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Foreign
Relations
of the
United
States



1933

Volume II

BRITISH
COMMONWEALTH
EUROPE, NEAR EAST
AFRICA

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AGREEMENT CONCERNING THE CHICAGO DIVERSION OF WATER AS AFFECTED BY PROVISIONS OF THE ST. LAWRENCE DEEP WATERWAY TREATY, EFFECTED BY EXCHANGE OF NOTES, APRIL 5, 1933

1933 Apr. 5	<i>To the Canadian Minister</i> Inquiry as to whether the Canadian Government would consent to 2-year extension of time for curtailment of the diversion of water from Lake Michigan as decreed by the Supreme Court on April 21, 1930.	100
Apr. 5 (53)	<i>From the Canadian Minister</i> Acquiescence of Canadian Government to the requested extension of time with the provision that such agreement will not in any way modify the provisions of the St. Lawrence Waterway Treaty.	101

LOAD LINE CONVENTION BETWEEN THE UNITED STATES AND CANADA, SIGNED DECEMBER 9, 1933

1933 Dec. 9	<i>Convention Between the United States of America and Canada</i> Text of convention signed at Washington.	102
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EFFECT UPON AMERICAN CITIZENSHIP OF OATHS REQUIRED OF ALIENS WHO TEACH IN CANADIAN SCHOOLS

1932 Oct. 7 (727)	<i>To the Chargé in Canada</i> Résumé of the question of citizenship status of Miss Audrey Howe, American national temporarily teaching in the Province of Manitoba, Canada, who has been denied admission into the United States upon the ground that she expatriated herself by taking the oath of temporary allegiance to Canada; request for information as to the Canadian law requiring teachers' oaths and the extent of its meaning and effect.	104
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IN CANADIAN SCHOOLS—Continued

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1932 Dec. 22 (1158)	<i>From the Chargé in Canada</i> Substance of Canadian note advising that the question of oaths to be taken by teachers is a matter within the jurisdiction of the several provinces; further advice that Miss Howe took the oath in the Province of Alberta.	105
1933 Feb. 3	<i>Memorandum by Mr. Richard W. Flournoy of the Office of the Legal Adviser</i> Opinion that the oath required in Alberta is an "oath of allegiance" within the meaning of section 2 of the Act of Congress of March 2, 1904.	105
Feb. 9	<i>To the Consul General at Winnipeg</i> Opinion that the Alberta oath constituted unqualified allegiance and that the taking of the oath resulted in the loss of Miss Howe's American citizenship; instructions to cancel her record of registration.	106

IRISH FREE STATE

REPRESENTATIONS BY THE IRISH FREE STATE CONCERNING THE ALLOTMENT GIVEN
TO THE IMPORTATION INTO THE UNITED STATES OF IRISH WHISKEY

1933 Nov. 25	<i>From the Irish Minister</i> Request that the U.S. Government give due consideration to a memorandum (text printed) concerning the trade situation between the Irish Free State and the United States in connection with the assignment of quotas for different countries in order to regulate the importation into the United States of liquor and wines.	107
Dec. 14	<i>Memorandum by the Acting Secretary of State of a Conversation With the Irish Minister</i> Indication that the Irish Minister considers the allotment for importation of Irish whiskey into the United States inadequate and that he will enter a protest if the figure cannot be raised.	108
Dec. 14	<i>To Mr. Raymond Miller of the Federal Alcohol Control Administration</i> Information that the Irish Minister is dissatisfied with the basic liquor quota allotted the Irish Free State in its relation to the Irish share of prewar exports of the United Kingdom; request that matter be reconsidered.	108
Dec. 16	<i>From the Irish Minister</i> Memorandum dated December 15 (text printed) indicating Irish Government's agreement to increase purchases of American wheat and other products in view of the satisfactory adjustment of the Irish liquor quota.	109

NEW ZEALAND

PRELIMINARY DISCUSSIONS REGARDING POSSIBLE NEGOTIATION OF A TRADE AGREEMENT BETWEEN THE UNITED STATES AND NEW ZEALAND

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1933 Apr. 10 (290)	<i>From the Consul General at Wellington</i> Opinion that New Zealand is inclined to favor a reciprocal trade agreement with the United States; request for indication of Department's attitude in this respect provided that necessary legislation is enacted authorizing the President to negotiate reciprocal trade agreements with foreign countries.	110
May 17	<i>To the Consul General at Wellington</i> Advice that inasmuch as the necessary legislation has not yet been enacted, no definite conclusions can be reached concerning trade negotiations with New Zealand but that a survey of the situation with a view to formulating the possible terms of such an agreement would be desirable.	110
May 23	<i>From the Consul General at Wellington (tel.)</i> Official information that the New Zealand Government would be glad to consider a reciprocal trade agreement with the United States and requests the views of the Department on the subject.	111
May 26	<i>To the Consul General at Wellington (tel.)</i> Instructions to communicate to the Acting Prime Minister the facts concerning U.S. inability to initiate negotiations at present and to express U.S. willingness to consider any tentative proposals which the New Zealand Government may wish to make.	112
June 21 (318)	<i>From the Consul General at Wellington</i> Note from the Acting Prime Minister, June 16 (text printed), containing a list of commodities of New Zealand origin which that Government desires to have incorporated in any future U.S.-New Zealand trade agreement. Information that a survey is being conducted on products of American origin on which concessions might be obtained from New Zealand.	112
July 14 (332)	<i>From the Consul General at Wellington</i> Analysis of certain items for which tariff concessions would benefit the United States; information that all phases of the existing tariff are being carefully studied by a Tariff Commission convening in New Zealand.	114
July 28 (343)	<i>From the Consul General at Wellington</i> Supplementary data concerning reciprocal tariff concessions.	117
Aug. 15	<i>Memorandum by the Acting Economic Adviser</i> Conversation between U.S. and New Zealand officials in which several individual commodities were discussed in connection with the stimulation of mutual trade and the granting of reciprocal tariff concessions; renewed inquiry of New Zealand Government as to the possibility of negotiating a trade agreement.	119

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1933 Sept. 7	<p><i>To the Consul General at Wellington</i></p> <p>Advice that since the expected legislation enabling the President to negotiate trade agreements was not enacted, the Department has instituted exploratory conversations with five other countries with a view to negotiating trade agreements involving U.S. tariff reductions subject to subsequent Congressional action; further advice that until the practicability of this procedure has been ascertained, no further conversations of this character will be instituted.</p>	122

UNION OF SOUTH AFRICA

ARRANGEMENT BETWEEN THE UNITED STATES AND THE UNION OF SOUTH AFRICA FOR AIR NAVIGATION, EFFECTED BY EXCHANGE OF NOTES SIGNED MARCH 17, 1933, AND SEPTEMBER 20, 1933

1933 Mar. 17 (166)	<p><i>From the American Minister in the Union of South Africa to the Minister of External Affairs of the Union of South Africa</i></p> <p>Transmittal of air navigation arrangement (text printed) agreed to in previous negotiations between the United States and the Union of South Africa; information that upon receipt of note confirming understanding of the arrangement as set forth, it will be considered in effect.</p>	123
Sept. 20	<p><i>From the Minister of External Affairs of the Union of South Africa to the American Minister in the Union of South Africa</i></p> <p>Confirmation of understanding of the arrangement.</p>	127

ARRANGEMENT BETWEEN THE UNITED STATES AND THE UNION OF SOUTH AFRICA FOR PILOT LICENSES TO OPERATE CIVIL AIRCRAFT, EFFECTED BY EXCHANGE OF NOTES SIGNED MARCH 17, 1933, AND SEPTEMBER 20, 1933

1933 Mar. 17 (167)	<p><i>From the American Minister in the Union of South Africa to the Minister of External Affairs of the Union of South Africa</i></p> <p>Transmittal of arrangement providing for the issuance by each country of licenses to nationals of the other country authorizing them to pilot civil aircraft (text printed) agreed to in previous negotiations between the United States and the Union of South Africa; information that upon receipt of note confirming understanding of the arrangement as set forth, it will be considered in effect.</p>	128
Sept. 20	<p><i>From the Minister of External Affairs of the Union of South Africa to the American Minister in the Union of South Africa</i></p> <p>Confirmation of understanding of the arrangement.</p>	130

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ALBANIA

EXTRADITION TREATY BETWEEN THE UNITED STATES AND ALBANIA, SIGNED
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1933 Mar. 1	<i>Extradition Treaty Between the United States of America and Albania</i> Text of treaty signed at Tirana.	133

CZECHOSLOVAKIA

DISCUSSION OF THE APPLICATION OF THE QUOTA SYSTEM TO AMERICAN MOTION
PICTURE FILMS IN CZECHOSLOVAKIA

1933 Feb. 25 (5)	<i>To the Chargé in Czechoslovakia (tel.)</i> Receipt of letter from Motion Picture Producers and Distributors of America, Inc. (excerpt printed), concerning Czechoslovak discrimination against foreign motion pictures and expressing the view that, if a compromise cannot be reached, they may have to acquiesce in the Czechoslovak quota law; instructions to communicate suggestions for any action that might protect the interests of the Motion Picture Producers. (Footnote: Telegraphic report by the Chargé in Czechoslovakia, March 7, that no immediate action was possible there.)	139
May 11	<i>From the Czechoslovak Minister</i> Opinion of Czechoslovak Government that films cannot be regarded as ordinary merchandise because of their cultural value; belief that a favorable conclusion of present negotiations at Prague between representatives of Czechoslovak and American industries concerning preferential treatment for importation of foreign films would be of value to both countries.	140
May 23	<i>To the Czechoslovak Minister</i> Inability of the Department to concur in the Czechoslovak restrictions on basis of cultural considerations, and reluctance to advise the American motion picture industry to re-enter the Czechoslovak market under the existing conditions.	141
May 24	<i>Memorandum by Mr. Joseph C. Green of the Division of Western European Affairs</i> Conversation between U.S. and Czechoslovak representatives in which Czechoslovak insistence that restrictions on importation of foreign films were made with a view to controlling anti-Czechoslovak propaganda was countered by U.S. contention that the main issue was the existence of an unfair quota system which would be unacceptable to the U.S. Government.	142

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FINLAND

PROPOSED MILITARY SERVICE CONVENTION BETWEEN THE UNITED STATES AND FINLAND

1932 Aug. 2 (95)	<p data-bbox="205 694 496 720"><i>To the Minister in Finland</i></p> <p data-bbox="205 720 862 807">Transmittal of draft treaty (text printed) relating to military service and other acts of allegiance which the Department would be prepared to conclude with the Finnish Government in lieu of the original draft of January 4, 1929.</p>	145
Sept. 13 (101)	<p data-bbox="205 824 485 850"><i>To the Minister in Finland</i></p> <p data-bbox="205 850 862 954">Instructions to present the U.S. revised draft treaty to the Finnish Government for consideration in view of the fact that a Finnish counterproposal (excerpt printed) to the original draft was presented prior to U.S. Minister's receipt of Department's instructions of August 2.</p>	147
1933 Apr. 3 (118)	<p data-bbox="205 972 485 998"><i>To the Minister in Finland</i></p> <p data-bbox="205 998 862 1076">Analysis of conflicting points in the U.S. and Finnish drafts; instructions to make representations based on this analysis, reiterating the hope that an agreement can be reached on the basis of the U.S. draft convention of August 2.</p>	148
July 3 (90)	<p data-bbox="205 1102 513 1128"><i>From the Minister in Finland</i></p> <p data-bbox="205 1128 862 1206">Transmittal of new Finnish proposal (text printed) similar to U.S. treaty with Norway, exempting from military service and other acts of allegiance certain nationals as approved by the Senate on December 20, 1930.</p>	150
Sept. 1	<p data-bbox="205 1223 485 1249"><i>To the Minister in Finland</i></p> <p data-bbox="205 1249 862 1302">Inability of U.S. Government to accept new Finnish proposal due to the phrasing of article 1, which fails to draw distinction between native born and naturalized citizens.</p>	152
Dec. 23 (63)	<p data-bbox="205 1328 513 1354"><i>From the Minister in Finland</i></p> <p data-bbox="205 1354 862 1432">Information that Finland maintains its position on the phrasing of article 1 but still hopes that, despite conflict over the question of dual nationality, a satisfactory conclusion of the treaty might be reached.</p>	153
	<p data-bbox="205 1449 862 1519">(Note: Information that a convention between the United States and Finland regulating the military obligations of persons having dual nationality was signed January 27, 1939.)</p>	154

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May 13 (131)	<i>To the Ambassador in France (tel.)</i> Instructions to make representations to the French Government protesting the discrimination against American imports into France resulting from French double tax agreements with third countries.	155
May 16 (3593)	<i>From the Chargé in France</i> Note to the Foreign Minister, May 16 (text printed), formally protesting against the preferential treatment accorded to third countries arising from the French effort to avoid double taxation.	156
May 22 (234)	<i>From the Chargé in France (tel.)</i> French reply (substance printed) to American protest, explaining certain conditions with regard to double taxation agreements with third countries.	157
July 20 (332)	<i>From the Ambassador in France (tel.)</i> Information that the French Government is reported to be again considering the imposition of the 15 percent tariff surtax on American imports.	158
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FOR INCREASE BY FRANCE IN QUOTAS FOR CERTAIN AMERICAN PRODUCTS

1933 Dec. 15 (369)	<i>To the Ambassador in France (tel.)</i> Completion of U.S.-French discussions concerning an increase in importation of American fruits and meat products into France and of French wines and liquors into the United States; request for suggestions concerning further proposal for additional increase in French wine quota in exchange for concessions to U.S. industrial products.	165
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REPRESENTATIONS REGARDING THE PROPOSED FRENCH PETROLEUM MONOPOLY

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1932 Sept. 16	<i>Memorandum by the Ambassador in Italy</i> Discussion with newly appointed Italian Ambassador to the United States concerning possibility of negotiation of a naturalization treaty between the United States and Italy; suggestion for meeting Italian objection that such a treaty would allow other countries to invoke the most-favored-nation clause, thus permitting drafting of Italian subjects in certain European countries.	570
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1933 Sept. 11 (171)	<i>From the Ambassador in Italy</i> Hope of Under Secretary of State for Foreign Affairs that the necessary legislation in support of the treaty will be passed in the December session of the Senate and that the text of the treaty will be ready by then; his comment that some Italian officials are not satisfied with the text proposed by the United States and want to make a fresh start.	579
Oct. 25 (79)	<i>To the Ambassador in Italy</i> Instructions to discuss treaty again with the Under Secretary in an effort to ascertain the particular provisions of the U.S. draft to which the Italian authorities object so that a solution of the difficulty may be worked out.	580
Nov. 10 (268)	<i>From the Ambassador in Italy</i> Report of discussion with the Under Secretary concerning Italian objections to U.S. draft treaty; submission of suggested changes in certain treaty provisions to meet these objections.	581
Dec. 2 (65)	<i>To the Ambassador in Italy (tel.)</i> Information that suggested changes in draft treaty have been approved in general but that certain modifications have been made.	583
Dec. 13	<i>From the Italian Under Secretary of State for Foreign Affairs to the American Ambassador in Italy</i> Enumeration of the difficulties of reaching a settlement of the naturalization question on the basis of the U.S. draft treaty, but expressing willingness in principle to conclude an agreement on the subject. (Note: Information that on January 18, 1934, the Ambassador in Italy was advised that, in view of the disinclination of the Italian Government to conclude a treaty, the negotiations should be dropped for the present.)	583 584

FASCIST PRESSURE ON NATURALIZED AMERICAN CITIZENS VISITING ITALY

1933 Aug. 3	<i>To the Consul at Trieste (tel.)</i> Instructions to render appropriate assistance to Guido Cimador, a naturalized American citizen alleged to have been arrested and imprisoned at Prato Carnico on June 3.	585
Aug. 4	<i>From the Consul at Trieste (tel.)</i> Report that unofficial information has been received that the real reasons behind Cimador's arrest for political and moral reasons were his actions in placing flowers on the bier of a dead anarchist and accompanying body to the grave.	585
Aug. 11 (289)	<i>From the Consul at Trieste</i> Report of investigation of the Cimador case; opinion that Cimador did not receive a fair trial by American standards, and that the Italian authorities were aware of his American citizenship.	585

ITALY

FASCIST PRESSURE ON NATURALIZED AMERICAN CITIZENS VISITING ITALY—Contd.

Date and number	Subject	Page
1933 Aug. 14 (87)	<i>From the Ambassador in Italy (tel.)</i> Information that representations are being made to central political authorities for release of Cimador.	587
Aug. 15	<i>From the American Ambassador in Italy to the Italian Director General for Political Affairs</i> Submittal of a memorandum in the case of Guido Cimador and advice that he is an American citizen.	587
Aug. 28	<i>Memorandum by the Consul at Trieste</i> Review of the Cimador case.	587
Aug. 31 (95)	<i>From the Ambassador in Italy (tel.)</i> Information from Trieste that Cimador has been released.	589
Oct. 19 (308)	<i>From the Consul at Trieste</i> Instance of Fascist pressure upon naturalized American citizens of Italian birth in the case of Aurelio Toppano, who had become a member of the Fascist Party, and had unwittingly taken the Fascist oath (text printed), because of promises of special privileges both in Italy and in the United States.	590

REPRESENTATIONS BY THE ITALIAN EMBASSY RESPECTING VIOLENT DEATH OF AN ITALIAN NATIONAL WHILE DETAINED IN JAIL AT NEW ORLEANS

1932 June 27	<i>From the District Attorney of New Orleans to the Secretary of the Governor of Louisiana</i> Receipt of inquiries from the Italian Consul at New Orleans concerning the death of Ross Palumbo, an Italian citizen, allegedly at the hands of two members of the New Orleans City Detective Department; information that an investigation showed that the two men were indicted for manslaughter, that the Grand Jury returned a vote of "no true bill", and that therefore the case is closed and the State barred from further action.	591
July 14	<i>From the Italian Ambassador</i> Presentation of facts in the case of Ross Palumbo and conclusion that there has been a gross miscarriage of justice; request, since there appears to be no hope of arriving at any results locally, for the intervention of the Department of State to secure redress, punishment of guilty parties, and an indemnity for Palumbo's widow and child.	592
Dec. 1	<i>To the Italian Chargé</i> Advice that a letter has been received from the Governor of Louisiana transmitting results of an investigation of the Palumbo case by the District Attorney of New Orleans; enclosure of copy of letter of June 27 from the District Attorney of New Orleans to the Secretary of the Governor of Louisiana.	593
1933 Jan. 9	<i>From the Italian Chargé</i> Information that the Italian Embassy cannot agree with the conclusions of the Attorney General of New Orleans; desire to be informed of Department's actions in bringing about a just solution of the case.	594

ITALY

REPRESENTATIONS BY THE ITALIAN EMBASSY RESPECTING VIOLENT DEATH OF AN ITALIAN NATIONAL WHILE DETAINED IN JAIL AT NEW ORLEANS—Continued

Date and number	Subject	Page
1933 Feb. 7	<i>To the Governor of Louisiana</i> Request for copies of official records, citations of pertinent authorities, citizenship data in the Palumbo case; expectation that all possible further steps will be taken to apprehend and punish the persons responsible for the death of Palumbo, and reminder that under international law a government is responsible for the damages in such cases where appropriate actions for the apprehension and punishment of wrongdoers is not taken.	595
Feb. 7	<i>To the Italian Ambassador</i> Information that steps are being taken to ascertain whether any further action can be taken by the competent authorities in the State of Louisiana.	597
July 5	<i>From the Italian Ambassador</i> Desire for a speedy and satisfactory settlement of the Palumbo case.	597
Aug. 12	<i>To the Governor of Louisiana</i> Reiteration of request for data referred to in Department's letter of February 7; probability that Italian Government will insist on payment of an indemnity if it cannot be convincingly established either that the death of Palumbo was not wrongful, or that the guilty parties have been punished.	597
Nov. 3	<i>To the Governor of Louisiana</i> Request for considered legal opinion of the Attorney General of Louisiana on the position of the State of Louisiana that it is barred from further action in the Palumbo case, in view of difference of opinion of the Italian Embassy; hope that, if it is so barred, action will be taken for the payment of a suitable indemnity as required under international law.	599
	(Note: Information that no reply from the Governor of Louisiana has been found in the Department files, and that aside from an inquiry on June 27, 1934, no further representations were made by the Italian Government.)	601

LATVIA

REPRESENTATIONS REGARDING ALLEGED DISCRIMINATION AGAINST AMERICAN TRADE IN LATVIA

1933 Apr. 4 (182)	<i>To the Minister in Latvia</i> Instructions for careful examination of any cases of discrimination against American trade by Latvian officials which may be brought to the attention of the Legation, with a view to making protest to the competent Latvian authorities; request for submission of a quarterly survey of new legislation, regulations, and practices restricting or discriminating against American trade and report of action taken by the Legation in connection with protection of American interests.	602
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LATVIA

REPRESENTATIONS REGARDING ALLEGED DISCRIMINATION AGAINST AMERICAN TRADE
IN LATVIA—Continued

Date and number	Subject	Page
1933 Apr. 21 (1307)	<i>From the Minister in Latvia</i> Three communications to the Foreign Office, March 30, 1932, January 23 and March 9, 1933 (texts printed), protesting discrimination against American trade resulting from Government's policy of regulating imports and <i>valuta</i> operations, to which no reply has as yet been received.	604
Apr. 26 (1314)	<i>From the Minister in Latvia</i> Foreign Office note of April 21 [20?] (text printed) expressing view that charges of discrimination against American trade are unfounded; reply to Foreign Office, April 24 (text printed), reiterating position that treaty rights are being denied to importers of American goods.	609
July 7 (1461)	<i>From the Chargé in Latvia</i> Report that during the June quarter there were no new laws, regulations, or practices tending to discriminate against American trade; data concerning two instances of discrimination reported to the Legation by a local importer of American goods.	613
Aug. 12 (221)	<i>To the Chargé in Latvia</i> Inability to determine from data given whether the two instances reported in Legation's despatch No. 1461 of July 7 actually constitute discrimination; caution concerning necessity for careful investigation and determination of facts before taking action on cases of alleged discrimination.	614
Oct. 13 (1657)	<i>From the Chargé in Latvia</i> Report that during the September quarter no new legislation restricting or discriminating against American trade, nor any specific instances of discrimination, have come to the attention of the Legation.	616

NETHERLANDS

PROPOSAL FOR THE ESTABLISHMENT OF A RECIPROCAL AIR NAVIGATION ARRANGEMENT BETWEEN THE UNITED STATES AND THE NETHERLANDS

1933 Mar. 29 (761)	<i>From the Netherlands Minister</i> Netherlands Ministry of Public Works Decree No. 473, February 23 (text printed), concerning conditions for admittance of American civil aircraft into the Netherlands pending the coming into force of the air navigation agreement concluded between the United States and the Netherlands on November 16, 1932.	617
May 6	<i>To the Netherlands Minister</i> Information concerning conditions for entry of Netherlands civil aircraft into the United States pending coming into force of the air navigation agreement.	618

NETHERLANDS

PROPOSAL FOR THE ESTABLISHMENT OF A RECIPROCAL AIR NAVIGATION ARRANGEMENT BETWEEN THE UNITED STATES AND THE NETHERLANDS—Continued

Date and number	Subject	Page
1933 Sept. 18 (28)	<i>To the Minister in the Netherlands (tel.)</i> Desire for exclusion of the Philippines, Hawaii, and Panama Canal Zone from the terms of the air navigation agreement, and proposal for amendment of article 1 accordingly; alternative proposal (text printed) providing for limitation of Netherlands possessions in case the first proposal is rejected by the Netherlands Government.	619
Oct. 17 (792)	<i>From the Minister in the Netherlands</i> Opinion of Netherlands official that there is no chance for acceptance of proposed modification of article 1, but that a proposal for exclusion of both American and Netherlands overseas possessions might be accepted; inquiry as to whether to suggest immediately the alternative formula mentioned in Department's telegram No. 28, of September 18.	620
Nov. 22 (824)	<i>From the Minister in the Netherlands</i> Note to Foreign Minister, November 22 (text printed), suggesting amendment of article 1 of air navigation agreement in accordance with second formula contained in telegram No. 28, September 18.	622

NORWAY

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND NORWAY

1933 Mar. 30	<i>Memorandum by the Secretary of State</i> Advice to the Norwegian Minister that the United States will be prepared to begin negotiation of reciprocal trade agreements after the necessary legislation is passed by Congress giving the President authority to negotiate such agreements.	624
Aug. 22	<i>From the Norwegian Legation</i> Statistics concerning Norwegian-American trade; interest of Norway in obtaining the reduction or abolishment of the U.S. import duty on whale oil, which, it is claimed, would lead to the increased exportation to Europe of American edible oils.	624
Sept. 15	<i>From the Chairman of the Tariff Commission</i> Comments on Norwegian <i>aide-mémoire</i> of August 22.	628
Dec. 16	<i>Memorandum by the Assistant Secretary of State</i> Inquiry by the Norwegian Minister as to when negotiations could begin for a U.S.-Norwegian trade agreement, and reply that Department is considering the matter but is not yet ready to begin conversations, owing to press of other work.	629

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ARRANGEMENT BETWEEN THE UNITED STATES AND NORWAY REGARDING AIR NAVIGATION, EFFECTED BY EXCHANGE OF NOTES SIGNED OCTOBER 16, 1933

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Oct. 16	<i>From the Norwegian Minister</i> Confirmation of understanding as set forth, and of November 15 as effective date of arrangement.	634

ARRANGEMENT BETWEEN THE UNITED STATES AND NORWAY REGARDING PILOT LICENSES TO OPERATE CIVIL AIRCRAFT, EFFECTED BY EXCHANGE OF NOTES SIGNED OCTOBER 16, 1933

1933 Oct. 16	<i>To the Norwegian Minister</i> Transmittal of reciprocal arrangement (text printed), agreed upon in previous negotiations, for the issuance by the one country of licenses to nationals of the other authorizing them to pilot civil aircraft; suggestion that if the Norwegian Government concurs, the arrangement become effective November 15.	635
Oct. 16	<i>From the Norwegian Minister</i> Confirmation of understanding as set forth, and of November 15 as effective date of arrangement.	637

ARRANGEMENT BETWEEN THE UNITED STATES AND NORWAY REGARDING RECIPROCAL RECOGNITION OF CERTIFICATES OF AIRWORTHINESS FOR IMPORTED AIRCRAFT, EFFECTED BY EXCHANGE OF NOTES SIGNED OCTOBER 16, 1933

1933 Oct. 16	<i>To the Norwegian Minister</i> Transmittal of arrangement (text printed), agreed upon in previous negotiations, for the reciprocal recognition of certificates of airworthiness for imported aircraft; suggestion that if the Norwegian Government concurs, the arrangement become effective November 15.	638
Oct. 16	<i>From the Norwegian Minister</i> Confirmation of understanding as set forth, and of November 15 as effective date of arrangement.	639

PORTUGAL

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE
UNITED STATES AND PORTUGAL

Date and number	Subject	Page
1933 July 13	<i>Memorandum by the Acting Secretary of State</i> Conversation with the Portuguese Chargé; expressions of U.S. desire for exploratory conversations with respect to the possible negotiation of a reciprocal trade agreement between the United States and Portugal.	640
July 17	<i>Memorandum by the Acting Secretary of State</i> Conversation with the Portuguese Chargé, who conveyed his Government's acceptance of suggestion for preliminary conversations respecting a trade agreement; U.S. inquiry as to whether conversations could begin immediately or whether they should await the arrival of the new Portuguese Minister.	640
July 27	<i>Memorandum by the Acting Secretary of State</i> Information from the Portuguese Chargé that the new Portuguese Minister will probably arrive in Washington on or about August 10 in order to open the trade conversations.	641
Aug. 4 (1015)	<i>From the Chargé in Portugal</i> Report containing specific suggestions as to tariff reductions or similar concessions which might be requested of Portugal and also which Portugal might request of the United States.	641
Aug. 8 (1020)	<i>From the Chargé in Portugal</i> Foreign Minister's opinion indicating enthusiasm for the suggested trade negotiations.	644
Nov. 2	<i>Memorandum by the Acting Secretary of State</i> Information in response to an inquiry by the Portuguese Minister that the Department hoped to be able to proceed with the reciprocal trade agreement conversations very soon.	644
Dec. 5	<i>Memorandum by the Chief of the Division of Western European Affairs</i> Desire of Portuguese Minister that commercial treaty negotiations be started; his view that Portugal had a right to expect more favorable treatment in the matter of the liquor quota.	645
Dec. 13	<i>Memorandum by the Assistant Secretary of State</i> Discussion with the Portuguese Minister concerning the suggested increase in the temporary liquor quota for Portugal and factors to be considered in the permanent trade agreement between the United States and Portugal.	646

PORTUGAL

REPRESENTATIONS REGARDING DISCRIMINATORY CHARGES IN PORTUGUESE PORTS

Date and number	Subject	Page
1932 Sept. 29 (718)	<i>From the Minister in Portugal</i> Note to Foreign Minister, September 28 (text printed), protesting against Portugal's failure to abolish discriminatory duties as pledged under Decree of September 12, 1931, as evidenced by suspension, on September 19, of Decree No. 20,333 of September 22, 1931.	649
Oct. 20 (159)	<i>To the Minister in Portugal</i> Approval of representations to Portuguese Government with reference to flag discrimination; instructions to inform Department of any developments.	651
Oct. 27 (78/27)	<i>From the Portuguese Minister for Foreign Affairs to the American Minister in Portugal</i> Information that Decree of September 22, 1931, was suspended merely to make place for another act to effect a more equitable distribution of the fuel subsidy.	651
1933 Jan. 4 (1)	<i>From the Minister in Portugal (tel.)</i> Report of reductions in discriminatory duties of 2 and 4 percent, effective January 2.	652
Oct. 18 (22)	<i>From the Minister in Portugal (tel.)</i> Report of revocation of decrees imposing discriminatory charges.	652
Oct. 23 (68)	<i>From the Minister in Portugal</i> Report of the conclusion on October 14 of an Anglo-Portuguese agreement, by which the Portuguese Government will abolish flag discrimination with respect to British vessels in Portugal in return for protection in Great Britain of Portuguese wine trade-marks; reasons which would appear to make any representations in the matter inadvisable at present.	652
Oct. 28 (73)	<i>From the Minister in Portugal</i> Impression, after discussion with the Prime Minister, that the question of flag discrimination is of secondary consideration with the Portuguese Government as compared with the negotiation of commercial treaties with the United States, France, and other countries.	654
Nov. 8 (12)	<i>To the Minister in Portugal (tel.)</i> Instructions to delay representations in the matter of the Anglo-Portuguese flag discrimination agreement in view of the opening of U.S.-Portuguese commercial treaty discussions in the near future.	655

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RECOGNITION BY THE UNITED STATES OF RUMANIA'S DE FACTO SOVEREIGNTY
OVER BESSARABIA

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1933 Mar. 6	<i>From the Chief of the Division of Near Eastern Affairs to the Secretary of State and the Under Secretary of State</i> Discussion with the Rumanian Minister, who urged that the United States reconsider its position on the question of Rumanian sovereignty over Bessarabia before making any decision with regard to recognition of the Soviet Union.	656
Mar. 16	<i>Memorandum by the Chief of the Division of Eastern European Affairs</i> Rumanian Minister's suggestion that the United States, in its discussions with the Soviet authorities preceding recognition, take the opportunity to indicate that it would like to see a settlement reached between Rumania and the Soviet Union with respect to Bessarabia.	658
Mar. 29	<i>From the Rumanian Minister</i> <i>Aide-mémoire</i> , March 28 (text printed), outlining background of Russo-Rumanian dispute over Bessarabia, and expressing view as to possibility for friendly mediation by the United States.	661
Apr. 12	<i>To President Roosevelt</i> Recommendation for the elimination of the Bessarabian quota and inclusion of that territory in the Rumanian quota in the new proclamation to be issued effecting changes in the immigration quota for the year beginning July 1, which action would have the effect of according American recognition to Rumanian sovereignty over Bessarabia. (Footnote: President Roosevelt's approval, April 15.)	680
May 31	<i>Memorandum by the Acting Secretary of State</i> Explanation to the Rumanian Minister of proposed action in connection with the Bessarabian quota, provided the Rumanian Government does not continue its policy of discrimination against American trade.	682
June 21	<i>To the Rumanian Minister</i> Transmittal of copies of the President's Proclamation No. 2048 of June 16 establishing immigration quotas for the year beginning July 1, in which the Bessarabian quota has been included within the Rumanian quota area and the Rumanian quota increased.	682

SUSPENSION OF PAYMENTS BY RUMANIA ON WAR DAMAGE BONDS HELD BY THE
ROMANO-AMERICANA, SUBSIDIARY OF THE STANDARD OIL COMPANY OF NEW
JERSEY

1933 June 30 (1087)	<i>From the Minister in Rumania</i> Note to the Acting Foreign Minister (text printed) expressing hope for reconsideration of Rumanian decision to suspend payment of the coupons of the War Damage Bonds issued under an agreement between the Rumanian Government and the Romano-Americana, sent in response to request of the General Manager of the Romano-Americana.	683
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RUMANIA

SUSPENSION OF PAYMENTS BY RUMANIA ON WAR DAMAGE BONDS HELD BY THE ROMANO-AMERICANA, SUBSIDIARY OF THE STANDARD OIL COMPANY OF NEW JERSEY—Continued

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1933 Nov. 10 (18)	<i>To the Minister in Rumania</i> Suggestion, with reference to the Minister's note of June 30 to the Acting Foreign Minister, that in case a similar situation should arise in the future the Legation should ask Department for specific instructions.	684
Dec. 18 (50)	<i>From the Minister in Rumania</i> Information that, in response to further requests by the General Manager of the Romano-Americana, a communication dated December 6 (text printed) was sent to the Foreign Minister expressing the view that the company should have been consulted in the matter of suspension of payment on the coupons of the War Damage Bonds and hope that an equitable settlement of the matter can be reached. (Footnote: Information that no further information on the case is found in the Department files.)	684

REPRESENTATIONS AGAINST THE APPLICATION OF THE RUMANIAN SYSTEM OF IMPORT QUOTAS

1933 Apr. 12 (1048)	<i>From the Minister in Rumania</i> Discussion with a Foreign Office official concerning the unfavorable effect on U.S.-Rumanian commercial relations of the Rumanian system of import quotas.	687
June 8	<i>From the Chief of the Division of Near Eastern Affairs to the Acting Secretary of State</i> Discussion with Rumanian Minister concerning U.S. attitude that American imports are discriminated against under the Rumanian import quota system.	689
June 15 (12)	<i>From the Minister in Rumania (tel.)</i> Telegram sent by the Rumanian Government to the Rumanian Minister in Washington (text printed) instructing him to give categorical assurances of the intention of the Rumanian Government to make no discriminations unfavorable to the United States.	690
Nov. 3 (26)	<i>From the Minister in Rumania</i> Report of representations to the Rumanian Government in several recent instances of discrimination against American firms and American merchandise.	690
Dec. 20 (32)	<i>To the Minister in Rumania (tel.)</i> Information that, in connection with the discussions of liquor quota for Rumania, the Rumanian Minister has asserted the nondiscriminatory attitude of the Rumanian Government toward the allotment of import licenses for American products; request for report on the situation.	692
Dec. 27 (33)	<i>From the Minister in Rumania (tel.)</i> Report of improvement in the allotment of import quotas and indication by officials that a favorable change is to be expected, but suggestion that liquor quota agreement be delayed pending receipt of a full report.	693

SPAIN

EFFORTS OF THE GOVERNMENTS OF THE UNITED STATES AND SPAIN TO ELIMINATE
MUTUAL TRADE GRIEVANCES

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1933 Apr. 6	<i>Memorandum by the Under Secretary of State</i> Inquiry by the Spanish Ambassador as to when the President intends to request authorization from Congress to negotiate reciprocal trade agreements.	694
June 27	<i>Memorandum by the Acting Secretary of State</i> Information, in reply to inquiry by Spanish Ambassador, that Spain is not included among those countries with which the United States hopes to negotiate trade agreements in the near future.	694
July 14	<i>Memorandum by the Under Secretary of State</i> Spanish desire for conversations looking toward improved U.S.-Spanish commercial relations with special reference to Spanish exports of grapes and cork.	695
Sept. 28	<i>Memorandum by the Secretary of State</i> U.S. attitude toward proposed conversations with Spain dealing with commercial relations.	696
Dec. 21 (81)	<i>From the Ambassador in Spain (tel.)</i> Spanish resentment because of alleged discrimination against Spanish wines in U.S. wine quota.	697
Dec. 21 (59)	<i>To the Ambassador in Spain (tel.)</i> Information that Spanish attitude shows complete misunderstanding of U.S. quota policy with regard to wines, and that it is open to Spain at any time to make a bargaining suggestion for a larger quota.	697

REPRESENTATIONS AGAINST BILLS INTRODUCED IN THE SPANISH CORTES TO ANNUL
THE CONTRACT OF THE INTERNATIONAL TELEPHONE AND TELEGRAPH COMPANY

1933 Jan. 10	<i>To the Vice President of the International Telephone and Telegraph Company</i> Acknowledgment of expression of appreciation for recent assistance in the protection of Spanish interests of the company, but anticipation that there may be further difficulties before final settlement of the question is obtained.	698
Feb. 4 (5)	<i>From the Ambassador in Spain (tel.)</i> Letter from the Prime Minister to telephone company official, February 2 (text printed), designating Spanish members of the commission which is to consider revision of the telephone contract.	699
Feb. 23 (1088)	<i>From the Ambassador in Spain</i> Designation by the telephone company of its representatives on the joint committee.	699
Apr. 26 (1167)	<i>From the Chargé in Spain</i> Introduction into the Cortes by a Radical Deputy of a draft bill abolishing the tax exemption granted in the telephone contract; hope of telephone company that bill will not reach discussion, but plans to meet such an eventuality.	700

SPAIN

REPRESENTATIONS AGAINST BILLS INTRODUCED IN THE SPANISH CORTES TO ANNUL
THE CONTRACT OF THE INTERNATIONAL TELEPHONE AND TELEGRAPH COMPANY—
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1933 May 15 (20)	<i>From the Chargé in Spain (tel.)</i> Information that telephone company official is reporting indirect efforts to impair telephone contract; intention to reiterate previously expressed position of United States should action be required.	701
July 25 (87)	<i>From the Ambassador in Spain</i> Information that, at the suggestion of telephone company official, it was pointed out to the Minister of State, with reference to program of Radical Socialists, one item of which called for the annulment of the telephone company's concession, that the U.S. position in the matter had not changed since presentation of note of November 23, 1932.	701
Dec. 13 (234)	<i>From the Ambassador in Spain</i> Transmittal of copy of a decree of November 30 providing for the transfer to the Catalan government of the execution of Spanish legislation relating to the telephone company and the company's service in the Generalidad.	702
Dec. 21 (60)	<i>To the Ambassador in Spain (tel.)</i> General authorization to maintain unchanged position of U.S. Government in event of reintroduction of legislation unfavorable to telephone company's interests, but request that Department be kept informed of developments.	702

REPRESENTATIONS RESPECTING DISCRIMINATION AGAINST AMERICAN AUTOMOBILE
TRADE IN SPAIN

1933 May 17 (1189)	<i>From the Chargé in Spain</i> Transmittal of text of decree of May 9 concerning intention of Spanish Government to concede to countries with which Spain maintains a favorable balance of trade a temporary arrangement of returns or benefits.	703
June 10 (33)	<i>From the Ambassador in Spain (tel.)</i> Unofficial information that Spain will grant 30-percent benefit to French automobiles under the decree of May 9.	704
June 12 (24)	<i>To the Ambassador in Spain (tel.)</i> Instructions to protest discrimination against American trade should proposed concession be granted to French automobiles.	704
June 26 (37)	<i>From the Ambassador in Spain (tel.)</i> Information that Foreign Minister has been requested to give official confirmation of reported secret agreement granting benefits to French automobiles.	704
July 5 (38)	<i>From the American Ambassador in Spain to the Spanish Minister for Foreign Affairs</i> Request for information concerning agreement, if one exists, effecting the reduction of the present Spanish tariff on automobiles of French origin.	704

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REPRESENTATIONS RESPECTING DISCRIMINATION AGAINST AMERICAN AUTOMOBILE
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1933		
July 8	<p data-bbox="288 366 942 409"><i>From the Spanish Minister for Foreign Affairs to the American Ambassador in Spain</i></p> <p data-bbox="288 409 942 522">Suggestion that reports concerning agreement with France, the terms of which were published in full in the <i>Gaceta de Madrid</i> for June 23, may refer to possibility of a French request for reduction of certain customs tariffs under the so-called "benefits" policy.</p>	705
Aug. 29 (67)	<p data-bbox="288 531 942 574"><i>From the American Ambassador in Spain to the Spanish Minister for Foreign Affairs</i></p> <p data-bbox="288 574 942 678">Representations against recent action of Customs head granting tariff advantages amounting to 35 percent to automobiles of French origin, which is a discrimination affecting American trade.</p>	706

REPRESENTATIONS TO MITIGATE SEVERITY OF TREATMENT OF AMERICANS HELD AT
PALMA FOR ALLEGED ATTACK UPON CIVIL GUARDS

1933		
June 16	<p data-bbox="288 802 756 828"><i>From the Consul General at Barcelona (tel.)</i></p> <p data-bbox="288 828 942 940">Report of arrest of five Americans on charge of assaulting civil guard; information that since case is under military jurisdiction the efforts of the Consulate General to secure prompt and lenient settlement were unsuccessful, and the intervention of the Embassy will be necessary.</p>	706
June 29 (38)	<p data-bbox="288 949 676 975"><i>From the Ambassador in Spain (tel.)</i></p> <p data-bbox="288 975 942 1045">Written and oral representations to Foreign Minister for provisional release of the five Americans imprisoned at Palma.</p>	707
July 1 (29)	<p data-bbox="288 1045 650 1071"><i>To the Ambassador in Spain (tel.)</i></p> <p data-bbox="288 1071 942 1123">Instructions to urge expedition in release of Americans at Palma.</p>	707
July 8 (30)	<p data-bbox="288 1123 650 1149"><i>To the Ambassador in Spain (tel.)</i></p> <p data-bbox="288 1149 777 1183">Request for immediate report in Palma case.</p>	708
July 13 (31)	<p data-bbox="288 1183 650 1209"><i>To the Ambassador in Spain (tel.)</i></p> <p data-bbox="288 1209 942 1288">Advice that concern has been expressed to the Spanish Ambassador with regard to the fate of the five Americans imprisoned at Palma.</p>	708
July 15 (41)	<p data-bbox="288 1288 676 1314"><i>From the Ambassador in Spain (tel.)</i></p> <p data-bbox="288 1314 942 1418">Information that the military judge in the Palma case has submitted a report hostile to any concession and has refused bail; intention to make an appeal to the Prime Minister in the case.</p>	708
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Aug. 1 (91)	<i>From the Ambassador in Spain</i> Information that Palma case will not be closed until finally disposed of by trial or dismissal; observations concerning seriousness of the incident from the Spanish viewpoint.	709
Sept. 7 (42)	<i>To the Ambassador in Spain (tel.)</i> Instructions to make representations again to the Prime Minister and the Foreign Minister for a speedy and final solution of the case of the five Americans at Palma, in view of public indignation in the United States over their long imprisonment; further instructions, in case accused are tried and sentenced to further imprisonment or payment of an excessive fine, to submit record of trial and other pertinent data for Department's consideration.	712
Sept. 19 (141)	<i>From the Ambassador in Spain</i> Representations to Prime Minister and Foreign Office officials, who agreed to do everything possible; opinion that there will be no further imprisonment of the five Americans.	713
Oct. 27 (65)	<i>From the Ambassador in Spain (tel.)</i> Report from Palma of acquittal of the five Americans subject to review.	714
Nov. 10 (52)	<i>To the Ambassador in Spain (tel.)</i> Inquiry, with reference to press reports that Military Auditor refused to approve verdict of acquittal and that case had been referred to the Supreme Court, as to when the Court's decision may be expected.	714
Nov. 11 (71)	<i>From the Ambassador in Spain (tel.)</i> Information that authorities are endeavoring to speed Supreme Court decision and close incident; belief that acquittal verdict will be sustained.	714
1934 Jan. 11 (2)	<i>From the Ambassador in Spain (tel.)</i> Information that trial has been concluded before the Supreme Court and that decision is expected within 8 days.	715
Jan. 19 (9)	<i>From the Ambassador in Spain (tel.)</i> Unofficial report that one of the accused Americans has been acquitted and the other four sentenced to 6 months and 1 day by Supreme Court decision.	715
Jan. 21 (11)	<i>From the Ambassador in Spain (tel.)</i> Information from Foreign Minister that two Americans were not reimprisoned as result of Court decision (which merely placed accused at disposition of the Court), but because of an accusation that they were planning to escape, and that orders would be sent for their release.	715

SPAIN

REPRESENTATIONS TO MITIGATE SEVERITY OF TREATMENT OF AMERICANS HELD AT PALMA FOR ALLEGED ATTACK UPON CIVIL GUARDS—Continued

Date and number	Subject	Page
1934 Jan. 23 (12)	<i>From the Ambassador in Spain (tel.)</i> Imprisonment of two other Americans in spite of Government's representations; information concerning proposed procedure for obtaining pardon of prisoners; request for authorization to send the Consul General at Barcelona to Palma to investigate condition of prisoners.	716
Jan. 25 (13)	<i>From the Ambassador in Spain (tel.)</i> Information that visit of Consul General will not be necessary in view of instructions to prison authorities by Minister of Justice.	717
Jan. 27 (8)	<i>To the Ambassador in Spain (tel.)</i> Instructions to inform Spanish authorities of pressure being brought upon Department to secure final and satisfactory settlement of the case.	717
Jan. 29 (14)	<i>From the Ambassador in Spain (tel.)</i> Information that Foreign Minister is making arrangements to secure a pardon in the near future.	717
Feb. 3 (16)	<i>From the Ambassador in Spain (tel.)</i> Pardon and arrangements for immediate release of the four prisoners.	718

SWEDEN

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND SWEDEN

1933 July 13 (25)	<i>To the Minister in Sweden (tel.)</i> Discussion with Swedish Chargé, who was advised of U.S. willingness to begin exploratory conversations looking toward conclusion of a reciprocal trade agreement.	719
Aug. 3 (28)	<i>To the Minister in Sweden (tel.)</i> Request for report on the commodities on which tariff concessions might be requested from Sweden, and those which Sweden might desire to request from the United States.	719
Aug. 11 (19)	<i>From the Minister in Sweden (tel.)</i> Information in reply to Department's telegram No. 28 of August 3.	720
Aug. 28	<i>Memorandum by the Chief of the Treaty Division</i> Discussion with Commercial Counselor of the Swedish Legation as to when proposed reciprocal trade conversations might begin.	720
Oct. 18	<i>Memorandum by the Chief of the Treaty Division</i> Conversation with Swedish Minister, who expressed his Government's interest in the continuation of wood pulp and newsprint on the free list and for reduction of duties on matches and certain steel manufactures.	721

SWEDEN

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND SWEDEN—Continued

Date and number	Subject	Page
1933 Dec. 20	<p data-bbox="192 371 841 440"><i>Memorandum by Mr. Harry C. Hawkins of the Treaty Division of a Conversation Between the Swedish Minister and the Assistant Secretary of State</i></p> <p data-bbox="192 440 841 527">Swedish Minister's desire for assurances that no action would be taken under the National Industrial Recovery Act which would limit the importation of pulp and paper from Sweden.</p>	722
REFUSAL OF THE SWEDISH STATE RAILWAYS TO PAY DEXTER AND CARPENTER, INC., JUDGMENT GRANTED BY A UNITED STATES COURT		
1933 Jan. 25 (4)	<p data-bbox="192 666 529 692"><i>To the Minister in Sweden (tel.)</i></p> <p data-bbox="192 692 841 753">Instructions to inquire when Foreign Office reply to Legation's note of March 10, 1932, concerning the Swedish State Railways case, may be expected.</p>	723
Feb. 17 (657)	<p data-bbox="192 770 501 796"><i>From the Minister in Sweden</i></p> <p data-bbox="192 796 841 944">Foreign Office note dated February 9 (text printed), giving a detailed review of the case, and advising that if the submission of the case to a Swedish court is not satisfactory to the United States, the Swedish Government is willing to submit to arbitration or to give serious consideration to any other proposal for settlement, provided the views of the Swedish Government are given sufficient consideration.</p>	723
Apr. 18 (180)	<p data-bbox="192 961 461 987"><i>To the Chargé in Sweden</i></p> <p data-bbox="192 987 841 1065">Instructions to address note to Foreign Office (text printed) expressing willingness to arbitrate the case, or, preferably, to enter into friendly discussion with a view to reaching a less formal solution of the question.</p>	752
May 15 (15)	<p data-bbox="192 1083 546 1109"><i>From the Chargé in Sweden (tel.)</i></p> <p data-bbox="192 1109 841 1170">Willingness of Swedish Government to enter into friendly discussion in the Dexter and Carpenter case, while reserving right to eventual arbitration.</p>	754
Aug. 21 (22)	<p data-bbox="192 1187 501 1213"><i>From the Minister in Sweden</i></p> <p data-bbox="192 1213 841 1343">Report of discussions with representative of Dexter and Carpenter and with Swedish Government official concerning maximum and minimum amounts of payment for settlement of case which would be acceptable to the respective parties; recommendation that amount of \$150,000 be accepted by the company as fair and final offer of Swedish Government.</p>	755
Aug. 29 (23)	<p data-bbox="192 1361 561 1387"><i>From the Minister in Sweden (tel.)</i></p> <p data-bbox="192 1387 841 1413">Information that settlement was agreed upon for \$150,000.</p>	757
Sept. 30 (26)	<p data-bbox="192 1430 561 1456"><i>From the Minister in Sweden (tel.)</i></p> <p data-bbox="192 1456 841 1534">Information that check for \$150,000 has been received from the Swedish Government in the Dexter and Carpenter case, and is being forwarded to the Department by registered mail.</p>	758

SWEDEN

CONVENTION BETWEEN THE UNITED STATES AND SWEDEN FOR THE EXEMPTION FROM MILITARY SERVICE OF PERSONS HAVING DUAL NATIONALITY, SIGNED JANUARY 31, 1933.

Date and number	Subject	Page
1931 June 23 (283)	<i>From the Minister in Sweden</i> Transmittal of a draft convention proposed by the Swedish Government (text printed) in reply to U.S. suggestion for the conclusion of a treaty covering exemption from military service of persons having dual nationality, and providing for the termination of dual nationality.	758
Sept. 2 (73)	<i>To the Minister in Sweden</i> U.S. objection to article 1 of Swedish draft convention relating to termination of dual nationality, and suggestion for certain additions and changes in phraseology of articles 2 and 3.	760
1932 Dec. 6 (620)	<i>From the Minister in Sweden</i> Foreign Office reply, November 29 (text printed), explaining inability to accept proposed changes in phraseology and expressing the hope that the U.S. Government will be willing to limit the convention to the exemption from military obligations.	761
1933 Jan. 7 (3)	<i>To the Minister in Sweden (tel.)</i> Authorization to sign convention limited to military obligations.	763
Jan. 31	<i>Convention Between the United States of America and Sweden</i> Text signed at Stockholm.	763
RECIPROCAL AIR NAVIGATION ARRANGEMENT BETWEEN THE UNITED STATES AND SWEDEN, EFFECTED BY EXCHANGE OF NOTES, SEPTEMBER 8 AND 9, 1933		
1933 Sept. 8	<i>To the Swedish Chargé</i> Transmittal of reciprocal arrangement (text printed), agreed upon in previous negotiations, concerning the operation of civil aircraft of the one country in the territory of the other, to become effective on October 9.	765
Sept. 9	<i>From the Swedish Chargé</i> Confirmation of understanding as set forth, and of October 9 as effective date of arrangement.	769

SWEDEN

RECIPROCAL ARRANGEMENT BETWEEN THE UNITED STATES AND SWEDEN FOR THE
ISSUANCE OF PILOT LICENSES TO OPERATE CIVIL AIRCRAFT, EFFECTED BY EX-
CHANGE OF NOTES, SEPTEMBER 8 AND 9, 1933

Date and number	Subject	Page
1933 Sept. 8	<i>To the Swedish Chargé</i> Transmittal of reciprocal arrangement (text printed), agreed upon in previous negotiations, for the issuance by the one country of licenses to nationals of the other authorizing them to pilot civil aircraft; suggestion that if the Swedish Government concurs, the arrangement become effective October 9.	770
Sept. 9	<i>From the Swedish Chargé</i> Confirmation of understanding as set forth, and of October 9 as effective date of arrangement.	772

ARRANGEMENT BETWEEN THE UNITED STATES AND SWEDEN PROVIDING FOR THE
RECIPROCAL RECOGNITION OF CERTIFICATES OF AIRWORTHINESS FOR IMPORTED
AIRCRAFT, EFFECTED BY EXCHANGE OF NOTES, SEPTEMBER 8 AND 9, 1933

1933 Sept. 8	<i>To the Swedish Chargé</i> Transmittal of reciprocal arrangement (text printed), agreed upon in previous negotiations, concerning the acceptance by the one country of certificates of airworthiness for aircraft exported from the other country as merchandise; suggestion that if the Swedish Government concurs, the arrangement become effective on October 9.	772
Sept. 9	<i>From the Swedish Chargé</i> Confirmation of understanding as set forth, and of October 9 as effective date of arrangement.	774

RECIPROCAL EXTENSION BY THE UNITED STATES AND SWEDEN OF FREE ENTRY
PRIVILEGES FOR LEGATION EMPLOYEES

1932 Dec. 23 (630)	<i>From the Minister in Sweden</i> Information, in response to Department's inquiry, that the Swedish Government grants free entry privileges to Legation employees of non-Swedish nationality under terms of a decree of July 1, 1927.	774
1933 Jan. 5	<i>To the Swedish Minister</i> Information that the Department has arranged for the extension of free entry privileges to employees of the Swedish Legation who are of Swedish nationality, since the Swedish Government already grants such privileges to U.S. Legation employees.	775

SWITZERLAND

EXEMPTION OF SWISS CONSULS IN THE UNITED STATES FROM VARIOUS
EXCISE TAXES

Date and number	Subject	Page
1933 Jan. 17	<i>From the Swiss Chargé</i> Acknowledgment of notification concerning the exemption of Swiss Consuls in the United States from various excise taxes provided for by the Revenue Act of 1932; advice that Switzerland does not impose excise taxes on such objects as the use of telegraph, telephone, radio and cable facilities, passage tickets, checks, or electrical energy.	776
Feb. 11	<i>To the Swiss Chargé</i> Information that inasmuch as Switzerland does not impose excise taxes on such objects as the use of telegraph, telephone, radio and cable facilities, passage tickets, checks, or electrical energy, the exemption of Swiss consular officers in the United States from such taxes is in effect.	777

UNION OF SOVIET SOCIALIST REPUBLICS

RECOGNITION BY THE UNITED STATES OF THE SOVIET UNION, NOVEMBER 16, 1933

1932 Sept. 8	<i>To Senator William E. Borah</i> Opinion as to the effect of U.S. recognition of the Soviet Union on the Far Eastern situation.	778
1933 Feb. 23 (1)	<i>From the Military Attaché in Japan to the Assistant Chief of Staff</i> Report of conversation with Soviet Military Attaché, who expressed opinion that it would be to the interest of the United States and the Soviet Union to reach a friendly understanding.	779
Mar. 3	<i>To Mr. Fred L. Eberhardt</i> Comments concerning trade relations with the Soviet Union; opinion that U.S. recognition would not materially alter the credit standing of the Soviet Union.	780
[July 27]	<i>Memorandum by the Chief of the Division of Eastern European Affairs</i> Discussion of problems pertaining to Russian-American relations which should be settled prior to recognition of the Soviet Government, including Communist world revolutionary activities, repudiated debts and confiscated property, economic and social differences.	782
Aug. 31	<i>From the Assistant Chief of the Division of Eastern European Affairs to the Special Assistant to the Secretary of State</i> Transmittal of copy of memorandum of July 27 (<i>supra</i>).	788
Sept. 21	<i>To President Roosevelt</i> Observation, in connection with the question of the extension of loans by U.S. Government agencies to the Soviet Union to facilitate purchases in the United States, that any such loans should be made only as part of a general settlement with the Soviet Union.	789

UNION OF SOVIET SOCIALIST REPUBLICS

RECOGNITION BY THE UNITED STATES OF THE SOVIET UNION, NOVEMBER 16, 1933—
Continued

Date and number	Subject	Page
1933 Sept. 25	<p><i>From the Chief of the Division of Eastern European Affairs to the Under Secretary of State</i></p> <p>Recommendation, in connection with the President's proposed message to the head of the Soviet State, that it be made clear that the conclusion of any definite agreement for Government financial assistance in facilitating American exports to Russia is dependent upon a general settlement of existing difficulties.</p>	790
Oct. 5	<p><i>To President Roosevelt</i></p> <p>Transmittal of two memoranda, October 4 (texts printed) by Judge Walton Moore, Assistant Secretary of State, and William Bullitt, Special Assistant to the Secretary of State, containing observations in connection with the development of plans for the recognition of the Soviet Union.</p>	791
Oct. 10	<p><i>From President Roosevelt to the President of the Soviet All-Union Central Executive Committee</i></p> <p>Proposal for the opening of exploratory discussions concerning questions outstanding between the United States and the Soviet Union with a view to ending the present abnormal relations between the two countries.</p>	794
Oct. 17	<p><i>From the President of the Soviet All-Union Central Executive Committee to President Roosevelt</i></p> <p>Acceptance of proposal for exploratory discussions with the United States, and designation of M. M. Litvinov as the Soviet representative.</p>	795
Oct. 20 (99)	<p><i>To the Ambassador in Japan (tel.)</i></p> <p>Information concerning arrangements for exploratory discussions between the United States and the Soviet Union; explanation that this action does not, however, constitute recognition.</p>	795
Oct. 21	<p><i>From the Russian Financial Attaché</i></p> <p>Request for discontinuance of present status and the temporary transfer to the Department of State of matters requiring further attention.</p>	796
Oct. 23 (163)	<p><i>From the Ambassador in Japan (tel.)</i></p> <p>Opinion of Foreign Minister quoted in press interview (text printed) and other comment indicating that the Japanese do not feel that the proposed U.S.-Soviet conversations are directed against Japan.</p>	796
Oct. 24 (166)	<p><i>From the Ambassador in Japan (tel.)</i></p> <p>Comment that any publicity in connection with the proposed U.S.-Soviet discussions giving grounds for suspicion of U.S. support of the Soviet Union in the Far East would lead to renewed outbursts on the part of the military faction in Japan.</p>	797
Oct. 24 (41)	<p><i>From the Chargé in Latvia (tel.)</i></p> <p>Account of Soviet newspaper comments which attempt to interpret the peace element in President Roosevelt's message as an offer of support against Japan.</p>	798

UNION OF SOVIET SOCIALIST REPUBLICS

RECOGNITION BY THE UNITED STATES OF THE SOVIET UNION, NOVEMBER 16, 1933—
Continued

Date and number	Subject	Page
1933 Oct. 24 (312)	<i>To the Chargé in France (tel.)</i> Instructions for issuance of visas to Litvinov and members of his party.	799
Oct. 25	<i>Memorandum by the Chief of the Division of Eastern European Affairs</i> Recommendations and considerations in connection with question of Russian governmental indebtedness to the U.S. Government; recommendation that two items representing obligations of the Kolchak government, which was never recognized by the United States, be not presented for payment.	800
Oct. 28	<i>From the Chief of the Division of Far Eastern Affairs to the Secretary of State</i> Importance of reassuring the Japanese, who are fearful that the conversations between President Roosevelt and Litvinov will relate in part to problems arising in the Far East in consequence of Japanese policy and actions.	801
Undated	<i>Joint Communiqué by the Secretary of State and the Soviet Commissar for Foreign Affairs, November 8, 1933</i> Announcement of opening of discussions concerning relations between the United States and the Soviet Union.	802
Undated	<i>Joint Statement by President Roosevelt and the Soviet Commissar for Foreign Affairs, November 10, 1933</i> Announcement that the President and Mr. Litvinov reviewed the questions previously discussed between the Secretary of State and Mr. Litvinov.	802
Nov. 15	<i>From the Special Assistant to the Secretary of State to President Roosevelt</i> Summary of discussion with Litvinov concerning debts and claims.	802
Nov. 15	<i>Memorandum by President Roosevelt and the Soviet Commissar for Foreign Affairs</i> Discussion between Mr. Litvinov and President Roosevelt, the Acting Secretary of the Treasury, and Mr. Bullitt, concerning the amount to be paid by the Soviet Union in settlement of its debt.	804
Nov. 16	<i>From President Roosevelt to the Soviet Commissar for Foreign Affairs</i> Advice that as a result of the conversations the United States Government has decided to establish normal diplomatic relations with the Soviet Union and to exchange ambassadors.	805
Nov. 16	<i>From the Soviet Commissar for Foreign Affairs to President Roosevelt</i> Information that Soviet Union is glad to establish normal diplomatic relations with the Government of the United States and to exchange ambassadors.	805

UNION OF SOVIET SOCIALIST REPUBLICS

RECOGNITION BY THE UNITED STATES OF THE SOVIET UNION, NOVEMBER 16, 1933—
Continued

Date and number	Subject	Page
1933 Nov. 16	<i>From the Soviet Commissar for Foreign Affairs to President Roosevelt</i> Statement of policy concerning respect for the territorial and political integrity of the United States.	805
Nov. 16	<i>From President Roosevelt to the Soviet Commissar for Foreign Affairs</i> Statement of policy to adhere reciprocally to the engagements set forth in the Soviet note of November 16 (<i>supra</i>).	806
Nov. 16	<i>From President Roosevelt to the Soviet Commissar for Foreign Affairs</i> Expectation of the U.S. Government that American nationals within the territory of the Soviet Union will be allowed the same freedom of conscience and religious liberty which they enjoy in the United States.	807
Nov. 16	<i>From the Soviet Commissar for Foreign Affairs to President Roosevelt</i> Statement of policy guaranteeing freedom of conscience and religious liberty to American nationals in the Soviet Union.	808
Nov. 16	<i>From the Soviet Commissar for Foreign Affairs to President Roosevelt</i> Readiness of Soviet Union to grant to American nationals in the Soviet Union immediately upon establishment of U.S.-Soviet relations rights with reference to legal protection not less favorable than those enjoyed in the Soviet Union by nationals of the nation most favored in this respect and to include such rights in a consular convention.	810
Nov. 16	<i>From President Roosevelt to the Soviet Commissar for Foreign Affairs</i> Willingness to negotiate a consular convention as soon as practicable; information that American diplomatic and consular officers in the Soviet Union will be zealous in guarding the rights of American nationals.	811
[Nov. 16]	<i>Statement by the Soviet Commissar for Foreign Affairs</i> Explanation of Soviet policy on the dissemination of economic information.	812
Nov. 16	<i>From the Soviet Commissar for Foreign Affairs to President Roosevelt</i> Release by the Soviet Union and assignment to the U.S. Government of any amounts which may be due the Soviet Government from American nationals as a result of litigation, or from the claim of the Russian Volunteer Fleet, pending a final settlement of the claims situation.	812
Nov. 16	<i>From President Roosevelt to the Soviet Commissar for Foreign Affairs</i> Acknowledgment of Soviet note concerning release and assignment of amounts due from claims.	813

UNION OF SOVIET SOCIALIST REPUBLICS

RECOGNITION BY THE UNITED STATES OF THE SOVIET UNION, NOVEMBER 16, 1933—
Continued

Date and number	Subject	Page
1933 Nov. 16	<p><i>From the Soviet Commissar for Foreign Affairs to President Roosevelt</i></p> <p>Waiver by Soviet Government of all claims arising out of activities of military forces of the United States in Siberia subsequent to January 1, 1918.</p>	814
Undated	<p><i>Joint Statement by President Roosevelt and the Soviet Commissar for Foreign Affairs, November 16, 1933</i></p> <p>Announcement that there has been an exchange of views on problems still outstanding and that there is hope for an early settlement of these questions.</p>	814
Nov. 16	<p><i>To Mr. Serge Ughet</i></p> <p>Notification of withdrawal of U.S. recognition of Ughet as Russian Financial Attaché in view of U.S. recognition of the Government of the Soviet Union.</p>	814
Nov. 17	<p><i>From the Chief of the Division of Eastern European Affairs to the Acting Secretary of State</i></p> <p>Information that, with the knowledge of Mr. Litvinov, some of the records were transferred from the Russian Embassy, over which the Department of State assumed custody recently, to a more convenient place for consultation during the U.S.-Soviet conversations.</p>	815
Nov. 17	<p><i>To the Russian Consul at Boston (tel.)</i></p> <p>Information that status as Russian Consul is considered terminated as of November 16 in view of U.S. recognition of the Soviet Union.</p> <p>(Footnote: Information that the same notification was sent, <i>mutatis mutandis</i>, to the Russian Consuls General at Chicago and Seattle.)</p>	816
Nov. 17	<p><i>To All Diplomatic Missions Abroad (cir. tel.)</i></p> <p>Instructions to enter into cordial official and social relations with Soviet colleagues in view of U.S. recognition of the Soviet Union on November 16.</p>	816
Nov. 18 (5)	<p><i>From the Secretary of State to the Acting Secretary of State</i></p> <p>Press statement (text printed) issued aboard ship, expressing gratification at resumption of normal relations with the Soviet Union.</p> <p>(Footnote: Information that Secretary Hull was en route to Montevideo to attend the Seventh International Conference of American States.)</p>	817
Nov. 20	<p><i>To the Soviet Chargé</i></p> <p>Intention to recommend to the President the issuance of a proclamation discontinuing the levying of discriminatory tonnage duties on Soviet vessels and the cargoes imported therein upon receipt of satisfactory proof that no discriminatory tonnage duties and imposts are imposed by the Soviet Union upon American vessels or their cargoes.</p>	817

UNION OF SOVIET SOCIALIST REPUBLICS

RECOGNITION BY THE UNITED STATES OF THE SOVIET UNION, NOVEMBER 16, 1933—
Continued

Date and number	Subject	Page
1933 Nov. 21	<p><i>From the Soviet Chargé</i> Information that beginning November 21 U.S. vessels have been accorded the preferential rate of tonnage duty, and that no discriminatory duties are levied on produce, manufactures, or merchandise imported in American vessels. (Footnote: Issuance of reciprocal proclamation signed January 16, 1934, effective as of November 21, 1933.)</p>	818
Nov. 22 (12)	<p><i>From the Acting Secretary of State to the Secretary of State (tel.)</i> Intention, in view of Litvinov's impending departure, to issue a statement explaining that while no decision has been reached on the question of debts and claims, conversations will be continued by responsible officers of both Governments.</p>	819
Nov. 22	<p><i>From the Soviet Commissar for Foreign Affairs to President Roosevelt</i> Expression of thanks for courtesies extended during visit, and gratification at successful conclusion of mission.</p>	819
Undated	<p><i>Extract from a Radio Address on November 22 by the Assistant Secretary of State</i> Observations on the U.S.-Soviet conferences and the final agreement resulting in U.S. recognition of the Soviet Union.</p>	819
Nov. 23	<p><i>From President Roosevelt to the Soviet Commissar for Foreign Affairs</i> Acknowledgment of Litvinov's letter of November 22.</p>	820
Nov. 23 (1716)	<p><i>From the Chargé in Latvia</i> Summary of the leading editorial in the Moscow <i>Izvestiya</i> of November 20, concerning U.S. recognition of the Soviet Union.</p>	821
Nov. 25	<p><i>From the Russian Consulate General at New York</i> Inquiry as to whether to carry on work until the conclusion of a consular convention between the United States and the Soviet Union and the establishment of a Soviet Consulate at New York, or to cease functioning immediately.</p>	824
Nov. 29	<p><i>Memorandum by the Acting Secretary of State</i> Conversation with the Soviet Chargé, who said that his Government would like to appoint a trade commissioner to reside in New York and to be given diplomatic status; reply that this would constitute an exception to the Department's policy and that the President will be consulted in the matter.</p>	824
Dec. 8	<p><i>To the Ambassador in Germany (tel.)</i> For Bullitt (Appointed Ambassador to the Soviet Union en route to his post) from Moore: Instructions to ascertain certain facts concerning Soviet obligations falling due in Germany in connection with plans for utilization of American-owned German obligations in financing trade with Soviet Union.</p>	825

UNION OF SOVIET SOCIALIST REPUBLICS

RECOGNITION BY THE UNITED STATES OF THE SOVIET UNION, NOVEMBER 16, 1933—
Continued

Date and number	Subject	Page
1933 Dec. 12	<i>To Mr. A. R. Feil</i> Advice as to status of former Russian Consulate General at New York, and information that that office should not undertake to perform consular functions.	826
Undated	<i>Remarks of the American Ambassador in the Soviet Union Upon the Presentation of His Letters of Credence to the President of the Soviet All-Union Central Executive Committee, at Moscow, December 13, 1933</i> Text of remarks.	827
Undated	<i>Reply of the President of the Soviet All-Union Central Executive Committee to the American Ambassador in the Soviet Union, at Moscow, December 13, 1933</i> Text of reply.	828
Dec. 20	<i>To the Soviet Embassy</i> Nonobjection to the appointment of a Commercial Attaché or Counselor to the Soviet Embassy in Washington upon certain conditions, or to the maintenance by such official of an office and residence in New York.	829
Dec. 21	<i>To the Ambassador in Germany (tel.)</i> For Bullitt from Moore: Request for opinion as to advisability of setting up a special bank or financial institution to effect transfer of American-owned German obligations to the Russians; request for data concerning Soviet maturities in Germany.	829
Dec. 23 (214)	<i>From the Ambassador in Germany (tel.)</i> For Moore from Bullitt: Approval of bank if no other method is practicable; information that list of Soviet obligations is being telegraphed to Washington by Litvinov.	830
Dec. 24 (576)	<i>From the Chargé in France (tel.)</i> From Bullitt: Litvinov's inquiry as to whether the United States would have any objection if the Soviet Government should join the League of Nations.	830
Dec. 27 (578)	<i>From the Chargé in France (tel.)</i> For the Acting Secretary and Moore from Bullitt: Receipt from Soviet Commercial Attaché in Paris of list of Soviet obligations in reichsmarks due in 1934 with promise that list of dollar obligations will be obtained from Berlin at once.	832
1934 Jan. 4 (2)	<i>From the Ambassador in the Soviet Union</i> Detailed report of visit to the Soviet Union.	833

THE NEAR EAST AND AFRICA

EGYPT

FAILURE OF THE UNITED STATES TO CONCLUDE A TREATY OF EXTRADITION
WITH EGYPT

Date and number	Subject	Page
1931 June 4 (61)	<i>To the Minister in Egypt</i> Transmittal of a draft treaty of extradition for consideration by the Egyptian Foreign Office.	841
June 19	<i>Memorandum Prepared in the Division of Near Eastern Affairs</i> U.S. practices with respect to extradition of its nationals from countries where extraterritorial jurisdiction is exercised.	841
1933 May 8 (215)	<i>To the Minister in Egypt</i> Authorization, in view of objections of the Egyptian Government which could only be met by provisions which would amount to a waiver of capitulatory rights, to inform the Egyptian Government that the United States is not disposed to continue the negotiations for conclusion of an extradition treaty.	843

DISCRIMINATION IN FAVOR OF BRITISH FIRMS IN AWARDED CONTRACTS FOR THE
BUILDING OF IRRIGATION WORKS IN THE ANGLO-EGYPTIAN SUDAN

1932 Nov. 19 (599)	<i>From the Minister in Egypt</i> Report of confidential decision of the Egyptian Council of Ministers by which the acceptance of bids for the construction of a dam at Gebel Awlia in the Sudan is limited to seven specified British firms; opinion that in view of the special position of Great Britain in Egypt and the Sudan, it would not seem advisable to protest against this action of the Egyptian Government.	845
1933 Jan. 17 (197)	<i>To the Minister in Egypt</i> Instructions to mention informally to the appropriate authorities that, while the United States does not intend to make formal protest in the matter of limitation of bids for the construction of a dam at Gebel Awlia, it can only look with disfavor upon arrangements which prevent American interests from enjoying opportunities in Egypt equal to those accorded to other foreign interests.	846
Apr. 12 (702)	<i>From the Minister in Egypt</i> Informal discussion with the Acting Foreign Minister, who gave assurance that the matter of the Gebel Awlia dam was a special case, adding that the Egyptian Government recognized the equality of all foreign economic interests in Egypt and had no intention of discriminating against American interests.	847

EGYPT

SUSPENSION OF THE EGYPTIAN GOVERNMENT'S ATTEMPT TO REGULATE AUTOMOTIVE TRAFFIC BY DECREE

Date and number	Subject	Page
1933 Mar. 30 (694)	<i>From the Minister in Egypt</i> Abandonment by the Egyptian Government, as a result of the strong and unyielding position of the capitulatory powers, of the collection of certain illegal automobile taxes and suspension or modification of restrictions upon commercial motor traffic.	848
Aug. 4 (782)	<i>From the Minister in Egypt</i> Announcement by the Egyptian Government on July 19 of the suspension of meetings of the Motor Licensing Committee pending decision concerning new draft automobile taxation law; information that through representations by the Legation, a meeting of the Committee was held on July 20 and all pending applications granted, but that it was reported that no further meetings would be held for another 2 months, during which time dealers would be unable to dispose of any trucks owing to impossibility of obtaining licenses for them. (Footnote: Information that all U.S. objections to the draft automobile taxation law were met by the Egyptian Government and that the law went into effect on July 2, 1934.)	849

ETHIOPIA

COOPERATION BY THE UNITED STATES IN EFFORTS TO EFFECT A REFORM OF THE SPECIAL COURT AT ADDIS ABABA

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MOROCCO

RESERVATION OF AMERICAN RIGHTS WITH RESPECT TO CERTAIN MEASURES IN THE FRENCH ZONE OF MOROCCO

1932 Dec. 15 (791)	<i>From the Diplomatic Agent and Consul General at Tangier</i> Receipt of communication from the Resident General of France at Rabat explaining his recent declaration of the incorporation of the special tax provided for in article 66 of the Act of Algeiras with the ordinary budget of the French Protectorate; request for Department's views and instructions as to reply to be made to the Resident General.	967
1933 Jan. 30 (806)	<i>From the Diplomatic Agent and Consul General at Tangier</i> Transmittal of correspondence with the Residency General of France at Rabat with regard to disputes at Tangier Customs over assumption by the Moroccan customs authorities of arbitrary powers in connection with the dutiable appraisement of imported merchandise, particularly American radio sets and flour imported by an American <i>ressortissant</i> ; request for Department's comments and instructions.	968

MOROCCO

RESERVATION OF AMERICAN RIGHTS WITH RESPECT TO CERTAIN MEASURES IN THE
FRENCH ZONE OF MOROCCO—Continued

Date and number	Subject	Page
1933 Feb. 8	<i>From the American Diplomatic Agent and Consul General at Tangier to the French Resident General in Morocco</i> Protest and reservations concerning application to American nationals and <i>ressortissants</i> of a dahir of January 30 instituting compensation taxes on certain imported merchandise, in violation of the Act of Algeciras and anterior treaties.	969
Mar. 8 (75-D)	<i>From the French Resident General in Morocco to the American Diplomatic Agent and Consul General at Tangier</i> Explanation that dahir of January 30 applies only to merchandise originating or shipped from countries not enjoying the benefit of the most-favored-nation clause, and that this is specified in the Vizirial Decree of February 20.	970
Mar. 14	<i>From the American Diplomatic Agent and Consul General at Tangier to the French Resident General in Morocco</i> Observation that the terms of the decree of February 20 in no way modify the objectionable character of the dahir of January 30, and reiteration of protest and reservations in note of February 8.	970
Mar. 16 (727)	<i>To the Diplomatic Agent and Consul General at Tangier</i> Instructions to address a communication to the Resident General protesting the action of the Protectorate authorities in incorporating the special tax with the ordinary budget as a contravention of article 66 of the Act of Algeciras.	971
Apr. 10 (736)	<i>To the Diplomatic Agent and Consul General at Tangier</i> Opinion that it would not be advisable at present to make representations through the American Embassy in Paris against the institution of compensatory taxation under dahir of January 30, but assurance that Department fully supports protests of February 8 and March 14 to the French Resident General.	972
Apr. 12 (834)	<i>From the Diplomatic Agent and Consul General at Tangier</i> Request of French Resident General for U.S. assent to the enforcement of provisions of a dahir and decree of February 6 governing operation of motor omnibus passenger services with respect to American nationals and <i>ressortissants</i> ; proposed reply (text printed) refusing assent in view of arbitrary powers of Transport Commission constituted under terms of the dahir and decree which might endanger free competition in regard to such enterprises.	973
May 8 (739)	<i>To the Diplomatic Agent and Consul General at Tangier</i> Authorization to make proposed reply to the French Resident General.	975

MOROCCO

REPRESENTATIONS RESPECTING THE VIOLATION OF AMERICAN TREATY RIGHTS TO
TRADE IN THE SPANISH ZONE OF MOROCCO

Date and number	Subject	Page
1933 Aug. 8 (869)	<i>From the Diplomatic Agent and Consul General at Tangier</i> Report on regulations of Spanish Protectorate authorities affecting the importation of flour by American <i>ressortissants</i> , and communication to the Spanish Consul General at Tangier, July 20 (text printed), requesting his intervention with the Spanish authorities for a removal of the difficulties; suggestion that Department take up the matter with the Spanish Government through the American Embassy at Madrid.	976
Sept. 1 (875)	<i>From the Chargé at Tangier</i> Report of clearance by Spanish authorities of flour imports of two American <i>ressortissants</i> ; observation, however, that questions of removal of illegal trade restrictions and liability for damages to American interests remain unsettled.	981
Sept. 28 (39)	<i>To the Ambassador in Spain</i> Instructions to take up orally and informally with the appropriate Spanish authorities question of regulations in Spanish Zone of Morocco affecting importation of flour, expressing hope that these regulations in violation of U.S. treaty rights will be withdrawn.	983
Oct. 19 (177)	<i>From the Ambassador in Spain</i> Information that representations were made in accordance with Department's instruction No. 39 of September 28 to the Minister of State, who agreed to look into the matter.	984
1934 Jan. 18 (65)	<i>To the Ambassador in Spain</i> Instructions to inform Minister of State of recent interference at Tangier with an American shipment of prunes and again to request an investigation of alleged impediments to American trade in Spanish Morocco with a view to correction of the situation.	984

SAUDI ARABIA

PROVISIONAL AGREEMENT BETWEEN THE UNITED STATES AND SAUDI ARABIA WITH
REGARD TO CONSULAR AND DIPLOMATIC REPRESENTATION, JURIDICAL PROTECTION,
COMMERCE AND NAVIGATION

1932 Feb. 2 (2553)	<i>From the Chargé in Great Britain</i> Transmittal of a memorandum from the Hedjazi Minister in Great Britain, January 29 (text printed), approving, with certain minor modifications, text of draft provisional agreement proposed by the United States relating to consular and diplomatic representation, juridical protection, commerce and navigation.	986
June 16 (83)	<i>To the Ambassador in Great Britain</i> Department's attitude regarding changes suggested by Hedjazi Minister; counterproposals concerning the treatment of consular officers and languages to be used in text.	989

SAUDI ARABIA

PROVISIONAL AGREEMENT BETWEEN THE UNITED STATES AND SAUDI ARABIA WITH REGARD TO CONSULAR AND DIPLOMATIC REPRESENTATION, JURIDICAL PROTECTION, COMMERCE AND NAVIGATION—Continued

Date and number	Subject	Page
1932		
Sept. 9 (340)	<i>From the Ambassador in Great Britain</i> Concurrence of Hedjazi Government with U.S. counter-proposals except for languages of text; hope that United States will agree to English and Arabic texts of equal validity.	991
Oct. 18 (255)	<i>To the Ambassador in Great Britain</i> Acceptance of Hedjazi proposal regarding language of text; information that text has been changed to conform to change of name of Kingdom of Hedjaz and Nejd to Saudi Arabia.	992
Nov. 3 (472)	<i>From the Ambassador in Great Britain</i> Request for authorization to send to the Saudi Arabian Minister a proposed draft note (text printed) incorporating undertakings not to claim certain privileges for U.S. consular officers.	993
Nov. 18 (285)	<i>To the Ambassador in Great Britain (tel.)</i> Approval of draft note.	996
Nov. 23 (505)	<i>From the Ambassador in Great Britain</i> Information that authorized note was sent to the Saudi Arabian Minister on November 19 and a reply dated November 21 (text printed) was received, advising that subject to the specified undertakings, the Saudi Arabian Government was willing to conclude the provisional agreement.	996
1933		
Mar. 14	<i>From the Saudi Arabian Legation in Great Britain to the American Embassy in Great Britain</i> Memorandum requesting certain alterations in the provisional agreement and expressing desire that the exchange of notes which occurred on November 19 and 21 take place on the same day as the signature of the agreement as an annex to it.	997
Apr. 26 (494)	<i>To the Chargé in Great Britain</i> Inability to accept one of Arabian Government's proposed changes; information that United States would prefer not to repeat assurances already given in exchange of notes of November 19 and 21.	998
Oct. 17 (113)	<i>To the Ambassador in Great Britain</i> Information that Department is satisfied with texts of provisional agreement as submitted and is returning them for signature.	999
Nov. 7	<i>Provisional Agreement Between the United States of America and the Kingdom of Saudi Arabia in Regard to Diplomatic and Consular Representation, Juridical Protection, Commerce and Navigation</i> Text of agreement signed at London.	999

SYRIA

ASSENT BY THE UNITED STATES TO CHANGES OF FRONTIER BETWEEN SYRIA AND
JEBEL DRUSE ON THE ONE HAND AND TRANS-JORDAN ON THE OTHER

Date and number	Subject	Page
1932 Feb. 17 (235 Pol.)	<i>From the Consul at Geneva</i> Transmittal of copies of League of Nations document containing Protocol of Agreement concluded on October 31, 1931, between the British and French Governments for the settlement of the question of the frontier between Syria and the Jebel Druse and Trans-Jordan, which was approved by the League Council.	1002
Aug. 18 (165)	<i>To the Chargé in Great Britain</i> Instructions to bring to the attention of the Foreign Office the position of the United States that the frontier changes effected by the Anglo-French Protocol have not been approved by the United States as required under the terms of the U.S.-British Convention of December 3, 1924, and consequently are not legally applicable to the United States and its nationals. (Footnote: The same, <i>mutatis mutandis</i> , to the Embassy in France.)	1004
1933 Jan. 10 (607)	<i>From the Chargé in Great Britain</i> Transmittal of Foreign Office reply of January 4 (text printed), explaining the reasons for alteration of frontiers of the mandated territory and advising that, without prejudice to the question as to whether the step is legally necessary, the British Government is requesting U.S. consent to the frontier changes.	1005
Jan. 19 (3271)	<i>From the Ambassador in France</i> Transmittal of Foreign Office note of January 12 (text printed), advising that French Government sees no objection to requesting U.S. approval of the new boundary line, without, however, prejudging the question as to whether this action is legally necessary.	1007
May 18 (513)	<i>To the Chargé in Great Britain</i> Instructions to inform Foreign Office of U.S. assent to frontier alterations as set forth in the Anglo-French Protocol of October 31, 1931. (Footnote: The same, <i>mutatis mutandis</i> , to the Chargé in France.)	1009

THE BRITISH COMMONWEALTH OF NATIONS

GREAT BRITAIN

APPLICABILITY OF IMPERIAL TARIFF PREFERENCE TO GRAIN SHIPPED FROM CANADA THROUGH THE UNITED STATES TO THE UNITED KINGDOM

611.42251/133

The British Embassy to the Department of State

AIDE-MÉMOIRE

In connection with the tariff preference to Empire wheat granted under the Ottawa Agreements Act, there has been considerable doubt in political and trade circles whether this preference would be applicable to wheat of Canadian growth which on its way from Canada to the United Kingdom has passed through and possibly been stored at the United States Lake Port of Buffalo and thence forwarded by rail through United States territory for shipment from New York or other Atlantic Ports of the United States.

In the case of the recent shipment by a Canadian exporter on the Cunard steamer *Laconia*, there was no evidence that when the wheat left Canada it was in fact consigned to the United Kingdom, and the decision of the United Kingdom Customs was to the effect that the preference could not be accorded in this case as the documents did not comply with the conditions necessary to establish a claim. If the wheat in question had in fact been consigned at the time it left Canada to an individual or company in the United Kingdom and if the documents had clearly established this to the satisfaction of the United Kingdom Customs, the wheat would have been accorded preferential treatment.

On the general question His Majesty's Government in the United Kingdom desire to state that there would appear to be no reason why exportation of wheat from Canada cannot be effected in such a manner as to satisfy the conditions as to Imperial preference notwithstanding the fact that it is transitional through the United States.

His Majesty's Government in the United Kingdom desire to emphasize that the requirements of consignment from a part of the Empire is not in any sense new but has on the contrary been an essential principle of preference ever since 1919. It is therefore obvious that there

can be no question of this being an innovation designed to prejudice United States interests in connection with the new wheat preference.

WASHINGTON, January 11, 1933.

611.42251/133

The Department of State to the British Embassy

AIDE-MÉMOIRE

The Government of the United States is very grateful for the desire expressed by the British authorities in the *aide-mémoire* left at the Department of State on January 11 to assist in reaching a solution of the difficulties at present affecting the shipment of Canadian grain through the United States to the United Kingdom. Over a long period of time the method now employed in shipping Canadian grain through American ports to Great Britain has been found to be the most satisfactory from the point of view of economy and expediency and this Government feels strongly that it would be a grave mistake to restrict in any way a method which vitally affects not only the Canadian producers, the exporters and carriers but also the ultimate consumer in the United Kingdom.

On January 11 and 12 a large delegation representing the American terminal, transportation and port interests discussed with representatives of this Department, the Department of Commerce and the Department of Agriculture the existing practices in the grain trade, stressing the difficulties in which they now find themselves in view of the recent decision of the British authorities regarding the granting of tariff preference to Canadian wheat under the Ottawa Agreements Act.

The principal difficulties encountered in conforming to the British regulations are as follows:

At the time Canadian grain is shipped from the head of the Lakes its ultimate destination and purchaser are unknown. These cannot be known since the transactions are financed by traders on the New York Grain Exchange who maintain an open market for North American grain. Hence, the title to Canadian grain may change many times between its original shipment from the head of the Lakes and its reaching the ultimate purchaser in the United Kingdom or Europe.

In the past the grain has moved to Buffalo and through the New York Barge Canal to tidewater in anticipation of the closing of navigation on the Great Lakes and the St. Lawrence River. The grain is accumulated at New York and other seaports for shipment to various parts of the world during the winter months. It is not possible with

existing transportation facilities in Canada to use a water route to accumulate grain at Canadian seaports for shipment during the winter months. By making use of the New York Barge Canal in piling up wheat in ocean ports prior to the closing of navigation on the Great Lakes a saving of more than four cents per bushel in transportation costs is realized. Grain shipped from North America largely moves as bottom cargo on regular shipping lines and Canadian grain shipped via United States Atlantic ports has the benefit of liner services which in frequency, speed, variety of destinations and transportation economy probably surpass those available anywhere else in the world. It may be noted that British vessels participate largely in the handling of this traffic.

Despite the fact that any change in the trading methods which have been developed gradually over several decades would involve added burdens, a majority of the representatives of the port, transportation and terminal interests have expressed a desire to go as far as possible in an effort to work out a formula to comply with the British regulations. After careful consideration, the following proposal has been drafted which the American Ambassador in London¹ has been requested to submit to the appropriate British authorities:²

"A. Will a shipment of Canadian wheat via the United States be accepted under the present British Customs Regulations as entitled to Imperial preference under the following conditions:

(1) The Lake bill of lading and the invoice to show shipment as consigned from a Canadian port for export to a named consignee in a specified port in the United Kingdom, it being understood that the grain may not in fact necessarily move to the original consignee specified but after intermediate sales may be delivered to an actual purchaser at any port in the United Kingdom.

(2) The certificate of origin to be filled out as far as possible by the qualified person in Canada and the supplementary certificate, when necessary, to be filled out by the exporter in the United States when the definite routing and ultimate destination in the United Kingdom are known.

"B. As a transitory provision in view of the uncertainty in the grain trade as to the precise procedure required under the application of the Ottawa Agreements Act to Canadian grain shipped via the United States, would it not be satisfactory to the British Customs Authority to allow such Canadian grain as is now in the United States consigned on the accustomed "for export to the United Kingdom" bill of lading to be recognized upon importation into the United Kingdom as Canadian grain for purposes of preferential tariff treatment provided that this transitory privilege is to apply only to grain which had left Canada before the close of navigation on the Great Lakes in 1932."

¹ Andrew Mellon.

² Telegraphic instruction No. 16, January 19, not printed.

It may be stated that the procedure under A (1) above differs from that used in the *Laconia* case in that the Lake bill of lading would be endorsed for export to a named person in a specified port in the United Kingdom, in practice the name of the exporting firm's usual customer or agent; for example, "for export to John Jones, Liverpool" instead of merely "for export to the United Kingdom". However, since intermediate sales between the consignment of the grain and its ultimate delivery are common, it should be definitely understood that the grain need not necessarily be delivered to the person specified in the bill of lading notation and invoice at the stated port but may be delivered to an actual purchaser at any port in the United Kingdom without losing the right to preference. This flexibility is absolutely indispensable if Canadian grain is henceforth to be shipped through the United States to Great Britain. It should be noted that since Canadian wheat moves in bond through the United States because of the American tariff of 42 cents per bushel there can be no question whatever as to its Canadian origin, because its identity as such is carefully preserved under customs supervision at all times.

As regards B mentioned above, it is understood that the quantity of Canadian grain now in American ports is about ten million bushels, only a portion of which will probably be shipped to the United Kingdom even if it be accorded imperial preference. This grain was shipped from Canada before the British Government had announced any decision in regard to the requirements to be met to enable Canadian grain to obtain the preference, and it is felt that this request is altogether a reasonable one.

In taking up this matter with the British authorities, the American Ambassador has been requested to make it clear that its discussion should not be construed as implying acquiescence on the part of the United States Government in the principle of imperial preference, a subject on which the United States Government expresses no opinion at this time and on which it reserves its position.

WASHINGTON, January 19, 1933.

611.42251/157

The Chargé in Great Britain (Atherton) to the Secretary of State

No. 787

LONDON, April 6, 1933.

[Received April 15.]

SIR: Confirming the Embassy's telegram No. 76, April 6, 12 noon,³ I have the honor to transmit herewith copies of the full text of a note

³ Not printed.

dated April 5 from the Foreign Office, in reply to the Embassy's *Aide-Mémoire* based on the Department's telegraphic instruction No. 16, January 19, 1 p. m.,⁴ concerning the difficulties at present encountered in shipping Canadian wheat to the United Kingdom via United States ports.

Respectfully yours,

RAY ATHERTON

[Enclosure]

The British Secretary of State for Foreign Affairs (Simon) to the American Chargé (Atherton)

No. A 2548/232/45

[LONDON,] 5 April, 1933.

SIR: His Majesty's Government in the United Kingdom have had under consideration the memorandum, which Mr. Mellon caused to be communicated to this department on the 24th January last⁵ regarding the recent decision of His Majesty's Customs in respect of a shipment of Canadian wheat in the S. S. *Laconia*.

2. In reply I have the honour to state that it has, since the introduction in 1919 of the system of Imperial Preference, been a statutory condition of the grant of preference not only that goods must be of British Empire origin but also that they must be consigned to the United Kingdom from a part of the British Empire. This requirement of consignment from a part of the British Empire appears for the first time in Section 8 (1) of the Finance Act, 1919, and has been reproduced in subsequent enactments as an essential principle of Empire preference. Since that date the principle has on a number of occasions been sustained in respect of various commodities and various countries, as it has been found indispensable for a proper administration of the system by the Customs.

3. It is true that in the case of the recent shipment of Canadian wheat from New York the documents accompanying the wheat established its Canadian origin, but there was no satisfactory evidence that at the time of leaving Canada the wheat was definitely consigned to the United Kingdom, and the claim of preference consequently failed. This question of consignment is one of fact, and in cases in which the wheat, at the time of leaving Canada, is definitely consigned to the United Kingdom there should be no insuperable difficulty in producing the necessary documents to satisfy the Customs on this point. In the *Laconia* case the documents showed that the wheat was first consigned to Buffalo and subsequently re-consigned from the United States of

⁴ Not printed.

⁵ See *aide-mémoire* to the British Embassy, January 19, *supra*.

America, the condition of through consignment thus clearly not being fulfilled.

4. While His Majesty's Government have given the most careful and sympathetic consideration to the memorandum under reference, they are, unfortunately, unable to regard the first proposal (A) put forward therein as entirely satisfactory, since the Lake bill of lading mentioned therein, even if endorsed to a named consignee in this country, could not be accepted as satisfactory evidence that the consignment condition had been fulfilled; they are advised that this document merely covers transit to Buffalo and that the endorsement has no legal effect.

5. His Majesty's Government in the United Kingdom are, however, most anxious to take account of the considerations set forth in the memorandum on behalf of the various United States interests concerned, so far as the statutory requirements in force permit and so far as is consistent with the essential objects which these requirements have in view. His Majesty's Customs will accordingly be prepared to accept a satisfactory evidence of through consignment to the United Kingdom, in cases where wheat is definitely consigned to the United Kingdom at the time of shipment from Canada, an invoice to the consignee in the United Kingdom issued at the time of shipment and supported by supplementary evidence that there was a bona fide transaction (e.g. the order from the British consignee for the supply of the wheat), even though the wheat did not move to the original consignee named on the invoice but to some other ultimate purchaser in the United Kingdom. It is to be understood that in such a case the invoice must also be accompanied by the usual documents tracing the transit of the goods from Canada to the United Kingdom. I trust that the above procedure may be found acceptable to the interests concerned, and will provide a solution of the difficulties which have arisen.

6. The memorandum further proposes (under sub-head B), a transitory procedure for the treatment of Canadian grain now in the United States which had left Canada before the close of navigation on the Great Lakes in 1932. I regret that it is not possible to adopt this procedure, since the Ottawa Agreements Act makes no provision for any special treatment of commodities which were already under way at the time of its entry into force; in this respect it followed the procedure generally adopted in this country and also, so far as I am aware, in the United States of America.

I have [etc.]

(For the Secretary of State)
R. L. CRAIGIE

611.42251/162 : Telegram

*The Secretary of State to the Ambassador in Great Britain
(Bingham)*

WASHINGTON, May 20, 1933.

117. Department's telegram 16, January 19, 1 p. m.,⁶ and your despatch 787, April 6. We feel that much depends on the interpretation to be given by the British customs authorities to their reply to our proposals if American exporters are to secure any relief from the present regulations. At a recent meeting between officials of the Department and representatives of the interested concerns it was decided that a more effective arrangement might be obtained by direct consultation between the representatives of the American grain exporters and the competent British officials. Accordingly, Robert M. Morgan, President of the North American Grain Export Association, and Walter P. Hedden, Chief, Bureau of Commerce, New York Port Authority, will arrive in England May 23. They will call on you the following day and will appreciate your making appointments for them with the appropriate British officials for Thursday May 25 with whom they will discuss the matter fully in the hope that some arrangement can be reached whereby the British regulations may be observed and at the same time American interests be safeguarded. Please render them any appropriate assistance.

We have followed with great concern the British consideration of our proposals as we feel that it is both unwise and unfair in the present period of economic stress to place hampering restrictions on a trade which has developed for many years along the most economic lines. The point of origin of the grain can be amply guaranteed under the present method of shipping and it would seem shortsighted for the British authorities to insist on a system which is uneconomic for producers, shippers and consumers alike, particularly in view of the unfavorable reaction here involving the danger of retaliatory legislation.

HULL

611.42251/167

*The Ambassador in Great Britain (Bingham) to the Acting
Secretary of State*

No. 30

LONDON, June 3, 1933.

[Received June 14.]

SIR: I have the honor to report that, in compliance with the Department's telegraphic instruction No. 117, May 20, 12 noon, the Embassy made an appointment through the Foreign Office for Mr. Robert M.

⁶ Not printed.

Morgan, President of the North American Grain Export Association, and Mr. Walter P. Hedden, Chief of the Bureau of Commerce, New York Port Authority, to consult directly with Mr. C. J. Flynn, Assistant Secretary of the Board of Customs and Excise, at the Customs House, London, on May 25, regarding the present difficulties in shipping Canadian grain via United States ports to the United Kingdom.

Messrs. Morgan and Hedden, who called at the Embassy on May 25, had frequent discussions with a member of the Embassy staff and with Mr. Foley, the Embassy's Agricultural Attaché, regarding the progress of their conversations with the Board of Customs and Excise. On June 2 they informed the Embassy that they had succeeded in obtaining a final agreement with the Board of Customs and Excise as to a *modus operandi* in exporting Canadian wheat via United States ports.

I enclose copies of a letter dated June 2 from Mr. Hedden to the Embassy,⁷ reporting the conclusions of their negotiations, together with copies of its enclosure, a memorandum containing the understanding arrived at between Messrs. Morgan and Hedden and Mr. Flynn of the Board of Customs and Excise.

Messrs. Morgan and Hedden sailed for the United States on the S. S. *Aquitania* today.

Respectfully yours,

For the Ambassador:
RAY ATHERTON
Counselor of Embassy

[Enclosure]

*Memorandum Regarding Entry of Canadian Wheat Exported Via
United States Ports*

[LONDON,] 2 June, 1933.

The following memorandum confirms the understanding arrived at in final conversations with Mr. C. J. Flynn of the Board of Customs and Excise on the above date.

Future shipments of Canadian Wheat to the United Kingdom can be granted Imperial Preference only upon final determination of the adequacy of documents submitted in connection with a specific shipment, but the broad general outline of the evidence which will be acceptable to H. M. Government is as under-noted.

The evidence with respect to origin of Canadian wheat has been found to be sufficient in the *Brittanic* and *Laconia* shipments and consists of Certificate of Origin (official printed form 119) properly executed. The other essential evidence consists of documents showing through consignment from a point in Canada to a point in the United

⁷ Not printed.

Kingdom. In general, routing is not important. Interruption in transit is not an impediment.

The documents and circumstances essential to prove through consignment are:—

(1) *An order from a buyer or importer in the United Kingdom for a supply of Canadian Wheat.*

This order may be on a purchase basis or may request shipment to U. K. Port for sale while the Wheat is in transit by the importer to another U. K. purchaser.

The printed form of confirmation ordinarily used by a British buyer must be presented by him with other documents covering shipment when tendered to the Customs for Preference treatment and will specify all terms of his order not included in the official Corn Trade Association form of contract.

The buyer's order may call for consignment to any port in the United Kingdom, but no document tendered in connection with a shipment may carry any indication that the seller or shipper has the option of shipping to some port outside of the United Kingdom.

In the event of re-sale by the British importer to a miller or other buyer in the United Kingdom, a second order upon the exporter may be attached to show the changed destination in the United Kingdom. Such order might specify a different steamship, different time of forwarding, or different trans-United States carrier, if the Wheat were still at the U. S. Lake port.

Such a supplemental order evidencing sale would be necessary in the event that the Wheat were moved forward on consignment to the British importer and the documents carrying title were still in the hands of the exporter. In such circumstances, a supplemental invoice to the second buyer might also be necessary to accompany the document.

The buyer's order may be directed to a business office located in the United States (e.g. New York City) providing evidence is furnished of the transmittal of the forwarding order to the Canadian supplier. The mere transmittal of an order by way of a New York house, provided it is satisfied by a bona-fide shipment from Canada subsequent to the date of order and pursuant thereto, will not constitute any impediment to the demonstration of through consignment from Canada to the United Kingdom.

If H. M. Customs desires a copy of the forwarding memorandum, telegram or other communication sent from the New York export office to the Winnipeg or other Canadian supplier's office, as well as the original British order, such can be supplied.

(2) *Invoice from the seller or supplier to the British buyer.*

This invoice will be dated on the day when shipment actually goes forward from the Canadian Lake port and will always be subsequent to

the date of the British buyer's order. The invoice will show that the seller has shipped to the buyer in the United Kingdom a quantity of given grade of Canadian wheat. This invoice will show the date when the Wheat was shipped from Canada; also the name of the Lake steamer and the compartment thereof. It will also show the terms of sale, which will be customarily c.i.f. London, Liverpool, or some other U. K. port, although certain deviations may appear, as indicated in the buyer's order; the invoice in all cases to show shipment conforms to the buyer's order.

(3) *Documents tracing transit across the United States.*

The buyer's order and seller's invoice, when presented to H. M. Customs in connection with the claim for Empire Preference, will be supported by such documents tracing transit across the United States as may be deemed essential. Since a through Bill of Lading from the Canadian Lake port to the United Kingdom port is not procurable, certain documents in lieu thereof may be submitted, in accordance with the alternative permitted under Customs Regulation No. 12.

Among these are:—

- (a) Copy of the Lake Bill of Lading from original point of origin in Canada.
- (b) The certificate of non-manipulation and transit under Bond furnished by the United States Customs authorities and visaed by the British Consul.
- (c) The certificate from the Grain Elevator in which the shipment has been stored if transit is interrupted.
- (d) Copy of the rail or canal Bill of Lading covering the movement from United States Lake port to United States seaboard port.
- (e) The ocean Bill of Lading covering movement from United States seaboard port to United Kingdom destination port.

In addition to the above documents evidencing through consignment, it is, of course, understood that the certificate of origin (Form 119), properly executed, or the official Dominion of Canada certificate of grade, will accompany the shipment when presented for entry in the United Kingdom.

PROPOSED SUPPLEMENTARY CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN REGARDING TENURE AND DISPOSITION OF REAL AND PERSONAL PROPERTY ^{7a}

811.5241/186

The Chargé in Great Britain (Atherton) to the Secretary of State

No. 828

LONDON, April 25, 1933.

[Received May 3.]

SIR: I have the honor to enclose a copy of a Foreign Office note, dated April 24, 1933, (No. A1175/1175/45), transmitting the draft of a supplementary convention to regulate the application to British colonies, protectorates and mandated territories and to insular possessions of the United States, of the Convention between the United States and Great Britain, signed at Washington on March 2, 1899,⁸ relative to the disposal of real and personal property in the respective countries.

As reported in the Embassy's despatch No. 1752 of March 13, 1931,⁹ the pertinent portions of the Department's instruction No. 694 of March 3, 1931,^{9a} were officially communicated to the Foreign Office.¹⁰ The Foreign Office subsequently inquired whether the Department contemplated that the signature of the supplementary convention should take place at Washington, but it apparently overlooked the reply which was made by the Embassy, that the Department would prefer to have the convention signed at Washington (See Department's telegram No. 156, June 8, 1931¹¹); and consequently the expected instructions were not sent to the British Ambassador at Washington.

Attention is invited to the proposal of the present note that the supplementary convention shall be signed at Washington, since the original convention was signed there.

Respectfully yours,

RAY ATHERTON

[Enclosure]

The British Secretary of State for Foreign Affairs (Simon) to the American Chargé (Atherton)

No. A 1175/1175/45

LONDON, 24 April, 1933.

SIR: I have the honour to invite reference to a note No. 1100 which General Dawes¹² was so good as to address to Mr. Henderson¹³ on the

^{7a}Continued from *Foreign Relations*, 1930, vol. III, pp. 134-141.

⁸William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. I, p. 774.

⁹*Foreign Relations*, 1930, vol. III, p. 139.

^{9a}*Ibid.*, p. 138.

¹⁰Note No. 1100, March 13, 1931, *ibid.*, p. 140.

¹¹Not printed.

¹²Charles G. Dawes, Ambassador to Great Britain.

¹³Arthur Henderson, British Secretary of State for Foreign Affairs.

13th March, 1931, regarding the Convention between the United States and the United Kingdom signed at Washington on the 2nd March, 1899, relative to the disposal of real and personal property in the respective countries.

2. I now transmit to you herewith the draft of a supplementary convention to regulate the application of the original convention to British Colonies, protectorates and mandated territories, and to United States overseas territories, and I shall be grateful to learn in due course whether this draft is acceptable to the United States Government. It is proposed that the supplementary convention shall be signed at Washington, since the original convention was signed there.

I have [etc.]

(For the Secretary of State)

R. L. CRAIGIE

[Subenclosure]

Draft of Proposed Convention to Extend the Application of the Convention Between the United States and the United Kingdom Signed at Washington on March 2, 1899, Relative to the Disposal of Real and Personal Property

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the United States of America, being desirous of amending Article IV of the Convention concerning the tenure and disposition of real and personal property signed at Washington on the 2nd March, 1899, have agreed to conclude a supplementary Convention for that purpose and have appointed as their Plenipotentiaries:

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India,

For Great Britain and Northern Ireland:

.....
The President of the United States of America:

.....
who having communicated their full powers, found in due form, have agreed as follows:—

ARTICLE I

As from the date of the entry into force of the present Convention, the following provisions shall be substituted for Article IV and the second paragraph of Article VI of the Convention concerning the tenure and disposition of real and personal property signed at Washington on the 2nd March, 1899:

“Article IV.

“1. The present convention shall not be applicable to any colony or protectorate of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, nor to any Mandated territory in respect of which the Mandate is exercised by His Government in the United Kingdom of Great Britain and Northern Ireland unless a notice to that effect has been given at any time while the present convention is in force to the Government of the United States of America by His Majesty’s Representative at Washington. The convention shall apply to any territory in respect of which such notice has been given as from the date of such notice.

“2. The present convention shall not be applicable to any overseas territory under the authority of the United States of America unless a notice to that effect has been given at any time while the present convention is in force to His Majesty’s Government in the United Kingdom by the Representative of the United States in London. The convention shall apply to any territory in respect of which such notice has been given as from the date of such notice.

“3. Either High Contracting Party may by a notification through the diplomatic channel terminate the application of the convention to any territory to which it is applicable or has become applicable under either of the preceding paragraphs of this article, and the convention shall cease to apply to any territory in respect of which such notification is made 12 months after the date of the receipt of the notification.

“4. The expression ‘subjects or citizens’ of one or the other High Contracting Party in the present convention shall be deemed to mean (a) in relation to His Majesty the King, all subjects of His Majesty and all persons under His Majesty’s protection belonging to territories to which the convention applies, (b) in relation to the United States of America all citizens of the United States and all persons enjoying the protection of the United States belonging to territories under the authority of the United States to which the convention applies.”

ARTICLE II

The present convention shall be ratified by His Majesty the King and by the President of the United States of America by and with the advice and consent of the Senate thereof. The ratifications shall be exchanged at Washington and the present convention shall take effect as from the date of the exchange of ratifications.

In witness whereof the above mentioned Plenipotentiaries have signed this Convention and have hereunto affixed their seals.

Done in duplicate at Washington, the day of 193 . .

811.5241/186 : Telegram

*The Secretary of State to the Ambassador in Great Britain
(Bingham)*

WASHINGTON, May 24, 1933—5 p. m.

123. Your despatch 828 April 25. Department has no objection to draft convention but makes following suggestions:

(1) That scope of convention might be extended to cover any mandated territory under His Majesty's control without limiting it to mandates exercised by His Majesty's Government in the United Kingdom.

(2) Preamble refers to desirability "of amending Article IV" whereas Article I provides "the following provision shall be substituted for Article IV and the second paragraph of Article VI." It is suggested that reference should be made in preamble to second paragraph of Article VI.

Will full powers be sent British Ambassador?

HULL

811.5241/187

*The Ambassador in Great Britain (Bingham) to the Acting
Secretary of State*

No. 88

LONDON, July 6, 1933.

[Received July 19.]

SIR: I have the honor to inform the Department that in compliance with the instructions contained in the Department's telegram No. 123 of May 24, 5 p. m., I addressed a note to the Foreign Office on May 25 transmitting the suggested revisions in the draft convention to extend the application of the Convention between the United States and the United Kingdom, signed at Washington on March 2, 1899, relative to the disposal of real and personal property in the respective countries, to British colonies, protectorates, mandated territories and to territories under the authority of the United States.

I now have the honor to enclose a copy of Foreign Office Note No. 4877/1175/45, of July 5, 1933. It will be observed that in paragraph 2 of the note the Foreign Office expresses the view that paragraph 1 of the new Article IV of the Draft Convention (see Embassy's despatch No. 828 of April 25, 1933) "provides for the application of the Convention to any mandated territory in respect of which the mandate is exercised by His Majesty's Government in the United Kingdom." The second suggestion contained in the Department's telegram above-mentioned has, however, been accepted.

The Foreign Office having expressed its willingness to have the British

Ambassador at Washington proceed with the signature of the Convention in Washington, I should be grateful if the Department would inform me whether the text as it now stands of the supplementary convention is acceptable.

Respectfully yours,

For the Ambassador:
RAY ATHERTON

[Enclosure]

The British Secretary of State for Foreign Affairs (Simon) to the American Ambassador (Bingham)

No. A 4877/1175/45

LONDON, 5 July, 1933.

YOUR EXCELLENCY: I have the honor to invite reference to the note No. 8 which Your Excellency was so good as to address to me on the 25th May last, regarding a proposed supplementary convention to regulate the application of the Convention between the United States and the United Kingdom signed at Washington on the 2nd March, 1899, relative to the disposal of real and personal property in the respective countries, to British colonies, protectorates and mandated territories and to insular possessions of the United States.

2. With reference to suggestion No. 1 in your note, I desire to invite your attention to paragraph 1 of the proposed new article 4 on page 2 of the draft supplementary convention transmitted in my note No. A. 1175/1175/45 of the 24th April last. This paragraph in fact provides for the application of the convention to any mandated territory in respect of which the mandate is exercised by His Majesty's Government in the United Kingdom. Moreover the phrase "persons under His Majesty's protection" in paragraph 4 of article 4 of the draft supplementary convention includes persons belonging to the mandated territories to which the convention applies.

3. I agree that the preamble should be amended in the sense of point No. 2 of your note under reply by the insertion between "of amending Article 4" and "of the Convention" of the words "and the second paragraph of Article 6".

4. If you are able to inform me in due course that, subject to the above observations, the text of the supplementary convention is acceptable to the United States Government, I am prepared to authorize His Majesty's Ambassador at Washington to sign it on behalf of His Majesty's Government in the United Kingdom.

I have [etc.]

(For the Secretary of State)

R. L. CRAIGIE

811.5241/187

*The Secretary of State to the Ambassador in Great Britain
(Bingham)*

No. 65

WASHINGTON, August 23, 1933.

SIR: The Department has received the Embassy's despatch No. 88 dated July 6, 1933—concerning the draft convention to extend to outlying territories of both countries the application of the Convention between the United States and Great Britain signed at Washington on March 2, 1899, relating to the disposal of real and personal property. It is observed that the Foreign Office, in the second paragraph of its note dated July 5, 1933, states that paragraph one of the proposed new Article 4 on page two of the draft supplementary convention transmitted with the Foreign Office's note of April 24, 1933, "provides for the application of the convention to any mandated territory in respect of which the mandate is exercised by His Majesty's Government in the United Kingdom".

It is understood that the following mandates are in force in addition to those exercised by His Majesty's Government in the United Kingdom:

Union of South Africa—	
Former German S. W. Africa	C Mandate
Australia—	
Northeastern New Guinea and adjacent islands	C Mandate
New Zealand—	
Western Samoa	C Mandate

Since the draft convention submitted by the Foreign Office with its note of April 24, 1933, provides for the giving of notice of the extension of the application of the Convention of March 2, 1899, "to any mandated territory in respect of which the mandate is exercised by His Government in the United Kingdom of Great Britain and Northern Ireland"—it is believed that notice could not properly be given in respect to territory subject to a mandate exercised by His Majesty's Government in South Africa, Australia, or New Zealand. As it is desired to have the Convention applicable to all territory under the control of His Majesty, it is believed that, after the words "Northern Ireland" in the first paragraph of the draft Article 4, a comma should be inserted and the following words should be added: "in the Union of South Africa, in the Commonwealth of Australia, or in New Zealand". A similar result could be accomplished by substituting for the words: "His Government in the United Kingdom of Great Britain and Northern Ireland" the words: "any of His Majesty's Governments".

Having thus elucidated the Department's telegram No. 123 of May

24, 1933, 5 p. m.—it is desired that you take up the matter again with a view to obtaining a definite response concerning the possible application of the draft convention to the territories under mandates of the Union of South Africa, Australia, or New Zealand.¹⁴

Very truly yours,

For the Secretary of State:
HARRY F. PAYER

INDEFINITE POSTPONEMENT OF NEGOTIATIONS FOR A TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND GREAT BRITAIN¹⁵

711.4112a/45

The Secretary of State to the Ambassador in Great Britain
(Dawes)

No. 450

WASHINGTON, July 28, 1930.

SIR: Reference is made to the Embassy's despatch No. 3335, of January 31, 1929,¹⁶ and to other communications on the subject of the arbitration treaty under negotiation between Great Britain and the United States.

This Government desires to bring an arbitration treaty with Great Britain into force as promptly as practicable, as well as to complete the negotiations of the series of such treaties which it began nearly three years ago, twenty of which are now in force.

In view of the fact that a considerable amount of time has passed since any apparent progress was made toward the conclusion of the treaty with Great Britain, you are requested at your early convenience again to take the matter up with the Foreign Office and to inquire what are the present prospects for reaching agreement upon the treaty.

Very truly yours,

For the Secretary of State:
W. R. CASTLE, JR.

711.4112a/46

The Chargé in Great Britain (Atherton) to the Secretary of State

No. 1158

LONDON, August 25, 1930.
[Received September 4.]

SIR: In the matter of the proposed Arbitration Treaty between the United States and Great Britain, referred to in the Department's instruction No. 450, July 28, 1930, I have the honor to state that the various considerations of the matter will be discussed at the forthcoming

¹⁴ For text of treaty signed May 27, 1936, see Department of State, Treaty Series No. 964; or 55 Stat. 1101.

¹⁵ For previous correspondence regarding this proposed treaty, see *Foreign Relations*, 1928, vol. II, pp. 945 ff.

¹⁶ *Ibid.*, p. 951.

Imperial Conference. The Foreign Office accordingly is reluctant to continue negotiations before that date but has expressed a desire informally to discuss certain phases of the question with the Embassy.

I shall report again at a later date.

Respectfully yours,

RAY ATHERTON

711.4112a/52

*The Secretary of State to the Ambassador in Great Britain
(Bingham)*

No. 101

WASHINGTON, October 3, 1933.

SIR: The Department refers to its instruction No. 450 of July 28, 1930, to despatch No. 1158 of August 25, 1930, and to previous correspondence relating to the negotiation of a proposed treaty of arbitration between the Government of the United States of America and the Government of Great Britain, extending the policy of arbitration enunciated in the convention signed at Washington, April 4, 1908,¹⁷ which expired by limitation on June 4, 1928.

The Department desires the Embassy to ascertain informally whether the Foreign Office has completed its preliminary consideration of the draft treaty and is prepared to continue the negotiations.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

711.4112a/53

*The Ambassador in Great Britain (Bingham) to the Secretary
of State*

No. 238

LONDON, October 11, 1933.

[Received October 21.]

SIR: I have the honor to refer to the Department's instruction No. 101, October 3, 1933 (File No. 711.4112/5 [711.4112a/52]), relating to the proposed treaty of arbitration between the Government of the United States and the Government of Great Britain, and to state that this question was informally raised with the Foreign Office. I received a perfectly frank reply, very much in the following words. It was pointed out that considerable and grave difficulties lay in the way of the proposed treaty, and that the present moment was so full that the Foreign Office would be more than well satisfied if the question of the negotiation of this treaty were set aside for some considerable period; however, if the present Administration were anxious that this matter should again be actively raised, the British Government would, of course, be prepared to undertake the negotiations in as hopeful a spirit as possible.

¹⁷ *Foreign Relations*, 1908, p. 382.

I shall take no action in this matter until I receive the Department's further instructions.

Respectfully yours,

(For the Ambassador)
RAY ATHERTON
Counselor of Embassy

711.4112a/53

*The Secretary of State to the Ambassador in Great Britain
(Bingham)*

No. 135

WASHINGTON, November 2, 1933.

SIR: The Department has received your despatch No. 238 of October 11, 1933, relating to the proposed treaty of arbitration between the Government of the United States of America and the Government of Great Britain.

In view of the circumstances mentioned in your despatch, it is considered by the Department that there is no objection to a further postponement of negotiations for the conclusion of the proposed treaty.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

**CITIZENSHIP STATUS OF ADOPTED CHILD WHOSE FATHER HAS
ACQUIRED AMERICAN CITIZENSHIP BY NATURALIZATION**

130 Baird, Annie

The Chargé in Great Britain (Atherton) to the Secretary of State

No. 307

LONDON, August 23, 1932.

[Received August 31.]

SIR: I have the honor to request instructions as to what representations the Department desires me to make to the Home Office, through the Foreign Office, with regard to the citizenship status of Miss Annie Baird and the legality of her adoption from the standpoint of British law. The matter has been referred to the Embassy by the American Consul at Dundee, pursuant to the Department's instructions to him under date of July 28, 1932.¹⁸

According to the information furnished by the Consul, Annie Baird was born Ann Allan Baird Gardyne, daughter of John Gardyne, May 21, 1915 at Dundee, was adopted on August 2, 1915 by Mr. and Mrs. James Baird by an agreement in writing between them and John Gardyne, was taken to the United States by her adoptive parents, was included in James Baird's petition for naturalization, acquired American citizen-

¹⁸ Not printed.

ship through his naturalization and on April 27, 1931 obtained an American passport for a visit to Scotland. It is not stated that the fact that she was an adopted child was shown in the petition for naturalization or in her own passport application.

It appears that the authorities at Dundee regard Miss Baird as a British subject and in this relation the Consul quotes a letter written on May 10, 1932 by the Home Office to a firm of local attorneys, as follows:

"With reference to your letter of the 5th instant regarding Miss Annie Baird, I am directed by the Secretary of State to say that he has no authority to determine questions of nationality but is advised that as it appears that Miss Baird acquired at birth the status of a natural born British subject no action of her adoptive parent can have the effect in English law of depriving her of the British nationality so acquired. The Secretary of State cannot express any opinion as to her status in American law."

The Embassy has discussed this case with the Consulate General and shares the latter's opinion that it may establish a precedent, neither office being aware of any similar case in which American citizenship has been acquired by an adopted child through the naturalization of the adoptive father. Under this principle, assuming that the legality of the adoption can be shown, the question arises whether the British authorities would not be required by the provisions of the Naturalization Convention of 1870¹⁹ to recognize the loss of British nationality, though possibly not before the person concerned has attained full age.

Respectfully yours,

RAY ATHERTON

130 Baird, Annie

The Secretary of State to the Chargé in Great Britain (Atherton)

No. 232

WASHINGTON, September 26, 1932.

SIR: The Department has received your despatch No. 307 of August 23, 1932, concerning the case of Miss Annie Baird (Ann Allan Baird Gardyne).

As stated in the Department's instruction of July 28, 1932, to the American Consul at Dundee, Scotland,²⁰ information is desired as to whether the legal agreement entered into between John Gardyne and James and Ann Allan Baird is held by the British Home Office to have constituted the legal adoption of Miss Baird under British law. If such is the case the Department would hold that when her adoptive father was naturalized as an American citizen, Miss Baird acquired American citizenship. It may be added that while the Department holds that the

¹⁹ Malloy, *Treaties, Conventions, etc.*, vol. I, p. 691.

²⁰ Not printed.

adoption of an alien child by an American citizen does not confer American citizenship upon the child, it holds that an alien child who is adopted by an alien who subsequently becomes naturalized as an American citizen acquires American nationality if residing in the United States at the time of naturalization of [or] if he or she takes up a permanent residence in the United States before attaining majority. If the British authorities hold that the legal agreement above referred to constituted legal adoption, it would seem that they should recognize the naturalization of Miss Baird through her adoptive father's naturalization as resulting in the loss of her British nationality under the provisions of the Naturalization Convention between the United States and Great Britain proclaimed September 16, 1870.

Very truly yours,

For the Secretary of State:
WILBUR J. CARR

130 Baird, Annie

The Ambassador in Great Britain (Mellon) to the Secretary of State

No. 519

LONDON, November 29, 1932.

[Received December 7.]

SIR: I have the honor to refer to the Department's instruction No. 232 of September 26, 1932, File No. 130-Baird, Annie, and to transmit herewith a copy of the note which on October 10 was addressed to the Foreign Office²¹ and a copy of the latter's reply under date of November 28, from which it will be seen that the British authorities are not disposed to certify to the legality of Miss Baird's adoption. The Embassy has informed the Consul at Dundee in this sense and has added that it was asking the Department to instruct it as to whether Miss Baird is still to be regarded as an American citizen. Instructions in that relation are accordingly respectfully requested.

Respectfully yours,

For the Ambassador:
RAY ATHERTON
Counselor of Embassy

[Enclosure]

*The British Principal Secretary of State for Foreign Affairs (Simon)
to the American Ambassador (Mellon)*

No. L 5916/5308/405

His Majesty's Principal Secretary of State for Foreign Affairs presents his compliments to the United States Ambassador and, with

²¹ Not printed.

reference to Mr. Mellon's Note No. 293 of October 10th last, relative to the case of Miss Annie Baird, has the honour to inform His Excellency that the Secretary of State for Scotland has intimated that, until the Adoption of Children (Scotland) Act, 1930, came into operation, adoption of children was not recognized by the law of Scotland, and had no legal effect in Scotland. That Act was not retrospective and, while the Secretary of State has no authority to give any binding opinion as to the effect of the agreement stated to have been entered into at Dundee in 1915 between the girl's father, John Gardyne, and Mr. and Mrs. Baird, it appears to him that such an agreement could not have affected the personal status of Miss Baird so far as the law of Scotland is concerned.

[LONDON,] 28 November, 1932.

130 Baird, Annie

The Secretary of State to the Vice Consul at Dundee (Dunlap)

WASHINGTON, February 9, 1933.

Reference is made to previous correspondence concerning the case of Miss Annie Baird (Ann Allan Baird Gardyne).

You are informed that a despatch has been received from the American Embassy at London transmitting a copy of a communication from the British Foreign Office from which it appears that the British government is of the opinion that the Adoption of Children (Scotland) Act, 1930, is not retroactive and that the agreement entered into between John Gardyne and James and Ann Allan Baird was inoperative under the laws of Scotland to change Miss Baird's personal status.

In view of the foregoing it will be necessary for the Department to regard Miss Baird as having the status of an alien inasmuch as the naturalization of James Baird would not confer American citizenship upon her under the circumstances. You are requested, therefore, to take up Miss Baird's passport (No. 368665) and to forward it to the Department for cancellation.

Inasmuch as the predicament in which Miss Baird now finds herself was based upon an unintentional misunderstanding of her personal status by the parties concerned, it seems highly desirable, in the event Miss Baird still desires to return to the United States, that her case be handled in a sympathetic manner and that she be rendered all possible assistance consistent with your office. However, in order for Miss Baird to return to this country it would appear to be necessary that she obtain an appropriate immigration visa from an American consular officer abroad. If she is unable to establish the status of a non-quota returning alien within the meaning of Section 4 (b) of the Immigration Act of

1924,²² as amended, she would appear to be properly classifiable as a non-preference quota immigrant. Under either classification it would, of course, be necessary that she establish that she is not inadmissible into the United States under the immigration laws before an immigration visa could properly be issued to her.

An extra copy of this instruction is enclosed in order that it may be forwarded, together with any other pertinent information regarding the case, to the American Consul General at Glasgow.

**EXCHANGE OF NOTES REGARDING REPORTING BY AMERICAN AND
BRITISH CONSULAR OFFICERS TO TAX AUTHORITIES OF THE
COMPENSATION RECEIVED BY NATIVE EMPLOYEES**

762.0641/74

The Chargé in Great Britain (Atherton) to the Secretary of State

No. 748

LONDON, March 21, 1933.

[Received March 30.]

SIR: I have the honor to refer to the Department's instructions No. 147, dated July 28, 1932, and No. 173, dated August 23, 1932,²³ directing me to express to the Foreign Office the belief that, as no request has been made of British consular officers in the United States to file statements with the Commissioner of Internal Revenue with regard to the emoluments of persons employed in their offices, American Consular officers in Great Britain should not be obliged to make returns to His Majesty's Inspectors of Taxes with regard to the emoluments of British subjects employed in American Consulates in Great Britain.

The substance of these instructions was conveyed to the Foreign Office by an official note as well as orally in the course of a conversation which a member of the Embassy staff had with the responsible officer in the Foreign Office, on September 12, 1932.

I am now informed unofficially by the Foreign Office that the Board of Inland Revenue takes the view that even if the Consul is not an employer within the meaning of the Income Tax Act, he would in any case be legally bound to supply the information desired as a "person who, in whatever capacity, is in receipt of any money or value, or of profits or gains arising from any of the sources mentioned in this Act, of or belonging to any other person who is chargeable in respect thereof". The Foreign Office has, however, expressed willingness to request the American Government to enter into an arrangement by which American Consular officers would be instructed to communicate direct with the British revenue authorities.

²² Approved May 26, 1924; 43 Stat. 153.

²³ Neither printed.

I enclose a copy of a draft note²⁵ which the Foreign Office is prepared to send the Embassy. The note would point out that the transmission through diplomatic channels of the request for information with regard to the emoluments of British subjects employed in American Consulates would involve additional correspondence; and it would request the American Government to instruct, presumably as an act of comity, its Consular officers to communicate the information desired direct to the revenue authorities. I also enclose a draft of the reply²⁵ which it is proposed the Embassy would make.

I should appreciate the Department's instructions with regard to the appropriateness of both the text and the substance of these two draft communications.

The Department will recall in this connection that, as the Embassy has already reported, a complete list of the British subjects employed in the Embassy, together with their emoluments, is forwarded annually in accordance with the request of the Foreign Office.

Respectfully yours,

RAY ATHERTON

702.0641/76

The Secretary of State to the Chargé in Great Britain (Atherton)

No. 7

WASHINGTON, May 29, 1933.

SIR: The Department refers to your despatch No. 748 dated March 21, 1933, and the Department's instruction No. 467 dated April 7, 1933,²⁶ concerning the assessment of British taxes on the salaries of British employees in American consulates and encloses a copy of a letter dated May 24, 1933,²⁵ received from the Secretary of the Treasury with regard to this matter. You will note that the Secretary of the Treasury expresses the opinion that it would aid the Internal Revenue Bureau of the Treasury Department in seeing that proper returns are filed by citizens of the United States employed in British consulates in this country, if information returns are furnished to our collectors of internal revenue by British consular officers in the United States. He therefore states that it would be desirable to have the proposed agreement consummated on a reciprocal basis.

You are instructed to take up the matter with the Foreign Office with a view to having the proposed exchange of notes amended to provide for the furnishing of information concerning the amounts paid to this class of employees in consulates upon a reciprocal basis.

Very truly yours,

For the Secretary of State:

WILBUR J. CARR

²⁵ Not printed.

²⁶ Letter not printed.

702.0641/78

*The Ambassador in Great Britain (Bingham) to the
Acting Secretary of State*

No. 71

LONDON, June 28, 1933.

[Received July 7.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 7, dated May 29, 1933 (File No. 702.0641/76), enclosing a copy of a letter dated May 24, 1933, from the Secretary of the Treasury, with regard to a proposed exchange of notes between the Embassy and the Foreign Office to provide for the furnishing of information by American and British consular officers to the revenue officers of Great Britain and the United States, respectively, as to the compensation received by native employees.

I was orally informed by the Foreign Office on June 14 that it would be entirely agreeable to the suggestion of the Secretary of the Treasury that the agreement be concluded on a reciprocal basis, and I have to-day received its Note No. T 6904/224/373, dated June 27, 1933, a copy of which I have the honor to enclose. With the exception of the fact that the note is addressed to the Ambassador, the first two paragraphs of the note are identical with the draft handed to the Chargé d'Affaires of the Embassy on March 15 and transmitted to the Department as enclosure No. 1 of the Embassy's despatch No. 748 of March 21, 1933. A final paragraph has been added to express the willingness of the British Government to instruct its consular officers in the United States to furnish information regarding the compensation of American employees in British consulates to the American revenue authorities.

I have the honor also to enclose a copy of my note, dated June 28, 1933, informing the Foreign Office that the necessary instructions in the premises will be issued to American consular officers in the United Kingdom, and taking note of the fact that the British Government would reciprocally instruct its consular officers in the United States in the same sense.

In furnishing the American Consul General in London with a copy of this despatch, I shall request him to instruct the officers under his jurisdiction to comply with the request of the British revenue authorities to furnish them with the amounts paid to British subjects employed in their consulates.

Respectfully yours,

For the Ambassador:
RAY ATHERTON
Counselor of Embassy

[Enclosure 1]

The British Secretary of State for Foreign Affairs (Simon) to the American Ambassador (Bingham)

No. T 6904/224/373

[LONDON,] 27 June, 1933.

YOUR EXCELLENCY: In Mr. Atherton's note No. 1563 of the 11th December 1931 he drew my attention to the fact that at various times recently His Majesty's Inspectors of Taxes had written to those United States Consuls stationed within their respective districts asking as to emoluments of British subjects employed in United States Consulates. Mr. Atherton also stated that he had instructed the United States Consuls to inform His Majesty's Inspectors of Taxes that it would seem more appropriate that these requests for information as to emoluments paid in various United States Consulates in Great Britain should in the first instance be made through this Department.

2. I have the honour to suggest that this course of action would necessarily involve considerable additional correspondence between the United States Embassy and this Department leading to mutual inconvenience and to state that His Majesty's Government would be grateful if the United States Government would agree to the United States Consuls in this country supplying direct to His Majesty's Inspectors of Taxes information as to emoluments of British subjects employed in the United States Consulates.

3. I beg leave to add that His Majesty's Government in the United Kingdom will, on their part, take the necessary steps to authorise His Majesty's Consular Officers in the United States to furnish direct to collectors of internal revenue information regarding the emoluments of citizens of the United States employed in His Majesty's Consulates.

I have [etc.]

(For the Secretary of State)

G. R. WARNER

[Enclosure 2]

The American Ambassador (Bingham) to the British Secretary of State for Foreign Affairs (Simon)

No. 69

LONDON, June 28, 1933.

SIR: I have the honor to refer to Your Excellency's note No. T 6904/224/373 of June 27, 1933, in which you suggest that American consular officers be instructed to forward direct to the appropriate authorities information with regard to the emoluments of British subjects employed in American consulates in Great Britain, which was duly referred to Washington, and to state that the American Government, having regard to the desirability of avoiding the additional correspondence which

would be necessitated by the transmission through diplomatic channels of this information, has undertaken to instruct American consular officers to conform with your suggestion. Appropriate instructions will be forwarded at the earliest possible moment.

In this relation, I note that His Majesty's Government will reciprocally instruct its consular officers in the United States to furnish direct to collectors of internal revenue information regarding the emoluments of citizens of the United States employed in British consulates.

I have [etc.]

For the Ambassador:
RAY ATHERTON
Counselor of Embassy

702.0641/86 : Telegram

The Consul General at London (Frazer) to the Secretary of State

LONDON, October 5, 1933—4 p.m.
[Received October 5—11:40 a.m.]

Great aggravation of the serious financial plight our clerks Great Britain threatened by imposition British income tax for past several years. It might greatly assist them to claim reciprocal treatment as accorded same circumstances by our Treasury in the United States. Does Department's telegram addressed Retallack August 28th²⁸ mean Treasury Department will not tax American staffs British Consulates until period beginning July 1, 1933?

FRAZER

702.0641/87 : Telegram

The Secretary of State to the Consul General at London (Frazer)

WASHINGTON, October 12, 1933—6 p.m.

Your October 5, 4 p.m. Treasury Department states "It is not the intention of this Department to make any general request of British consular officers for information concerning the compensation paid American citizens prior to the calendar year 1933, regardless of the fact that British tax inspectors are seeking information as to compensation paid British subjects for earlier periods."

Endeavor to obtain reciprocal treatment for clerks in consular offices. Retroactive effect was not intended by reciprocal arrangement of June 28, 1933. Mail complete report.

HULL

²⁸ Not printed.

702.0641/89

The Secretary of State to the Consul General at London (Frazer)

WASHINGTON, October 31, 1933.

SIR: Reference is made to the Department's telegram dated October 12, 1933, 6 P.M., concerning the reciprocal arrangements between Great Britain and the United States under which it was agreed that American consular officers in Great Britain would furnish to the British taxing authorities information in regard to emoluments paid British subjects by American consulates in Great Britain and in return British consular officers in the United States would furnish information to the Treasury Department of the United States with respect to emoluments paid American citizens by British consulates in the United States. A copy of a letter dated October 20, 1933, received from the Treasury Department containing a further expression of its views on this subject is enclosed.²⁹ You will note that this communication concludes with the following paragraphs:

"But it is not the understanding of this Department that the reciprocal agreement is intended to affect in any way the question of the liability for the tax. The tax liability is fixed by law, and in the absence of a treaty granting exemption therefrom cannot legally be made the subject of agreement, reciprocal or otherwise.

"While, therefore, as you were advised in the letter of October 11, 1933, it is not the intention of this Department to make any general request of British consular officers for information as to compensation paid to American employees in British consulates prior to the calendar year 1933, it should be understood that this Department is without authority to exempt or to agree to exempt American citizens employed in British consulates from liability for income taxes for which they are otherwise legally liable without regard to the period during which the income was received."

Very truly yours,

For the Secretary of State:
WILBUR J. CARR

702.0641/90

*The Consul General at London (Frazer) to the Acting
Secretary of State*

No. 851

LONDON, November 20, 1933.

[Received November 29.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction of October 31, 1933—without file number—enclosing a copy of a communication from the Treasury Department dated October 20th,

²⁹ Not printed.

with reference to the assessment of income tax against employees in Consulates in the United States and in Great Britain.

In a letter dated November 13th the Foreign Office informed the Embassy that the Inland Revenue authorities in this country hold that the reciprocal agreement of last June is concerned merely with the furnishing of information as to salaries paid and did not in any way affect the liability to income tax of British subjects employed in American consulates. They hold, and I am afraid correctly, that in view of the provisions of Section 20 of the Finance Act of 1930, there is no doubt of the liability of such employees to British income tax for the years 1930-31 onwards, so that even though the consuls may not supply information as to salaries paid prior to the fiscal year 1933-34, the employees concerned could not on that account be absolved from their liability for earlier years. The revenue authorities have no power to agree that the ordinary operation of the law, that is the assessment of British subjects employed in consulates, should be set aside, though in cases where any hardship existed they are prepared to agree to the payment of the tax for past years being made in installments.

It will therefore be seen that the revenue authorities in the United States and in this country take substantially the same view and it would appear that we are not in a position to take further steps to protect our British employees from the assessment of income tax for periods before the reciprocal agreement of last June was effected. I cannot refrain from remarking in this connection that the prospect of being compelled to pay income tax for two or three years at this time, coupled with the reduction in salaries and the fall of dollar exchange is, in the case of many employees, nothing less than a catastrophe, and I sincerely hope that arrangements will soon be made to adjust the salaries of our employees in this country to the actual cost of living.

Respectfully yours,

ROBERT FRAZER

ASSESSMENT OF CERTAIN TAXES BY THE BRITISH GOVERNMENT
AGAINST AMERICAN CONSULAR OFFICERS IN THE UNITED KING-
DOM

702.0641/73

The Chargé in Great Britain (Atherton) to the Secretary of State

No. 747

LONDON, March 21, 1933.

[Received March 30.]

SIR: I have the honor to refer to the Department's instruction No. 147, dated July 28, 1932,³⁰ directing me to inform the Foreign Office of the views of the American Government with regard to the taxation of the

³⁰ Not printed.

private incomes of American Consular officers in Great Britain and to express the hope that an exemption would be accorded to American officers with respect to income derived from sources outside Great Britain.

The substance of this instruction was conveyed to the Foreign Office by an official note as well as orally in the course of a conversation which a member of the Embassy staff had with the responsible officer in the Foreign Office on September 12, 1932. I now have the honor to enclose a copy of a note, dated March 11, 1933, which has been received from the Foreign Office.

It will be noted that the British Government expresses its inability to grant "foreign consular officers wider exemption than the Act (Finance Act, 1930) accords to them where income tax is concerned".

The argument that American Consular officers should be accorded exemption on the basis of reciprocity has apparently had no weight with the British Government; for in a private letter which I have received from the responsible officer in the Foreign Office statement was made that "we cannot claim for our consuls in the United States privileges which we are unable to concede to your consuls in this country".

I do not feel that the negotiations on this particular matter are at an end, nor do I believe that all possible arguments in favor of granting exemption have been exhausted. It is my impression that discussions can be protracted for some considerable period of time, at the end of which the British authorities might be disposed to take a more generous view. If it should meet with the Department's approval, I shall give the Foreign Office to understand that this Government does not consider the matter to be closed and desires to continue the discussions.

Respectfully yours,

RAY ATHERTON

[Enclosure]

The British Secretary of State for Foreign Affairs (Simon) to the American Ambassador (Mellon)

No. T 2692/224/373

[LONDON,] 11 March, 1933.

YOUR EXCELLENCY: I have the honor to inform you that His Majesty's Government have given careful consideration to the representations made by Mr. Atherton in his note No. 197 of the 12th August last concerning the treatment of United States consular officers in this country in the matter of income tax on their private incomes as distinct from their official emoluments.

2. As Your Excellency is doubtless aware, the exemption enjoyed by foreign consular officers in this country from payment of income tax in respect of their official emoluments is secured to them by the provi-

sions of Section 20 of the Finance Act, 1930, which gave legality to a practice of over eighty years standing. During that period the view was consistently maintained that a relief confined to official emoluments was appropriate to foreign consular officers. That view, which formed the subject of careful deliberation before the enactment of the Statute referred to, may be said to have been endorsed by the legislature through the passing of the Act, and His Majesty's Government regret that they are not able to contemplate any further amendment of the law in the direction of granting to foreign consular officers wider exemption than the Act accords to them where income tax is concerned.

3. In Mr. Atherton's note under reply it was suggested that the practical effect of charging British income tax on the private incomes of United States consular officers would be to limit appointments in Great Britain to those officers who happen to be without independent income. This suggestion is one which His Majesty's Government find it difficult to appreciate, and they feel that it may be due to some misunderstanding on the part of the United States Government as to the amount of tax payable in these cases. In the semi-official correspondence which passed between the Embassy and this Office in regard to this question in 1930 it was pointed out that a consular officer's official income is not merely exempt from income tax but is entirely disregarded in determining the amount of his income for taxation purposes, with the result that he enjoys the full benefit of ordinary personal reliefs against his private income. This means that at the present time he does not pay income tax unless his private income exceeds £100 if he is unmarried, £150 if he is married, and a considerably larger sum if he has children, while the first £175 of any excess income is liable at only half the standard rate of tax.

I have [etc.]

(For the Secretary of State)

G. R. WARNER

702.0641/75

The Secretary of State to the Chargé in Great Britain (Atherton)

No. 520

WASHINGTON, May 23, 1933.

SIR: Referring to the Department's instruction of April 10, 1933,³² there is enclosed a copy of a letter of May 6, 1933, from the Treasury Department, in connection with the assessment of British tax on private incomes of American consular officers. Your especial attention is directed to the fourth paragraph concerning the status accorded British consuls in the United States.

Very truly yours,

For the Secretary of State:

WILBUR J. CARR

³² Not printed.

[Enclosure]

*The Acting Secretary of the Treasury (Ballantine) to the
Secretary of State*

WASHINGTON, May 6, 1933.

SIR: I have Assistant Secretary Carr's letter dated April 10, 1933 (FA 702.0641/73),³³ transmitting a copy of despatch No. 747 of March 21, 1933, together with enclosure, received by your office from the American Embassy at London, England, subject: "Assessment of British Tax on Private Incomes of American consuls."

It is stated that the substance of the instructions issued to the Embassy under date of July 28, 1932,³³ directing a conveyance of the view of the American Government with respect to the taxation of the private incomes of American consular officers in Great Britain, was transmitted to the Foreign Office; that in reply thereto the Foreign Office on March 11, 1933, expressed its inability to grant foreign consular officers wider exemption than the Finance Act of 1930 accords to them where income tax is concerned; and that no claim could be made for the British consuls in the United States for privileges which could not be conceded to the American consular officers.

It is further stated that the contention that American consular officers should be accorded exemption on the basis of reciprocity has apparently had no weight with the British Government; that it is not believed that all possible arguments in favor of granting exemption have been exhausted; and that perhaps, after protracted discussions, the British authorities might be disposed to take a more generous view of the subject.

In reply you are advised that it has been the consistent policy of this Department to treat foreign consular officers in the United States, who are nationals of the states appointing them, as nonresident aliens and, therefore, to tax them only with respect to their income from sources within the United States other than their official compensation received for services rendered in the United States, which compensation is exempt from the Federal income tax on the basis of reciprocity. It would appear, therefore, that the responsible officer in the Foreign Office is unaware of the status accorded British consuls in this country; and that the consistent policy of the Department to treat foreign consular officers in the United States, who are nationals of the states appointing them, as nonresident aliens, eliminates from taxation any income which such consular officers may receive from sources outside of the United States.

It is possible that, if the policy of this Department is made clear to the British Foreign Office, the Government of Great Britain will adopt

³³ Not printed.

a more liberal treatment of American consular officers with respect to the taxing of income derived by them from sources outside Great Britain.

Respectfully,

A. A. BALLANTINE

702.0641/77

*The Ambassador in Great Britain (Bingham) to the Acting
Secretary of State*

No. 35

LONDON, June 6, 1933.

[Received June 16.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 520, dated May 23, 1933, enclosing a copy of a letter, dated May 6, 1933, from the Treasury Department, with regard to the assessment of the British tax on the private incomes of American consular officers. The Embassy's attention was directed to the fourth paragraph of the Treasury Department's letter, which outlines the treatment accorded foreign consular officers in the United States, and I have noted the suggestion that if the policy of the Treasury Department were made clear to the Foreign Office, the British Government might be disposed to adopt a more liberal treatment of American consular officers in respect of the taxation of private incomes.

The suggestion, that the Foreign Office does not appreciate the nature of the favorable treatment accorded British, as well as other consular, officers in the United States, would appear to be based on some misunderstanding. The Embassy has repeatedly brought the matter of privileges enjoyed by British diplomatic and consular officers in the United States to the notice of the Foreign Office, sometimes orally in connection with the taxation of motor cars owned by American diplomatic officers, and on other occasions by official note. With particular regard to the subject of the present despatch, the Embassy informed the Foreign Office, in accordance with the Department's instruction No. 147, July 28, 1932,³⁴ that:

" . . . consular officers in British consulates in the United States are accorded a status of non-resident aliens and as such are subject to income tax only on income (other than official salaries and fees) derived from sources within the United States.

" . . . it is believed that as a matter of comity and reciprocal treatment, consular officers of both countries should be regarded as entitled to be accorded privileges and exemptions not given to non-privileged individuals."

The Foreign Office replied on March 11, 1933, (see enclosure No. 1,

³⁴ Not printed.

despatch No. 747, March 21, 1933) that the exemption accorded in respect of the official emoluments of foreign consular officers derives from an Act of Parliament, and that

“His Majesty’s Government regret that they are unable to contemplate any further amendment of the law in the direction of granting to foreign consular officers wider exemption than the Act accords to them where income tax is concerned.”

In short, the position of the British Government is apparently that it cannot enter into an agreement reciprocally to grant exemption by administrative acts, and that it will not seek any amendment in the law to permit of the granting of such exemption.

This understanding has been clearly confirmed by members of the Foreign Office, who, when reminded in conversation of the privileges in the matter of certain taxes accorded British diplomatic and consular officers in the United States, invariably affect to show much appreciation of the courtesies extended, but add that they are purely voluntary acts on the part of the American authorities and impose no obligation upon the British Government to reciprocate.

Respectfully yours,

For the Ambassador:
RAY ATHERTON
Counselor of Embassy

702.0641/81

*The Ambassador in Great Britain (Bingham) to the Secretary
of State*

No. 144

LONDON, August 9, 1933.

[Received August 19.]

SIR: I have the honor to refer to the Embassy’s despatch No. 35 of June 6, 1933, and to previous correspondence on the subject of the assessment of the British tax on the private incomes of American consular officers in Great Britain, and in this connection to transmit herewith a copy of an informal communication, with its enclosure, from the Foreign Office, dated July 31, 1933.³⁵

This note states in writing what has already been pointed out orally at the Foreign Office on previous occasions, namely, that “it would not be possible to make any concession to United States consular officers in the present matter without an alteration of the law on the subject. To secure such alteration would involve serious difficulties, and any concession designed to meet the case would have to be extended not only to United States consular officers but to those of foreign countries gen-

³⁵ Not printed.

erally. This would entail a departure from policy and practice which in present conditions it would hardly be possible for His Majesty's Government to contemplate".

I may add in conclusion that the Foreign Office has repeated that foreign consular officers in this country are exempt from the payment of income tax in respect of their official emoluments, and that as regards other monies the liability of an American consular officer in Great Britain "so far as concerns income from sources outside the United Kingdom, would be on only such part of that income as is received in or remitted to the United Kingdom."

I venture to indicate that oral conversations at the Foreign Office do not suggest any likelihood that the attitude of the British Government as set forth in its latest communication will be modified.

Respectfully yours,

For the Ambassador:
RAY ATHERTON
Counselor of Embassy

702.0641/83

*The Secretary of State to the Ambassador in Great Britain
(Bingham)*

No. 58

WASHINGTON, August 15, 1933.

SIR: The Department encloses a copy of a despatch dated July 11, 1933, received from the American Consul General at Glasgow, Scotland,³⁶ concerning the taxes on automobiles operated by American consular officers at Glasgow. As pointed out by the Consul General, British consular officers in the United States are generally exempted from the payment of such taxes except in the State of New York. The authorities of that State have held that the sums paid for automobile license plates are a charge for a service rendered in the maintenance of highways, bridges, et cetera, and does not constitute a tax on the consular officers.

You are requested to take up this matter informally with the British authorities with a view to ascertaining whether an exemption is granted to any foreign consular officers stationed in Great Britain and whether exemption will be granted to American consular officers from taxes on their automobiles on a reciprocal basis. In so far as the inability of this Government to obtain exemption for British consular officers in New York is concerned, you may, if this question is raised, refer to the much higher rate of tax in Great Britain and the large number of British consular officers stationed in the United States who are exempt from taxes as their offices are outside of New York.

³⁶ Not printed.

You will also request the Consulate General at London to obtain information and prepare a list of all American consular officers in the United Kingdom having automobiles with the amount of tax paid thereon annually.

A full report with regard to this matter is desired.

Very truly yours,

For the Secretary of State:
WILBUR J. CARR

702.0641/84

The Ambassador in Great Britain (Bingham) to the Secretary of State

[Extract]

No. 182

LONDON, September 7, 1933.

[Received September 21.]

SIR: I have the honor to refer to the Department's instruction No. 58 of August 15, 1933, directing me to take up informally with the British authorities the question of the taxes on automobiles operated by American consular officers stationed in Great Britain and Northern Ireland, with a view to ascertaining whether exemption is granted to any foreign consular officers stationed in Great Britain and whether exemption would be granted to American consular officers from taxes on their automobiles, on a reciprocal basis.

This matter was taken up informally with the appropriate Foreign Office official on August 29, and I enclose a copy of a letter dated September 6³⁷ which the Embassy has received in reply. This letter explains that no exemptions are granted to foreign consular officers in the United Kingdom with respect to the payment of annual taxes on automobiles, and also gives the Foreign Office's view that it would not be possible to make any arrangements for the exemption of United States Consuls from payment of these taxes, on a reciprocal basis.

Respectfully yours,

For the Ambassador:
RAY ATHERTON
Counselor of Embassy

³⁷ Not printed.

CANADA

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND CANADA

611.4231/784

The Chargé in Canada (Boal) to the Secretary of State

No. 1300

OTTAWA, March 29, 1933.

[Received April 3.]

SIR: I have the honor to refer to my despatch No. 1080, of October 20, 1932,¹ regarding the Ottawa agreements,² as well as to previous reports upon that subject, and to my despatch No. 1243 of February 21, 1933,¹ reporting a debate in the Canadian House of Commons regarding the possibility of reciprocal trade arrangements with the United States.

In order that the Department may have at hand material from this Legation to supplement its study of the possibility of some form of trade and other agreements with Canada I recently asked Mr. Meekins, the Commercial Attaché of the Legation, Mr. Harrington, American Consul here, and Mr. Bonbright, Third Secretary, to work together upon the preparation of data for this purpose. This has been prepared in the following form: ³

Memorandum dealing with general provisions and with Canadian exports to the United States.

Memorandum dealing with United States exports to Canada.

Tentative outline of agreement.

I wish to make it clear that in the absence of more definite information as to the method under which our Government might be prepared to proceed, it has been rather difficult to base these studies upon the probability of the adoption of any particular method. Current press reports indicate that consideration is being given to the possibility of legislation which would enable the President to conclude Executive agreements possibly embodying the method used in the Argol agree-

¹ Not printed.

² The trade agreements concluded during the Imperial Economic Conference at Ottawa in 1932. For complete texts of the agreements and attached schedules, published by the Canadian Government as annex V to the report of the Conference, see Imperial Economic Conference 1932: *Report of the Conference*, Supplementary Volume (Ottawa, 1932); the texts are also printed in *British and Foreign State Papers*, vol. cxxxv, p. 161.

³ The following papers enclosed with this despatch are not printed.

ments.⁴ From the Canadian point of view this might be open to the objection that such agreements might be terminated by unilateral action at any time. Possibly a means may be devised to obtain authority for Executive agreements which would make it possible for the President to conclude such agreements with assurance that they would endure for a fixed period. I note, for instance, that in Executive Agreements, Series No. 37, which relates to the Chinese courts in the international settlement at Shanghai, Article X states that

“The present agreement and the attached notes shall enter into effect on April 1st, 1930, and shall continue in force for a period of three years from that date, provided that they may be extended for an additional period upon mutual consent of the parties thereto.”

As an annex to this despatch will be found an outline embodying a series of agreements.⁵ In submitting this outline I wish to make it clear that it is not intended to represent anything but a part of the study in an elementary form. It is my thought that it would be more convenient for the Department to deal with a specific form and text, even though this may not correspond to the Department's ultimate policies and general plan of action. This outline is based upon two assumptions: one, that it is now timely to conclude a trade agreement with Canada and that it is therefore an opportune time to complete agreements with Canada on other subjects; two, that fixed tariff rates, intended to remain unchanged for a considerable period of time, cannot be put into an agreement because of A, the uncertainties surrounding the future of international trade and the consequent difficulty of determining the probable course of Canadian-American trade over any period greater than one year, and B, the acute problems presented by the overproduction of natural commodities in the United States which may, however, be relieved rapidly as the result of national and international action. The attached outline contains provisions for the employment of the International Joint Commission as the agency through which these difficulties can be met. If this method is incompatible with the policies of procedure formulated by the Department in conjunction with the other interested Departments that part of the enclosure can be disregarded; the remainder, however, will be found to contain data

⁴ The “argol agreements” were negotiated under section 3 of the Act of 1897. In conformity with the provisions of the first part of section 3, two series of agreements, known from the first article specified on the list as “argol agreements”, were concluded. During President Theodore Roosevelt's administration, the United States negotiated a second series of “argol agreements”. See United States Tariff Commission, *Reciprocity and Commercial Treaties* (Washington, Government Printing Office, 1919), pp. 205, 209 ff. and 435 ff. See also U. S. Tariff Commission, *Dictionary of Tariff Information* (Washington, Government Printing Office, 1924), p. 619.

⁵ Not printed.

which should prove of value in negotiating any type of agreement with this country.

I have also endeavored to give due weight to the very strong and general feeling in Canada that some guarantee must be given Canadian industries and natural producers that the benefits of any agreement arrived at will not suddenly be removed from them, leaving on their hands a series of enterprises developed for the American market with no market to which to send their produce.

I have gone on the assumption that present United States tariff rates can in many instances be considered to be higher than desirable. It is obvious, however, that during the past year American tariffs with Canada have been lowered through the operation of the exchange rate between the currencies of the two countries. Part II, Article 3, by providing that the trade agreement between the two countries should be based upon the assessment of duty at par of exchange, would effectively lower duties now paid on American exports to Canada, since, as explained in the Commercial Attaché's memorandum, these are now calculated much higher than the regular rates because they are figured on the basis of the present disparity in the currencies.

Another feature of the enclosed outline is the provi[sion] in Article V, Part II, dealing with the elimination of the troublesome Canadian valuation system, which is discussed at some length in Mr. Meekins' memorandum. This system of valuation has been the cause of most of our trade difficulties in Canada and has been a far greater bar to normal trade than tariff rates in themselves.

It may appear surprising to the Department that the enclosed outline should stress the purposes of the proposed agreement and should leave so much to the future in the form of adjustment in rates during the life of the agreement. I am convinced, however, by such experience as I have had here with the Canadian point of view and the trade difficulties which have arisen that the main objective to be reached is to obtain a change in the Canadian mentality with regard to the degree of safety involved in trading extensively with us. They must be assured that we are not attempting to absorb them economically or to dominate them financially and that we will be as conscientious in seeking to make this agreement operate to their national advantage as to our own. I believe that a satisfactory agreement should undertake to attain these objectives and should make provision for flexible tariff operation which can be simply and expeditiously adjusted from time to time when the result of the agreement's operation is an obvious deviation from the attainment of these objectives. I am inclined to think that an agreement which does not contain the quality of flexibility and easy adjustment is

likely to fail in its purpose through changes of circumstance or to fail in negotiation because of objections in one or the other country.

It may be noted that the maxima for rates are indicated in schedules called "Schedules A" and "B", which are attached to the outline and are intended to be the only part of the agreement dealing with specific rates. These schedules would permit not only of the fixing of duties between these maxima and minima rates, but also of adjustment on a period basis in order that the graduation from present high tariffs to lower ranges might be arrived at progressively instead of abruptly. This would give time for adjustment to certain industries which might otherwise be seriously affected. It would seem advisable to consult the affected producers in connection with the fixing of the rates in these schedules.

The proposal contained in Part II, Article II, of the outline to entrust the solution of current operating problems and such adjustments as may be necessary during the life of the proposed agreement to the International Joint Commission may cause some surprise. However, the language in Article IX of the Treaty of January 11, 1909, relating to boundary waters and questions arising along the boundary between Canada and the United States⁶ would appear to be broad enough to cover "any other questions or matters of difference arising between them (United States and Canada) involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other along the common frontier". Since, as is shown by experience with the Ottawa agreements, the operation of a substantial trade agreement between the United States and Canada would be followed by the necessity for a continuous study and adjustment, it would seem desirable that some medium for such adjustment should be provided which would be somewhat removed from the immediate pressure of politics in both countries. As its membership is evenly divided between the two countries the Joint Commission cannot make a joint recommendation to both governments on the basis of a majority finding unless at least one American member sides with all the Canadians or vice versa. Furthermore, in the language of the treaty, the Commission's reports shall not be regarded as "decisions of the questions or matter so submitted either on the facts or the law and shall in no way have the character of an arbitral award". The Commission's procedure would not be along the lines of those of a legal body such as a court of law, but rather along the lines of a policy body. It could be equipped with technical assistants, could obtain the assistance of Commercial Attachés or other members of the Legations of one or both countries when necessary, could refer certain technical questions for study to the tariff boards of

⁶ *Foreign Relations*, 1910, p. 532.

either country, could confer with the representatives of industries and foster agreements between the major industries of the two countries, as was done by the British and Canadian governments just before the Ottawa Conference took place. It could be authorized to avail itself of the services of outstanding authorities on economic questions either permanently or during the discussion of particular subjects. It would act really as a steering committee for the treaty during its life.

It may be objected that this work would interfere with the regular work of the Joint Commission. I may say that this is not at the moment very heavy, and that if the Joint Commission were constituted of men competent to deal with the intricate economic questions involved in Canadian-American trade relations they could follow their present practice of employing temporary assistants to work on other types of questions which are currently referred to them by the Governments.

This thought of using the Joint Commission, however, is advanced tentatively. It may be that it would be found preferable to create some other group to perform the same function, or that a method of achieving the same results through the usual diplomatic channels can be evolved. I do feel, however, that progress can be made more smoothly and rapidly by having a constant contact between persons having some limited authority of action assisted by experts working out the details of the operation of the agreement rather than by having each detail taken up between Governments as it arises and having to appoint special persons to discuss these details in each case.

It may further be objected that while an International Joint Commission exists between the United States and Canada, such an organization does not exist to deal with the relations of the United States with other countries, and that to create bilateral commissions with all the countries with which we have extensive trade relations would be both cumbersome and expensive. I believe that this objection is important, but I submit that our relations with Canada are and should continue to be exceptional. If international trade relations drift toward regional understanding, we should in fact be in the position of having a sort of regional understanding with the nations of this hemisphere, more particularly Canada. The further we advance along this path before the regional feeling crystallizes, the better we will be situated with regard to the defence of our interests. If, on the other hand, international trade relations are developed along the lines of general and progressive reduction of tariffs with a view to increasing the volume of international trade, the sooner we establish, in so far as is possible, an identity of interests with the nations of this hemisphere, and the closer we are associated with them the more successfully we can advance our views of what these reductions should be, and the more effectively can we

use our tariffs for bargaining purposes. It is really a premise on which this outline of an agreement is based that our trade relations with Canada, often described as our "best customer", economically our most powerful neighbor, indissolubly an immediate part of the economic system of this hemisphere, are and must be considered on a different footing from our trade relations with distant nations or with all nations, and that therefore our concessions to Canada in trade matters and such a system of trade relationships as may be evolved between Canada and the United States should not be taken as a yardstick to measure the concessions and treatment which other nations should expect from us or from Canada.

The idea of embodying schedules which can be added to from time to time without the re-negotiation of the entire agreement is taken from the method of the Ottawa agreements. The idea which will be found in Part II Article 2, paragraph 8, of this outline of providing for modification of the agreement in case any particular industries are shown to be undergoing serious damage because of its operation is based on the Canada-New Zealand agreement.⁷ In Part II, Article 3, of the outline will be found a provision to safeguard our agricultural producers against dumping in the event that the processing taxes embodied in legislation now pending before Congress are applied to products included in the proposed agreement. The provision in Part IV (Customs) of the outline which deals with the privilege for American vessels of loading and unloading cargoes at non-customs ports of entry would be favorable to shipping interests in the State of Washington, and might tend to offset the effect of a reduction in the duty on fish and the import tax on lumber.

It is probable that if trade relations are to be regulated by an Executive agreement it will not be advisable to include as an integral part thereof the portions of the outline covering such matters as treatment of nationals, consular rights, et cetera. It is my feeling, however, that if it is practical to do so it would be desirable to include fisheries, and possibly navigation, in the agreement to be concluded. In the matter of fisheries particularly it is obvious that the question of Canadian treatment of American fishing vessels is closely related in the Canadian mind to the American tariff on Canadian fish; therefore an agreement in separate parts, but which would be concluded as a whole, would deal effectively with this obvious feeling. If the matter is dealt with in two entirely separate agreements, particularly if one of these were to be referred to the Senate and the other not, Canada would probably wish to defer ratification of both agreements until both had been perfected

⁷ Trade agreement between Canada and New Zealand, signed at Ottawa and Wellington, April 23, 1932, Canada, Treaty Series No. 2, 1932.

in the United States, and this might operate to delay or jeopardize either the trade agreement or the fisheries agreement, or both. If it should be determined that the agreements with Canada should all be made in treaty form I can see no practical bar at the moment to including all of these subjects in the same treaty. The outline has been drafted in the treaty form, although as I have above explained, this has merely been done for the sake of convenience and does not indicate on the part of the Legation any conviction that the treaty form is preferable.

I have not indicated in this outline any possible agreement on immigration matters as I do not know whether such an agreement would be feasible to our Government. It is clear to me from some occasional remarks made to me by the Prime Minister that he is not satisfied with the present situation between the two countries with regard to immigration, and it is therefore quite possible that if any negotiations were undertaken he would request that some provision covering immigration be included in the interests of certain classes of Canadians desirous of residing in the United States. I have the honor to suggest that the Department may wish to obtain some report from the appropriate authorities of the current situation on immigration matters between the United States and Canada with a view to determining whether any improvements could be effected on both sides of the line.

I have the honor to point out that this week the question of trade relations with the United States was raised again in the Canadian House of Commons in connection with the debate on the Budget. Opinion throughout Canada is crystallizing to press upon the Government for an agreement with the United States. It is politically timely and expedient for the Canadian Government to make such an agreement to still the criticism of the Liberal party that Canada's future welfare has been sacrificed in the Ottawa agreements. I am inclined to believe that although it will be difficult to do so, it should be possible to obtain some changes in the Ottawa agreements in the interest of a substantial trade agreement with the United States.

I am also enclosing, as of interest on the subject of non-ferrous metals, copy of a memorandum received from Professor W. Y. Elliott of Harvard, and of a memorandum prepared by Mr. C. K. Leith.⁸ The establishment of a precise list of non-ferrous metals has not been attempted. The items listed in Schedules A and B, attached to the outline, have been selected merely as a basis for study. Obviously, there might be some additions to this list, some deletions and a good deal of further sub-division into categories. However, it has appeared obvious that this could not be done effectively without extensive consultation with

⁸ Neither printed.

representatives of various agricultural and other industries. As this can only be done in Washington, no attempt has been made to sub-divide the items in Schedules A and B extensively, or to insert any rates. I may mention that due consideration was given to the possibility of including petroleum and its products in Schedule B, but that it was felt that due to the particular character and development of this industry and the fact that American imports of petroleum suffer far more because of over-valuation than because of the rate of duty, it was preferable to leave out this item and to rely upon obtaining an improvement in the Canadian system of valuations as indicated in Article V of the outline.

The possible advantages of combining with the rate-fixing features of the outline and of Schedules A and B some form of quota restriction has not been overlooked. I feel however that, at the outset of this study at least, it may not be desirable to attempt to formulate restrictive provisions of this character. If it should develop, after consultation with representatives of the interested industries, that substantial reductions of rate could not be achieved without some quota protection for domestic industries, there would still be opportunity for the framing of some quota provision. Furthermore, it may be noted that Article II, section 10 of the outline, provides for a means of resorting to new methods by mutual agreement.

Respectfully yours,

PIERRE DE L. BOAL

611.4231/794½

The Chargé in Canada (Boal) to the Under Secretary of State (Phillips)

OTTAWA, April 14, 1933.

DEAR MR. SECRETARY: In view of the approaching visit of the Prime Minister⁹ to Washington it occurs to me that it may be timely if I set down for you a summary of the last few talks I have had with him, and especially of a recent quite long one in which he discussed his coming trip to Washington. I have concluded that as these conversations were on a personal basis and contained a good many expressions of a confidential character it would be better to deal with them in a letter to you than in a despatch.

In these conversations the Prime Minister has stressed, first, the great difficulties of the present moment in Canada; second, Canada's dependence on a considerable amount of tariff protection; third, the desirability of an economic agreement with the United States and the disastrous effect which sudden changes in the American tariff have in the past had upon the commercial fortunes of Canada.

⁹Richard Bedford Bennett.

The Prime Minister has pointed out the importance of export trade to Canada. He says that even in the United States, where exports are less than 10 per cent of the nation's business, they are known to be a vital factor without which prosperity cannot exist. How much more true is this of Canada, he says, where the export business is close to a third of the total. He has then explained that Canada developed a war-time industrial organization which has since had to be protected. He has stressed his high opinion of the Canadian as an industrial workman, pointing out as an instance that the Canadian industries made shells during the war at a considerably lower cost than did corresponding industries in the United States. I have gathered from what he said that he felt that the Canadian manufacturer must continue to receive extensive protection in spite of the great importance of developing Canadian exports. I imagine that he realizes that, in some branches of industry at least, Canada is not able to produce goods anything like as cheaply as the United States, but I have not attempted to argue out this subject with him. He recently said to me, speaking of the Canadian House of Commons, "If they only knew it, there are few men in that House more reluctant to bring in high tariffs than myself, but I have had to do so as a matter of necessity—the necessity of preserving Canada." He then went on to explain the necessity under which Canada has been to defend itself by the instrument of tariffs from foreign competition, not only from the United States but more particularly from the European countries, especially the United Kingdom.

The Prime Minister has made it clear, first, that the burden of adversity in Canada during the last few years has been very great, and that because of the more centralized character of the Canadian economic and financial structure the impact of the problems and difficulties has really been greater on his Government than they have been during a like period in the United States on our Government. He pointed out that the depression began in Canada before it began in the United States. He does not believe the depression to be over. He does believe that if far-reaching international solutions are not arrived at this year between the principal governments of the world, then the orthodox line of action which has been at the basis of his practice of government in Canada must be abandoned. He has stood for the fulfillment of Canadian obligations and the maintenance of Canadian credit, but he tells me that if an agreement is not reached this year this line of action will no longer be possible. He tells me that he has already drafted a plan of action to be taken in the event of failure of the World Economic Conference—a plan of which even his colleagues in the Cabinet have no knowledge. I gather from what he said that it would probably involve inflation and of necessity the abandonment of Canada's present

determination to pay its foreign obligations, and that it would of necessity launch Canada into a number of untried social and economic experiments the outcome of which no one at the moment could foresee.

The Prime Minister apparently feels that there is some ground for a certain amount of achievement by direct reciprocity in the lowering of tariff rates. He pointed out, for instance, that feeder cattle imported from Canada in the unrestricted years constituted only 2 per cent of the cattle consumed in the United States; and then he went on to point out that there was no reason why a country of 120 millions should be so fearful of the effects of importations from a country of 10 millions.

I pointed out, however, that production both in Canada and the United States was largely a regional matter, and that for some given product, such for instance as cattle, there might be almost the same number of Canadians producing this product as Americans. He conceded that this was sound but went on to say that he felt that there was considerable ground for reduction in favor of Canadian natural products. He said, however, that he, for one, would not expect to go to the United States with any kind of exorbitant demands. He would go as a realist seeking to attain a practical objective. He was not an economist and was inclined to agree with "Jimmy" Thomas that "the opinions of the first half dozen of 'em cancel out the opinions of the second half dozen of 'em". He described himself as just a working man who would like to get something done.

The Prime Minister remarked that the *modus vivendi* which he has just concluded with Germany was subject to immediate change (30 days) in case it became necessary, and that the French agreement was not yet concluded and he was holding out firmly for French concessions on a couple of important items. I take it that he was holding out for provisions favoring the importation of Canadian wheat and Canadian canned salmon into France. I inferred from these remarks that he did not expect to conclude the French treaty until after his return from Washington, where he would have explored the possibilities of the general economic situation.

He has never at any time made the statement to me that the Ottawa agreements were not subject to change. He has said that they were made in a binding form because of the fear that a change in government in Russia might bring Russia back into world economy in such a way as to make later agreements impossible, and because he felt that within the Empire at least the Canadian producer must be able to count on some kind of tariff stability during the next five years. He feels it essential to attain as great a measure of tariff stability as possible, for if constant changes of tariffs and currency values continue no substantial international business can be done. Furthermore, he has indi-

cated that he would not exclude from consideration alterations of the Ottawa agreements, not only as to what lower tariffs might be given to the United States by Canada, but also as to what lower British tariffs Canada would agree to in favor of the United States. I want to make clear that he has made no commitment on this point, although he has had the idea in mind and has stated it as follows: "If, for instance, Canada were allowed to enter 100,000 bushels of Canadian wheat into the United States at a low rate of duty along the lines of the British preference, then the United States might ship 100,000 bushels of American wheat to the United Kingdom at a rate equivalent to the British preferential rate now granted to Canadian wheat." Thus he has indicated that he is prepared to consider this idea as a sort of extension of scope of a part of the Ottawa Agreements. He has certainly not indicated that he is prepared to favor it. The Prime Minister has made it clear that it was at his instance that the Ottawa agreements were made for a duration of five years.

He has also expressed his conviction that a prerequisite to the success of any trade agreement reached must be measures which will ensure a stable relationship between American and Canadian currency. He points out that Canada's gold production has helped out Canada to an extent out of all proportion to its volume. He suggests that it would help it still further if a reduction of the gold content of the dollar (both dollars I presume) could be agreed upon. This would appreciate the value of gold and make it easier to make payments abroad, especially in the United States. I think you may count him as a proponent of the idea of the reduction of the gold content and that he will advocate a value of about \$30 an ounce for gold.

On the question of the necessity for an agreement with the United States, the Prime Minister has been most definite. It is his thought that it would send the World Conference off to a good start if an agreement, even a small partial agreement but in fact an agreement, could be reached between the United States and Canada before the World Economic Conference. His greatest problem, he says, is to meet the need for stability in Canadian-American economic relationships. He has related to me a conversation which he had with Mr. Arthur Meighen some years ago in which he said to Mr. Meighen: "Give me the control of the tariff policy of the United States for a period of ten years and I can do more for the welfare of Canada than I could do for it as Prime Minister." After some thought Sir Arthur agreed with him that this was true. The Prime Minister remembers when he was a boy in the Maritime Provinces the ruinous blows which fell upon the fishing and shipping trades with which he was familiar as a result of the abandonment of reciprocity between the United States and Canada.

The first requisite of any agreement that he could make with the United States would be something that would prove an assurance of stability in the economic relationship which was arrived at. If the entire agreement is to be subject to destruction, probable destruction, at the end of each administration in the United States and at the end of each administration in Canada, the situation will continue to be hopeless. Furthermore, he said, whatever the duration of any agreement that could be arrived at, he would wish its end not to coincide with an election in Canada. He does not want to have to fight his elections on the issue of reciprocity with the United States. (The Bennett government does not have to go to elections before the summer of 1935, and every indication now is that they will not go to elections until that time.)

On this subject of duration I remarked to the Prime Minister that possibly an agreement could be made more likely to endure if it were supplied to some extent with the quality of flexibility so that it could be adapted to circumstances from time to time if necessary, without the necessary destruction of the whole fabric. He seemed to agree that this might be a method of attaining his object which was worth exploring.

The Prime Minister's present plans are to leave for Washington so that he may arrive in time to spend with Mr. MacDonald¹⁰ the last day of his visit there. He feels that he wants to allow Mr. MacDonald freedom to start his conversations entirely without reference to him, since, as he puts it, he thinks he is not going to be able to agree with Mr. MacDonald on four out of five subjects. At the same time, although he has not said so explicitly, it is clear from his manner that he feels that he can, by his presence, be of considerable assistance to the progress of British-American negotiations. He implies that while the British have complained a good deal about the firmness of his methods; that while they had not been accustomed to receiving from Colonial Ministers the kind of language which he has used with them, they respect him. He tells me that they have had to admit that he was right about the inadvisability of the Neville Chamberlain language on the war debts question. He says that he knows how difficult they are to move along paths which they have not themselves chosen, and that it has been his lot to move them in such paths in the past. The implication is that he has the combination for moving them along in the future and expects to use it when necessary during the coming negotiations.

In past letters and despatches I have expressed the feeling that the present Canadian government has everything to gain and nothing to lose from a prompt agreement with the United States. I think that if we are prepared, as Mr. Bennett suggests, before the World Economic Conference meets to make even a limited agreement, subject to later

¹⁰ J. Ramsay MacDonald, British Prime Minister.

enlargement, we will probably have in him a strong ally at the World Economic Conference. As you know, it is in his character to force the issue with the British when he deems it necessary, and it seems to be quite certain that if there is one thing above all others the United Kingdom cannot afford during the coming year it is an open rift with Canada. The Prime Minister's willingness to press forward vigorously for the measures in which he believes, if availed of by our representatives during the Conference, might, I should think, strengthen our position, and in some instances make it possible to obtain acceptance of our views without our having to make an issue of them ourselves.

In conclusion, I may say that the Prime Minister has several times indicated that he is aware of the obstruction to the flow of international trade which results from the Canadian system of valuation of imports and other customs practices. He has expressed a willingness to negotiate for the purpose of simplifying customs procedure, but he probably realizes that the stringent control which his government has of imports is due to the valuation system rather than to any tariff rates and that unless we can do away with that present system changes in tariff rates in our favor will really be of little avail. Very likely he will be disposed to talk about tariffs and currencies rather than about methods of valuation and other administrative restrictions to importation. I feel, however, that in order to obtain an agreement he should be willing to make concessions in the latter field in order that the American and the Canadian practices in these matters may become substantially similar.

With all best regards [etc.]

PIERRE DE L. BOAL

611.4231/808

*Memorandum by the Secretary of State of a Conversation With
the Canadian Chargé (Wrong)*

[WASHINGTON,] May 26, 1933.

The Canadian Chargé came in and delivered the reply of the Canadian Government to President Roosevelt's speech addressed to the world powers on disarmament, both military and economic.¹¹ He protested against the pending House provisions intended to extend the tariff tax on lumber, oil, coal, and copper, until 1935, and also against the valuation of certain lumber imports on the Northwest Border.

I thanked the Chargé, but reminded him that I had a protest almost daily about the most amazing elastic system of customs valuations by Canada. I said that both countries were reaching a stalemate so far as any commercial transactions were concerned and that both alike

¹¹ Message to various Chiefs of State, May 16, 1933, vol. 1, p. 143.

should undertake to face in the direction of reform. I stated that I had not examined the question as to whether the proposed tax on copper and other articles mentioned violated the tariff truce.

C[ORDELL] H[ULL]

611.4231/815

Memorandum by the Assistant Chief of the Division of Western European Affairs (Hickerson) of a Conversation With the Counselor of the Canadian Legation (Wrong)

[WASHINGTON,] July 15, 1933.

In a conversation in my office with Mr. Wrong this morning, he referred to the President's recent announcement that Sweden, Portugal, Brazil, Colombia and Argentina were to be invited to engage in informal conversations with the United States looking to trade agreements and said that there would undoubtedly be some mention made of the fact in Canada that the Dominion was not included in this list. I told Mr. Wrong that when Prime Minister Bennett was in Washington last April, we had explained in full to him the procedure which we desired to adopt in connection with a reciprocal trade agreement with Canada; that we had pointed out that it was the President's intention to request Congress to authorize him to negotiate trade agreements which would not have to be approved by a two-thirds vote of the Senate and that we had hoped that such authority would be conferred upon the President by the special session of Congress which adjourned in the middle of June. I explained to Mr. Wrong that as he was aware it had not been possible for the President to present such legislation to Congress and that we do not as yet know whether the President will consider it advisable to ask the next session of Congress to confer such authority upon him.

I stated that during our conversations with the Prime Minister here in April, it had become apparent that the Governments of both countries desire a trade agreement as soon as possible. I added that notwithstanding the great desirability of such an agreement from the standpoint of both countries, there would be considerable opposition in the United States and probably also in Canada to an agreement of the comprehensive nature which I was sure both Governments would like to negotiate. I pointed out that it would probably be difficult to obtain a two-thirds majority in the Senate for the sort of trade agreement which the President and the Prime Minister had in mind at the time of their conversations in April; that a trade agreement in the form of a regular treaty would thus necessarily have to contain less in the way of tariff reductions than would be the case of an agreement of the sort which

we had contemplated at the time the tariff bargaining bill was drafted last spring. I added that in my opinion until we knew definitely what our general method of approach was going to be it would be useless to discuss a trade agreement further with the Canadian Government. I went on to say that I had no doubt that upon Secretary Hull's return from London he would go into this matter fully with the President with the view of obtaining a decision as to the precise form which our trade agreements will take.

I explained that the countries which had been invited to enter upon informal conversations with us had been selected because of the fact that the products which they export to the United States present fewer difficulties and complexities than in the case of other countries. At this point, Mr. Wrong raised the question of whether this was true of Argentina, and I replied that it was not, but that that country had been added at the earnest insistence of the Argentine Ambassador here, who is firmly of the opinion that there is abundant room for a satisfactory trade agreement between the United States and the Argentine, despite the fact that their principal exports are products which we also produce in large quantities.

I emphasized the fact that we are keenly desirous of entering upon negotiations with Canada as soon as we know the type of agreement which we will be in a position to conclude, and that if we had selected a list of countries for negotiations from the standpoint of the importance of trade relations with the United States, Canada would, of course, have been at the head of the list.

J[OHN] D. H[ICKERSON]

611.4231/840

*Memorandum by the Under Secretary of State (Phillips) of a
Conversation With the Canadian Minister (Herridge)*

[WASHINGTON,] November 20, 1933.

The Canadian Minister talked to me at length today in regard to the necessity of doing something to stimulate trade relations between Canada and the United States; he referred to Prime Minister Bennett's visit to Washington last spring and to the public statements made along these lines; he said it was high time to move forward in this respect; he had not pressed the matter because he was well aware of the emergency program undertaken by the N. R. A.¹² and felt that Canada should not interfere with the remedies which the American people were putting into effect to find a solution for their own economic difficulties; he felt, how-

¹² National Recovery Administration.

ever, that a point had been reached where there was now a parting of the ways—if the American tariffs against Canadian imports were raised further; that there was bound to be further retaliation in Canada against the United States; in these circumstances it was essential to make an effort now to work out an exchange of commodities on a reciprocal basis which would turn the tide away from a complete stoppage on the Canadian border; he had not in mind a reciprocal trade agreement, necessitating submission to the Senate, but rather the selection of a few items which, by an exchange of notes, could be facilitated entrance. The Minister asked that we consider the idea of asking the Tariff Commission to study the 50% reduction of tariffs on potatoes, lumber, cattle and fish and in return he could promise facilitating the entry into Canada of American vegetables and fruits, farm machinery and other manufactured articles. He felt sure that the Tariff Commission would consent to a 50% reduction because of the similarity in the costs of production in both countries; Mr. Herridge felt the need of creating some machinery which would start trade moving; it need not be very important; it might well be limited to three or four items from Canada; the point which he had in mind was to make a start in the right direction and, once reciprocity was established, other items would normally be added.

W[ILLIAM] P[HILLIPS]

CONTINUED NEGOTIATIONS WITH THE CANADIAN GOVERNMENT
REGARDING DAMAGES TO PROPERTY IN THE STATE OF WASHINGTON
BY FUMES FROM THE SMELTER AT TRAIL, B. C.¹⁸

711.4215 Air Pollution/407b

The Secretary of State to the Chargé in Canada (Boal)

No. 841

WASHINGTON, February 10, 1933.

SIR: For a number of years a serious situation in the State of Washington has obtained because of damage caused by fumes from the smelter of the Consolidated Mining and Smelting Company at Trail, British Columbia, a few miles from the international boundary between the United States and Canada. Fumes from this smelter carried by the wind across the international boundary did some damage in the State of Washington as early as 1918. Increased activities on the part of the smelter resulted in greater damage, and by 1923 the effect of these fumes in the State of Washington reached serious proportions. The fumes have injured vegetable growth as far as thirty or forty miles from the international boundary.

¹⁸ For previous correspondence on this subject, see *Foreign Relations*, 1928, vol. II, pp. 78 ff.

This situation is not only serious but anomalous. There are, of course, many smelters in the United States and Canada, but in no other instance, so far as I am aware, has the area adjacent to a smelter been compelled to submit without indemnification or any other remedy to continued exposure to fumes. It has been possible in ordinary cases for the injured parties by resorting to the remedies afforded by the courts to obtain that protection which the United States and Canada guarantee to their respective nationals. It is my understanding that even in the case of the smelter at Trail, British Columbia, the Canadian property owners in British Columbia have been able to obtain indemnification through the medium of the Canadian courts. No such remedy is, however, available to the American community in the State of Washington.

On August 7, 1928, after a somewhat protracted correspondence, the Governments of the United States and Canada referred this question to the International Joint Commission, United States and Canada, for investigation and report. After a series of hearings the International Joint Commission rendered a report on February 28, 1931,¹⁴ on the question. The Department has given careful consideration to this report of the International Joint Commission. I recognize that this report is not an arbitral decision which must be accepted by both Governments, but it is in the nature of a group of recommendations for the consideration of the two Governments to facilitate the reaching of a settlement. The report of the International Joint Commission of February 28, 1931, upon its publication, caused dissatisfaction and protest in the interested part of the State of Washington. The injured property holders insisted that the recommended award of \$350,000 for damages up to and including January 1, 1932, was inadequate, and that the report in general accorded too little recognition to the complaints of the people in that section of Washington. The Government of the United States shares with the Government of Canada a certain pride in the helpful work of the International Joint Commission since its establishment, and this feeling has impelled me to regard the report of February 28, 1931, as a recommendation which, while not satisfactory to the injured parties in the United States, is entitled to the most serious consideration of this Government.

The report of the International Joint Commission expressed the view that damages in the State of Washington from fumes from the smelter at Trail would practically cease by the end of 1931. Unfortunately, that has not been the case and extensive damage has continued. It is the view of the Government of the United States that a means must be found to bring about adequate relief for this section of the State of

¹⁴ *Trail Smelter Question*, Documents, Series A, Appendix A 3: Report of the International Joint Commission, signed at Toronto, 28th February, 1931 (Ottawa. J. O. Patenaude, I.S.O., 1936).

Washington. It seems just that our people concerned should be given no less protection than that which citizens of both countries are customarily able to obtain in the proper courts, and which the people of the State of Washington could indeed obtain were it not for the fact that the smelter which causes the damage is situated in a foreign jurisdiction.

In these circumstances I propose that a treaty be concluded between the United States and Canada to give effect to the principal features of that report and to provide substantially:

1. That the sum of \$350,000 be paid as indemnity to cover damages which occurred prior to January 1, 1932. This sum of \$350,000 shall be paid to the Government of the United States to be distributed as the Government determines.

2. That damages occurring subsequent to January 1, 1932, shall be assessed by a board or commission to be established for that purpose. Damages so assessed shall be paid to the Government of the United States and distributed by it.

3. That, in accordance with a schedule agreed upon in the treaty by the two Governments, the amount of sulphur dioxide discharged by the smelter and the rate of discharge shall be progressively reduced by means of extraction works or any other device which the smelter chooses to employ until no further damage is done in United States territory.

4. That the two Governments shall establish an agency to continue investigations, to report progress on the schedule agreed upon for the progressive reduction of the amount of sulphur dioxide and to assess damages. The members of the agency established by the two Governments shall have access to the smelter and to property affected in the United States and shall be furnished with information pertaining to the operations of the smelter.

An agreement such as is proposed above would be in substantial conformity with the report of the International Joint Commission with minor variations pertaining chiefly to the modal features of the report. The Department feels that an adjustment of the international problem presented by the operation of the smelter could best be effectuated by concluding a treaty between the two Governments. An outline of the substance of a treaty is set forth above. That description of the proposed treaty would, of course, be subject to such amendment and elaboration as might be deemed necessary as discussion progressed.

Please obtain an interview with the Prime Minister,¹⁵ communicate the above-mentioned views to him, and inquire whether the Government of Canada will agree to designate a representative to confer with a representative of the United States with a view to formulating an agreement along these lines. You may leave with the Prime Minister a note in the sense of this instruction. It is essential that you impress upon

¹⁵ Richard Bedford Bennett.

the Prime Minister that this is a serious situation for which a solution must be found. Please keep in touch with the proper authorities after your interview with the Prime Minister in an endeavor to expedite their reply as much as possible.

Very truly yours,

HENRY L. STIMSON

711.4215 Air Pollution/413 : Telegram

The Chargé in Canada (Boal) to the Secretary of State

OTTAWA, February 25, 1933—11 a. m.

[Received 2:30 p. m.]

6. Department's instruction 841 of February 10, 1933. I presented the press release¹⁶ and a note in the sense of this instruction to the Prime Minister yesterday with our representations as instructed. In the note the word treaty has throughout been changed to the word agreement in order to leave the Canadians a little more leeway as to form. I shall make it clear in due course that ratification in the United States of any treaty, convention or other form of agreement reached between the two countries will probably be necessary.

The Prime Minister has telegraphed to Mr. James J. Warren, President of the Consolidated Mining and Smelting Company, to consult with him regarding the suggestions made in our note. He also wanted to defer the press release until he had a reply from Warren but I explained that this would be very awkward and he then said that in that case he would prefer that the release be made without any reference to him. Therefore when release is made it should be done without any mention of the Prime Minister and without any suggestion that he might have knowledge of it. The word treaty in the release should also be changed to agreement.

BOAL

711.4215 Air Pollution/414 : Telegram

The Chargé in Canada (Boal) to the Secretary of State

OTTAWA, March 1, 1933—4 p. m.

[Received March 2—5:54 a. m.]

7. Reference despatch No. 1255, February 27, 1933,¹⁷ the following is the pertinent part of Canadian Government's reply:

"You are doubtless aware that there is a difference of opinion between

¹⁶ A draft press statement enclosed with instruction No. 845, February 21, 1933 (711.4215 Air Pollution/407a), not printed. The press release apparently was not issued.

¹⁷ Not printed; it enclosed copy of note dated February 17, 1933, handed to the Canadian Prime Minister on February 24, in accordance with Department's instruction No. 841, February 10, p. 52.

the Governments as to the commencement and extent of damage in the State of Washington, caused by fumes carried across the international boundary from the smelter of the Consolidated Mining and Smelting Company at Trail. Further, there seems to be some misunderstanding as to the remedies that have at all times been available to the injured parties under the laws of this country. It has always been open to the residents of the State of Washington who were injured by the fumes, to take proceedings in the courts of British Columbia and to obtain redress either by way of injunction or damages. The Canadian Government, however, felt that owing to the large number of claims involved it was not unreasonable to concur in a reference to the International Joint Commission in order that the claims of the injured parties might be presented in a single reference in a manner that would insure substantial justice to all of the interested parties.

It is the view of the Canadian Government that the report of the International Joint Commission dated the 28th February and the recommendations contained therein should form the basis of any settlement of this question; accordingly, the Canadian Government is prepared to enter upon any negotiations which can properly be based upon this report and will designate a representative to confer with the representative of the United States, with a view to formulating an agreement along the general lines proposed by you. There is, however, one condition included in the report of the International Joint Commission which has apparently been overlooked in your reference to the principal features of that report. The recommendations of the International Joint Commission provided for the progressive reduction of the amount of sulphur dioxide discharged by the smelter until no further damage should be done in United States territory. This provision was, however, qualified by a definition of "damage", and it is the view of the Canadian Government that such a definition should be incorporated in any agreement which may be formulated by the representatives of the two Governments referred to in your note. The failure to include such a definition would impose an obligation upon the Consolidated Mining and Smelting Company that would be fundamentally different from that contemplated by the report of the Commission, and that would, in all probability be incapable of fulfillment, both from the technical and practical point of view."

BOAL

711.4215 Air Pollution/414 : Telegram

The Secretary of State to the Chargé in Canada (Boal)

WASHINGTON, March 7, 1933—6 p. m.

9. Your telegram No. 7, March 1, 4 p. m. Express to Department of External Affairs appreciation of Canadian Government's willingness to enter upon negotiations and inquire when Canadian representative will be prepared to open discussion. Qualification referred to in Canadian note may be discussed in course of negotiations along with other questions which will arise.

HULL

711.4215 Air Pollution/414 : Telegram

The Secretary of State to the Chargé in Canada (Boal)

WASHINGTON, April 19, 1933—5 p. m.

15. Endeavor obtain from Canadian Government answer to inquiry stated in Department's telegram No. 9 of March 7, 6 p. m., 1933, Trail Smelter.

HULL

711.4215 Air Pollution/430

The Chargé in Canada (Boal) to the Secretary of State

No. 1331

OTTAWA, April 21, 1933.

[Received April 24.]

SIR: I have the honor to refer to my telegram No. 13, April 30 [20], 12 noon, to the Department¹⁸ and to previous correspondence regarding the Trail Smelter case.

After talking with the Prime Minister and Mr. J. E. Read of External Affairs today the following suggestion has been made to me through the latter.

That a preliminary and entirely informal conversation be held between Mr. Read on behalf of the Department of External Affairs and such person as may be designated for the purpose on behalf of the Department of State to examine the possibilities of an agreement on the basis of the Joint Commission's report. Mr. Tilley, lawyer for the Consolidated Smelter, will arrive in Canada May second and it is suggested tentatively that this meeting be held at Ottawa on or about May eighth. Dr. Tory, head of the Canadian National Research Council, would then be named in the capacity outlined in paragraph 4 of the suggested agreement in the Department's instruction No. 841 of February 10, 1933. Dr. Tory and his opposite number appointed by the American Government would be authorized to employ experts to work at Trail and to report back to them the data on which they would reach their findings. Mr. Read assumes that our Government would be prepared to assume its part of the expense of this organization.

If the above plan of action is acceptable I would recommend that Mr. Metzger, who I understand has taken part in this work over a long period of time and is familiar with the situation at Trail, be sent here about May eighth to reach the terms of an agreement informally with Mr. Read. Mr. Read expresses the belief that the terms of an agreement can be reached in a few hours and once this is done the agreement can in due course be concluded in whatever form is most desirable. He at

¹⁸ Not printed.

first suggested an exchange of notes for this but I remarked that it might be necessary for us to follow the treaty form and that this matter might well be discussed May eighth, to which he agreed.

Respectfully yours,

PIERRE DE L. BOAL

711.4215 Air Pollution/483

The Acting Secretary of State to the Chargé in Canada (Boal)

No. 973

WASHINGTON, June 5, 1933.

SIR: Adverting to conversations which recently took place at Ottawa in regard to the Trail Smelter case, I write to inform you that the United States Experts who are studying the effects in the State of Washington of the operation of the smelter at Trail report that beginning at 9 a. m. on March 9, 1933, and persisting until 12:40 a. m. on March 12, a period of 51.67 hours, the conductivity recorder at Northport, Washington, registered contamination of the atmosphere with sulphur dioxide. The maximum sulphur dioxide concentration recorded during the course of the 51.67 hour fumigation was .82 p.p.m. which occurred about 5 p. m. March 11.

It is reported also that beginning at 8:40 a. m. on April 5, 1933, and persisting until 12 noon of the same day, a period of 3.33 hours, the conductivity recorder at Northport registered contamination of the atmosphere with sulphur dioxide. The maximum concentration recorded during the course of this 3.33 hour fumigation was 1.09 p.p.m. which occurred at about 9:20 a. m.

You will please communicate this information to the Department of External Affairs and say that the Government of the United States expects the Canadian Government to take such steps as may be necessary to prevent a recurrence of fumigations of the duration and intensity such as were recorded from March 9 to 12 and on April 5, 1933. It should be added that in segregating these two instances of fumigation, it is not intended to convey the impression that the Government of the United States does not object to other fumigations which occur from time to time. These two instances were of such significance that the Experts deemed it desirable to report on them in advance of making a complete analysis.

You may add that in the light of all that has transpired in relation to the smelter matter the Government of the United States feels warranted in insisting that the entire controversy be promptly adjusted.

Very truly yours,

WILLIAM PHILLIPS

711.4215 Air Pollution/440

The Chargé in Canada (Boal) to the Acting Secretary of State

No. 44

OTTAWA, June 7, 1933.

[Received June 12.]

SIR: I have the honor to report that upon the receipt of the Department's instruction No. 973 of June 5, 1933, on the Trail Smelter case, I wrote a note, of which a copy is enclosed,¹⁹ to the Department of External Affairs regarding the fumigation periods reported by the experts. I deemed it advisable to deal with this matter in a note in order that a record of the fumigation at the periods reported might be filed with the Department of External Affairs at this time. I considered it politic, however, to make slight changes in two phrases contained in the instruction when incorporating them into the note. It may be observed that the note reads:

“. . . the Government of the United States requests the Canadian Government to take such steps as may be necessary . . .”

and

“. . . my Government feels warranted in again urging a prompt adjustment . . .”

It appeared to me that no useful purpose would be served by having on the record statements which might be alleged by the Trail Smelter lawyers or others to be dictatorial in their tone, as this would only serve as an excuse for stiffening such resistance to an adjustment as now exists. However, I did verbally use exactly the language of the Department's instruction in both these instances in discussing the matter with Mr. Read today, and further stressed the necessity of an early settlement of this matter from the standpoint of the interests of both governments.

Respectfully yours,

PIERRE DE L. BOAL

711.4215 Air Pollution/447

The Acting Secretary of State to the Minister in Canada (Robbins)

No. 5

WASHINGTON, August 3, 1933.

SIR: The receipt is acknowledged of the Legation's despatch No. 131 of July 28, 1933,²⁰ in regard to the air pollution problem arising from the operation of the Smelter at Trail, British Columbia.

Communication in regard to this air pollution problem was resumed with the Canadian Government by the Legation's note to the Department for External Affairs of Canada dated February 17, 1933, pursuant

¹⁹ Note No. 30 of June 7, not printed.

²⁰ Not printed.

to the Department's Instruction No. 841 of February 10. After some delay, an arrangement for informal discussions was made. These discussions took place at Ottawa, May 19 to May 23, last. When these discussions terminated it was understood that the Canadian Government was to make proposals in a note to the Legation. The receipt of the note was expected within a few weeks subsequent to the time the informal discussions took place.

I exceedingly regret the slowness with which the Canadian Government moves in dealing with this air pollution problem. The Legation's despatch No. 1321 of April 13, 1933,²¹ indicates that discussion of proposed terms of settlement was then delayed because of the absence in Europe of the attorney for the Consolidated Mining and Smelter Company. Your despatch under acknowledgment indicates that action by the Canadian Government is now being delayed by the absence in Europe of the President of the Company.

It is especially regretted—considering the circumstances of this case and the necessity of an early settlement—that the Canadian authorities have seen fit to delay action merely because attorneys or officials of the Smelter Company happen to be traveling.

With the Department's No. 973 of June 5, 1933, information was communicated to the Legation in regard to fumigations that took place in Stevens County, Washington, in the months of March and April, 1933. The Legation transmitted this information to the Department for External Affairs in a note dated June 7, 1933. No response has been received to this communication, except an acknowledgment from the Department of External Affairs dated June 8,²¹ in which it was stated that the matter was receiving immediate attention and that inquiry was being made at Trail.

Reports of the United States Experts who are making observations in the State of Washington indicate that severe fumigations of substantial duration continued in the State of Washington in the months of May and June, 1933.

The conductivity recorder operating at Boundary, Washington, showed the presence of sulphur dioxide on thirteen days in the month of May with fumigations lasting as long as 3.33 hours and with concentrations as high as .88 ppm.

The recorder at Northport, Washington, showed the presence of sulphur dioxide on sixteen days in the month of May. The longest visitation of sulphur dioxide at Northport lasted 9.67 hours. The maximum concentration at Northport for the month of May was .39 ppm.

The recorder at Evans, Washington, showed the presence of sulphur

²¹ Not printed.

dioxide on seven days in the month of May. The longest visitation recorded at Evans lasted seven hours. The maximum concentration at Evans was .33 ppm.

The recorder at Boundary showed the presence of sulphur dioxide there on twenty-one days in the month of June, 1933. The longest visitation lasted 5.67 hours. The maximum concentration was 1.00 ppm.

The recorder at Northport, showed the presence of sulphur dioxide on twenty-three days in June, 1933. The longest visitation recorded at Northport lasted ten hours. The maximum concentration was .32 ppm.

The recorder at Evans, Washington, showed the presence of sulphur dioxide on two days in the month of June, 1933. The longest visitation of sulphur dioxide lasted 6.67 hours. The maximum concentration at Evans was .14 ppm.

A comparison of the readings for May and June, 1933, with the corresponding readings for March and April, 1933, shows an improvement in atmospheric conditions in Stevens County. However, I cannot contemplate the probability of a continuance, even temporarily, of fumigations such as are reported to have occurred in May and June, 1933, without registering complaint with the Canadian Government and without urging that adequate steps be taken by the Canadian Government to suppress this nuisance.

It is desired that you communicate this brief review to the Department for External Affairs and that you employ all available means consistent with a proper manifestation of firmness and tact to induce the Canadian authorities energetically to proceed with the adjustment of this long-standing air pollution problem.

You are authorized to confer with the Prime Minister upon his return to Ottawa, provided, of course, that the expected communication from the Canadian Government has not previously been received by the Legation. It is not deemed advisable to have the American Ambassador at London discuss the matter with the Prime Minister as suggested in the Legation's despatch under acknowledgment.

Very truly yours,

WILLIAM PHILLIPS

711.4215 Air Pollution/447

The Secretary of State to the Minister in Canada (Robbins)

No. 90

WASHINGTON, October 20, 1933.

SIR: In instruction No. 5 of August 3, 1933, reference was made to the Department's instruction No. 841 of February 10, 1933, and to subsequent instructions which have been sent to the Legation in regard to the pollution of air in Stevens County, Washington, by sulphur dioxide fumes from the Smelter at Trail, British Columbia.

The communication from the Canadian Government which was expected to follow the discussion which took place at Ottawa in May has not yet been received. The communications urging that adequate steps be taken to suppress the nuisance caused by the fumes, which the Legation was directed to present to the Canadian Government, remain unanswered.

Please inform the Department of any developments which have occurred relating to the Smelter case and report whether the communication which the Canadian Government was to send several months ago can be expected in the near future.

No opportunity should be lost to impress upon the Canadian officials the feeling prevailing in the United States that negotiations looking to a solution of this air pollution problem have not been characterized by the progress which can reasonably be expected when dealing with a matter of so much importance and of such urgency and vital concern to so many people.

An early report will be appreciated.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

711.4215 Air Pollution/458

The Minister in Canada (Robbins) to the Acting Secretary of State

No. 318

OTTAWA, December 26, 1933.

[Received December 29.]

SIR: I have the honor to refer to my despatch No. 313 of December 21, 1933,²³ regarding the Trail Smelter question and to enclose herewith a note on this subject dated December 26, 1933, which has just been received from the Prime Minister.

Respectfully yours,

WARREN D. ROBBINS

[Enclosure]

*The Canadian Secretary of State for External Affairs (Bennett)
to the American Minister (Robbins)*

No. 158

OTTAWA, December 26, 1933.

SIR: I have the honour to refer to Mr. Boal's note No. 625, dated the 17th February, 1933, in which certain proposals were made with regard to the Trail Smelter question, and also to Mr. Boal's note, dated the 7th June, 1933, concerning fumigations at Northport from March 9th to

²³ Not printed.

12th and on the 5th April, which were thereby brought to the attention of the Canadian Government.

In Mr. Boal's note of the 17th February, it was proposed that an agreement should be concluded between the United States and Canada to give effect to the principal features of the report of the International Joint Commission, dated the 28th February, 1931, and to provide, substantially, for certain matters more particularly set forth in the note. It was also proposed that the two Governments should designate representatives to confer with a view to formulating such an agreement.

In my note No. 13, dated the 1st March, 1933, it was pointed out that it was the view of the Canadian Government that the report of the International Joint Commission, dated the 28th February, 1931, and the recommendations contained therein, should form the basis of any settlement of the question. The Canadian Government intimated its willingness to enter into any negotiations which could properly be based upon that report, and expressed its willingness to designate a representative to confer with the representative of the United States with a view to formulating an agreement along the general lines proposed by Mr. Boal.

It was subsequently thought to be desirable to have a preliminary, informal conference between officials of the Department of External Affairs and your Department of State, in order to explore the type and character of an agreement that might be concluded, and as a result of this preliminary conference, it was thought that more progress could be made by a submission, on behalf of the Canadian Government, of the grounds upon which an agreement might be based, than by proceeding further with the idea of appointing representatives to negotiate an agreement.

With regard to the questions raised by the note of the 7th June, 1933, the result of inquiries made have impressed the Canadian Government with the urgent necessity of holding an immediate joint inquiry into the effect of the remedial works constructed by the Consolidated Mining and Smelting Company in eliminating damage, as defined in the report of the International Joint Commission, in the State of Washington.

In the report of the International Joint Commission, paragraph (b) of the findings, under the Fifth Question, the Commission recommends "that the Governments of the United States and Canada appoint scientists from the two countries to study and report upon the effect of the works erected and contemplated by the company, as aforesaid, on the fumes drifting from said smelter into the United States, and also to report, from time to time, to their respective Governments in regard to such further or other works or actions, if any, as such scientists may deem necessary on the part of the Company, to reduce the amount and concentration of such fumes to the extent hereinbefore provided for."

If the report had been promptly accepted by the two Governments, the scientists thus appointed, who may conveniently be referred to as "the Scientists," would have been engaged in studying and making a report upon the effect of the works erected during the past year or more. It seems to be desirable to avoid the further loss of time that would be involved in postponing this inquiry until a convention or agreement has been concluded and ratified and the Scientists appointed to carry out the duties involved in the report. Accordingly, it is the view of the Canadian Government that the first step that should be taken by the two Governments in this matter is the provisional appointment of the Scientists to make the inquiry referred to above, namely, an investigation into the effect of the remedial works constructed by the Company, and particularly into the question whether damage, as defined in the Report, is now being caused to interests in the State of Washington. The provisional appointment might be so made that when an agreement is concluded and ratified, the Scientists thus provisionally appointed can be confirmed in office for the purpose of carrying out the report of the International Joint Commission, and any other duties that may be given to it under the terms of such agreement.

With regard to the permanent arrangements for implementing the report of the International Joint Commission, the Canadian Government has given serious consideration to the whole question of the proposed convention or agreement, and to the various suggestions made as to its terms. The Canadian Government has come to the conclusion that no convention or agreement dealing with this matter would be satisfactory, if it did not accept, incorporate and implement the unanimous report of the International Joint Commission. Any attempt to vary the recommendations included in this report would, it is thought, fail to meet with the approval of the two Countries. The report followed a long, exhaustive and painstaking investigation and it embodies the unanimous and considered judgment of the members of the Commission. It would be difficult to justify any course other than a complete acceptance of its terms.

The Canadian Government, throughout, was under the impression that the procedure that should be followed would be the acceptance of the report by an exchange of notes, including provisions for carrying out its terms. It is understood, however, that constitutional difficulties in the United States make it desirable or necessary that such action should be expressed in a convention or agreement. Accordingly, the Canadian Government is prepared to conclude a convention or agreement, and for that purpose, submits the following draft clauses. It is intended, of course, that the text of the report of the International Joint Commis-

sion, dated the 28th day of February, 1931, should be annexed as Appendix A, to the Convention or Agreement:—

Recitals

Taking note of the reference of certain questions relating to damage in the State of Washington, caused by the sulphur dioxide from the smelter of the Consolidated Mining and Smelting Company, at Trail, British Columbia, hereinafter referred to as "the Trail Smelter", by the Governments of Canada and of the United States of America, hereinafter referred to as "the Governments", to the International Joint Commission; and

Taking note of the Joint Report, Conclusions and Recommendations of the International Joint Commission to the Governments, dated the 28th day of February, 1931, hereinafter referred to as "the Joint Report"; and

Recognizing the desirability of effecting a permanent settlement of the questions so referred, pursuant to the said Joint Report, Conclusions and Recommendations; and

Taking note of the construction by the Consolidated Mining and Smelting Company of certain works, hereinafter referred to as "the works", designed to lessen the concentrations of sulphur dioxide in the United States and to eliminate damage; and

Taking note of a complaint made by the Government of the United States, to the Government of Canada, with regard to sulphur dioxide fumigations in the Northport neighborhood on March 9th to 12th, 1933, and on April 5th, 1933, and recognizing the desirability of making an immediate investigation into the effect of the Works and into the question as to whether damage, as defined in the Joint Report, has been eliminated, and particularly as to whether damage, as therein defined, has been caused by the said fumigations;

Have decided to conclude, etc.

ARTICLE I

The Governments accept the Joint Report which is annexed hereto as Appendix A, and is incorporated as a part of this Convention, and undertake to carry out their respective obligations thereunder.

ARTICLE II

The Government of Canada will cause to be paid into [to?] the Secretary of State of the United States at Washington within three months after ratifications of the present Convention have been exchanged, the sum of three hundred and fifty thousand dollars, United States currency, in payment of damages which occurred in the United States prior to the 1st day of January, 1932, as a result of the operation of the Trail Smelter.

ARTICLE III

The Governments mutually agree to appoint two Scientists, hereinafter referred to as "the Scientists", one designated by the Government of Canada and one designated by the Government of the United States,

from their respective public services. The Scientists shall make the studies and reports provided for in paragraph (b) of that part of the Joint Report which includes the findings of the International Joint Commission, in respect to the fifth question.

The Scientists shall also make such inquiries and investigations as are necessary in order to assist in carrying out the provisions of the parts of the Joint Report relating to complaints in respect to damage caused by the operations of the Trail Smelter after the 1st day of January, 1932, and the assessment of indemnity therefor, and particularly the provisions of the findings of the International Joint Commission in respect to the fourth question, and the provisions of paragraph (f) and the proviso to paragraph (g) of the findings, in answer to the fifth question. For this purpose complaints shall be submitted to the Consolidated Mining and Smelting Company and to the Scientists, and in the event that such claims are not adjusted by the Company within a reasonable time, they shall make a report thereon to the Governments.

The Scientists shall have assigned to them from the services of the two Governments such staff as may be necessary to carry out the duties provided for by this Convention and by the Joint Report.

ARTICLE IV

The Scientists shall make investigations and reports to the Governments with regard to such matters, relating to the general question arising out of the drifting of sulphur dioxide from the Trail Smelter into the United States, as may from time to time be referred to the Board by the Governments.

ARTICLE V

The Scientists shall make their reports to the Governments with regard to the questions referred to them. They shall make their report in respect to the matters referred to in the first paragraph of Article III hereof, as soon as is possible, and without waiting for the completion of such other investigations as are or may be referred to it, and shall make their reports in respect to the matters referred to in the second paragraph of Article III hereof from time to time, and with due despatch, in order that the damages determined, if any, may be paid to the claimants promptly.

The Government of Canada will cause the damages, if any, assessed in accordance with the provisions of the Joint Report and of the second paragraph of Article III hereof, to be paid to the claimants within three months after the date of each assessment.

The Government of Canada will cause such other action as may be necessary, in order fully to carry out the provisions of the Joint Report, to be undertaken and carried out with due despatch.

The Scientists shall have access to the Trail Smelter and to the remedial works already constructed or to be constructed and shall be furnished with such information as they may require for the purposes of their investigations, inquiries and determination hereunder. They shall have access to lands and other property of the claimants for the purpose of investigating claims under the provisions of the second paragraph of Article III hereof and for the purpose of their investigations generally, they shall be afforded access to and the right to inspect prop-

erty within the affected area. They shall also be permitted to acquire such limited interests in land as may be necessary to enable them to conduct their investigations.

The Government of the United States will cause notification to be made promptly, by telegram, of all complaints with regard to damage from sulphur dioxide fumigations and with regard to excessive concentrations of sulphur dioxide caused in the United States by the Trail Smelter. These notifications will be made to the Consolidated Mining and Smelting Company, Limited at Trail, and to the Scientists, in order that an immediate investigation may be made.

APPENDIX A—*Report of the International Joint Commission in the Trail Smelter Reference, February 28, 1931*

It is hoped that the Government of the United States will be prepared to follow a course along these lines and thus to effect a permanent settlement of the problem. In any event, it is hoped that your Government, pending the conclusion of a convention or agreement, will be prepared to take the necessary steps for the appointment of the Scientists to make an immediate inquiry into existing complaints, and into such complaints as may be notified from time to time, pending the conclusion of a permanent arrangement.

Accept [etc.]

R. B. BENNETT

REPRESENTATIONS REGARDING THE SEIZURE OF AMERICAN SALMON TROLLERS "MAY," "QUEEN CITY," "SUNRISE," AND "TILLIE M." BY THE CANADIAN VESSEL "RIVIDUS"

711.428 Queen City/79

The Secretary of State to the Minister in Canada (MacNider)

No. 562

WASHINGTON, May 25, 1932.

SIR: The Department refers to your despatch of March 24, 1932,²⁴ regarding the seizure of the American salmon trolling vessels *May*, *Tillie M.*, *Sunrise*, and *Queen City*,²⁵ and encloses for your information copies of letters of March 4 and April 4, 1932, from the Trolling Vessel Owners' Association.²⁴ You invite attention to the fact that in presenting the matter to the competent Canadian authorities you did not deem it desirable to request that the vessels be returned to the owners without a penalty of some kind for the reason that such a request would have no chance of success.

The Department regrets that you did not, in your informal memorandum presented to the Prime Minister,²⁶ give an indication of the opinion

²⁴ Not printed.

²⁵ These ships were seized by a Canadian patrol boat in Canadian waters near Prince Rupert, B. C., on June 18, 1930.

²⁶ Richard Bedford Bennett.

of the Department that the seizure of the vessels in question was not justified by the laws of Canada or the law of nations and the subsequent forfeiture by judicial decree was a denial of justice. Furthermore the deprivation of the use of the vessels for a period of nearly two years is in itself a severe loss to the owners.

As you are aware the ship *May* was declared forfeited under Section 10(b) of the Customs and Fisheries Protection Act ²⁷ which reads as follows:

"10. Every fishing ship, vessel or boat which is foreign, or not navigated according to the laws of Great Britain or of Canada, which,

"(a) . . .

"(b) has entered such waters for any purpose not permitted by treaty or convention or by any law of Great Britain or of Canada for the time being in force . . . shall, together with the tackle, rigging, apparel, furniture, stores and cargo thereof, be forfeited."

The fishermen contended that they were not anchored within the territorial waters of Canada and that if they were they were justified in anchoring in such waters under the Canadian Customs Act ²⁸ and the Treaty of October 20, 1818,²⁹ because of the stress of weather. They testified that when they entered McIntyre Bay for shelter the weather was thick, that they took soundings and were satisfied that they were anchored safely beyond the three-mile limit. The arresting officer testified that they were anchored two and one-half miles from the shore. The fishermen also testified that the weather was of sufficient severity to justify seeking shelter in the bay. The arresting officer, who was not present at the time of the ship's alleged entry into Canadian territorial waters, testified that there was no urgent necessity for seeking shelter. The court held that the evidence established that the ship *May* was within the territorial waters of Canada, that the fishermen did not show any necessity whatever for entering Canadian waters and that the Treaty of October 20, 1818, was not intended to be applicable to the Pacific Coast.

With respect to the contention that the fishermen sought shelter from the stress of weather, the Canadian Supreme Court stated after citing four reported cases that:

"A perusal of the above authorities leads to the conclusion that an entry by a foreign vessel into Canadian waters can not be justified on the ground of 'stress of weather' unless the weather is such as to produce in the mind of a reasonably competent and skillful master, possessing courage and firmness, a well-grounded bona fide apprehension that if

²⁷ Revised Statutes of Canada, 1927, vol. II, ch. 43.

²⁸ *Ibid.*, ch. 42, sec. 183.

²⁹ Convention respecting fisheries, boundary, and the restoration of slaves, Malloy, *Treaties, 1776-1909*, vol. I, p. 631.

he remains outside the territorial waters he will put in jeopardy his vessel and cargo. In every case the questions whether the master fairly and honestly on reasonable ground believed it necessary to take shelter, and whether he exercised reasonable skill, competence and courage in the circumstances, are questions of fact for the tribunal whose duty it is to find the facts. The evidence in this case does not show any necessity whatever for entering Canadian waters, much less any apprehension on the part of Knudsen that if he continued his voyage he would be risking the loss of his vessel."

The case of the ship *May* as reported in the Dominion Law Reports, 1931, Volume III, not only discloses a disregard for the humane principles of international law relating to shelter, but indicates the nature and extent of the comity and courtesy which American fishing vessels can in the future expect in Canadian territorial waters.

The cases cited in the decision rendered by the Canadian Supreme Court in the case of the ship *May* in support of an alleged rule regarding the stress of weather required to justify the entry of a vessel seeking shelter are not apposite. Moreover they did not involve innocent fishing vessels. The facts in the cases cited were omitted.

The case of the ship *Diana*, 7 Wallace 354, involved a trading vessel which attempted, under the disguise of a fabricated distress, to enter a blockaded port in time of war.

The case of the ship *New York*, 3 Wheaton 59, involved a trading vessel which attempted under a pretended distress to import into the United States a cargo interdicted by the laws of the United States.

The case of the ship *Eleanor*, (Edwards Admiralty Reports 135) decided in November 1809 by Sir William Scott, involved a merchant vessel which attempted to violate the British navigation laws under a simulated distress.

The case of *Phelps James and Company v. Hill*, (1891) 1 Q. B. 605, related to a merchant vessel which was obliged to return to Queenstown for repairs and later, while proceeding to Bristol where the repairs could be made, collided with another vessel. The question presented was whether the master exercised reasonable discretion in proceeding to Bristol. From this statement of the facts in each of the cases cited it appears that they are not pertinent to the question involved.

The cases involving the ships *Queen City*, *Tillie M.* and *Sunrise* are also reported in the Dominion Law Reports, 1931, Volume III, on page 147. The Court held that the entry of the vessels was not justified by the alleged stress of weather for the conditions of atmosphere and sea at the time of the entry did not satisfy the test enunciated in the case of the ship *May*. The Court stated:

"All these witnesses for the defense claim that it was too rough to remain outside of the three-mile limit in safety . . .

"Whether there was 'stress of weather' within the meaning of S.183

on the afternoon and evening of June 17 was a question of fact depending upon the credibility of the witnesses. The trial judge is known as an able and careful judge, with more than thirty years experience in cases similar to those before us, and he accepted the evidence submitted on behalf of the Crown in preference to that submitted on behalf of the several vessels . . . The trial judge found that there was no stress of weather or other sufficient cause to justify the entry of these vessels into Canadian territorial water and, in our opinion, the evidence amply supports the finding which should be affirmed." (pp. 152-153).

The decision was reached notwithstanding the fact that the arresting officer was sixty or seventy miles away. (Case on Appeal Vol. 1, p. 32).

It is pertinent to observe in this relation that the three boats in question and two others were seized in Canadian waters at two o'clock in the morning while the crews were asleep and that two of the vessels were released because one had lost part of its sail and its anchor in the stress of weather from which shelter was sought and the other was released because it had a supply of fuel oil deemed insufficient to ride out the storm if it had desired to do so. It is also pertinent to observe that some Canadian fishing vessels had also sought shelter within sight of the American vessels.

Elaborate signal systems and safety devices are maintained at the seaports of all civilized countries for the purpose of saving life and property at sea from stress of weather. They would not prevent the loss of lives and the destruction of property of fishermen, if courts when considering cases of fishermen in small fishing craft who have entered territorial waters in distress, subject them to the risk of forfeiture of their vessels under the same rigid rules of domestic law that are applicable to merchant vessels attempting under the disguise of distress, to import interdicted cargoes. Such a novel doctrine has not received universal approbation. The fact that the Canadian Supreme Court did not cite a case, involving the forfeiture of an innocent fishing vessel, in support of the rigid rule it applied to the vessels in question indicates that none was available for citation. A diligent search by the law officers of the Department has failed to bring any to light.

In the case of the shipping vessel *Paquete Habana*, 175 U. S. 677, Mr. Justice Gray, who delivered the opinion of the Court, stated:

"This review of the precedents and authorities on the subject appears to us abundantly to demonstrate that at the present day, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act, it is an established rule of international law, founded on considerations of humanity to a poor and industrious order of men, and of the mutual convenience of belligerent States, that coast fishing vessels, with their implements and supplies, cargoes and crews, unarmed, and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war." (Page 708).

In House Report No. 4087 of the 49th Congress, Second Session, to accompany S. 3173, the following statement appears:

“No nation has asserted, independently of a treaty, an exclusive dominion over the sea surrounding its coast applicable to the *passing* ships of other nations. Why should a vessel which, under stress of weather or necessities of navigation, casts anchor for a few hours in a bay be subjected to a larger or fuller foreign jurisdiction than a passing vessel, provided inshore fisheries are not thereby poached upon, or the revenue evaded, or safe navigation endangered, or crime attempted or committed? Why need a powerful state take any cognizance of such innocent and casual presence of a little body of foreign seamen? The treaties which have been made applicable thereto refer to neutrality in war and the exclusive right of fishing, thereby proving the general rule.”

In Senate Report No. 1683, 49th Congress, Second Session, to accompany S. 3173, the following statement appears:

“On the 12th of May, 1870, the Dominion act of 33 Vict., ch. 15, was passed, repealing the third section of the last-mentioned act on the subject of bringing vessels into port, &c., and provided in lieu thereof that any of the officers or persons before mentioned might bring any vessel, being within any harbor in Canada, or hovering in British waters within 3 miles of the coast, into port, search her cargo, examine her master on oath, &c., without any previous notice to depart, which had been required by the former act. So that an American vessel, fishing at sea, being driven by stress of weather, want of wood or water, or need of repairing damages, which should run into a Canadian harbor, under the right reserved to it by the treaty of 1818, the moment her anchor was dropped or she was within the shelter of a headland was, at the discretion of the Canadian official, to be immediately seized and carried into port, which might be, and often would be, many miles from the place where she would have her safe shelter or could obtain her wood and water or repair her damages.

“The committee thinks it is not too much to say that such a provision is, in view of the treaty and of the common principles of comity among nations, grossly in violation of rights secured by the treaty and of that friendly conduct of good neighborhood that should exist between civilized nations holding relations such as ought to exist between the United States and Her Majesty’s dominions.”

S. 3173, as amended, was approved March 3, 1887 (24 Stat. 475). The Act, which is still in force, reads as follows:

“Whenever the President of the United States shall be satisfied that American fishing vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by treaty or law, or are or then lately have been unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed

in said waters, ports or places; or whenever the President of the United States shall be satisfied that any such fishing vessels or fishermen, having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places in the same manner and under the same regulations as may exist therein applicable to trading vessels of the most favored nation, or shall be unjustly vexed or harassed, in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favored nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favored nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this section. Every violation of any such proclamation, or any part thereof, is declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may be enforced and proceeded upon. Every person who shall violate any of the provisions of this section, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding \$1,000, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court. (Mar. 3, 1887, c. 339, 24 Stat. 475.)" (Title 46, § 143, U. S. C.).

The Canadian Government has for more than a century in all of its laws and regulations relating to fisheries generally recognized the natural right of American fishing vessels to seek shelter in Canadian territorial

waters. This privilege, while stipulated in the Treaty of 1818, is not dependent upon that Treaty. It was inserted in the Treaty at a time when Canadian ports, because of the British navigation laws, then in force, were not open to American vessels. The treaty stipulation merely confirmed the natural right of entry in such cases accorded by the law of nations. This fact was recognized in the decision rendered in the North Atlantic Fisheries Arbitrations before the Permanent Court of Arbitration at The Hague on September 7, 1910, which reads in part as follows:

"QUESTION IV

The Tribunal is of opinion that the provision in the first article of the treaty of October 20, 1818, admitting American fishermen to enter certain bays or harbours for shelter, repairs, wood and water, and for no other purpose whatever, is an exercise in large measure of those duties of hospitality and humanity which all civilised nations impose upon themselves and expect the performance of from others. The enumerated purposes for which entry is permitted all relate to the exigencies in which those who pursue their perilous calling on the sea may be involved. The proviso which appears in the first article of the said treaty immediately after the so-called renunciation clause, was doubtless due to a recognition by Great Britain of what was expected from the humanity and civilisation of the then leading commercial nation of the world. To impose restrictions making the exercise of such privileges conditional upon the payment of light, harbour or other dues, or entering and reporting at custom-houses, or any similar conditions would be inconsistent with the grounds upon which such privileges rest and therefore is not permissible.

And it is decided and awarded that such restrictions are not permissible.

It seems reasonable, however, in order that these privileges accorded by Great Britain on these grounds of hospitality and humanity should not be abused, that the American fishermen entering such bays for any of the four purposes aforesaid and remaining more than forty-eight hours therein, should be required, if thought necessary by Great Britain or the Colonial Government, to report, either in person or by telegraph, at a custom-house or to a customs official, if reasonably convenient opportunity therefor is afforded.

And it is so decided and awarded."

Were there no treaty in force between the United States and Great Britain and were the American vessels without any other right to visit the coasts of Canada than is possessed by the fishing vessels of any other country, the action of the Canadian authorities in seizing and forfeiting the vessels in question, which according to evidence before the court were bona fide fishing vessels innocently seeking refuge in the sheltered territorial waters of Canada from stress of weather which actually existed in some uncertain degree of severity at the time of the

entry of the vessels, would be an invasion of their rights under the law of nations.

In view of the somewhat similar action of the Canadian authorities on the North Atlantic coast in the last century and of the unwarranted seizures and forfeitures that have recently taken place on the Pacific coast of Canada, the Department feels it to be its duty to protect and defend the just rights of American fishermen by such measures as may be within its power. While the Department has no present intention of invoking the retaliatory provisions of the Act of Congress quoted above, it nevertheless shall be constrained when satisfied that unjust, unfair, or unfriendly conduct is practiced by the Canadian authorities in respect of American fishermen and their property within the territorial waters of Canada, to bring the matter to the attention of the President for consideration and appropriate action.

This instruction is to be regarded as confidential and has been prepared for your information and guidance in any further informal representations you may deem it appropriate to make in the attending circumstances.

Very truly yours,

For the Secretary of State:
W. R. CASTLE, JR.

711.423 Queen City/87

The Secretary of State to the Chargé in Canada (Bonbright)

No. 777

WASHINGTON, December 7, 1932.

SIR: The Department refers to previous correspondence regarding the seizure of the American fishing vessels *May*, *Tillie M.*, *Sunrise* and *Queen City* and encloses a copy of a letter dated November 16, 1932, from Mr. Wood Freeman, President of the Trolling Vessel Owners' Association of Seattle, Washington.³⁰

You are instructed to thoroughly familiarize yourself with this case, especially with the Department's instruction No. 562 dated May 25, 1932. You will then take up the case with the Canadian authorities and urge them to take favorable action on the petitions that have been filed with respect to these vessels. A full report setting forth the present status of the petitions and the results of your discussion regarding them should be forwarded to the Department.

Very truly yours,

For the Secretary of State:
W. R. CASTLE, JR.

³⁰ Not printed.

711.428 Queen City/99 : Telegram

The Chargé in Canada (Boal) to the Secretary of State

OTTAWA, January 11, 1933—3 p.m.

[Received 6:25 p.m.]

2. Department's 119, December 17, 1 p. m.³¹ The Undersecretary of State for External Affairs has just telephoned me that his Department and the Department of Fisheries are disposed to agree in recommending that the boats be returned to the owners and that the question of who shall pay the court and maintenance costs has not yet been settled definitely. The Department of Fisheries has insisted that the entire costs amounting to about \$6000 should be paid by the owners. The Department of External Affairs has suggested that each party pay its own costs. This would leave about \$2400 in costs and about \$150 in maintenance charges to be paid by the owners of the boats before these can be returned to them. The Department of External Affairs believes that they would be in a better position to obtain the assent of the other Departments involved and of the Governor General in Council to this suggestion if it emanated from the owners of the boats. Would the Department ascertain whether the owners are disposed to pay the last mentioned sums to obtain recovery of their boats? If so, and if they are disposed to suggest the settlement to the Canadian Government, I recommend that their reply to this suggestion be transmitted through the Legation rather than directly. It would be desirable to have an early telegraphic reply.

BOAL

711.428 Queen City/99

The Secretary of State to the Chargé in Canada (Boal)

No. 816

WASHINGTON, January 23, 1933.

SIR: The Department has received your telegram No. 1 [2] dated January 11, 1933, 3 p.m., concerning conditions for the release of the American fishing vessels *May*, *Tillie M.*, *Sunrise* and *Queen City*, seized by the Canadian authorities. The Department has telegraphed Mr. Wood Freeman, President of the Trolling Vessel Owners' Association, Seattle, Washington, with regard to this matter and has requested a telegraphic reply.

The Department encloses for your consideration copies of a letter dated January 9, 1933, and of its enclosure received from Senator Dill dealing with this matter.³¹ You will note that Senator Dill calls atten-

³¹ Not printed.

tion to the recommendation of Mr. Wood Freeman, President of the Trolling Vessel Owners' Association, Seattle, Washington, that a treaty to protect American fishery interests in Canada be negotiated.

You are instructed to submit a report regarding the possibility of negotiating a treaty with Canada on this subject at the present time.

Very truly yours,

For the Secretary of State:

JAMES GRAFTON ROGERS

711.428 Queen City/105

The Secretary of State to the Chargé in Canada (Boal)

No. 838

WASHINGTON, February 8, 1933.

SIR: The Department refers to its telegram No. 3 dated January 14, 1933, 5 p.m.³⁴ and previous correspondence, particularly its instruction No. 562 dated May 25, 1932, concerning the seizure of the American salmon trolling vessels *May*, *Tillie M.*, *Sunrise* and *Queen City*. In your telegram No. 1 [2] dated January 11, 1933, 3 p.m., you stated that the Department of External Affairs had suggested that each party pay its own costs and that this would leave about \$2,400 in costs and about \$150 in maintenance charges to be paid by the owners of the boats before they could be returned to them.

It is not clear of what these costs and maintenance charges which the owners are asked to pay consist as it is stated in Mr. Wood Freeman's telegram to the Department, quoted in the Department's telegram No. 3, dated January 14, 1933, 5 p.m., that "owners have paid about \$6,000 costs and attorneys fees." If each party is to "pay its own costs" as suggested by the Department of External Affairs, it would seem that no further amount should be required from the owners.

Please take up this matter promptly with the Canadian authorities and advise the Department by telegraph concerning the present status of this important case.

Very truly yours,

For the Secretary of State:

W. R. CASTLE, JR.

711.428 Queen City/107

The Chargé in Canada (Boal) to the Secretary of State

No. 1261

OTTAWA, March 3, 1933.

[Received March 6.]

SIR: I have the honor to refer to my despatch No. 1232 of February 10, 1933,³⁴ regarding the confiscation by the Canadian Government of

³⁴ Not printed.

the salmon trolling vessels *May*, *Queen City*, *Sunrise* and *Tillie M*, and to transmit herewith a copy of a note which I addressed to Mr. Bennett on March 1, 1933, together with his reply of March 2, 1933.³⁵

It will be noted that the Canadian Government is now disposed to return the above-mentioned vessels to the owners upon payment of \$107.30, the amount expended on repairs and maintenance. In this connection I wish to refer to Mr. Read's letter of February 1st, 1933,³⁶ which was transmitted to the Department as an enclosure to the despatch under reference, in which he stated that this item "does not by any means represent the costs of custody. They do not include the very substantial costs of custody while in the hands of the Court. Further, they do not include the Departmental costs of custody of the vessels since condemnation, which are borne by the Department; they simply represent the out-of-pocket expenditures for the preservation of the property".

It will also be noted that the Canadian Government states in the third paragraph of its note that it is prepared to enter into negotiations with the United States with a view to effecting "a complete revision of the present fisheries arrangements between the two countries".

I feel that the moment is propitious to undertake the conclusion of such an arrangement. I should be grateful to receive your instructions as to the reply which you desire me to make to the Canadian Government.

Respectfully yours,

PIERRE DE L. BOAL

711.428 Queen City/115

The Secretary of Commerce (Roper) to the Secretary of State

WASHINGTON, March 22, 1933.

[Received March 25.]

MY DEAR MR. SECRETARY: In reply to your communication of March 14, 1933 (Le-711.428 Queen City/107[111]),³⁷ enclosing a copy of a dispatch from the American Legation at Ottawa, it is noted that The Secretary of State for External Affairs for Canada, states "There are undoubtedly fundamental questions susceptible of adjustment and settlement only by means of a complete revision of the present fisheries arrangements between the two countries. The Canadian government would be prepared to commence a consideration of the present fisheries arrangements, with a view to the mutual benefit of those engaged in the fisheries in both countries."

³⁵ Neither printed.

³⁶ Letter from Mr. J. E. Read, Legal Adviser of the Canadian Department of External Affairs, not printed.

³⁷ Not printed.

I am informed by the Commissioner of Fisheries of this Department that one of the most pressing problems from our point of view is to obtain consent of the United States Senate to ratification of the pending Fraser River Sockeye Salmon Fisheries Convention.³⁸ As Canada has already approved of this Convention, it appears that the obligation for initiating further action in this case rests with the United States.

I am also informed that if our Great Lakes fisheries are to be properly administered and the danger of their economic exhaustion eliminated, the natural procedure would be through a convention with Canada along the lines of the existing halibut convention of the eastern north Pacific³⁹ and the pending sockeye salmon treaty. Because of the opposition of certain influential persons connected with our Great Lakes fisheries, the Department has hesitated to recommend the initiation of negotiations to that end. It is believed that the opposition has been slowly losing ground and careful consideration should be given as to whether we are not nearing the time for such action.

As to the need for consideration of other fisheries arrangements between the two countries, it is suggested that the State Department may wish to inquire as to the nature of the questions which Canada desires to have considered.

The action taken by the Canadian Government in providing for the release of certain American fishing vessels is appreciated.

Sincerely yours,

DANIEL C. ROPER

711.428 Queen City/118

The Secretary of State to the Chargé in Canada (Boal)

No. 894

WASHINGTON, April 3, 1933.

SIR: The Department refers to your despatches No. 1261 and No. 1279 dated March 3 and March 15, 1933,⁴⁰ concerning the conditions under which the American salmon trolling vessels, *May*, *Queen City*, *Sunrise* and *Tillie M*, would be released. The matter has been taken up with the office of Senator Dill and it has been stated that telegraphic inquiries would be made with a view to having the sum of \$107.30 paid to effect the release of these vessels without any conditions attached to the payment thereof.

With respect to the statement of the Secretary of State for External Affairs for Canada in the note which was enclosed with your despatch No. 1261 of March 3, 1933, concerning the desirability of "a complete revision of the present fisheries arrangements between the two coun-

³⁸ Convention of May 26, 1930, *Foreign Relations*, 1930, vol. I, p. 505.

³⁹ Convention of May 9, 1930, *ibid.*, p. 518.

⁴⁰ No. 1279, March 15, not printed.

tries", the Department encloses a copy of a letter dated March 22, 1933, received from the Secretary of Commerce with regard to this subject. You are instructed to ask the Secretary of State for External Affairs what questions Canada desires to have considered.⁴¹

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

REPRESENTATIONS REGARDING TREATMENT OF AN AMERICAN CITIZEN IN A CANADIAN PRISON AND RIGHT OF CONSULAR OFFICERS TO VISIT THEIR NATIONALS IN PRISON

342.1121/6

The Consul at Kingston (Fuller) to the Chargé in Canada (Boal) ⁴²

KINGSTON, May 19, 1933.

SIR: I have the honor to report the case of John O'Brien, an American citizen who is now a convict in the Kingston Penitentiary. O'Brien has a bad police record and was sentenced to a long term following a payroll holdup in Toronto. About two months ago the Warden stated that O'Brien wanted to see me about being deported. I replied I would be glad to see him and asked whether any steps had been taken towards his deportation. I was informed that his application was under consideration at Ottawa, that I would be notified of any action and that there did not appear to be anything I could do in his case.

As the result of the prison riots Murray Kirkland was placed on trial, another convict who claims to have been born in the United States and who served in the American army. One of the causes of the riot was that John O'Brien had been unjustly kept in confinement. The attorney for Kirkland therefore arranged to have O'Brien appear as a witness and asked me to be present. According to his testimony, O'Brien was found to be in possession of a needle and a buckle soon after he was admitted. He was placed in the "hole", and then moved to solitary confinement for a few days. Before his time was up he was charged with talking "pigeon English", and later with planning to escape. He asked what the charge was based on and who made it, and was told that the Warden's word was enough. As a result of the latter charge he has been kept in solitary confinement since August 1931, although he has several times asked to be put to work.

After obtaining some legal information I wrote the Warden on the morning of May 13th asking to be allowed to see O'Brien. Although I have received no reply, I was told yesterday by the Warden that he was requesting permission from the Superintendent of Penitentiaries at

⁴¹ No reply to this inquiry has been found in the files of the Department.

⁴² Copy transmitted to the Department by the Consul at Kingston; received May 23.

Ottawa and that I could not see any prisoner until permission had been granted by the Superintendent. I pointed out that I had three times visited prisoners in the last month without such permission. The Warden then admitted that he had some discretion in the matter.

On May 15th I received a letter from the Consul General, Toronto, enclosing a clipping from the *Toronto Star* of May 13th, copy of which is attached.⁴³ This reprints a letter from the Warden to O'Brien dated March 8th stating that he had referred his request for an interview with me to headquarters, and that the interview was not approved. The article reports that in answer to inquiries the Ontario Parole Board advanced the opinion that no objection would be raised there to a consul seeing a prisoner who was a citizen of his country, but that things were different at the Kingston Penitentiary.

There is also enclosed a letter from W. M. Nickle⁴⁴ who with his father, W. F. Nickle, former Attorney-General for Ontario, was the attorney for Kirkland. This points out that O'Brien has been kept in solitary confinement for almost two years without a trial and only on the evidence of a letter from another convict; that the letter is written as a Canadian citizen who is "disgusted with the Department of Justice of this country" and that "the treatment that has been given O'Brien would not have been accorded a prisoner in the middle ages."

I feel that O'Brien is being oppressed and is not being granted the privileges conceded by ordinary usage. I desire to interview him within view of a guard who would be out of hearing. The prison rules provide that anything a guard may hear during an interview can be used against prisoners, so O'Brien would probably say nothing in the presence of a guard. I believe this privilege is no greater than would be accorded the attorney of any convict. I feel O'Brien will soon break down mentally unless he feels some one is interested in his case. A convict in a nearby cell recently committed suicide and another one has gone insane. After seeing O'Brien I will be able to decide whether I should make representation to the local authorities with regard to giving him the work he believes is his right. Of course, I shall not attempt to obtain for friendless American convicts the same treatment they would be accorded in American prisons, but only the treatment which is usual in the case of Canadians under existing prison regulations. If the Superintendent of Penitentiaries has not yet granted the permission for me to interview O'Brien which the Warden says he has asked for, I would suggest that the Legation might approach the Superintendent in order that such permission might be promptly given.

Very respectfully yours,

GEORGE GREGG FULLER

⁴³ Not reprinted.

⁴⁴ Not printed.

342.1121/6

The Acting Secretary of State to the Chargé in Canada (Boal)

No. 981

WASHINGTON, June 12, 1933.

SIR: The American Consul at Kingston, Ontario, has forwarded to the Department a copy of his report addressed to you on May 19, 1933, concerning the case of John O'Brien, an American citizen who is now a convict in the Kingston Penitentiary. It is noted that the Consul states that "O'Brien has been kept in solitary confinement for almost two years without a trial and only on the evidence of a letter from another convict." Consul Fuller has recently called at the Department while on leave and has reported that he has received permission to visit O'Brien in the penitentiary. He has been requested to submit a full report with regard to the information obtained during his interview with O'Brien.

You are requested to advise the Department whether the Canadian Department of Justice has investigated this case and, if so, what conclusions have been reached with regard to it.

A copy of an instruction that is being addressed to the American Consul at Kingston concerning O'Brien's case is enclosed for your information.⁴⁵

Very truly yours,

WILLIAM PHILLIPS

342.1121/6

The Acting Secretary of State to the Consul at Kingston (Fuller)

WASHINGTON, June 12, 1933.

SIR: Referring to your report dated May 19, 1933, addressed to the American Chargé d'Affaires ad interim at Ottawa with regard to the case of John O'Brien, an American citizen who is now a convict in the Kingston Penitentiary, the Department encloses for your information a copy of an instruction that has been forwarded to the American Legation at Ottawa.⁴⁶

With reference to inquiries made by you during your call at the Department with respect to this case you are advised as follows:

It is believed that a consular officer should be permitted to visit American citizens who are imprisoned in his district without obtaining a special authorization from the authorities at the seat of government for each visit. It is also believed that the Consul should be permitted to interview such an American citizen alone without having a guard present to hear statements made at the interview. The Consul would also seem

⁴⁵ *Infra.*⁴⁶ *Supra.*

to be entitled to receive from the warden of the penitentiary names of American citizens who are imprisoned therein in order that the Consul may investigate their cases and provide adequate protection to their interests. Otherwise an American citizen might unjustifiably be imprisoned for a considerable time without having action taken to determine the merits of his case.

You are advised that whenever British subjects have been arrested in connection with smuggling operations, the British Government has insisted upon the right of its consular officers in the United States to interview the persons arrested without delay, and has also made strong objection if persons unable to furnish bail were kept in jail for several months without a trial.

Please submit a prompt report to the Department setting forth the action taken by you pursuant to this instruction. A copy of this instruction is being forwarded to the American Chargé d'Affaires at Ottawa, for his information.

Very truly yours,

WILLIAM PHILLIPS

342.1121/7

The Acting Secretary of State to the Chargé in Canada (Boal)

No. 1020

WASHINGTON, July 11, 1933.

SIR: Referring to the Department's instruction No. 981, dated June 12, 1933, concerning the case of George Giller, alias John O'Brien, now imprisoned in the Kingston Penitentiary, the Department encloses copies of despatches Nos. 198 and 199, dated June 16, 1933,⁴⁷ received from the American Consul at Kingston, Ontario, dealing with this case. You will observe that despatch No. 199 is to be treated as confidential.

On page six of the Consul's despatch No. 198, he suggests that it would be desirable to have you approach the Minister of Justice with the object of obtaining recognition of the right of the Consul to interview persons, without obtaining special authorization from the authorities at Ottawa for each visit. As it is believed that such special authorization for each visit to American citizens who are prisoners should not be required as it is the general practice of States to grant foreign consular officers the privilege of visiting their nationals who are imprisoned, you are requested to discuss this matter with the Minister of Justice with a view to having instructions issued that will avoid the necessity of a reference of each request for a visit to the authorities at Ottawa.

Please submit a report setting forth the result of your inquiries concerning this matter.

Very truly yours,

WILLIAM PHILLIPS

⁴⁷ Neither printed.

842.1121/10

The Chargé in Canada (Boal) to the Acting Secretary of State

[Extract]

No. 110

OTTAWA, July 19, 1933.

[Received July 24.]

SIR: I have the honor to refer to the Department's instruction No. 1020 of July 11, 1933, concerning the case of George Giller, alias John O'Brien, now imprisoned in the Kingston Penitentiary, and to report that I yesterday discussed this case with the Honorable Hugh Guthrie, Minister of Justice, with the object of obtaining recognition of the right of the consul to interview persons without obtaining special authorization from the authorities at Ottawa for each visit.

Mr. Guthrie had obviously discussed this matter at some length before my call with General Ormond, Superintendent of Penitentiaries, and he told me that he would later ask General Ormond to call upon me to explain the O'Brien case. I found that Mr. Guthrie was not disposed to recognize that there existed any right for an American convict serving a sentence in a Canadian penitentiary to see his consular representative, although he said that he considered that such interviews might be permitted as a courtesy to the consul. Mr. Guthrie's view is that although convicts are foreign nationals they are forced to comply with the laws and regulations governing the administration of the penitentiaries in which they are incarcerated and where they are being punished. He saw no objection to correspondence from the convict to the consul being forwarded, provided it were handed to the prison authorities open.

After some conversation with Mr. Guthrie, he conceded that he might be prepared to formulate a regulation permitting the visits of American consuls to American convicts upon application to the warden. He said that he would endeavor to restrict this to Americans since he would not care to allow so broad a privilege to the Italian and Polish consular representatives, since it would probably involve a large number of visits. I inferred that in the long run he felt that these would be detrimental to prison discipline.

Mr. Guthrie, however, said that in order to model his regulation, in so far as practicable, on our own practice, he would like to have before him the provisions of the United States laws and regulations on the subject, and asked if I would request that these be furnished.

I have made some examination of the books available here but have not found any references which appear to be directly applicable to this case. Most of the examples cited in Article 719, Volume V, of Moore's *International Law Digest*, under the heading "Interposition with Local

Authorities" are obviously concerned with cases in which the prisoners involved have not yet been tried.

Respectfully yours,

PIERRE DE L. BOAL

342.1121/10

The Secretary of State to the Minister in Canada (Robbins)

No. 27

WASHINGTON, August 17, 1933.

SIR: In response to the Legation's despatch, dated July 19, 1933, concerning the case of George Giller, alias John O'Brien—I enclose herewith copy of a letter dated July 28, 1933, and its enclosures ⁴⁸—received from the Director of the Bureau of Prisons. Included is a copy of the regulation in force in the United States penal and correctional institutions—authorizing foreign consular representatives to visit their nationals. The regulation reads as follows:

"Whenever it has been determined to the satisfaction of the warden that a prisoner is a citizen of a foreign country, visits by the consular representative of such foreign country, or other duly accredited delegates having legitimate business with such prisoner, shall be permitted by the warden at reasonable hours. This privilege shall not be withheld even though the inmate is undergoing punishment by solitary confinement or under other disciplinary control."

You will observe how clear and explicit our own Federal rule is. It is considered to be consonant with the practice of all modern nations. Even without such rule however—such right would be quite generally conceded in our Federal and State penal institutions as well so far as this Department is informed.

Precedents are abundant. William H. Seward, Secretary of State, issued an instruction to Mr. Burton, American Minister to Colombia, on January 29, 1862, as follows:

"It seems to us only reasonable that when any person being a prisoner alleges, with apparent probability, that he is an American citizen, that the acting political authorities in New Granada should allow him to be visited by the consul of the United States, to the end that, the fact of his citizenship being verified, the consul may lend his good offices or bring his case before this government. In such a case it would be proper for you to bring the subject formally to the notice of the authorities, if you had been duly received, and if not then to do it informally while the question of your admission to your position is in abeyance." (5 Moore, *Int. Law Dig.*, 101.)

⁴⁸ Not printed.

The Claims Commission, United States and Mexico, in the Faulkner case, on November 2, 1926, said:

"The allegation of the claimant (allegation *d*) that he was not allowed for several days to communicate with his consul would, if proven, also have weight with the Commission. The Commission holds that a foreigner, not familiar with the laws of the country where he temporarily resides, should be given this opportunity. It is not clear, however, from the record when and how the liberty to communicate was given the claimant; his letter of October 4, 1915, to the consul appearing, from its wording, not to have been the first communication tendered." (Claims Commission, United States and Mexico, 1927, pages 86, 90.)

In Borchard's *Diplomatic Protection*, page 437, appears the following statement:

"One of the consul's most usual duties is to address the local authorities on behalf of his fellow-citizens accused of crime or imprisoned, to support these persons in their right to due process of law, to secure all necessary information concerning their welfare, and to visit them, if proper. Being often nearest to the scene of action, the protective function in first instance is frequently exercised by the consul rather than by the diplomatic representative. Only if prevented from fulfilling his duties of protection, in cases where communication with the central government is required, need he address the diplomatic representative accredited to the country, although, as a matter of fact, in every case of more than trifling importance the consular officer either directly informs the legation of the facts or forwards to the legation a copy of dispatches sent to the Department of State."

The Draft Convention regarding the Legal Position and Functions of Consuls prepared by the Harvard Research in International Law contains the following provision regarding consular functions:

"To communicate with, to advise and to adjust differences between nationals of the sending state within the consular district; to visit such nationals especially when they are imprisoned or detained by authorities of the receiving state; to assist such nationals in proceedings before or relations with such authorities; and to inquire into any incidents which have occurred within the consular district affecting the interests of such nationals." (Article 11 (*d*), Research in International Law, Confidential Copy of Preliminary Draft Conventions to be considered at the Meeting in February, 1932, p. 543.)

In the comments that follow this provision, it is stated:

"The opportunity to visit nationals personally may be essential if the consul is to give them effective protection, especially if they are imprisoned. This function may be exercised especially during a period when the person is held incommunicado. Opportunity for such visit is provided in the treaty between Germany and Russia (1925, protocol to article 11, section 1) and has been claimed in diplomatic correspondence (Secretary of State Seward to Lord Lyons, British Minister, July

26, 1861; Secretary of State Seward to Mr. Burton, Minister to Colombia, January 29, 1862; Correspondence between United States and Governor General of Cuba, U. S. *Foreign Relations*, 1896, pp. 770-772, 834, 5 Moore's *Dig.* 101, 104-105). Opportunity of a person imprisoned to communicate with his consul has been recognized as a right of the person by the United States and Mexico general claims commission (U. S. (Walter H. Faulkner) and Mexico November 2, 1926, *Opinions of Commissioners*, 1926, p. 86; 21 *American Journal of International Law* (1927), 349; MacNair and Lauterpacht, *Annual Digest of Public International Law Cases*, 1925-1926, p. 295)." (*Ibid.*, p. 546.)

On July 24, 1861, the British Minister, Lord Lyons, applied to Secretary of State Seward for an order to allow the British Consul at Baltimore to visit a British subject then held as a prisoner at Fort McHenry. On July 26, 1861, Mr. Seward replied:

"I have the honor to acknowledge the receipt of your communication of the 24th instant in which application is made for an order to allow Her Britannic Majesty's Consul at Baltimore to visit Thomas C. Fitzpatrick, a British subject now held as a prisoner at Fort McHenry.

"In reply, I have the honor to state, that the Secretary of War to whom the matter was referred, has acceded to the request, and I now have the honor to enclose to you the necessary order." (MS. Notes to Great Britain, 8, 470.)

On June 18, 1896, Gen. Fitzhugh Lee, Consul General of the United States at Habana, was instructed to ascertain and report upon the health and welfare of an American citizen confined in the Cabaña fortress. In his reply of June 30, 1896, Gen. Lee stated that he had communicated with the Governor and Captain-General of Cuba in regard to the case, and that the latter—

". . . replied that the prisoner is in good health, and that I may visit him, or any other American prisoner under confinement, by giving one day's notice beforehand, so that the prisoner may be in the guardroom nearest to the entrance of the fortress at the time of my visit, which, it is expected, will be at 8 a.m." (*Foreign Relations*, 1896, 834.)

Certain persons in New York having sent a draft for money to Mr. Williams, Consul General of the United States at Habana, for delivery to an American prisoner in the Cabaña fortress, the Department instructed the Consul General that he might, with the knowledge and assent of the authorities, deliver the proceeds of the draft. In his despatch of August 17, 1895, the Consul General reported the delivery of the proceeds of the draft and stated:

"Prior to taking charge of the negotiation of this draft, I made a visit, in pursuance of the Department's suggestion, to the Acting Governor-General, General Arderius, to give him a statement of its source, and to ask and obtain his consent for the delivery of its proceeds to Mr. Sanguily. The general readily and cordially consented, with the remark

that my application first for the consent of the authorities was the correct course in the matter on the part of this consulate-general." (*Ibid.*, p. 772.)

The Department concurs in the recommendation that immediate intervention on Giller's behalf is not desirable at this time and has instructed the Consul at Kingston to follow developments in the case and to report to the Department when the trials of the rioters at the penitentiary are terminated.

Very truly yours,

For the Secretary of State:
HARRY F. PAYER

342.1121/21

The Secretary of State to the Minister in Canada (Robbins)

No. 51

WASHINGTON, September 9, 1933.

SIR: Referring to your despatch No. 161 dated August 14, 1933,⁴⁹ and to the Department's instruction No. 27 dated August 17, 1933, concerning the case of George Giller, alias John O'Brien, and the right of foreign consular representatives to visit their nationals in prison, I quote the following extracts from letters received by the Director of the Bureau of Prisons with respect to the practice followed regarding such visits in Federal penal and correctional institutions in the United States:

"No consular representatives have ever called here to visit inmates who were foreign citizens. It has, therefore, been unnecessary for us to permit or deny such visits." (Letter dated August 2, 1933, from the Superintendent of the Federal Reformatory Camp, Petersburg, Virginia.)

"Reference is made to your letter of July 29, concerning visits of Consular representatives to inmates who are citizens of foreign countries. On several occasions we have had Consuls of foreign countries call to see inmates who were citizens of their country. After definite identification we extended to them the same privileges granted to attorneys." (Letter dated August 3, 1933, received from the Assistant Superintendent of the Detention Headquarters at New York City.)

"We . . . wish to advise you that we have had no occasion to permit or deny visits to foreign citizens by consular representatives. In the future, we will govern ourselves according to the rules and regulations laid down in this connection.

"In connection with the men held by us for the Immigration Authorities, we permit no visits without special authority from Mr. Zurbrick, the Immigration Director of this District." (The Superintendent of the United States Detention Farm at Milan, Michigan, in a letter dated August 4, 1933.)

"Consular Agents of foreign governments have visited inmates here who are citizens of their respective countries on several occasions: The

⁴⁹ Not printed.

most recent have been the Vice Consuls of Great Britain, France, Germany, Italy and Mexico. These visits have been regarded as a matter of course. I have, however, never had occasion to pass upon a request for a visit of such Consular Agents where the inmate was undergoing disciplinary punishment." (Letter dated August 4, 1933, from Warden of the United States Penitentiary at Leavenworth, Kansas.)

"I have never in the past had occasion to deny visits to foreign Citizens by consular representatives.

"I can recall but two instances of visits by consular representatives since the institution was opened. They were granted." (The Superintendent of the United States Industrial Reformatory at Chillicothe, Ohio, in a letter dated August 4, 1933.)

"While we have several citizens of Mexico here, none of their relatives or consular agents has as yet visited them. Our policy would have been, however, to admit them at any reasonable hour, the distance traveled being too far to insist on an enforcement of the Sunday afternoon regulation for visits." (The Assistant Superintendent of the United States Southwestern Reformatory at El Reno, Oklahoma, in a letter dated August 5, 1933.)

"I do not know of any case of this nature occurring during the past ten or twelve years, but certain classes of punishment call for the restriction of visits while under such punishment." (The Warden of the United States Penitentiary at McNeil Island, Washington, in a letter dated August 7, 1933.)

"Since I have been Warden of this institution I have not had occasion to permit or deny visits to foreign citizens by consular representatives as no such visits have been requested." (The Warden of the United States Penitentiary Annex, Fort Leavenworth, Kansas, in a letter dated August 7, 1933.)

"We have never had occasion to permit or deny visits by consular or foreign representatives." (The Superintendent of the Federal Correctional Camp, Fort Eustis, Lee Hall, Virginia, in a letter dated August 7, 1933.)

"It has been the practice in this institution to permit visits by Consular representatives with inmates citizens of their respective countries, under the usual conditions, and so far I have not heard any complaints either from the prisoners or the Consular representatives, of their being refused such an interview." (The Warden of the United States Penitentiary at Atlanta, Georgia, in a letter dated August 7, 1933.)

"In response to question in your letter as to whether or not our practice in this regard was in accordance with your circular, will state that I have had occasion to approve several visits by Mexican Consular Officials with the prisoners here. As a matter of fact, I have approved all requests of this kind and have never had occasion to deny any.

"I might state in this connection that I had the pleasure of showing the Mexican Consul General, Mr. Luis Lupian G, through the institution. I brought about this visit myself so that the Mexican Official and his staff could see the place and its advantages, for so many of their nationals are confined here." (The Warden of the United States Detention Farm, La Tuna, Texas, in a letter dated August 7, 1933.)

According to a communication received from the United States North-eastern Penitentiary recently constructed at Lewisburg, Pennsylvania, there have not been thus far any applications from foreign consular officers for permission to visit inmates. It is stated, however, that "should the occasion arise, we shall be guided by this regulation". (See regulation quoted on page 1 of Department's instruction No. 27, dated August 17, 1933.)

You may transmit these extracts to the Canadian authorities for their information. Please report whether any action has been taken to have George Giller, alias John O'Brien, released from solitary confinement.

Very truly yours,

For the Secretary of State:

HARRY F. PAYER

342.1121/21

The Secretary of State to the Minister in Canada (Robbins)

No. 63

WASHINGTON, September 29, 1933.

SIR: Referring to the Department's instruction No. 51 dated September 9, 1933, concerning the case of George Giller, alias John O'Brien, I enclose copies of despatches dated August 23 and 24, 1933, received from the American Consul at Kingston, Canada,⁵⁰ which, respectively, concern the prison of isolation that has been proposed as a means of giving Giller more freedom, and the names of Americans in Canadian penitentiaries.

You are requested to ascertain whether the Dominion authorities would be disposed to ask convicts when they are admitted to penitentiaries for information concerning their nationality and make note of any proof of any such nationality that may be in their possession. By this means information would be available concerning naturalized as well as native-born American citizens who are imprisoned in Canadian penitentiaries.

With respect to the prison of isolation, you are advised that the Department considers that Giller should not be left in the prison of isolation even after it has been remodelled, unless he has been tried for and found guilty of some infraction of prison rules warranting such detention, and, much more, that he should not be kept there permanently. Please report fully concerning the views of the Canadian authorities with regard to this matter.

Very truly yours,

For the Secretary of State:

HARRY F. PAYER

⁵⁰ Neither printed.

342.1121/35

The Secretary of State to the Minister in Canada (Robbins)

No. 86

WASHINGTON, October 18, 1933.

SIR: Referring to the Department's telegram No. 62 dated October 7, 1933,⁵² the case of Elmer Giller alias George Lane alias George Giller alias John O'Brien, I enclose a copy of a letter dated October 10, 1933, received from the Attorney General of the United States in which he expresses his views concerning the treatment of this convict as follows:

"The treatment being given to this convict, as described by the American Consul consists, in the opinion of our Bureau of Prisons, of solitary confinement. On the statement of the Consul that this situation has existed for more than two years, representing a longer period of isolation than has ever been given by the Canadian Government before, and on his further representation that O'Brien seems to be deteriorating physically and mentally, it would seem justifiable for your Department to communicate with the authorities at Ottawa, expressing the interest of the Federal Government in this matter. While being careful not to express any opinion as to the administration of the Canadian prisons, nevertheless, the suggestion might be made that the Canadian Government inquire carefully into this case and ascertain whether or not this prisoner has been justly dealt with and his treatment free from discrimination."

You are instructed to renew your representations with regard to this case in accordance with the suggestion contained in the last sentence quoted from the Attorney General's letter.

Please advise the Department fully concerning the action taken by you in this case and the result thereof.

Very truly yours,

For the Secretary of State:

HARRY F. PAYER

342.1121/42

The Secretary of State to the Minister in Canada (Robbins)

No. 108

WASHINGTON, November 8, 1933.

SIR: Referring to the Department's instruction No. 27 dated August 17, 1933, concerning the right of a consular officer to visit citizens of his country who are imprisoned, the Department informs you that the American Consul at Kingston, Canada, reported in his despatch No. 213, dated October 12, 1933,⁵² that the warden of the Kingston Penitentiary had shown him circular letter No. 174, dated September 19, 1933, issued by the Superintendent of Penitentiaries to the wardens of penitentiaries in Canada dealing with the subject. The Consul suggests that the right

⁵² Not printed.

of consuls as recognized by this circular letter should be brought to the attention of all American consuls in Canada.

You are requested to endeavor to obtain copies of circular letter No. 174 from the Superintendent of Penitentiaries in order that it may be brought to the attention of American consuls in Canada.

It is noted that the Consul at Kingston reports that circular letter No. 174 provides in part as follows:

"The warden will extend every courtesy to the consul. If a consul requests an interview it will be handled as an urgent matter. The consul will be informed of these instructions and the consul's application promptly transmitted to the superintendent. The request will be transmitted by telegraph only in urgent cases."

In the Department's instruction No. 51, dated September 9, 1933, you were advised concerning the practice adopted with respect to visits of foreign consular officers to their nationals who were imprisoned in the United States. It was pointed out that requests of consular officers were granted promptly without reference thereof to the Director of the Bureau of Prisons, Washington, D. C., who corresponds to the Canadian Superintendent of Penitentiaries. As the provision above quoted will result in delay and inconvenience for consular officers who desire to visit American citizens in Canadian prisons, you are requested to discuss this provision informally with the appropriate Canadian authorities with a view to ascertaining whether they would be disposed to bring it more into accord with the regulation in force in Federal penitentiaries set forth on page one of the Department's instruction No. 27, dated August 17, 1933.

Very truly yours,

For the Secretary of State:
HARRY F. PAYER

342.1121/70

The Attorney General (Cummings) to the Acting Secretary of State

WASHINGTON, December 12, 1933.

DEAR MR. SECRETARY: This will acknowledge the receipt of the several communications from your Department (342.1121) referring to the case of George Giller, alias John O'Brien, an American citizen now imprisoned in the penitentiary at Kingston, Ontario.

The letters from you dated October 27, 1933, and October 31, 1933,⁵³ contain full descriptions of the issues presented in the case and also bear on the causes of certain disturbances in the prison where O'Brien is confined, which have been aired in the Canadian courts. The letter of

⁵³ Neither printed.

November 7, 1933, forwards the report of the American Consul at Toronto stating that this prisoner is now receiving fair treatment for a man of his type. The letter of November 11, 1933, sets forth the conclusion of the Consul that O'Brien is not now being discriminated against. The letter of November 21, 1933, expresses the opinion that no further representation is necessary from the American Government to the Canadian authorities.

These reports and letters have all been read with interest by the Director of the Bureau of Prisons and it is his opinion that there now is a clear distinction, as expressed in these letters, between solitary confinement as punitive discipline and isolation or segregation of a prisoner for the protection of himself, other prisoners and the administration of the prison.

It is apparent that this incident has been amicably and properly adjusted and that there is no further occasion for the recommendation of any further action by your Department.

Yours very truly,

HOMER CUMMINGS

AGREEMENT BETWEEN THE UNITED STATES AND CANADA FOR THE DREDGING OF CERTAIN SHOAL AREAS IN THE ST. CLAIR RIVER

711.42157 Detroit/25

The Secretary of State to the Chargé in Canada (Boal)

No. 706

WASHINGTON, September 24, 1932.

SIR: The Acting Secretary of War in a letter dated September 12, 1932, a copy of which is enclosed,⁵⁴ requests that the consent of the Government of Canada be obtained for operations to be conducted in Canadian waters in connection with the dredging of certain shoal areas in the St. Clair River to a depth of twenty-five feet at low water datum. One set of thirteen blue prints is enclosed for transmission to the Canadian Government.

Since it is desired that dredging in the river start during the season of 1933, you will appreciate the desirability of securing expeditious action by the Canadian Government in according sanction and approval for dredging shoal areas and spoiling waste to a depth not less than thirty feet in deep water areas on the Canadian side of the boundary, approximately as shown on the accompanying maps,⁵⁵ and also for the spoiling of waste from hydraulic dredging on Walpole Island, Squirrel Island and the marshes south thereof subject to the approval of the owners of the property. The Acting Secretary of War states that the dredging

⁵⁴ Not printed.

⁵⁵ Maps not reproduced.

and dumping as proposed will have little, if any, effect on slopes or water levels.

Very truly yours,

For the Secretary of State:
JAMES GRAFTON ROGERS

711.42157 Detroit/33

The Chargé in Canada (Boal) to the Secretary of State

No. 1297

OTTAWA, March 23, 1933.

[Received March 24.]

SIR: I have the honor to refer to instruction No. 706 of September 24, 1932, (file No. 711.42157 Detroit/25) and other correspondence, regarding operations to be conducted in Canadian waters in connection with the dredging of certain shoal areas in the St. Clair River, and to report the receipt of note No. 27 of March 21, 1933, from the Department of External Affairs, in which the Canadian Government grants the necessary permission to carry out the proposed works, subject, however, to certain important conditions.

Copy of the note in question is transmitted herewith.

Respectfully yours,

PIERRE DE L. BOAL

[Enclosure]

The Canadian Secretary of State for External Affairs (Bennett) to the American Chargé (Boal)

No. 27

OTTAWA, 21 March, 1933.

SIR: I have the honour to refer to your note No. 576 dated the 6th October, 1932, in which you transmitted a copy of a letter addressed to the Secretary of State at Washington by the Acting Secretary of War regarding operations which the War Department proposed to conduct in Canadian waters in connection with the dredging of certain shoal areas in the St. Clair River to a depth of twenty-five feet at low water datum, and enclosing a set of thirteen blue prints showing in general the areas to be dredged.

I have the honour to inform you that the Canadian Government has granted the necessary permission to carry out the proposed works, subject, however, to the following conditions:

(1) That the United States Government, having decided upon the extent of the proposed improvement, shall, before proceeding with the dredging and disposal of spoil material, submit the result of their further studies to the Engineers of the Department of Public Works, and secure the concurrence of the Canadian Government Engineers therein, in

order that the maximum beneficial effect from the disposal of the waste material shall be obtained.

(2) That the Canadian Government shall be informed in advance of the method to be followed in carrying out the work, and shall be provided with a programme of operations.

(3) That a particular study shall be made of the conditions surrounding navigation at the junction of the Chenal Ecarte river with the main channel of the St. Clair River, and agreement secured thereto between the Engineers of the United States Government and the Engineers of the Canadian Government in order that, as a result of any improvement proposed to be made, the difficulties of navigating at this section will be no more onerous than under existing conditions.

(4) That during the progress of the work, and subsequent thereto, such soundings, gaugings, and meterings shall be carried out as may be agreed upon, the work to be done by the United States Corps of Engineers, the Department of Public Works to be kept advised of the results obtained so as to insure that limitations of the Boundary Waters Treaty of 1909 are adhered to, and navigation interests protected. Authorized representatives of the Canadian Government shall be free at all times to inspect the work during progress and shall also be permitted to continue to make such check surveys with soundings, meterings and gaugings, in any part of the St. Clair River, as may be considered desirable at any time.

(5) That whatever works are carried out in Canadian territorial waters shall be carried out without prejudice to the sovereign or territorial rights of the Dominion of Canada.

(6) That the ownership of materials deposited in Canadian waters, or upon lands in Canada, shall automatically become the property of the Crown in right of the Dominion or of the Province, or the property of private individuals, dependent on the ownership of the site where the materials are placed; provided, however, that this condition shall not be construed as entitling the owner of such site to remove or otherwise disturb the materials deposited in Canadian waters, unless authorized by the appropriate authorities charged with the responsibility for the interests of navigation.

(7) That all necessary steps shall be taken by the United States Government to safeguard the interests of navigation during the progress of work.

(8) That the United States Engineers shall present plans for submission to the Department of Indian Affairs showing, in detail, the location and extent of the spoiling areas on Walpole Island, Squirrel Island and the marshes south thereof, accompanied by a statement setting forth the method of disposal and the extent of the yardage involved.

(9) That, if on receipt of this information an investigation shows that the interests of the Indians will suffer damage, either directly or indirectly, or by reason of the effect of such operations upon existing or prospective leases, equitable compensation will be paid to the Department of Indian Affairs for the benefit of the Indians.

(10) That the method of disposal will be subject to the approval of the Department of Indian Affairs.

(11) That, prior to the commencement of the work, the Department of Indian Affairs will be provided with a programme of the operations, in so far as they may affect Walpole and Squirrel Islands and the marshes south thereof.

(12) That, in view of a question that exists between the Department of Indian Affairs and the Government of the Province of Ontario as to the ownership of the marshes adjoining these lands, and without prejudice to the claim of the Department of Indian Affairs, which does not admit the claim of the Province, the consent and approval of the Government of the Province of Ontario should be obtained, in so far as it may affect any claim that that Province may have in these marshes.

(13) That the consent of the owner of any land upon which waste material is to be deposited, whether that owner be the Crown in right of the Dominion or in right of the Province of Ontario, or a private individual, shall be obtained prior to the disposition of any such waste material on such land. This provision shall not extend to the disposition of waste material in the bed of the river at places where the depth is in excess of forty feet, and where the disposition is in accordance with the limitations set forth in the proposal.

(14) That, while it is expected that adherence to the foregoing conditions will insure that the resulting effect of the contemplated work upon the levels of Lakes Huron and Erie and the connecting waters will be practically negligible, the United States authorities will, in the event of adverse effects upon such levels resulting, undertake the construction of such compensating works as may be necessary.

(15) That the permission hereby granted is without prejudice to the rights or obligations of either of the parties arising from either the provisions of or the declarations noted in the St. Lawrence Deep Waterway Treaty, signed at Washington the 18th July, 1932.⁵⁶

Accept [etc.]

W. H. WALKER
For the Secretary of State for External Affairs

711.42157 Detroit/41

The Chargé in Canada (Boal) to the Acting Secretary of State

No. 57

OTTAWA, June 12, 1933.

[Received June 14.]

SIR: I have the honor to refer to my despatch No. 1297 of March 23, 1933, and other correspondence with regard to operations to be conducted in Canadian waters in connection with the dredging of certain shoal areas in the St. Clair River, and to report the receipt of a note No. 68 of June 10, 1933, from the Department of External Affairs which modifies to some extent the conditions imposed by the Canadian Government in its note No. 27 of March 21, 1933, which was transmitted with the despatch under reference.

Respectfully yours,

PIERRE DE L. BOAL

⁵⁶ *Foreign Relations*, 1932, vol. II, p. 69.

[Enclosure]

*The Canadian Secretary of State for External Affairs (Bennett)
to the American Chargé (Boal)*

No. 68

OTTAWA, June 10, 1933.

SIR: I have the honour to refer to my note No. 27, dated the 21st March, 1933, concerning the operations which the War Department was proposing to conduct in Canadian waters, in connection with the dredging of certain shoal areas in the St. Clair River.

The first two conditions set forth in the note required that your Government, having decided upon the extent of the proposed improvement, should, before proceeding with the dredging and disposal of spoil material, submit the results of their further studies to the engineers of the Department of Public Works, and secure the concurrence of the Canadian Government engineers therein, in order that the maximum beneficial effect from the disposal of the waste material should be obtained. They also provided that the Canadian Government should be informed in advance of the method to be followed in carrying out the work, and should be provided with a programme of operations.

I understand that pursuant to these conditions the United States authorities have made certain submissions to the Canadian Government engineers in respect to the improvement of that section of the St. Clair River channel from the head of the St. Clair Flats Canal upstream as far as Algonac, Michigan, about opposite the head of Walpole Island in Ontario. These submissions have been examined by the Canadian Government engineers and I have been authorized by the Department of Public Works to request you to notify the United States engineer officer that the work may be proceeded with according to the scheme submitted, in so far as the section of the river improvement under this portion of the proposal is concerned.

It is understood that the submission referred to does not contemplate the disposal of waste material on Walpole and Squirrel Islands and the marshes south thereof and that, accordingly, there is no occasion for the operation of conditions (9) to (12) inclusive, as set forth in the note referred to above.

Accept [etc.]

O. D. SKELTON
For the Secretary of State for External Affairs

711.42157 Detroit/58

The Minister in Canada (Robbins) to the Acting Secretary of State
No. 337

OTTAWA, January 12, 1934.

[Received January 15.]

SIR: I have the honor to refer to Mr. Boal's despatches No. 1297 of March 23, 1933, and No. 57 of June 12, 1933, transmitting copies of two notes from the Canadian Department of External Affairs relative to the dredging operations now being carried out in the St. Clair River.

In this connection I am enclosing copy of a further note (No. 4 of January 10, 1934,) which I received this morning from the Canadian Department of External Affairs. The latter's notes No. 27 and No. 68, referred to by Dr. Skelton, were enclosed with Mr. Boal's despatches mentioned above.

Respectfully yours,

WARREN D. ROBBINS

[Enclosure]

The Canadian Secretary of State for External Affairs (Bennett)
to the American Minister (Robbins)

No. 4

OTTAWA, January 10, 1934.

SIR: I have the honour to refer to my note No. 27, dated the 21st March, 1933, and also to my note No. 68, dated the 10th June, 1933, both concerning the operations which the War Department was proposing to conduct in Canadian waters in connection with the dredging of certain shoal areas in the St. Clair River.

In the first note, to which reference has been made, the necessary permission was granted to carry out the proposed work, and there was included a condition that the United States Engineers, having decided upon the extent of the proposed improvement should, before proceeding with the dredging and disposal of spoil material, submit the result of their further studies to the engineers of the Department of Public Works, and secure the concurrence of the Canadian Government engineers therein.

In the second note, to which reference has been made, the concurrence of the Canadian Government engineers to the submission made by the United States Government engineers in respect to the improvement of that section of the St. Clair River Channel, from the head of the St. Clair Flats Canal, up-stream as far as Algonac, Michigan (about opposite the head of Walpole Island in Ontario) was brought to your attention.

I understand that, pursuant to the conditions in the first note to which reference has been made, the United States Government engineers have

submitted to District Engineer Harcourt of the Canadian Department of Public Works, under date of November 22nd, 1933, nine plans covering the section from Algonac, Michigan to the foot of Lake Huron, and have indicated thereon the improvement they propose to effect in that portion of the river from Algonac north as far as the station marked "Birch", which is just down-stream of Marysville, Michigan, and have outlined the method to be followed in carrying out the said works. These submissions have been examined by the Canadian Government engineers, and I have been authorized by the Department of Public Works to request you to notify the United States authorities that the work may be proceeded with in accordance with the scheme submitted, in so far as the section of the river improvement under this portion of their proposal is concerned, and in accordance with the conditions in the first note referred to above.⁵⁷

Accept [etc.]

O. D. SKELTON
For Secretary of State for External Affairs

AGREEMENT CONCERNING THE DIVERSION OF WATER THROUGH
THE MASSENA CANAL AND GRASS RIVER AS AFFECTED BY PROVI-
SIONS OF THE ST. LAWRENCE DEEP WATERWAY TREATY, EFFECTED
BY EXCHANGE OF NOTES, JANUARY 13, 1933

711.42157SA29/1040a

The Secretary of State to the Canadian Minister (Herridge)

WASHINGTON, January 13, 1933.

SIR: I have the honor to inform you that during the senatorial inquiry into the Great Lakes-St. Lawrence Deep Waterway Treaty, signed July 18, 1932,⁵⁸ a suggestion has been made that an indirect effect of the terms of the treaty might be to commit this Government or the State of New York or other authorities concerned, if any, to the continuance of the diversion for the private power installation now using the Massena Canal and the Grass River. The suggestion is based on the circumstance that the reports of the Joint Board of Engineers in outlining the general engineering project which is adopted as a basis for the treaty include an estimate for the continuance of diversion facilities at the present location of the Massena Canal intake.

I do not agree that any such consequence arises from the terms of the treaty, and I am confident that the Canadian Government, like our own, has no desire or intention that the treaty should even remotely

⁵⁷ In a further note dated February 2, 1934, the Canadian Secretary of State for External Affairs added certain other conditions which the Canadian Government engineers desired to have followed with respect to dredging the section of the river referred to in this note (711.42147 Detroit/60).

⁵⁸ *Foreign Relations*, 1932, vol. II, p. 69.

produce such consequences. This Government believes that the treaty does not, and desires that it should not in any respect, fix the policy to be pursued within the United States in regard to the recognition of or maintenance of the diversion referred to above, and is confident that the Treaty does not operate to limit the freedom of the United States to deal with this diversion as a domestic question involving only the use of this Government's share of the flow of the river.

In order, however, to remove all doubt as to the purpose and effect of the treaty, I request the Government of Canada to state whether it will join this Government in a statement of the following principles:

1. The effect of the Great Lakes-St. Lawrence Deep Waterway Treaty, signed at Washington, July 18th, 1932, is not in any respect to recognize, confirm, or establish any rights or claims of any person or corporation in respect to the diversion of water for power purposes through the Massena Canal and Grass River, or to limit the freedom of the United States or the State of New York, or other competent authority to treat the question of the continuance, control, or elimination of such diversion as a domestic question.

2. The Canadian Government does hereby, and will, upon request, formally consent to the modification or elimination of the works provided for in the Report of the Joint Board of Engineers in connection with the said diversion through the Massena Canal.

3. The Canadian Government recognizes that the competent authorities in the United States are free to eliminate the diversion of water for power purposes through the Massena Canal and Grass River, and to use the water so released through the main river works in conformity with the provisions of Article IV of the said Treaty.

Accept [etc.]

HENRY L. STIMSON

711.42157SA29/1041

The Canadian Minister (Herridge) to the Secretary of State

No. 8

WASHINGTON, January 13, 1933.

SIR: I have the honour to acknowledge the receipt of your note of January 13th, 1933, relating to the effect of the Great Lakes-St. Lawrence Deep Waterway Treaty upon the diversion of the waters of the St. Lawrence River at Massena.

My Government shares the views of the United States Government that it was not the purpose of the Treaty to fix, in any respect, the policy to be pursued in regard to the maintenance of such diversion. It is the view of the Canadian Government that the continuance or discontinuance of that diversion is a purely domestic matter for determination by competent authorities in the United States.

The Canadian Government, therefore, joins with the United States Government in a declaration of the following principles:

1. The effect of the Great Lakes-St. Lawrence Deep Waterway Treaty, signed at Washington July 18th, 1932, is not, in any respect, to recognize, confirm, or establish any rights or claims of any person or corporation, in respect to the diversion of water for power purposes through the Massena Canal and Grass River, or to limit the freedom of the United States or the State of New York, or other competent authority, to treat the question of the continuance, control or elimination of such diversion as a domestic question;

2. The Canadian Government does hereby and will, upon request, formally consent to the modification or elimination of the works provided for in the report of the Joint Board of Engineers, in connection with the said diversion through the Massena Canal;

3. The Canadian Government recognizes that the competent authorities in the United States are free to eliminate the diversion of water for power purposes through the Massena Canal and Grass River, and to use the water so released through the main river works in conformity with the provisions of Article IV of the said Treaty.

I have [etc.]

W. D. HERRIDGE

AGREEMENT CONCERNING THE CHICAGO DIVERSION OF WATER AS AFFECTED BY PROVISIONS OF THE ST. LAWRENCE DEEP WATERWAY TREATY, EFFECTED BY EXCHANGE OF NOTES, APRIL 5, 1933

711.42157SA29/1067a

The Secretary of State to the Canadian Minister (Herridge)

WASHINGTON, April 5, 1933.

SIR: I have the honor to inform you that as a consequence of the world-wide depression a serious financial situation has developed in the State of Illinois which has resulted in a cessation of construction work on the sewage disposal plants contemplated by the decree of the Supreme Court of the United States of April 21 [14], 1930.⁵⁹ The Sanitary District's schedule of construction is now considerably in arrears, and officials of the State of Illinois represent that the necessary works to enable the Sanitary District to comply with the above-mentioned decree may not be completed by the end of 1938. In these circumstances, they point out that to reduce the diversion of water from Lake Michigan to the quantity permitted as of December 31, 1938, by the above-mentioned decree, might seriously endanger public health.

Certain aspects of this question are now pending before the Supreme Court of the United States and will, in due course, be decided on the merits of the case. It would, however, be helpful for the Government of the United States, in view of the provisions of Article VIII of the pending Great Lakes-St. Lawrence Deep Waterway Treaty, signed in Washington on July 18, 1932,⁶⁰ to have an indication of the attitude of the

⁵⁹ 281 U. S. 179.

⁶⁰ *Foreign Relations*, 1932, vol. II, p. 69.

Canadian Government in this matter. You will recall that Article VIII (a) 2 of the pending St. Lawrence Deep Waterway Treaty makes provision for Canada's acquiescence in increases in the diversion permitted under the decree of the Supreme Court through the Chicago drainage canal to meet an emergency.

I should appreciate being informed whether, if before December 31, 1938, it should become manifest that an extension of time for curtailing the diversion in conformity with the Supreme Court's decree of April 21, 1930, is necessary, and the Government of the United States should request the acquiescence of the Canadian Government, the Government of Canada would in such circumstances give its acquiescence in such an extension for a period of not to exceed two years from December 31, 1938, on the understanding that such an agreement would not in any way affect or modify the provisions of the pending Treaty.

Accept [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

711.42157SA29/1068

The Canadian Minister (Herridge) to the Secretary of State

No. 53

WASHINGTON, April 5, 1933.

SIR: I have the honour to refer to your note of even date herewith, concerning the Chicago diversion as affected by the provisions of the St. Lawrence Deep Waterway Treaty.

It appears that in the present circumstances it is possible that the sewage disposal program will not be completed within the time limit set forth in Article VIII (a) of the Treaty. Accordingly, insistence upon the strict application of that clause might imperil the public health of the City of Chicago.

In view of these considerations, I am authorized to inform you that if such a situation arises, the Canadian Government agrees, upon request of the Government of the United States, to give its acquiescence to an extension of the above-mentioned time limit for a period not exceeding two years upon the understanding that such agreement and acquiescence will not in any way affect or modify the provisions of the Treaty.

I have [etc.]

W. D. HERRIDGE

LOAD LINE CONVENTION BETWEEN THE UNITED STATES AND CANADA, SIGNED DECEMBER 9, 1933

Treaty Series No. 869

*Convention Between the United States of America and Canada, Signed at Washington, December 9, 1933*⁶¹

The President of the United States of America and His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, in respect of the Dominion of Canada,

Desiring to exempt vessels of the United States and Canada operating solely on certain sheltered waters of the west coast of North America from load line requirements, as contemplated in Article 2, Section 2 of the International Load Line Convention, signed at London, July 5, 1930,⁶² which reads as follows:

"Ships when engaged on international voyages between the near neighbouring ports of two or more countries may be exempted by the Administration to which such ships belong from the provisions of this Convention, so long as they shall remain in such trades, if the Governments of the countries in which such ports are situated shall be satisfied that the sheltered nature and conditions of such voyages between such ports make it unreasonable or impracticable to apply the provisions of this Convention to ships engaged in such trades."

have resolved to conclude a convention for these purposes, and to that end have appointed as their respective Plenipotentiaries:

The President of the United States of America:

William Phillips, Acting Secretary of State of the United States of America; and

His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, for the Dominion of Canada:

The Honorable William Duncan Herridge, P.C., D.S.O., M.C., His Envoy Extraordinary and Minister Plenipotentiary for Canada in the United States of America;

Who, having communicated to each other their full powers, found in good and due form, have agreed as follows:

ARTICLE I

The Government of the United States of America, being satisfied that the waters of Puget Sound, the waters lying between Vancouver Island and the mainland, and east of a line from a point one nautical mile west of the city limits of Port Angeles in the State of Washington to

⁶¹ Ratification advised by the Senate, February 2 (legislative day of January 23), 1934; ratified by the President, February 21, 1934; ratifications exchanged at Washington, July 26, 1934; proclaimed by the President, August 11, 1934.

⁶² *Foreign Relations*, 1930, vol. I, p. 261.

Race Rocks on Vancouver Island, and of a line from Hope Island, British Columbia, to Cape Calvert, Calvert Island, British Columbia, the waters east of a line from Cape Calvert to Duke Point on Duke Island, and the waters north of Duke Island and east of Prince of Wales Island, Baranof Island and Chicagof Island, the waters of Peril, Neva and Olga Straits to Sitka, and the waters east of a line from Port Althorp on Chicagof Island to Cape Spencer, Alaska, are sheltered waters of the nature contemplated in Article 2, Section 2 of the International Load Line Convention, 1930, agrees to exempt from the provisions of the International Load Line Convention, and existing load line statutes of the United States, Canadian vessels, and vessels of the United States, when engaged on international voyages originating on, wholly confined to, and terminating on the above defined waters.

ARTICLE II

The Government of the Dominion of Canada, also being satisfied of the sheltered nature of the waters defined in Article I agrees likewise to exempt vessels of the United States and Canadian vessels from the requirements of the aforesaid convention and existing load line statutes of Canada, when engaged on international voyages originating on, wholly confined to, and terminating on the said waters.

ARTICLE III

The present convention shall be ratified in accordance with the constitutional methods of the High Contracting Parties. It shall take effect on the day of the exchange of ratifications, which shall take place at Washington as soon as possible, and it shall remain in force thereafter, until six months from the date on which one of the High Contracting Parties shall have given to the other notice of an intention to terminate it.

In faith whereof the above-named Plenipotentiaries have signed the present convention and affixed thereto their respective seals.

Done in duplicate at Washington, the ninth day of December, one thousand nine hundred and thirty-three.

WILLIAM PHILLIPS	[SEAL]
W. D. HERRIDGE	[SEAL]

EFFECT UPON AMERICAN CITIZENSHIP OF OATHS REQUIRED OF ALIENS WHO TEACH IN CANADIAN SCHOOLS

130 Howe, Audrey Marie

The Secretary of State to the Chargé in Canada (Boal)

No. 727

WASHINGTON, October 7, 1932.

Enclosed herewith is a copy of a letter of September 1, 1932,⁶⁴ from the American Consul General at Winnipeg, Canada, concerning the question of the citizenship of Miss Audrey M. Howe, who was born in this country and is temporarily residing in Winnipeg, Manitoba, Canada, where she is engaged as a school teacher. It appears that as a preliminary to taking this position she took the oath of temporary allegiance required of aliens who teach in Canadian schools. It further appears that this Department, in an instruction of July 25, 1932,⁶⁴ authorized the Consul General at Winnipeg to register Miss Howe as a citizen of the United States, upon the ground that the school teacher's oath which she took was not to be regarded as an oath of allegiance within the meaning of the first paragraph of Section 2 of the Citizenship Act of March 2, 1907.⁶⁵ However, it also appears that she has been denied admission into the United States as a citizen thereof by the immigration authorities upon the ground that she expatriated herself by taking the oath mentioned.

In a letter of July 23, 1932,⁶⁴ from the Honorable Edmund F. Erk, a Representative in the Congress of the United States from the State of Pennsylvania, the Department's attention was called to the case of Brother Michael Schleich, in which the same question as that mentioned above was involved. In connection with that case the Department was informed that the form of oath required of persons entering the schools of Manitoba is as follows:

"I, hereby swear that, while holding any office as teacher in the public schools in the Province of Manitoba, I will be faithful and bear true allegiance to His Majesty, King George the Fifth, his heirs and successors, according to the law. So help me God."

It is hardly necessary to add that the form of oath just quoted differs from the usual oath of allegiance required in Canada.

In order that the Department may give further consideration to the question whether the teacher's oath mentioned above is to be regarded as an "oath of allegiance", within the meaning of the first paragraph of Section 2 of the Citizenship Act of March 2, 1907, the Department desires that the Legation endeavor to obtain and forward to it a state-

⁶⁴ Not printed.

⁶⁵ 34 Stat. 1228.

ment from the appropriate authorities as to the meaning and effect of the teacher's oath, and, in particular, whether it requires complete subjection to the British Sovereign during the period when it is in effect, that is, while the person taking it is occupied as a teacher in the public schools of the Province of Manitoba. In this connection the Department desires to be informed as to the law of Canada under which teachers' oaths are required.

[File copy not signed]

130 Howe, Audrey Marie

The Chargé in Canada (Boal) to the Secretary of State

No. 1158

OTTAWA, December 22, 1932.

[Received January 3, 1933.]

SIR: I have the honor to refer to instruction No. 727 of October 7, 1932, concerning the question of the citizenship of Miss Audrey M. Howe and to transmit herewith a copy of a note No. 156 of December the 16th, 1932, together with its enclosures, from the Secretary of State for External Affairs,⁶⁶ in which it is stated that the question of oaths to be taken by teachers is a matter within the jurisdiction of the several provinces. The replies of certain of the provinces to an inquiry from the Department of External Affairs are attached herewith.⁶⁶

In the case of Miss Audrey M. Howe, the Lieutenant-Governor of Alberta states that she took the oath of allegiance in 1929. He adds:

"Beyond this my Ministers have nothing further to add to the information already furnished."

Respectfully yours,

PIERRE DE L. BOAL

130 Howe, Audrey Marie

*Memorandum by Mr. Richard W. Flournoy of the Office of
the Legal Adviser*

[WASHINGTON,] February 3, 1933.

The question whether the Americans who take oaths of office when they accept positions as teachers in Canada thereby lose their American nationality under the provision of the first paragraph of Section 2 of the Act of Congress of March 2, 1907, would seem to depend upon the nature of the particular oath taken. If the oath appears from its phraseology to be an unqualified oath of allegiance, it seems necessary to hold that American nationality is lost by taking it. If, on the other hand, the oath appears merely to obligate the taker to be obedient and to bear

⁶⁶ Not printed.

temporary allegiance to the British Sovereign while he or she continues to hold the position of a teacher in Canada, it seems reasonable to hold, in accordance with previous rulings, that the oath is not an "oath of allegiance", within the meaning and intent of the statute mentioned, so that American nationality is not lost by taking it. Examples of the two classes of oaths are found in this correspondence. The oath required of teachers in the Province of Alberta reads as follows:

"I, of in the Province of Alberta, swear by Almighty God that I will be faithful and bear allegiance to His Majesty King George the Fifth, His Heirs, and Successors according to law. So help me God."

The oath required of teachers in the Province of Manitoba reads as follows:

"I, hereby swear that, while holding any office as teacher in the public schools in the Province of Manitoba, I will be faithful and bear true allegiance to His Majesty, King George the Fifth, his heirs and successors, according to the law. So help me God."

It is the opinion of this office that the oath required in Alberta is an "oath of allegiance", within the meaning of the first paragraph of Section 2 of the Act of Congress of March 2, 1907, but that this is not true of the oath required in Manitoba.

130 Howe, Audrey Marie

*The Secretary of State to the Consul General at Winnipeg
(Heintzleman)*

WASHINGTON, February 9, 1933.

With reference to the registration application which was executed in your office on July 20, 1932, by Miss Audrey Marie Howe and the Department's instruction of July 25, 1932,⁶⁷ approving the registration you are informed that the case of Miss Howe has been receiving further consideration by the Department and it has been ascertained that the oath of allegiance taken by her in connection with her position as a teacher in the schools of the Province of Alberta was in no way qualified. Accordingly, the Department is of the opinion that the oath taken is such an oath as is contemplated by the first paragraph of Section 2 of the Act of March 2, 1907, and that the taking of such an oath resulted in the loss of American citizenship by Miss Howe. You will, therefore, cancel the record of her registration in your office.

[File copy not signed]

⁶⁷ Not printed.

IRISH FREE STATE

REPRESENTATIONS BY THE IRISH FREE STATE CONCERNING THE ALLOTMENT GIVEN TO THE IMPORTATION INTO THE UNITED STATES OF IRISH WHISKEY

811.41D6 Liquor/1

The Irish Minister (MacWhite) to the Acting Secretary of State

WASHINGTON, 25 November, 1933.

SIR: I have been given to understand that the United States Government are about to set up machinery to regulate the importation of liquor and wines, and that certain officials have already been designated to work out quotas for different countries.

I have the honour to request that you will be so good as to bring to the attention of the authorities concerned the annexed memorandum which shows the trade situation between the Irish Free State and the United States for the ten years from 1924 to 1933. It will be observed from this memorandum that in the period mentioned the United States purchased only an average of one dollar's worth of Irish merchandise in return for every eight dollars of American merchandise purchased by the Irish Free State. During the nine months January to September of the current year this proportion has not varied to any extent.

I should like furthermore to point out that in the manufacture of Irish Porter, Stout, and Whiskey a considerable percentage of the barley, hops and wood employed has invariably been imported from the United States.

I trust these facts will be taken into due consideration by your Government in determining the regulations that may govern the importation of alcoholic beverages from the Irish Free State, and that a more equitable adjustment of our mutual trade relations will result therefrom.

I have [etc.]

M. MACWHITE

[Enclosure]

*Memorandum by the Irish Minister (MacWhite)*VALUE OF TRADE BETWEEN THE IRISH FREE STATE AND THE UNITED STATES
FOR THE YEARS 1924 TO 1932 IN POUNDS STERLING

<i>Imported from the United States</i>		<i>Exported to the United States</i>	
	£ Sterling		£ Sterling
1924	3,708,669	1924	241,191
1925	3,162,448	1925	297,919
1926	4,955,589	1926	306,395
1927	4,658,006	1927	456,855
1928	3,810,596	1928	326,540
1929	4,772,495	1929	993,320
1930	3,867,788	1930	1,176,221
1931	2,044,359	1931	393,437
1932	1,320,211	1932	103,282
1933 (9 months)	739,954	1933 (9 months)	111,265

611.41D6 Liquor/3

*Memorandum by the Acting Secretary of State of a Conversation
With the Irish Minister (MacWhite)*

[WASHINGTON,] December 14, 1933.

The Irish Minister seemed considerably disturbed over the allotment of 50,000 which has been given to the importation into the United States of Irish whiskey. He admitted that after conversation with Mr. Miller the latter had raised the allotment from 15,000 to 50,000. However, the Minister had seen in the morning papers that the allotment given to Great Britain was something well over 600,000. If this was based on the 1910-1914 average, he felt certain, though he had no information to prove it, that this figure would have included during those years exportations from Ireland. In the circumstances, he was not satisfied with 50,000 for Ireland and said that, if the figure could not be raised, he would have to enter a most definite protest. I told the Minister that I knew nothing about the allotment of 50,000 to Ireland but would look into it and see if anything could be done.

W[ILLIAM] P[HILLIPS]

611.41D6 Liquor/3

*The Assistant Economic Adviser (Livesey) to Mr. Raymond Miller
of the Federal Alcohol Control Administration*

WASHINGTON, December 14, 1933.

MY DEAR MR. MILLER: Mr. Phillips telephoned to say that the Irish Minister was dissatisfied with the basic quota you were disposed to

allocate the Free State, feeling that it did not sufficiently take into account the Irish share in the pre-war exports of the United Kingdom. I said, and Mr. Phillips repeated presumably for the benefit of the Irish Minister, that I would re-open the question with you for consideration.

Sincerely yours,

FREDERICK LIVESEY

611.41D6 Liquor/4

*The Irish Minister (MacWhite) to the Assistant
Economic Adviser (Livesey)*

WASHINGTON, 16 December, 1933.

DEAR MR. LIVESEY: I am enclosing herewith the memorandum submitted yesterday with the rectifications agreed upon.

Sincerely yours,

M. MACWHITE

[Enclosure]

Memorandum by the Irish Minister (MacWhite)

WASHINGTON, 15 December, 1933.

On consideration of a satisfactory liquor quota being allocated to the Irish Free State, my Government undertakes, subject to consideration of prices and quality, to increase purchases of American wheat and to explore sympathetic possibilities of increasing purchases of other American products.

Quite recently the Irish Free State purchased a large quantity of its wheat requirements from the North Pacific Export Association. During the past week, 3,100 bales of hops have been shipped direct from San Francisco to Dublin.

M. M[ACWHITE]

NEW ZEALAND

PRELIMINARY DISCUSSIONS REGARDING POSSIBLE NEGOTIATION OF A
TRADE AGREEMENT BETWEEN THE UNITED STATES AND NEW
ZEALAND

611.47H31/27

The Consul General at Wellington (Hitch) to the Secretary of State

No. 290

WELLINGTON, April 10, 1933.

[Received April 29.]

SIR: I have the honor to report that from informal conversations I have had recently with Government officials and prominent business men of New Zealand, I am of the opinion that there is a growing sentiment in this country in favor of a reciprocal trade agreement with the United States. This opinion is strengthened by a resolution recently adopted by the Auckland Chamber of Commerce requesting the New Zealand Government to favorably consider a trade treaty with the United States.

In the event that the necessary legislation is enacted at the present session of Congress, conferring upon the President the power to negotiate reciprocal trade agreements with foreign countries, and it is the desire of the United States to negotiate such a treaty with New Zealand, I shall be very glad, if authorized by the Department, to ascertain whether the Government of New Zealand would be inclined to negotiate such an agreement.

Respectfully yours,

CALVIN M. HITCH

611.47H31/27

The Secretary of State to the Consul General at Wellington (Hitch)

WASHINGTON, May 17, 1933.

SIR: Reference is made to your despatch No. 290 of April 10, 1933, in which you report the growing sentiment in New Zealand for a reciprocal trade agreement with the United States and raise the question of opening negotiations for such an agreement as soon as the necessary legislation shall have been enacted by Congress.

Inasmuch as the legislation to which you refer has not as yet been enacted the matter should not be discussed with the New Zealand authorities at this time. However, anticipating that a policy of concluding reciprocal trade agreements will eventually be adopted, studies

are now being made with a view to formulating tentatively the terms of such agreements with the various countries with which negotiations are likely to be undertaken. It would be helpful to receive from you concrete suggestions as to the provisions which should be included in any such agreement with New Zealand. While no definite conclusions in these matters will be reached until Congress shall have acted, a survey of the situation with a view to formulating the possible terms of such agreement will facilitate the conduct of the negotiations when the basis on which the United States will be prepared to proceed shall have been defined.

Without approaching the New Zealand Government in the matter, therefore, you should submit to the Department your recommendations as to the products on which concessions might best be sought from New Zealand, and any information you may have as to the concessions which New Zealand would be likely to ask in return. You will of course, consider in this relation the preferences made by New Zealand in favor of the United Kingdom or other parts of the British Empire and indicate the extent to which you consider it desirable and possible to bring about the removal of these preferences.

You should also bear in mind the fact that any concessions made by either party under such an agreement will in all probability be generalized to other countries. It is essential, therefore, that in selecting products on which concessions would be sought consideration be given to the competitive position of the United States in supplying the New Zealand market. In other words in the case of any given product you should consider whether the competitive situation is such that the United States would be likely to obtain a substantial share of any increase in total importations resulting from a reduction in duty applicable to importations from all foreign sources.

All publicity concerning the above-mentioned studies should be most carefully avoided until the question whether negotiations will be undertaken with New Zealand has been decided and you have been instructed as to the basis on which such negotiations might proceed.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

611.47H31/28 : Telegram

The Consul General at Wellington (Hitch) to the Secretary of State

WELLINGTON, May 23, 1933—4 p.m.

[Received May 23—2:08 a.m.]

By special request of Mr. Coates, Acting Prime Minister, I called upon him this morning and was informed that New Zealand Government

would be glad to consider a reciprocal trade agreement with United States and it was suggested that I ascertain by cable your views upon the subject. Please refer to my despatch No. 290 of April 10th, last.

HITCH

611.47H31/28 : Telegram

The Secretary of State to the Consul General at Wellington (Hitch)

WASHINGTON, May 26, 1933—2 p.m.

Your May 23, 4 p.m. You may say to the Acting Prime Minister that it is expected that legislation will be introduced in a short time which would authorize the President to conclude trade agreements. Pending the enactment of this legislation, the United States Government is not in a position to initiate negotiations with other governments. A certain amount of time will also have to be allowed for organization of machinery and programme for negotiations. I should, however, welcome and give careful consideration to any proposals which the New Zealand Government may wish to make in the meantime. Please request that no publicity be given to this matter at this time.

HULL

611.47H31/30

*The Consul General at Wellington (Hitch) to the
Acting Secretary of State*

No. 318

WELLINGTON, June 21, 1933.

[Received July 17.]

SIR: I have the honor to acknowledge the receipt of your Instruction dated May 17, 1933, upon the subject above mentioned.

It is noted from your communication that legislation had not been enacted by Congress conferring upon the President the authority for negotiating reciprocal trade agreements, and for that reason the matter should not be discussed with the New Zealand authorities at this time.

By reference to my cablegram of May 23, 4 p.m., it will be noted that the New Zealand Government had taken the initiative in the matter, and that at the special request of the Acting Prime Minister, I had called upon him and was informed at the time of the interview that the New Zealand Government would be glad to negotiate a reciprocal trade agreement with the United States.

Upon the receipt of your reply to my cablegram I called upon Mr. Coates, the Acting Prime Minister, and exhibited to him a paraphrase

of your cablegram. I have since received a confidential note from him dated June 16, 1933, containing a list of the commodities of New Zealand origin which his Government desires to have incorporated in any trade agreement hereafter negotiated between the Governments of the United States and New Zealand.

Your attention is specially invited to the last paragraph of the Acting Prime Minister's letter, in which he requested me to inform you that the Government of New Zealand is anxious to enter into negotiations with the Government of the United States of America, with a view to the conclusion of a trade agreement which will be to the mutual advantage of both countries.

I am now conducting an investigation along the lines mentioned in the first paragraph on Page 2 of your instruction under acknowledgment, and as soon as possible I will transmit to you a list of products of American origin on which in my opinion concessions might advantageously be obtained from New Zealand. The concessions desired by New Zealand are set forth in the letter I have received from the Acting Prime Minister, a copy of which is transmitted herewith.

Respectfully yours,

CALVIN M. HITCH

[Enclosure]

*The New Zealand Acting Prime Minister (Coates) to the
American Consul General at Wellington (Hitch)*

C.22/11/3

WELLINGTON, 16 June, 1933.

SIR: I have the honour to acknowledge receipt of your letter CMH.drm 631 of the 8th instant enclosing a paraphrase of a cablegram dated the 17th ultimo which you have received from the Secretary of State at Washington respecting the probability of a reciprocal trade agreement between the United States of America and this Dominion.

In reply I have to inform you that the New Zealand Government are gratified to learn that it is probable that legislation will be introduced in Congress at an early date which would authorise the President to conclude such an agreement. To this end it would be of great assistance to my Government in dealing with the matter if it could be arranged for your Government to give an indication of the goods or classes of goods of United States origin respecting which it may be desired that tariff concessions should be granted.

The principal commodities of New Zealand origin to which my Government would desire the Government of the United States of

America to give consideration with a view to favourable tariff treatment are the following:

Butter,
Casein,
Cheese,
Fruits, viz., apples and pears,
Hides, calf and cattle,
Honey,
Hops,
Meats, canned,
Meat, frozen,
Peas unprepared,
Phormium tenax,
Seeds,
Tallow,
Wool.

I should be obliged if you would advise the Secretary of State at Washington along the lines indicated above and at the same time inform him that the Government of New Zealand are anxious to enter into negotiations with the Government of the United States of America with a view to the conclusion of a trade agreement which will be to the mutual advantage of both countries.

I have [etc.]

J. G. COATES

611.47E31/34

*The Consul General at Wellington (Hitch) to the
Acting Secretary of State*

No. 332

WELLINGTON, July 14, 1933.

[Received August 15.]

SIR: I have the honor to refer to your instruction of May 17, 1933, regarding reciprocal trade agreements that may possibly be entered into between the United States and New Zealand. In accordance with the first paragraph of the second page of this Instruction, and supplementing my Despatch No. 318 of June 21, I beg to submit herewith a statement¹ giving statistics of the principal commodities entering into the export trade of the United States to New Zealand in the year 1929. This year was chosen as being the last year before the world-wide depression, (although the slump had already begun to be felt in this Dominion), and as being before the Ottawa Agreements had been put into effect. Figures are given showing, in order, total imports of British origin, imports from the United States, imports from the next competing foreign country of origin, and the grand total. The figures represent values only; they

¹ Not printed.

are given in New Zealand pounds sterling, and are computed by adding 10% to the value in the country of origin. For purposes of comparison the corresponding figures are given for this past year 1932, and a further column is added showing the Customs tariff at present in effect. Goods which are admitted free of duty into New Zealand have been omitted from this list, even though entering in quantity into the trade, as, there being no duty charged, no concession could be made.

From a study of this list, certain items may easily be noted for which tariff concessions would benefit the United States. A good example of this is hosiery. In 1929 the United States supplied approximately one-tenth of the total imports, and the next largest foreign competitor roughly one sixty-third, or an almost negligible amount. In 1932, however, imports from the United States had fallen off greatly to one one-hundred-and-seventieth. As the proportion of other foreign imports also decreased, it may be reasoned that America's loss was the British Empire's gain. With very slight foreign competition in this line, a reduction of the British preference would be of great benefit to the United States. Other similar items are: Artificers' tools; hardware, hollow-ware, etc.; electrical batteries and appliances; gas and oil engines; Douglas fir and redwood; and motorcycles, automobiles and parts and tires therefor. All of these articles had a considerable sale in New Zealand during 1929, and met with almost negligible foreign competition. In 1932, imports of all had greatly diminished, although Empire imports had increased, foreign competition, however, still being at a minimum. Moreover, in every instance, the difference between the general tariff schedule and the British preferential is at least 30%, (25% plus 9/40ths), and frequently very much higher.

As has already been mentioned in previous reports, a Tariff Commission is now sitting in New Zealand for the purpose of bringing this Dominion's Customs duties more nearly into line with those proposed by the Ottawa Agreements. Hearings are being conducted in Wellington at present, and later on will be held in the other principal cities. All phases of the existing tariff are being exhaustively studied, and all interested persons are invited to present their views on revision. It is believed that an entirely new schedule of duties will be drawn up and recommended for adoption, but it is too early yet to forecast the tendency of this revision. In fact, a member of the Commission was asked recently in the course of a private conversation whether the new schedule would increase or lessen the margin of preference accorded to British goods, and he replied that he had no idea; that every article would be treated separately, and that the proposed rates would be in accordance with existing conditions of supply and demand.

In the hearings that have been held to date, arguments have been advanced for greater all-round protection, for a greater margin of British preference and for a general lessening of the duties, each person arguing from the point of view of his own advantage. Generally the arguments have been aligned either for free trade or an approximation thereof by the agricultural interests, or greater protection asked for by the manufacturers. It appears very unlikely that any progress will be made in the direction of decreased British preference. Although a few merchants realize the benefits that would accrue by removing some of the restrictions to trade with America, the bulk of the people are firmly convinced that the United Kingdom is their only market and that, in order to dispose of their exports, they must cater to Great Britain in the matter of imports. It is true that they have seen prices rise, of late, due to American participation in the wool and skin sales, but the true meaning of this participation is not generally realized as it has largely taken place in United Kingdom markets, although the products dealt in are of New Zealand origin. Whether Great Britain wants or expects more than the 20% preference established as a minimum at Ottawa is another matter. Importers from the United Kingdom are, of course, endeavoring to secure the maximum, but the British Trade Commissioner in New Zealand once remarked, in the course of a recent conversation, that 20% was all that his Government wanted and that any firm unable to compete with this advantage deserved to lose business.

Within recent weeks a new situation has developed which may be of very great importance in strengthening our position. As protection for its own farmers, England is urging with ever increasing insistence the adoption of a quota on the amount of New Zealand dairy products imported annually, a restriction which is being unanimously and energetically opposed throughout this Dominion. Under the Ottawa Agreements, of course, such a quota may not be imposed at present without the consent of the Dominion, but the Agreements, in that particular, have not much longer to run, and it looks very much as if some sort of restriction would be made effective at the earliest possible moment. Large stocks of butter and cheese in Great Britain are keeping prices well down at present, and New Zealand is, and has been for some time past, casting about anxiously for additional markets in which to dispose of its surplus output. Should a quota be imposed in England, the situation from the Dominion's point of view would be very greatly aggravated. Under these conditions American concessions opening the United States to New Zealand's dairy products, notably butter and cheese, would come as an enormous relief to the agricultural interests here and would undoubtedly call forth similar concessions to our principal items of export.

A certain amount of trade between the United States and New Zealand there will always be. But without tariff reductions this trade can never assume very large proportions, as can be shown by the following figures. In 1929 we shipped goods to this Dominion to the value of £9,319,926, and in 1930 to the value of £7,573,053. In 1931, however, the total value of all shipments had declined to £3,885,073, and in 1932 it had fallen off still further to £3,267,086. During these four years, economic conditions changed somewhat and prices fell, but not in proportion to the drop in the trade with us. Index numbers of export prices of pastoral and dairy products, the principal and almost sole items of export, fell from 1634 in 1929 to 1279 in 1930, 965 in 1931, and 870 in 1932. Thus the index numbers declined by 47.76%, but imports from the United States declined by 65%. Exports from New Zealand to the United States in 1929 were valued at £3,653,427. In 1930 they amounted to £2,116,752, and in 1931 and 1932 they were, respectively, £920,931 and £940,015, showing a decline over the whole period of 74.2%. There can be no question but what this great decline is responsible for the drop in our export trade, and, in turn, the responsibility for the decline must rest in large part with the Hawley-Smoot Tariff, which became effective in June, 1930. Any breaches that can be made in the wall which it has built around the United States will be correspondingly reciprocated in the New Zealand tariff, and are bound to show an immediate effect in the mutual trade between the two countries.

Respectfully yours,

CALVIN M. HITCH

611.47H31/35

*The Consul General at Wellington (Hitch) to the
Acting Secretary of State*

No. 343

WELLINGTON, July 28, 1933.

[Received August 6.]

SIR: I have the honor to refer to my despatches Numbers 318 and 332 of June 21 and July 14 respectively, on the subject of possible trade agreements to be entered into between the United States and New Zealand. In this connection it has been published in the local press that the Premier of New Zealand, the Honorable G. W. Forbes, is planning to stop in Washington for a few days on his return from the World Economic Conference in London for the purpose of discussing such agreements with you. I do not know, of course, what your policy is in this matter, but should like to take this opportunity to point out a few relevant facts supplementing those brought out in my despatches above referred to.

The present New Zealand tariff contains a general schedule applicable to all goods of non-British origin. A further schedule applies to imports

from the British Empire and, in addition, there are separate agreements entered into with Australia, Canada, and South Africa establishing different schedules for articles originating in those countries. In every instance the general tariff is considerably higher than the preferential tariff or the individual tariff agreements. The difference varies with individual items, but it may safely be stated that, on an average, the duties imposed by the general tariff are, roughly, 100% higher than those imposed by the British preferential tariff. In a very great many instances British goods are admitted free of duty whereas others must pay 25% ad valorem. In others, and this is very common, Empire goods are taxed 20% ad valorem, and those coming under the general tariff provisions must pay at the rate of 40% or 45%. Over and above these margins, however, all goods admitted under the general tariff are subject to a surcharge of 9/40ths of the assessed duty which has the effect of adding from 5.6% to 11% onto the duty as stipulated in the schedule. For example, electric heating and cooking appliances are dutiable at 20% under the preferential tariff. Under the general tariff, however, they must pay 45% ad valorem plus 9/40ths which amounts to an additional 10.1%, making the margin of preference accorded to British goods over 35%, or almost double the minimum of 20% stipulated by the Ottawa Agreements. It is felt that a great benefit would accrue to American exporters to New Zealand if this surcharge might be removed or, better yet, if the difference between the British preferential and the general tariff might be reduced to a uniform 20%.

It is not known how definitely New Zealand is committed to grant "most favored nation" treatment in her treaties. In view of the separate agreements into which it has entered with other self-governing Dominions within the British Empire, it is possible that an additional agreement might be entered into applicable only to the United States. Weight is given to this suggestion by the fact that in 1932, as in previous years, New Zealand imported from the United States goods of greater value than from any other country except the United Kingdom, exceeding even Australia and Canada. American goods imported were valued at £3,267,086, while our nearest non-British competitors were the Dutch East Indies with £793,622, almost entirely petroleum products, Germany £459,971, and Japan £434,636. Such a preponderance in the import trade of this Dominion would seem to justify special tariff concessions not accorded to other nations whose interest in the New Zealand market is so much slighter.

As regards reciprocal concessions on our part, the standard of living in New Zealand is such that there can be no question of lowering the bars to goods produced by cheap labor. The importation of, and competition by, such goods would effectively annul the advantages to be

derived from the industrial codes now being put into operation. There can be no danger of this, however, since labor in New Zealand is more effectively unionised and better paid than in almost any other country of the world. In every industry minimum wages are fixed by law, or rather by awards of compulsory arbitration courts, which also decide as to the weekly working hours. Examples of minimum weekly wages in effect as of March 31st, 1932, are as follows:

Butter factory employees, general hands	73s.	9d.
Meat freezing, general hands	82s.	6d.
Slaughtermen, per 100 sheep	36s.	0d.
General farm hands	45s.	5d.
Shearers, per 100 sheep, shorn	26s.	0d.
Dairy farm hands	43s.	5d.

The examples given above are taken from agricultural industries which are those most likely to compete with native American products. These, however, are the lowest paid groups, other wage scales being very considerably higher, as for example, coal miners, who receive 95s. 2d. per week, bricklayers at 94s., ordinary stevedores at 92s. 5d., etc. At present the New Zealand pound is stabilised at £5 New Zealand to £4 British. Prices, however, have risen very little since the stabilisation and for purposes of comparison conversion may safely be made at par, namely \$4.85. At this rate the least paid of the whole list, dairy farm hands, receive \$10.52 weekly, which compares very favorably with similar wages in the United States. The stigma of production by underpaid labor whose standards of living are exceedingly low cannot attach to New Zealand goods, and there need be no grounds for fear that the admission of the produce of this Dominion will undermine the standards set by the industrial codes now being established.

Respectfully yours,

CALVIN M. HITCH

611.47H31/36

Memorandum by the Acting Economic Adviser (Livesey)

[WASHINGTON,] August 15, 1933.

Mr. Masters ² called by appointment arranged by Mr. H. O. Chalkley, Commercial Counselor of the British Embassy, with the Secretary's office. He was accompanied by Mr. J. W. Collins, New Zealand Trade Commissioner, Toronto, Canada; Mr. W. J. Stevenson, Official Representative, Customs Department, Dominion of New Zealand, New York; and Dr. R. M. Campbell, Economic Adviser to the New Zealand Delegation to the Monetary and Economic Conference. The Americans present were Mr. Frederick Livesey, Acting Economic Adviser; Mr. John D. Hickerson, Acting Chief, Division of Western European Affairs; Dr.

² Robert Masters, New Zealand Minister of Industries and Commerce.

Wallace McClure, Assistant Chief of the Treaty Division; Mr. Paul T. Culbertson and Mr. John R. Minter of the Division of Western European Affairs.

Mr. Masters said he had called at the Department of Commerce in the morning on advice from the British Embassy that that Department would be charged with commercial negotiations but had been referred by the Department of Commerce to the Department of State, after an opportunity had been given for discussion with various commodity experts. He was interested in discussing the possibilities of a trade agreement with the United States. New Zealand was a producer of raw materials and its interest would be in the sale of such products in the United States. In return it would be glad to facilitate the sale of certain American products in New Zealand by favorable tariff terms. New Zealand does not have a high tariff for protective purposes as do, for example, Australia and Canada. Its tariffs are for revenue.

Asked regarding the tariff on automobiles, Mr. Masters said it was about 45% on American cars, being unusually high on this product.

Mr. Masters was told that the officials charged with such matters in the Washington Departments had made certain general studies of trade relations in preparation for reciprocity negotiations and were now making intensive studies in preparation for exploratory conversations which had been announced with five different countries. The New Zealand situation had not yet been intensively studied and could not immediately be so studied in view of current pressure of other studies. The United States would be keenly interested in obtaining a reciprocal trade agreement with New Zealand, would be glad to give intensive study to the subject as soon as possible, and in the meantime welcomed the opportunity for informal discussion with Mr. Masters.

Mr. Masters suggested that we run over the situation with regard to New Zealand products. In reply to a suggestion that it would be undesirable to have any public indication of discussion of particular commodities, Mr. Masters suggested the conversations should be strictly confidential on both sides. No publicity had been given to his visit to the Department and the New Zealand visitors did not expect to have any further contact with reporters in this country.

The first commodity taken up was wool. Mr. Masters stated that New Zealand wool valued at 12 cents is subject to thirty-four cents American duty. The United States is not self-sufficient in wool and New Zealand would be glad if the duty on its wool could be lowered to facilitate sale in the United States. In the discussion, the suggestion was made that as the United States expects to negotiate under the unconditional most-favored-nation clause and to generalize the negotiated rates to all countries which do not discriminate against American trade,

It would have to make a careful study of a commodity like wool which is of importance to the trade of several countries such as Australia, the Argentine and South Africa, as well as New Zealand, and carefully determine the most advantageous policy. The Americans present did not have the expert knowledge regarding wool to judge whether, for example, there were any special characteristics of New Zealand wool which would justify a tariff treatment different from that given to wools from other countries. Mr. Masters said that in that precise connection he and his assistants were proceeding to Boston August 17 to examine into the conditions in the American wool market. He was of the impression that New Zealand wool was of a distinctive grade not produced in the United States and therefore not directly competitive.

In reference to butter, Mr. Masters was told that apparently the United States is working into a position of self-sufficiency and over-production for the domestic market. American dairy farming was generally regarded as one of the relatively prosperous branches of agriculture but the newspapers were currently reporting rioting in New York State with farmers blockading roads and spilling milk on way to market, and similar troubles had been reported from other States. The Agricultural Adjustment Administration is considering codes for milk producers in the districts supplying the different metropolitan centers—Mr. Masters was shown some twenty mimeographed tentative codes of this sort. The details of this situation are naturally obscure to all except specialists but it did not seem to offer favorable prospects for tariff concessions. The New Zealanders developed considerable interest in this situation *per se*.

The question as to the possibilities of marketing New Zealand mutton in the United States was raised by a question on the American side. Mr. Masters expressed great confidence in the possibility of marketing New Zealand mutton, in view of its quality, were there not a prohibitive tariff.

The conversation having lasted an hour or more, Mr. Masters broke off the discussion of individual commodities and raised the question of the possibility of negotiations. New Zealand was eager to have a trade agreement—the mere knowledge of this fact might be of interest to the United States at the moment of tariff discussions with the Argentine. He was assured that the United States also desires a tariff agreement and will be glad to take the matter up when it is practical to do so. Mr. Masters inquired how the New Zealand Government would learn that the United States is ready to negotiate. Would it be necessary that all negotiations be conducted at Washington? How can the New Zealand Government keep in touch with the situation? He was assured that this Government will give the New Zealand Government timely information

and reference was made in this connection to the correspondence already exchanged between the New Zealand Government and the American Consul General at Wellington.

611.47H31/30

The Secretary of State to the Consul General at Wellington (Hitch)

WASHINGTON, September 7, 1933.

SIR: Reference is made to your despatch No. 318 of June 21, 1933, enclosing a copy of a letter from the Acting Prime Minister of New Zealand in which he states that his Government is anxious to enter into negotiations with the Government of the United States with a view to the conclusion of a trade agreement which will be to the mutual advantage of both countries.

For your strictly confidential information you are advised that when the Department's instruction of May 17, and telegram of May 26, 1933, were forwarded to you, the possibility existed that the President would request of Congress general authority for the negotiation of reciprocal trade agreements which would come into force without further action by the Congress, and it was expected that such enabling legislation would be enacted before adjournment of the special session.

In the absence of such legislation, the Department has instituted exploratory conversations with five countries³ with a view to determining the practicability of negotiating reciprocal trade agreements involving tariff reductions on the part of the United States which would be given effect by Congress subsequent to their conclusion. Until these conversations shall have been concluded and the practicability of this procedure shall have been ascertained, it is not considered advisable to institute further conversations of this character.

There is enclosed for your confidential information a memorandum of conversation on this subject⁴ held on August 15, 1933, between officers of the Department and the Honorable Robert Masters, Minister of Education and Minister of Industries and Commerce, Government of New Zealand, and certain officers of the New Zealand Government. As you will note, Mr. Masters was assured that the Government of the United States also wishes to conclude a reciprocal trade agreement with the New Zealand Government and will gladly take the matter up if and when it is practicable to do so.

Very truly yours,

For the Secretary of State:

JEFFERSON CAFFERY

³ For correspondence concerning the discussions with Portugal and Sweden, see *post*, pp. 640 ff. and pp. 719 ff.; for similar correspondence with Argentina, see vol. iv, pp. 642 ff.; with Brazil and Colombia, see vol. v, pp. 13 ff. and pp. 217 ff.

⁴ *Supra*.

UNION OF SOUTH AFRICA

ARRANGEMENT BETWEEN THE UNITED STATES AND THE UNION OF SOUTH AFRICA FOR AIR NAVIGATION, EFFECTED BY EXCHANGE OF NOTES SIGNED MARCH 17, 1933, AND SEPTEMBER 20, 1933

Executive Agreement Series No. 54

The American Minister in the Union of South Africa (Totten) to the Minister of External Affairs of the Union of South Africa (Hertzog)

No. 166

PRETORIA, March 17, 1933.

SIR: I have the honor to communicate the text of the arrangement between the United States of America and the Union of South Africa providing for navigation by aircraft of each country in the territory of the other, as understood by me to have been agreed to in the negotiations which have just been concluded between the Legation and your Ministry, as evidenced by your note of March 13, 1933¹ (File No. P.M. 66/1/1).

AIR NAVIGATION ARRANGEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOUTH AFRICA

ARTICLE 1

Pending the conclusion of a convention between the United States of America and the Union of South Africa on the subject of air navigation, the operation of civil aircraft of the one country in the other country shall be governed by the following provisions.

ARTICLE 2

The present arrangement shall apply to Continental United States of America, exclusive of Alaska, and to the Union of South Africa, including the adjacent territorial waters of the two countries.

ARTICLE 3

The term aircraft with reference to one or the other Party to this arrangement shall be understood to mean civil aircraft, including state aircraft used exclusively for commercial purposes, duly registered in the territory of such Party.

ARTICLE 4

Each of the Parties undertakes to grant liberty of passage above its territory in time of peace to the aircraft of the other Party, provided that the conditions set forth in the present arrangement are observed.

It is, however, agreed that the establishment and operation of regular air routes by an air transport company of one of the Parties within the

¹ Not printed.

territory of the other Party or across the said territory, with or without intermediary landing, shall be subject to the prior consent of the other Party given on the principle of reciprocity and at the request of the party whose nationality the air transport company possesses.

The parties to this arrangement agree that the period in which pilots may, while holding valid pilot licenses issued or rendered valid by either country, operate registered aircraft of that country in the other country for non-industrial or non-commercial purposes shall be limited to a period not exceeding six months from the time of entry for the purpose of operating aircraft, unless prior to the expiration of this period the pilots obtain from the Government of the country in which they are operating, pilot licenses authorizing them to operate aircraft for non-industrial or non-commercial purposes.

ARTICLE 5

The aircraft of each of the Parties to this arrangement, their crews and passengers, shall, while within the territory of the other Party, be subject to the general legislation in force in that territory, as well as the regulations in force therein relating to air traffic in general, to the transport of passengers and goods and to public safety and order in so far as these regulations apply to all foreign aircraft, their crews and passengers.

Each of the Parties to this arrangement shall permit the import or export of all merchandise which may be legally imported or exported and also the carriage of passengers, subject to any customs immigration and quarantine restrictions, into or from their respective territories in the aircraft of the other party, and such aircraft, their passengers and cargoes, shall enjoy the same privileges as and shall not be subjected to any other or higher duties or charges than those which the aircraft of the country, imposing such duties or charges, engaged in international commerce, and their cargoes and passengers, or the aircraft of any foreign country likewise engaged, and their cargoes and passengers, enjoy or are subjected to.

Each of the Parties to this arrangement may reserve to its own aircraft air commerce between any two points neither of which is in a foreign country. Nevertheless the aircraft of either Party may proceed from any aerodrome in the territory of the other Party which they are entitled to use to any other such aerodrome either for the purpose of landing the whole or part of their cargoes or passengers or of taking on board the whole or part of their cargoes or passengers, provided that such cargoes are covered by through bills of lading, and such passengers hold through tickets, issued respectively for a journey whose starting place and destination both are not points between which air commerce has been duly so reserved, and such aircraft, while proceeding as aforesaid, from one aerodrome to another, shall, notwithstanding that such aerodromes are points between which air commerce has been duly reserved, enjoy all the privileges of this arrangement.

ARTICLE 6

Each of the Parties to this arrangement shall have the right to prohibit air traffic over certain areas of its territory, provided that no

distinction in this matter is made between its aircraft engaged in international commerce and the aircraft of the other Party likewise engaged. The areas above which air traffic is thus prohibited by either Party must be notified to the other Party.

Each of the Parties reserves the right under exceptional circumstances in time of peace and with immediate effect temporarily to limit or prohibit air traffic above its territory on condition that in this respect no distinction is made between the aircraft of the other Party and the aircraft of any foreign country.

ARTICLE 7

Any aircraft which finds itself over a prohibited area shall, as soon as it is aware of the fact, give the signal of distress prescribed in the Rules of the Air in force in the territory flown over and shall land as soon as possible at an aerodrome situated in such territory outside of but as near as possible to such prohibited area.

ARTICLE 8

All aircraft shall carry clear and visible nationality and registration marks whereby they may be recognized during flight. In addition, they must bear the name and address of the owner.

All aircraft shall be provided with certificates of registration and of airworthiness and with all the other documents prescribed for air traffic in the territory in which they are registered.

The members of the crew who perform, in an aircraft, duties for which a special permit is required in the territory in which such aircraft is registered, shall be provided with all documents and in particular with the certificates and licenses prescribed by the regulations in force in such territory.

The other members of the crew shall carry documents showing their duties in the aircraft, their profession, identity and nationality.

The certificate of airworthiness, certificates of competency and licenses issued or rendered valid by one of the Parties to this arrangement in respect of an aircraft registered in its territory or of the crew of such aircraft shall have the same validity in the territory of the other Party as the corresponding documents issued or rendered valid by the latter.

Each of the Parties reserves the right for the purpose of flight within its own territory to refuse to recognize certificates of competency and licenses issued to nationals of that Party by the other Party.

ARTICLE 9

Aircraft of either of the Parties to this arrangement may carry wireless apparatus in the territory of the other Party only if a license to install and work such apparatus shall have been issued by the competent authorities of the Party in whose territory the aircraft is registered. The use of such apparatus shall be in accordance with the regulations on the subject issued by the competent authorities of the territory within whose air space the aircraft is navigating.

Such apparatus shall be used only by such members of the crew as are provided with a special license for the purpose issued by the Government of the territory in which the aircraft is registered.

The Parties to this arrangement reserve respectively the right, for reasons of safety, to issue regulations relative to the obligatory equipment of aircraft with wireless apparatus.

ARTICLE 10

No arms of war, explosives of war, or munitions of war shall be carried by aircraft of either Party above the territory of the other Party or by the crew or passengers, except by permission of the competent authorities of the territory within whose air space the aircraft is navigating.

ARTICLE 11

Upon the departure or landing of any aircraft each Party may within its own territory and through its competent authorities search the aircraft of the other Party and examine the certificates and other documents prescribed.

ARTICLE 12

Aerodromes open to public air traffic in the territory of one of the Parties to this arrangement shall in so far as they are under the control of the Party in whose territory they are situated be open to all aircraft of the other Party, which shall also be entitled to the assistance of the meteorological services, the wireless services, the lighting services and the day and night signalling services, in so far as the several classes of services are under the control of the Party in whose territory they respectively are rendered. Any scale of charges made, namely, landing, accommodation or other charge, with respect to the aircraft of each Party in the territory of the other Party, shall in so far as such charges are under the control of the Party in whose territory they are made be the same for the aircraft of both Parties.

ARTICLE 13

All aircraft entering or leaving the territory of either of the Parties to this arrangement shall land at or depart from an aerodrome open to public air traffic and classed as a customs aerodrome at which facilities exist for enforcement of immigration regulations and clearance of aircraft, and no intermediary landing shall be effected between the frontier and the aerodrome. In special cases the competent authorities may allow aircraft to land at or depart from other aerodromes, at which customs, immigration and clearance facilities have been arranged. The prohibition of any intermediary landing applies also in such cases.

In the event of a forced landing outside the aerodromes, referred to in the first paragraph of this article, the pilot of the aircraft, its crew and the passengers shall conform to the customs and immigration regulations in force in the territory in which the landing has been made.

Aircraft of each Party to this arrangement are accorded the right to enter the territory of the other Party subject to compliance with quarantine regulations in force therein.

The Parties to this arrangement shall exchange lists of the aerodromes in their territories designated by them as ports of entry and departure.

ARTICLE 14

Each of the Parties to this arrangement reserves the right to require that all aircraft crossing the frontiers of its territory shall do so between certain points. Subject to the notification of any such requirements by one Party to the other Party, and to the right to prohibit air traffic over certain areas as stipulated in Article 6, the frontiers of the territories of the Parties to this arrangement may be crossed at any point.

ARTICLE 15

As ballast, only fine sand or water may be dropped from an aircraft.

ARTICLE 16

No article or substance, other than ballast, may be unloaded or otherwise discharged in the course of flight unless special permission for such purpose shall have been given by the authorities of the territory in which such unloading or discharge takes place.

ARTICLE 17

Whenever questions of nationality arise in carrying out the present arrangement, it is agreed that every aircraft shall be deemed to possess the nationality of the Party in whose territory it is duly registered.

ARTICLE 18

The Parties to this arrangement shall communicate to each other the regulations relative to air traffic in force in their respective territories.

ARTICLE 19

The present arrangement shall be subject to termination by either Party upon sixty days notice given to the other Party or by the enactment by either Party of legislation inconsistent therewith.

If you inform me that it is the understanding of your Government that the arrangement agreed upon is as herein set forth, the arrangement will be considered to be operative from the date of the receipt of your note so advising me.

I have [etc.]

RALPH J. TOTTEN

Executive Agreement Series No. 54

*The Minister of External Affairs of the Union of South Africa (Hertzog)
to the American Minister in the Union of South Africa (Totten)*

PRETORIA, 20 September, 1933.

SIR: I have the honour to refer to your letter No. 166 of the 17th March last regarding the arrangement between the Union of South Africa and the United States of America providing for navigation by aircraft of each country in the territory of the other and to inform you

that His Majesty's Government in the Union of South Africa are in accord with the terms of the arrangement which is, word for word as follows:—

[Here follows text of the arrangement as given in note No. 166, March 17, printed *supra*.]

It is further agreed that the arrangement will be operative as from the date of this note.

I have [etc.]

J. B. M. HERTZOG

ARRANGEMENT BETWEEN THE UNITED STATES AND THE UNION OF SOUTH AFRICA FOR PILOT LICENSES TO OPERATE CIVIL AIRCRAFT, EFFECTED BY EXCHANGE OF NOTES SIGNED MARCH 17, 1933, AND SEPTEMBER 20, 1933

Executive Agreement Series No. 55

The American Minister in the Union of South Africa (Totten) to the Minister of External Affairs of the Union of South Africa (Hertzog)

No. 167

PRETORIA, March 17, 1933.

SIR: I have the honor to communicate the text of the arrangement between the United States of America and the Union of South Africa providing for the issuance by each country of licenses to nationals of the other country authorizing them to pilot civil aircraft, as understood by me to have been agreed to in the negotiations which have just been concluded between the Legation and your Ministry, as evidenced by your note of March 13, 1933² (File No. P.M. 66/1/1).

ARRANGEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOUTH AFRICA PROVIDING FOR THE ISSUANCE BY EACH COUNTRY OF LICENSES TO NATIONALS OF THE OTHER COUNTRY AUTHORIZING THEM TO PILOT CIVIL AIRCRAFT

ARTICLE 1

The present arrangement between the United States of America and the Union of South Africa relates to the issuance by each country of licenses to nationals of the other country for the piloting of civil aircraft. The term "civil aircraft" shall be understood to mean aircraft used for private, industrial, commercial or transport purposes.

ARTICLE 2

(a) The Department of Defence of the Union of South Africa will issue pilots' licenses to American nationals upon a showing that they are qualified under the regulations of that Department covering the licensing of pilots.

² Not printed.

(b) The Department of Commerce of the United States of America will issue pilots' licenses to nationals of the Union of South Africa upon a showing that they are qualified under the regulations of that Department covering the licensing of pilots.

ARTICLE 3

(a) Pilots' licenses issued by the Department of Commerce of the United States of America to nationals of the Union of South Africa shall entitle them to the same privileges as are granted by pilots' licenses issued to American nationals.

(b) Pilots' licenses issued by the Department of Defence of the Union of South Africa to American nationals shall entitle them to the same privileges as are granted by pilots' licenses issued to nationals of the Union of South Africa.

ARTICLE 4

Pilots' licenses issued to nationals of the one country by the competent authority of the other country shall not be construed to accord to the licensees the right to register aircraft in such other country.

ARTICLE 5

Pilots' licenses issued to nationals of the one country by the competent authority of the other country shall not be construed to accord to the licensees the right to operate aircraft in air commerce wholly within territory of such other country reserved to national aircraft, unless the aircraft have been registered under the laws of the country issuing the pilots' licenses.

ARTICLE 6

(a) Nationals of the Union of South Africa shall while holding valid pilot licenses issued by the Department of Defence of the Union of South Africa be permitted to operate in Continental United States of America, exclusive of Alaska, for non-industrial or non-commercial purposes for a period not exceeding six months from the time of entering that country, any civil aircraft registered by the Department of Defence of the Union of South Africa, and/or any civil aircraft registered by the United States Department of Commerce. The period of validity of the licenses first mentioned in this paragraph shall, for the purpose of this paragraph, include any renewal of the license by the pilot's own Government made after the pilot has entered Continental United States of America. No person to whom this paragraph applies shall be allowed to operate civil aircraft in Continental United States of America, exclusive of Alaska, for non-industrial or non-commercial purposes for a period of more than six months from the time of entering that country, unless he shall, prior to the expiration of such period, have obtained a pilot license from the United States Department of Commerce in the manner provided for in this arrangement.

(b) American nationals shall while holding valid pilot licenses issued by the United States Department of Commerce be permitted to operate in the Union of South Africa for non-industrial or non-commercial purposes for a period not exceeding six months from the time of entering that country, any civil aircraft registered by the United States Department of Commerce, and/or any civil aircraft registered by the Department of Defence of the Union of South Africa. The period of validity of the licenses first mentioned in this paragraph shall, for the purpose of this paragraph, include any renewal of the license by the pilot's own Government made after the pilot has entered the Union of South Africa. No person to whom this paragraph applies shall be allowed to operate civil aircraft in the Union of South Africa for non-industrial or non-commercial purposes for a period of more than six months from the time of entering that country, unless he shall, prior to the expiration of such period, have obtained a pilot's license from the Department of Defence of the Union of South Africa in the manner provided for in this arrangement.

(c) The conditions under which pilots of the nationality of either country may operate aircraft of their country in the other country, as provided for in this article, shall be as stipulated in the air navigation arrangement in force between the parties to this arrangement for the issuance of pilot licenses; and the conditions under which pilots of the nationality of either country may operate aircraft of the other country, as provided for in this article, shall be in accordance with the requirements of such other country.

ARTICLE 7

The present arrangement shall be subject to termination by either Party upon sixty days' notice given to the other Party or by the enactment by either Party of legislation inconsistent therewith.

If you inform me that it is the understanding of your Government that the arrangement agreed upon is as herein set forth, the arrangement will be considered to be operative from the date of the receipt of your note so advising me.

I have [etc.]

RALPH J. TOTTEN

Executive Agreement Series No. 55

*The Minister of External Affairs of the Union of South Africa (Hertzog)
to the American Minister in the Union of South Africa (Totten)*

PRETORIA, 20 September, 1933.

SIR: I have the honour to refer to your letter No. 167 of the 17th March last regarding the proposed arrangement between the Union of South Africa and the United States of America providing for the issuance by each country of licences to Nationals of the other country authorizing

them to pilot civil aircraft, and to inform you that His Majesty's Government in the Union of South Africa are in accord with the terms of the arrangement which is, word for word as follows:—

[Here follows text of the arrangement as given in note No. 167, March 17, printed *supra*.]

It is further agreed that the arrangement will be operative as from the date of this note.

I have [etc.]

J. B. M. HERTZOG

EUROPE

ALBANIA

EXTRADITION TREATY BETWEEN THE UNITED STATES AND ALBANIA, SIGNED MARCH 1, 1933

Treaty Series No. 902

*Extradition Treaty Between the United States of America and Albania, Signed at Tirana, March 1, 1933*¹

The United States of America and Albania, desiring to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the two countries and have appointed for that purpose the following Plenipotentiaries:

The President of the United States of America: Herman Bernstein, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Albania;

His Majesty the King of the Albanians: His Excellency M. Djafer Vila, Minister for Foreign Affairs;

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

It is agreed that the Government of the United States and the Government of Albania shall, upon requisition duly made as herein provided, deliver up to justice any person who may be charged with, or may have been convicted of, any of the crimes or offenses specified in Article II of the present Treaty committed within the jurisdiction of one of the High Contracting Parties, and who shall seek an asylum or shall be found within the territories of the other; provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed.

¹ In English and Albanian; Albanian text not printed. Ratification advised by the Senate, February 2 (legislative day of January 23), 1934; ratified by the President, February 21, 1934; ratifications exchanged at Washington, November 14, 1935; proclaimed by the President, November 19, 1935.

ARTICLE II

Persons shall be delivered up according to the provisions of the present Treaty, who shall have been charged with or convicted of any of the following crimes or offenses:

1. Murder, (including crimes designated by the terms parricide, poisoning, and infanticide); manslaughter, when voluntary.
2. Malicious wounding or inflicting grievous bodily harm with premeditation.
3. Rape, abortion, carnal knowledge of children under the age of 15 years.
4. Abduction or detention of women or girls for immoral purposes.
5. Bigamy.
6. Arson.
7. Willful and unlawful destruction or obstruction of railroads, which endangers human life.
8. Crimes committed at sea:
 - (a) Piracy, as commonly known and defined by the law of nations, or by statutes;
 - (b) Wrongfully sinking or destroying a vessel at sea or attempting to do so;
 - (c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the Captain or Commander of such vessel, or by fraud or violence taking possession of such vessel;
 - (d) Assault on board ship upon the high seas with intent to do bodily harm.
9. Burglary; house-breaking.
10. The act of breaking into and entering the offices of the Government or public authorities, or other buildings not dwellings with intent to commit a felony therein.
11. Robbery.
12. Forgery or the utterance of forged papers.
13. The forgery or falsification of the official acts of the Government or public authorities, including Courts of Justice, or the uttering or fraudulent use of any of the same.
14. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by National, State, Provincial, Territorial, Local or Municipal Governments, bank notes or other instruments of public credit, counterfeit seals, stamps, dies and marks of State or public administrations, and the utterance, circulation or fraudulent use of the above mentioned objects.
15. Embezzlement.
16. Kidnapping of minors or adults, defined to be the abduction or

detention of a person or persons, in order to exact money from them, their families or any other person or persons, or for any other unlawful end.

17. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more, or Albanian equivalent.

18. Obtaining money, valuable securities or other property by false pretenses, or receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds two hundred dollars, or Albanian equivalent.

19. Perjury.

20. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, executor, administrator, guardian, director or officer of any company or corporation, or by any one in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds two hundred dollars, or Albanian equivalent.

21. Crimes and offenses against the laws of both countries for the suppression of slavery and slave trading.

22. Wilful desertion or wilful non-support of minor or dependent children, or of other dependent persons, provided that the crime or offense is punishable by the laws of both countries.

23. Bribery.

24. Crimes or offenses against the bankruptcy laws.

25. Crimes or offenses against the laws for the suppression of traffic in narcotics.

26. Extradition shall also take place for participation in any of the crimes or offenses before mentioned as an accessory before or after the fact, or in any attempt to commit any of the aforesaid crimes or offenses.

ARTICLE III

The provisions of the present Treaty shall not import a claim of extradition for any crime or offense of a political character, nor for acts connected with such crimes or offenses; and no person surrendered by or to either of the High Contracting Parties in virtue of this Treaty shall be tried or punished for a political crime or offense committed before his extradition. The State applied to, or courts of such State, shall decide whether the crime or offense is of a political character. When the offense charged comprises the act either of murder or assassination or of poisoning, either consummated or attempted, the fact that the offense was committed or attempted against the life of the Sovereign or Head of the State of one of the High Contracting Parties, or against the

Sovereign or Head of a foreign State, or against the life of any member of his family, shall not be deemed sufficient to sustain that such crime or offense was of a political character, or was an act connected with crimes or offenses of a political character.

ARTICLE IV

No person shall be tried for any crime or offense, committed prior to his extradition, other than that for which he was surrendered, unless he has been at liberty for one month after having been tried, to leave the country, or, in case of conviction, for one month after having suffered his punishment or having been pardoned.

ARTICLE V

A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of the demanding country, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked.

ARTICLE VI

If a fugitive criminal whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offense committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined, and until he shall have been set at liberty in due course of law.

ARTICLE VII

If a fugitive criminal claimed by one of the two parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes or offenses committed within their jurisdiction, such criminal shall be delivered to that State whose demand is first received unless the demand is waived.

This article shall not affect such treaties as have previously been concluded by one of the contracting parties with other States.

ARTICLE VIII

Under the stipulations of this Treaty, neither of the High Contracting Parties shall be bound to deliver up its own citizens, except in cases where such citizenship has been obtained after the perpetration of the crime for which extradition is sought. The State appealed to shall decide whether the person claimed is its own citizen.

ARTICLE IX

The expense of transportation of the fugitive shall be borne by the government which has preferred the demand for extradition. The appropriate legal officers of the country where the proceedings of extradition are had, shall assist the officers of the government demanding the extradition before the respective judges and magistrates, by every legal means within their power; and no claim other than for the board and lodging of a fugitive prior to his surrender, arising out of the arrest, detention, examination and surrender of fugitives under this treaty, shall be made against the government demanding the extradition; provided, however, that any officer or officers of the surrendering government giving assistance, who shall, in the usual course of their duty receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the government demanding the extradition the customary fees for the acts or services performed by them in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE X

Everything found in the possession of the fugitive criminal at the time of his arrest, whether being the proceeds of the crime or offense, or which may be material as evidence in making proof of the crime, shall so far as practicable, according to the laws of either of the High Contracting Parties, be delivered up with his person at the time of surrender. Nevertheless, the rights of a third party with regard to the articles referred to, shall be duly respected.

ARTICLE XI

The stipulations of the present Treaty shall be applicable to all territory wherever situated, belonging to either of the High Contracting Parties or in the occupancy and under the control of either of them, during such occupancy or control.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the High Contracting Parties. In the event of the absence of such agents from the country or where extradition is sought from territory included in the preceding paragraphs, other than the United States or Albania, requisitions may be made by superior consular officers.

The arrest of the fugitive shall be brought about in accordance with the laws of the respective countries, and if, after an examination, it shall be decided, according to the law and the evidence, that extradition is

due pursuant to this treaty, the fugitive shall be surrendered in conformity to the forms of law prescribed in such cases.

The person provisionally arrested, shall be released, unless within two months from the date of arrest in Albania, or from the date of commitment in the United States, the formal requisition for surrender with the documentary proofs hereinafter prescribed be made as aforesaid by the diplomatic agent of the demanding Government, or, in his absence, by a consular officer thereof.

If the fugitive criminal shall have been convicted of the crime or offense for which his surrender is asked, a copy of the sentence of the court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed shall be produced, together with the evidence of criminality mentioned in Article I hereof.

ARTICLE XII

The present Treaty, of which the English and Albanian texts are equally authentic, shall be ratified by the High Contracting Parties in accordance with their respective constitutional methods, and shall take effect on the date of the exchange of ratifications which shall take place at Washington as soon as possible.

ARTICLE XIII

The present Treaty shall remain in force for a period of five years, and in case neither of the High Contracting Parties shall have given notice one year before the expiration of that period of its intention to terminate the Treaty, it shall continue in force until the expiration of one year from the date on which such notice of termination shall be given by either of the High Contracting Parties.

In witness whereof the above named Plenipotentiaries have signed the present Treaty and have hereunto affixed their seals.

Done in duplicate at Tirana this first day of March, nineteen hundred and thirty-three.

HERMAN BERNSTEIN

[SEAL]

DJAFER VILA

[SEAL]

CZECHOSLOVAKIA

DISCUSSION OF THE APPLICATION OF THE QUOTA SYSTEM TO AMERICAN MOTION PICTURE FILMS IN CZECHOSLOVAKIA

660F.116/48 : Telegram

The Secretary of State to the Chargé in Czechoslovakia (Tuck)

WASHINGTON, February 25, 1933—1 p.m.

5. Legation's despatch No. 831, September 25, 1932.¹ The Department is in receipt of a letter from Motion Picture Producers and Distributors of America, Incorporated, reading in part as follows:

"You will recall that for almost a year our offices have ceased taking contracts in Czechoslovakia, thinking that by this action we could break down the quota law in that country against foreign motion pictures. Unfortunately, in spite of the splendid help and cooperation from the Legation we have not been able to change the Government's idea on this matter.

The different foreign managers are returning from their annual trips to Europe where they have gone into this matter pretty thoroughly, and they feel that they cannot afford to allow the money from that territory to slip through their hands any longer. The loss of last year's business meant well over \$100,000 to them. Due to the terrific pressure from their financial departments in their home offices they feel that if they cannot strike a compromise by the middle of March, that we will have to give in.

In the meantime, of course, we are saying nothing about this supposed action of going back into the territory on March 15th under these new laws because, needless to say, there would be no compromise by the Czechoslovakian Government if they thought we had this in the back of our minds."

We hope that the action contemplated by the Motion Picture Producers can be avoided. Should they be forced to give way on this point, their position would be weakened not only in Czechoslovakia but presumably in other countries as well.

Telegraph report of recent developments together with suggestions as to any action which you believe might be taken with a view to protecting the interests of the Motion Picture Producers.²

STIMSON

¹ Not printed.

² In telegram No. 6, March 7, 4 p.m., the Chargé in Czechoslovakia reported: "No immediate action possible here." (660F.116/50)

660F.116/63

The Czechoslovak Minister (Veverka) to the Secretary of State

WASHINGTON, May 11, 1933.

EXCELLENCY: I have been instructed by my government to present to Your Excellency the following information concerning the importation of American films into Czechoslovakia with regard to special importation permit regulations.

Films, in the opinion of my government, cannot be regarded as ordinary merchandise because of their cultural value, and therefore, all governments give them special consideration. Czechoslovakia was the last of all the film-producing countries of Europe to impose special regulations on the importation of films. This, however, became necessary with the development of sound and talking pictures because political questions were involved. In the interests of development of the national production of sound and talking films, there is a clause in the importation permit regulations which states that any producer in the Czechoslovak studios of one feature film in the Czech language has the right to preferential treatment as regards the importation of foreign films, that is, any such producer is allowed to import five foreign sound films. The producer who does not take advantage of this favor, could, with the approval of the Ministry of Commerce, transfer it to another importer.

The price for preferential treatment is established at 20,000 Cz. Cr. for one feature. In practice, the Czechoslovak Ministry of Commerce complies with the requests of the importers of American films and therefore all demands for preferential treatment for the importation of American films are granted.

The American film industry represented by its most important organization, was from the beginning against these regulations on the grounds that the American exporters were not able to support this charge. In this connection, I should like to mention that the Czechoslovak importation practice is one of the most lenient of all European film-producing countries. Further, all other film-importing countries such as France, Great Britain, Italy, are obliged to pay this charge, and finally the home distributing companies so far as they can import American films are also obliged to pay for the monopoly rights while the American branches do not pay for these rights to the central office. So far as I am informed, the American branch offices have at their disposal many films which earn for them on the Czechoslovak market approximately 800,000 Cz. Cr. and therefore, the charge of 20,000 Cz. Cr. amounts to only 2½% of the mentioned income. American films have always been held in a very high esteem in Czechoslovakia and the Czechoslovak authorities as well as the Czechoslovak public, heartily wish the most

friendly relations with the American film industry. These relations were somewhat marred through the middlemen between the American film industry and the Czechoslovak public. I should like to point out, for instance, that the director of the branch office of Metro-Goldwyn in Prague is a foreigner who does not know Czech and also the majority of the directors of other branches in Prague are of German origin. These agents never show proper understanding for the national needs of the Czechoslovak Republic. It was only on the recommendation of the Prague and Berlin agents of American film companies that the Czechoslovak market was boycotted by the Hays³ organization. The Czechoslovak Government wishes that the interested countries might work together in the film branch offices and find some decision which would serve the needs of both if the interests of the Czechoslovak film industry and of the American film importers would be economically bound together.

The largest Czechoslovak film branches, such as the A-B Co., Ltd., in Prague, Elekta Film Co., together with the Slavia Film and Moldavia Film, Lloyd Film, and other firms, show readiness to buy American films and to take care of obtaining preferential treatment for importation of foreign films. This organization of the trade relations would be of value to both countries. I believe that under these conditions, it would be possible to assure to the American film industry its position on the Czechoslovak market which it formerly held.

From the commercial point of view, the American firms could get payments for the license rights immediately by importation of the goods instead of after the showing of the film which is the present arrangement. The protection of the market origin of American films would be assured by agreement.

I would greatly appreciate it if Your Excellency would kindly take this matter into consideration with a view to the favorable conclusion of the negotiations already begun between the respective interested Czechoslovak and American industries.

Accept [etc.]

FERDINAND VEVERKA

660F.116/63

The Secretary of State to the Czechoslovak Minister (Veverka)

WASHINGTON, May 23, 1933.

SIR: I am in receipt of your note of May 11, 1933, in regard to the restrictions which your Government has placed upon the importation of motion picture films into Czechoslovakia. Although this question has been and continues to be under active consideration and discussion by

³ Will H. Hays, President, Motion Picture Producers and Distributors of America.

the appropriate interests and authorities at Prague, I am glad to give you my views on the points raised in your note.

This Government cannot concur in the suggestion that motion pictures should be placed in a category distinct and separate from other commodities of international trade. It would appear that restrictions deemed advisable on the basis of cultural considerations could be satisfactorily effected by equitable censorship regulations.

The restrictions which your Government has adopted in regard to motion pictures go far beyond what would appear to be necessary from the standpoint of cultural protection. These restrictions and regulations form a system which if applied to all or even a considerable number of the commodities of international trade would quickly stifle all such trade. These regulations and restrictions moreover appear to constitute an attempt to force importing interests to subsidize the domestic motion picture industry. I cannot conceive how international trade could continue to be carried on under such a system. A feature of the system which would appear to be particularly indefensible is that the control of the importation of motion picture films is not vested in impartial Governmental authorities, but is placed in the hands of domestic producers who are under but slight obligation to regulate with impartiality the sale of import licenses.

This Government is no less anxious than your Government that the negotiations being carried on at Prague in this connection be brought to a successful conclusion. I am not, however, in a position to urge upon the American motion picture industry the desirability of re-entering the Czechoslovak market as long as the existing restrictions remain in force.

Accept [etc.]

CORDELL HULL

660F.116/65

*Memorandum by Mr. Joseph C. Green of the Division of Western European Affairs*⁴

[WASHINGTON,] May 24, 1933.

Mr. Kabelac called at the Department this afternoon to bring with him the Department's note of May 23, 1933, in regard to Czechoslovak discrimination against American motion pictures.

Mr. Kabelac began by emphasizing the importance of motion pictures as an organ of propaganda, stating that motion pictures in the German language were used in Czechoslovakia as a means of propaganda directed against the cultural and political interests of the country. He

⁴Of a conversation between Messrs. Green and Culbertson, of the Division of Western European Affairs, and Mr. Kabelac, First Secretary of the Czechoslovak Legation.

stated that the restrictions on the importation of films into Czechoslovakia were made with a view to controlling this propaganda.

Mr. Green replied that we recognized the importance of the motion picture as a means of propaganda, but that we could not see why in the present case a quota system was applicable to a situation which could apparently be met by censorship or, if necessary, by a prohibition of the importation of German language films. This Government would have no objection to such measures as these.

Mr. Kabelac said that the chief difficulty between the American motion picture producers and the Czechoslovak authorities arose from the fact that the Prague agents of American companies were in many cases Germans who because of their participation in propaganda directed against Czechoslovak cultural and political interests were not *personae gratae* to the Czechoslovak Government. The presence of these agents was retarding the progress of the negotiations in Prague.

Mr. Culbertson replied that if this were the case the facts should be brought to the attention of the American motion picture producers who would probably be glad to change their agents if, by this action, they could arrive at an agreement with the Czechoslovak authorities which would protect their interests.

Mr. Green said that the use of the German language and the character of the agents in Prague were subsidiary questions, that the main question was the existence of a quota system administered to a large extent by the Czechoslovak motion picture producers, and that the system so administered was unfair to American interests and would never be acceptable to this Government.

We made it clear that we had no desire to shift the locus of the negotiation from Prague to Washington.

Mr. Culbertson ascertained by telephone from the Department of Commerce that Colonel Herron⁵ would be in town tomorrow and he told Mr. Kabelac that he would arrange to put them in touch with each other.

JOSEPH C. GREEN

660F.116/64 : Telegram

The Chargé in Czechoslovakia (Benton) to the Acting Secretary of State

PRAGUE, May 31, 1933—10 a.m.

[Received May 31—7:49 a.m.]

12. Referring to Department's telegram No. 8, March 13, 5 p.m., and my despatch No. 993 of May 23rd.⁶ Negotiations between Canty⁷ and

⁵ Frederick L. Herron, Foreign Manager, Motion Picture Producers and Distributors of America, Inc., New York.

⁶ Neither printed.

⁷ Commercial Attaché and Trade Commissioner in Czechoslovakia.

Czechoslovak authorities in progress last few days for regulation film situation have broken down since latter are unwilling to make any concessions whatsoever. Canty is recommending that American companies remain out of this market for another year. In this I concur since further representations diplomatic or otherwise would seem useless at this time. Please see Canty's telegram No. 32 to Commerce. Reporting fully by mail.

BENTON

FINLAND

PROPOSED MILITARY SERVICE CONVENTION BETWEEN THE UNITED STATES AND FINLAND

711.60D4/20

The Secretary of State to the Minister in Finland (Brodie)

No. 95

WASHINGTON, August 2, 1932.

SIR: The Department acknowledges the receipt of your despatches of April 5, 6 and 27, 1932,¹ relating to the negotiations of a treaty of naturalization and military service between the United States and Finland. It is noted in your despatch of April 6, 1932, that the first two paragraphs of Article I of the draft treaty² as submitted by the Legation on January 4, 1929, are not acceptable to the Finnish Government.

For your information in connection with further discussions of the matter with the Finnish Government, there is herewith enclosed a draft treaty relating to military service and other acts of allegiance which the Department would be prepared to conclude if the Finnish Government definitely refuses to accept the provisions of Article I of the original draft.

With reference to the suggestion made in your despatch of April 27, 1932 that full powers be issued, you are informed that it is customary for the Department to issue full powers for the signature of a treaty only after the terms have been agreed upon.

Very truly yours,

For the Secretary of State:
JAMES GRAFTON ROGERS

[Enclosure]

[*Convention Between the United States of America and Finland
Relating to Military Service and Other Acts of Allegiance*]*

The President of the United States of America and the President of the Republic of Finland, being desirous of regulating the liability for military service and other acts of allegiance of persons who are nationals

¹ None printed.

² See "Draft Treaty of Naturalization between the United States and Estonia" and footnote 60, *Foreign Relations*, 1928, vol. I, p. 503.

* This title is for purposes of reference during the negotiations and is not to appear in the final draft. [Footnote in the original; brackets around the title also appear in the original.]

of both countries, under their respective laws, have decided to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States of America:
and the President of the Republic of Finland:

Who, having communicated to each other their full powers found to be in good and due form, have agreed upon the following articles:

ARTICLE I

A person born in either the United States of America or Finland of parents who are nationals of the other country, and having the nationality of both countries under their respective laws, shall not, if he has his habitual residence, that is, the place of his general abode, in one of the countries be held liable for military service or any other act of allegiance during a temporary stay in the other country.

ARTICLE II

Nationals of either country who have been or shall become naturalized in the other country, shall not, upon returning to the country of former nationality, be held liable for the performance of military service in the armed forces of such country; nor shall they be punished for the original act of emigration, or for failure, prior to naturalization, to respond to calls for military service accruing after bona fide residence was acquired in the country of naturalization.

ARTICLE III

If a national of either country, who has been or shall have become naturalized in the territory of the other country, shall renew his residence in the country of his former nationality without the intent to return to the country of his naturalization, he shall be held to have abandoned his naturalization.

Provided that, if the stay in the country of former nationality is protracted beyond the period of two years it shall be presumed to be permanent in the absence of sufficient evidence to the contrary.

ARTICLE IV

The present convention shall be ratified. It shall come into force on the day of the exchange of ratifications, and shall continue in force for ten years. If six months before the termination of the said ten years, neither Contracting Party shall have given to the other Party notice of an intention to terminate the convention, it shall remain in force until

the end of twelve months after either of the parties shall have given to the other party notice of such intention.

In Witness Whereof, the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

Done in duplicate in the English and Finnish languages which are equally authentic, at Helsingfors, this day of

.....

711.60D4/22

The Secretary of State to the Minister in Finland (Brodie)

No. 101

WASHINGTON, September 13, 1932.

SIR: The receipt is acknowledged of your despatch No. 774 of August 3, 1932,³ reporting the willingness of the Finnish Government to conclude a military service agreement containing the following article:

“A person born *or naturalized* in the territory of one party of parents who are nationals of the other party, and having the nationality of both parties under their laws, shall not, if he has his habitual residence, that is, the place of his general abode, in the territory of the State of his birth be held liable for military service or any other act of allegiance during a temporary stay in the territory of the other party.

“Provided, that if such stay is protracted beyond the period of two years, it shall be presumed to be permanent, in the absence of sufficient evidence showing that return to the territory of the other party will take place within a short time.”

At the time you discussed this matter with the Director of Juridical Affairs of the Finnish Foreign Office, you were not in receipt of the Department's instruction of August 2, 1932, submitting a revised draft.

With respect to the Finnish counter-proposal above mentioned, the Department considers it confusing to incorporate in a single paragraph provisions relating both to persons born with dual nationality and to naturalized persons. It is not entirely clear from the Finnish counter-proposal what would be the nature of the exemption from military service of naturalized persons.

You are, therefore, requested to present to the Finnish Foreign Office the draft submitted with the Department's instruction of August 2, 1932, and to request further consideration of the proposals relating to the exemption from military service of naturalized persons.

Very truly yours,

For the Secretary of State:

W. R. CASTLE, JR.

³ Not printed.

711.60D4/27

The Secretary of State to the Minister in Finland (Brodie)

No. 118

WASHINGTON, April 3, 1933.

SIR: The Department has received your despatch No. 881, of January 3, 1933,⁴ concerning the proposed military service convention between the United States and Finland.

It is noted that Article I of the Department's draft convention which accompanied its instruction of August 2, 1932, is acceptable to the Finnish Government.

With respect to Article II of the Department's draft, you state that Mr. Kivikoski, the Director of Juridical affairs of the Finnish Foreign Office, referred to the general rule of the Finnish law according to which a Finnish national who becomes naturalized in another country loses his Finnish nationality. After pointing out that such a person is not held liable for military service, he added that, were there no exception to this law, there would be no need for Article II.

It may be observed, however, that non-liability for military service, in the absence of a treaty provision, would depend on municipal law and not on an international obligation. Furthermore, even if there were no exception, the Department would prefer to have Article II included in the convention, if for no other reason, because its omission might, when the proposed convention is concluded and published, prompt other States, whose laws are not similar to the Finnish law, to request the conclusion of similar conventions.

The above discussion might seem academic in its nature in view of the fact that the Finnish law contains the following exception to the general rule that naturalization terminates former nationality:

"However, a male citizen of Finland, whose age is between seventeen and twenty-eight years and who has not fulfilled as a conscript his active military service and who has not been legally exempted from military service, may lose his Finnish citizenship only by a special decree of the President of the republic." (Law of June 17, 1927, 1, Flournoy and Hudson, *A Collection of Nationality Laws*, New York, 1929, 239.)

It is believed, however, that the above discussion would be useful in dispelling any idea which might probably be in Mr. Kivikoski's mind that the inclusion of Article II was desired by this Government only because of the existence of the exception.

The exception appears to be also at the basis of the objection of the Foreign Office to Article II of the Department's draft. It may be pointed out, however, that Article II of the Finnish counter-proposal transmitted with your despatch under acknowledgment does not purport to

⁴ Not printed.

make a Finnish male person who, as a result of the exception, has not lost his Finnish nationality by being naturalized in another country, subject to the provisions of the Finnish military law. On the contrary, such a person is expressly exempted from the performance of military service. The phrase "without losing their former nationality" in Article II of the Finnish draft, which is not in the Department's draft, would seem to have been added in order to imply that naturalization in a foreign country does not terminate Finnish nationality in a case of a Finn who is within the exception quoted above. The Finnish Government is aware of this Government's position that even in that class of cases naturalization should be regarded as terminating former nationality. If the last quoted phrase is included, it would carry with it a clear implication contrary to this Government's position, while, if it is omitted—this should be emphasized in your discussions with the Foreign Office—Article II would relate merely to liability for military service and would leave open the question whether naturalization should be regarded as terminating former nationality. For your own information it may be observed that this Government could not in any case enter into a treaty containing the phrase quoted above.

The only other difference between Article II of the Department's and Article II of the Finnish draft is that the latter provides that a person shall be exempt from military service only "during a temporary stay in the country of original nationality". It appears from your despatch under acknowledgment that this phrase and Article III of the Finnish draft are intended as a substitute for the provisions of Article III of the Department's draft.

The Finnish Government objects to the last mentioned Article because the Finnish law contains no provisions for the renunciation of acquired foreign nationality or of resumption of Finnish nationality through the mere act of returning to and residing in Finland for a period of two years, and points out that under Finnish law every foreigner, even though a former Finnish national must be naturalized in due order, though former Finnish nationals are granted special facilities in the matter. You will please make clear to the Foreign Office that Article III was not intended by the Department to mean, nor does it provide that, if a former Finnish national who had been naturalized as an American citizen should establish a permanent residence in Finland he would thereby resume Finnish nationality. It merely provides that such a person would be held to have renounced his American naturalization, leaving the question of his re-acquisition of Finnish nationality for determination by the municipal law of Finland. This Article would not only make it unnecessary for the Government of the United States to extend protection to a Finn who, after naturalization in the United

States, had acquired a permanent residence in his former country, but would enable the Finnish Government to object to such extension of protection. A detailed discussion of the policy and reasons back of this Article is contained in the Department's instruction No. 99, of December 1, 1928,⁵ concerning the conclusion of a naturalization treaty between the United States and Finland.

An important corollary of Article III would be that the naturalizing state could not claim as its nationals, *jure sanguinis*, children born to a naturalized citizen after he had acquired a permanent residence in his country of origin.

The provisions in Articles II and III of the Finnish draft regarding military liability during a temporary stay in the country of origin are similar to those in Article I of the treaty between the United States and Norway, signed at Oslo, November 1, 1930.⁶ While the Department prefers Article III of its draft, it would be prepared to accept the Finnish counter-proposal regarding this Article if the Finnish Government should definitely refuse to accept the provisions of the former. However, this should not be indicated to the Foreign Office in any way unless and until you are convinced of the futility of any further efforts to have Article III of the Department's draft accepted.

You are, therefore, requested to present a note to the Foreign Office in the sense indicated above and to express the hope that after further study the Finnish Government may find it possible to enter into an agreement on the basis of the draft convention submitted with the Department's instruction of August 2, 1932.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

711.60D4/28

The Minister in Finland (Brodie) to the Acting Secretary of State

No. 990

HELSINGFORS, July 3, 1933.

[Received August 1.]

SIR: With reference to the Department's Instruction No. 118 of April 3, 1933, concerning the proposed military service convention between the United States and Finland, I have the honor to inform the Department that the observations made in the Department's instruction herein referred to were brought to the attention of the Finnish Foreign Office which duly took the matter under consideration through the competent authorities of the Finnish Government.

After considerable deliberation, the Foreign Office, through Mr. Bruno Kivikoski, has drawn up a new proposal termed "Convention between

⁵ Not printed.

⁶ *Foreign Relations*, 1930, vol. III, p. 713.

the United States of America and Finland Relating to Military Service and other Acts of Allegiance" to which the Government of Finland is ready to subscribe. Copies of the proposed convention are herewith enclosed for the Department's consideration. From the proposal, the Department will perceive that it is more or less similar to our treaty with Norway, exempting from military service and other acts of allegiance certain nationals as approved by the Senate on December 20, 1930.

Respectfully yours,

EDWARD E. BRODIE

[Enclosure]

Draft Convention Between the United States and Finland Relating to Military Service and Other Acts of Allegiance, Presented by the Finnish Foreign Office

The President of the United States of America and the President of the Republic of Finland, being desirous of regulating the liability for military service and other acts of allegiance of persons who are nationals of both countries, under their respective laws, have decided to conclude a convention for that purpose, and have appointed as their Plenipotentiaries:

The President of the United States of America:.....
and the President of the Republic of Finland:.....

Who, having communicated to each other their full powers found to be in good and due form, have agreed upon the following articles:

ARTICLE I

A person possessing the nationality of Finland and of the United States of America under the respective laws of these countries, shall not if he has his habitual residence, that is, the place of his general abode, in one of the countries, be held liable for military service or any other act of allegiance during a temporary stay in the other country.

Provided that, if such stay is protracted beyond the period of two years, it shall be presumed to be permanent in the absence of sufficient evidence to the contrary.

ARTICLE II

The present convention shall be ratified. It shall come into force on the day of the exchange of ratifications, and shall continue in force for ten years. If six months before the termination of the said ten years, neither Contracting Party shall have given to the other party notice of an intention to terminate the convention, it shall remain in force until the end of twelve months after either of the parties shall have given to the other party notice of such intention.

IN WITNESS WHEREOF,

the respective Plenipotentiaries have signed this convention and have hereunto affixed their seals.

DONE

in duplicate in the English and Finnish languages which are equally authentic, at Helsingfors, this day of

.....

711.60D4/31

The Secretary of State to the Minister in Finland (Albright)

WASHINGTON, September 1, 1933.

SIR: The receipt is acknowledged of the Legation's despatch No. 990 of July 3, 1933, transmitting the counter proposals of the Finnish Government on the proposed treaty relating to military service.

The Department regrets to inform you that this Government is unable to enter into a convention on the basis of the draft submitted. The wording of the first three lines of Article 1 would still appear to admit of the construction that a naturalized American of Finnish origin may have Finnish nationality. Such a proviso would be directly contrary to the Act of Congress of July 27, 1868 (15 Stat. 223, 224) which reads in part as follows:

“. . . any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.”

As the Legation has been informed in previous instructions, this Government is desirous of obtaining a convention with Finland covering the nationality and military obligations of persons of Finnish origin naturalized in the United States and also those of persons born with the nationality of Finland as well as that of the United States, provided such convention, as is the case with those concluded by the United States with various other states, definitely recognizes naturalization as having the effect of terminating the prior nationality. You will please inform the Finnish Government to that effect. You may also avail yourself of a suitable opportunity to discuss this subject informally with the Foreign Minister. You will find the Department's position set forth in previous instructions. With reference to the objection of the Finnish officials to the inclusion in the convention of the provision mentioned above concerning termination of nationality because such a provision would not coincide with the present law of Finland, you may call attention to the fact that the United States has concluded naturalization conventions similar to the proposed convention with Finland,

with a number of European countries whose laws concerning expatriation were substantially similar to the present law of Finland.

Very truly yours,

For the Secretary of State:
WILBUR J. CARR

711.60D4/32

The Minister in Finland (Albright) to the Acting Secretary of State

No. 63

HELSINGSFORS, December 23, 1933.

[Received January 23, 1934.]

SIR: I have the honor to refer to the Department's instruction of September 1, 1933, to which reply has necessarily been deferred due to recent alteration in the administration of this Legation. I regret to report that the Finnish Foreign Office still maintains its previous position with respect to the phrasing of Article 1 of the proposed treaty with the United States relating to military service, holding that acceptance of this Article as phrased in the draft treaty appended to the Department's instruction to this Legation of August 2, 1932, would be incompatible with existing Finnish law.

Mr. Bruno Kivikoski, Chief of the Juridical Division of the Finnish Foreign Office, who is charged by the Minister for Foreign Affairs with the conduct of the preliminary negotiations leading to the possible conclusion of a treaty between the United States and Finland relating to military service, does not believe that a solution may be found to the conflict between existing legislation in the United States and in Finland, respectively, which arises from any and all of the drafts of Article 1 hitherto proposed by either party. The position of the Foreign Office thus remains substantially that described in my predecessor's despatch No. 881, dated January 3, 1933.⁷ It may be recalled that the Finnish Foreign Office suggested in its draft treaty, submitted as an enclosure to this Legation's despatch No. 990, dated July 3, 1933, that the agreement follow more or less in nature a treaty upon this subject concluded between the United States and Norway, Article 1 failing to draw distinction between native born and naturalized citizens. Mr. Kivikoski points out that the President of Finland may, under the terms of Paragraph 46 of the Finnish Law of June 30, 1932, grant exemption from military service to any American citizens who are also considered to be Finnish citizens under the laws of this country and that, in practice, it would undoubtedly be his disposition to do so since the experience of several years has demonstrated that cases of dual nationality (as interpreted after Finnish law) involving liability of American citizens to military service in Finland are rare.

Mr. Kivikoski's attention was invited to that portion of the Depart-

⁷ Not printed.

ment's instruction of September 1, 1933, which referred to the conclusion by the United States of naturalization conventions of a nature similar to that proposed to Finland with a number of other European countries. Mr. Kivikoski replied that the Finnish Foreign Office, although aware that this was the case, was, nevertheless, of the opinion that existing Finnish Legislation precluded the possibility of concluding a treaty between the United States and Finland along the lines proposed by the Department. He added that the Foreign Office understands that conflict over the question of dual nationality has thus far defeated efforts to conclude treaties relating to military service between the United States and certain other countries, but that the absence of any convention bearing upon this subject undoubtedly worked a hardship upon native-born American citizens of Finnish parentage whom the Finnish Government is quite ready to exempt from all liability to military service in the event of their temporary return to Finland, while the absence of specific exemption under the form of treaty proposed by the Finnish Foreign Office of naturalized American citizens of Finnish birth would, it was felt, not be important in practice in view of the authority vested in the Finnish Chief Executive by law to grant exemption from military service in individual cases.

In a later conversation on this subject, Mr. Kivikoski expressed the readiness of the Foreign Office to accept the phraseology of Article 1 of the military service convention agreed upon early this year between the Governments of the United States and of Sweden,⁸ pointing out that the wording differs very little from that proposed by the Finnish Government.

As suggested in the Department's instruction of September 1, 1933, (Page 2), I availed myself a few days ago of an opportunity informally to discuss this matter with the Honorable A. Hackzell, Finnish Foreign Minister. Mr. Hackzell expressed the hope that a satisfactory solution of the present conflict in views with respect to the contents of the treaty might be found. It is my impression that the familiarity of the Finnish Foreign Office with the form and content of military service conventions negotiated between the United States and certain other countries in this part of the world—notably Norway and Sweden—is a considerable factor in its reluctance to accept the drafts of Article 1 proposed by the Department.

Respectfully yours,

EDWARD ALBRIGHT

[A convention between the United States and Finland regulating the military obligations of persons having dual nationality was signed January 27, 1939; for text, see 54 Stat., 1712; or Treaty Series No. 953.]

⁸ Signed January 31, 1933, p. 763.

FRANCE

REPRESENTATIONS ON ACCOUNT OF DISCRIMINATIONS AGAINST AMERICAN PRODUCTS IMPORTED INTO FRANCE

651.113/118 : Telegram

The Secretary of State to the Ambassador in France (Straus)

WASHINGTON, May 12, 1933—5 p. m.

130. We are much concerned over press reports that the French Government contemplates the imposition of 15 per cent surtax on American imports if the dollar falls to 20.

In view of the appreciation of commodity prices in the United States since the depreciation of the dollar, the result would probably be an actual increase in the tariff burden to which American goods are subject. The United States adopted no such measures against France at the time of the depreciation of the franc.

Please investigate and report. Also inform the Department if there are indications of increased American competition in the French market as a result of dollar depreciation.

HULL

651.113/120a : Telegram

The Secretary of State to the Ambassador in France (Straus)

WASHINGTON, May 13, 1933—2 p. m.

131. This morning's *New York Times* reports that France has completed an agreement with the Italians¹ similar to the Belgian agreement² which removes from Italian products imported into France the French turnover tax. You will recall that at the time of the Franco-Belgian agreement we made representations to the effect that this discrimination should be rectified particularly in respect of copper. American copper interests are again pressing the Department with regard to this matter.

You are requested to present a protest either orally or in writing, as you may deem more appropriate, to the French Government, saying that this Government cannot recognize this method of discrimination in favor

¹ *Journal Officiel de la République Française: Lois et décrets*, May 12, 1933, p. 4934.

² League of Nations Treaty Series, vol. cxxxvii, p. 289.

of third countries on the excuse that such preferential treatment arises out of an effort on the part of France to avoid double taxation.

HULL

651.113/123

The Chargé in France (Marriner) to the Secretary of State

No. 3593

PARIS, May 16, 1933.

[Received May 24.]

SIR: I have the honor to acknowledge the receipt of the Department's telegraphic instruction No. 131 of May 13, 2 p. m., 1933, requesting me to make representations with regard to the discrimination against American products imported into France introduced through the negotiation by the French Government of double taxation agreements with third countries providing that the products of such third countries shall be relieved from the increased French import turnover tax.

In view of the importance of this question I felt it preferable to make the representations asked by the Department in written form. A copy of my note, which I today left with M. Léger, Secretary General of the Ministry for Foreign Affairs, is enclosed for the information of the Department.

Respectfully yours,

THEODORE MARRINER

[Enclosure]

The American Chargé (Marriner) to the French Minister for Foreign Affairs (Paul-Boncour)

No. 2386

PARIS, May 16, 1933.

EXCELLENCY: I have the honor to recall that on August 2, 1932, the Ambassador addressed to M. Herriot³ a personal note with which he enclosed a memorandum⁴ inviting attention to certain commercial difficulties existing between France and the United States. One section of the memorandum dealt with the discrimination against American exports to France introduced by the application of the Franco-Belgian Convention of June 18, 1932, to avoid double imposition as regards transmission taxes and turnover taxes on imports from one country to the other. By the terms of this Convention, Belgian exporters were relieved of the necessity of paying the increased rates under the French import turnover tax on shipments to France. It was pointed out by the Ambassador that similar reductions as regards this tax had not been accorded products

³ Edouard Herriot, Deputy President of Radical and Radical Socialist Party, formerly Premier.

⁴ Neither printed.

imported into France from the United States, with the consequence that the market for the American products was prejudiced vis-à-vis competitive Belgian merchandise.

There has now been ratified by the French Government a double taxation arrangement with Italy whereby Italian products, like those from Belgium, will be relieved from the increased French import turnover tax. My Government is increasingly concerned over the situation characterized by these two preferential accords, a situation wherein American products introduced into France are placed at a distinct disadvantage as compared with the goods of Belgian and Italian origin.

Accordingly, my Government has instructed me to inform Your Excellency that it does not feel that the method of discrimination in favor of third countries is warranted in order to avoid double taxation. I feel that the inequity is apparent of denying to American products as favorable treatment as has been granted to the products of other countries largely because those countries had instituted special taxes which adversely affected French exports. It is therefore earnestly hoped that a way will be found of eliminating this element of discrimination against American imports.

I avail myself [etc.]

THEODORE MARRINER

651.113/122 : Telegram

The Chargé in France (Marriner) to the Secretary of State

PARIS, May 22, 1933—4 p.m.
[Received May 22—2:30 p.m.]

234. Reference Department's telegram 131 of May 13, 2 p.m., concerning discrimination as regards French import turnover tax resulting from double taxation agreements with Belgium and Italy.

In response to Embassy's representations a note has been received from Foreign Office, a copy of which will be forwarded by mail, pointing out that

1. Agreement with Belgium was necessary in order to relieve merchandise from being twice subjected to analogous taxes.

2. Ratifications of Italian agreement not having been exchanged Italian products are still subject to the import tax and

3. Foreign Office will examine the problem with the Embassy when a draft law already submitted to Parliament should have been passed authorizing the Government to reduce the tax to 2 percent as regards products of countries having equivalent taxes or which shall have concluded with France special arrangements on the subject.

The Foreign Office concludes by urging favorable action as concerns representations of French Embassy in Washington regarding use of free

trade names such as champagne for 3.2 wines manufactured in the United States.

MARRINER

651.113/131 : Telegram

The Ambassador in France (Straus) to the Acting Secretary of State

PARIS, July 20, 1933—6 p. m.

[Received July 21—6 a. m.]

332. According to reliable reports the French Government is once more considering the immediate application of the 15 percent tariff surtax to goods coming from the United States in view of the depreciation of the dollar exchange and because of a British protest against discrimination as such a surtax has been applied to their goods since depreciation reached 20 percent.

STRAUS

651.113/131 : Telegram

The Acting Secretary of State to the Ambassador in France (Straus)

WASHINGTON, July 21, 1933—6 p. m.

210. Your 332, July 20. The French market is so thoroughly blocked off by quotas, exorbitant quota license fees, high duties, sales and turn-over taxes and discriminations against American commerce, as to make appear highly improbable that there has been any appreciable influx of American goods into the French market because of the depreciation of the dollar. Furthermore general American commodity price levels have increased in a proportion greater than the depreciation of the dollar. Is there anything to indicate that an unreasonable influx of American goods has taken place or is likely to take place?

I feel that unless it can be factually proven that the depreciation of the dollar has brought about an unreasonable influx into the French market of American goods the imposition of an exchange surtax by France will be without justification, and can only be looked upon as unreasonable added tariff protection against American commerce.

I do not take seriously the suggestion that the imposition of such surtax is necessary because of any British protests. The British protested this surtax long before the depreciation of the dollar and maintained at that time that the mere levying of this surtax was a discrimination against British trade.

Unless you feel that it would be unwise, I suggest that you make clear to the French either orally or in writing our position in this matter.

PHILLIPS

651.113/132 : Telegram

The Ambassador in France (Straus) to the Acting Secretary of State

PARIS, July 26, 1933—6 p. m.

[Received July 27—10:30 a. m.⁵]

342. Department's 210, July 21, 6 p. m. I saw Leger at the Foreign Office yesterday afternoon to discuss various outstanding commercial difficulties, films, copper reclassification and import surtax, impressing upon him the unfortunate reaction in America to the French attitude on these various points and the possible difficulties that such an attitude would have when it might become a question of legislating with respect to a tariff on wines.

Leger received me cordially and promised an investigation and prompt action.

This morning De la Baume head of the Commercial Relations section of the Foreign Office asked Marriner to come and see him to discuss the points I had raised with Leger.

With respect to the film question he said that the decree was valid for 1 year and that the quotas established therein could not be diminished in that time. He said that he had thought that it had been understood that so far as the substance of the decree was concerned it was satisfactory to the motion pictures industry. Marriner told him that this did not appear to be the case and that there were indications that the French moving picture theatre interests were not satisfied.

With respect to copper reclassification De la Baume promised that the Foreign Office would write today to the Ministers of Commerce and Budget urging upon them on the basis of America's action with respect to dress samples the reduction of the copper turnover tantamount to 2 percent. He was fairly sanguine about obtaining the consent of the Ministry of Commerce but not so sanguine with regard to the Department of the Budget.

M. de la Baume then took up the question of the exchange surtax. He said that some time ago Laboulaye had mentioned to the President that with the continued fall of the dollar it might become necessary to apply such a surtax and that the President had found this quite natural. Laboulaye, he said, had repeated the subject of this conversation likewise to Mr. Phillips.

According to information which has been furnished the Foreign Office by the French Embassy in Washington commodity prices of raw materials in the United States have risen but as yet there have been little or no rise in the price of manufactured goods. Inasmuch as the exchange surtax in France does not apply in any case to raw materials De la

⁵ Telegram in four sections.

Baume felt that a large part of the trade of the United States would be unaffected by the imposition of such a tax. He pointed out, however, that with such manufactured goods, as for example automobiles, the fall of the dollar and the fact that the duty was assessed on the basis of a minimum ad valorem duty of 45% was causing great uneasiness and anxiety to the French automobile manufacturers⁶ who were daily insisting that a surtax be imposed. He said that up to the present time no decision had been taken but that he could not answer that it would not be taken tomorrow. He said that since the dollar had declined the same amount as the pound the French position vis-à-vis England was extremely difficult as there seemed no adequate reason why an exchange surtax should be applied to the one and not to the other. He said that with respect to the argument that France was [well?] protected by its quota and tariff system, few of the articles in the trade with the United States were subject to quota and mentioned, for example, that automobiles were not. He likewise said that in case an exchange surtax were established negotiations might be undertaken for a commercial arrangement and that on concluding such an arrangement the provisions of the law for the exchange surtax would permit the withdrawal of this surtax until such time as possibly further devaluation made it again necessary. He said that since the imposition of the surtax on English goods negotiations had been undertaken for a commercial arrangement and were now proceeding. Despatch follows.

STRAUS

651.113/133 : Telegram

The Ambassador in France (Straus) to the Acting Secretary of State

PARIS, July 27, 1933—noon.
[Received July 27—10:35 a. m.]

343. De la Baume called Marriner on the telephone today and with reference to yesterday's conversations (see Embassy's telegram 342, July 27 [26], 6 p.m.) said that a decree was now in preparation in the Ministry of Commerce to bring the tariff on American products raised by the changes published in the *Bulletin Douanier* on July 18 into accord with the situation under the *modus vivendi*.⁷ The tariff raises published were principally intended to affect importations from Ger-

⁶ A memorandum of July 27, 1933, by John D. Hickerson, Assistant Chief of the Division of Western European Affairs, states:

"I might point out that the reference in the Embassy's telegram to the French duty on automobiles is not at all accurate. The French law provides that a specific rate of duty shall be applied to automobiles but that the duty shall not at any time be less than forty-five per cent. American automobiles imported into France in 1931 paid an average duty of around sixty-five per cent." (651.113/142)

⁷ Effected by an exchange of notes in October and November of 1927, *Foreign Relations*, 1927, vol. II, pp. 696-703.

many and the Ministry for Foreign Affairs is desirous that these changes should cause no disquietude in the United States as the decree is destined to adjust the situation and restore us to our previous relative tariff positions.

STRAUS

651.113/134 : Telegram

The Ambassador in France (Straus) to the Acting Secretary of State

PARIS, August 2, 1933—11 a. m.

[Received August 2—8:30 a. m.]⁸

353. My 342, July 26, 6 p. m. This morning in order to check up on the rumor that a 15% surtax was to be immediately applied to American products I telephoned Leger at the Foreign Office. He said that there is no immediate danger if he can control the situation; that the French Government is now in negotiation for a new commercial treaty with England; that the 15% had been applied to English products and that England was [protesting] which made the situation for France rather difficult; but that he had referred the matter to the Ministry of Commerce which was pressing it with the request that decision be deferred until a complete examination of the situation [could be made and the result of that examination could be submitted to the Ministry. Leger expressed] himself as hopeful that no decision would be reached before several weeks and that in any case if a decision were to be taken he would communicate with me.

STRAUS

651.113/137 : Telegram

The Ambassador in France (Straus) to the Secretary of State

PARIS, August 10, 1933—1 p. m.

[Received August 10—10:50 a. m.]

366. Embassy's 343, July 27, noon. The decree promised appeared in the *Journal Officiel* of this morning's date. In checking over the list it appears that complete rectification has been accorded in all except two minor items in chemical group. Attention appropriate authorities is being called to these omissions.

STRAUS

⁸ Corrected from confirmation copy received September 12.

651.113/141

The French Ambassador (De Laboulaye) to the Secretary of State

[Translation]

AIDE-MÉMOIRE

The *Journal Officiel* of the French Republic of August 10, 1933, published the text of a decree modifying the custom tariffs applicable to certain products of origin in the United States upon their entry into France.

This modification, which could not be made sooner by the French Government due to the fact that the Ministers concerned were absent from Paris, has its origin in the law of July 12, 1933.

The said law, which prescribes changes in the French custom tariff, had the following consequences, as regards American importations into France:

1. The French general tariff became applicable automatically to a certain number of American goods, through application of the principle whereby advantages authorized unilaterally through a given tariff law, become inoperative in France at the same time as the said law;

2. The only concessions from which the products of the United States could henceforth benefit upon their entry into France were the ones resulting from tables A and B annexed to the law and the decree of March 29, 1910.

Now, the American articles mentioned in the decree of August 10, 1933, do not appear in said tables. Accordingly those articles, which had enjoyed the minimum and intermediate tariffs, fell under the general tariff.

Only special measures taken by means of a decree could modify this new state of things. This is precisely the object of the decree of August 10, 1933, which authorizes the application to the American goods of the intermediate or minimum tariff.

While informing His Excellency the Secretary of State of this modification, the Ambassador of France desires furthermore to call his attention to the fact that the French Government has seen fit up to the present time to postpone the application of the exchange surtax to American products entering France, in spite of the premium on exportation enjoyed by the American exporters due to the depreciation of the dollar, especially as regards automobiles and parts, machine tools, etc., and in spite of the repeated requests by numerous French industrialists for whom the American importations constitute serious competition.

It goes without saying that this attitude of the French Government is no prediction of its future course and that it might be modified if the safeguarding of French national production rendered it necessary.

Besides, the American Government has not contested the French Government's right to apply the surtax on importation. Nevertheless, up to the present the French Government, which risks finding itself in difficulties with foreign countries whose situation is analogous to that of the United States and to which the said surtax is already applied, has not felt that it should make use of this right so far as concerns American products. In so acting, it wished to view the question from the highest viewpoint and to give an effective proof of its desire to avoid, as far as possible, taking any step, even though justifiable, which might in one way or another complicate the work of economic adjustment undertaken by President Roosevelt.

WASHINGTON, August 11, 1933.

651.113/143

The Ambassador in France (Straus) to the Secretary of State

No. 186

PARIS, August 21, 1933.

[Received August 30.]

SIR: In view of the somewhat complicated nature of the developments described in my telegram No. 367 of August 12, 1 p.m., 1933,⁹ and reported as satisfactorily adjusted in my telegram No. 372 of August 17, 1 p.m.,⁹ I now have the honor to report thereon in further detail for the Department's more complete understanding of the situation.

By a law of August 6, 1933, published in the *Journal Officiel* of August 8 (a copy of which is enclosed),¹⁰ the customs duties on oilseeds and fruits embraced under tariff heading No. 88 were largely augmented. The law also provided for the modification by the pertinent Ministries of the duties on certain other specified tariff items, the increases to follow the ratio established for item No. 88. Pending application of the new rates on the articles other than those of No. 88, a temporary import quota was authorized as regards such items as are consolidated by agreement with other Governments. The alleged purpose of the tariff augmentation is to foster imports from the French colonies.

The same number of the *Journal Officiel* carried a decree of the Ministry of Colonies, dated August 7 (see Enclosure No. 2), establishing the new maximum and minimum rates on the majority of the categories of the merchandise not included under heading No. 88. It was, however, specified in Article 2 of the decree that the new tariff on certain items listed therein, which are the object of consolidation with other countries, would not go into effect until further notice—presumably until negotiations with the countries concerned had been completed.

⁹ Not printed.

¹⁰ None of the enclosures to this despatch are reprinted.

A few days subsequent, on August 11, the *Bulletin Douanier* (See Enclosure No. 3) reprinted the revised maximum and minimum tariffs and in so doing in numerous instances indicated that the United States would receive the general tariff, although, as a matter of fact, previous to the law of August 6 the United States had benefited by the minimum or intermediary rates. As the Department is aware, this inequity was promptly drawn to the attention of the Ministry for Foreign Affairs by the Embassy.

An attempt was made to correct the situation so far as concerns American products by the publication of a "rectification" in the *Journal Officiel* of August 15. Since, however, errors were made in redrafting the American rates, the *Journal Officiel* of August 17 carried a further "rectification" annulling the first one and reestablishing the treatment to which the United States is entitled under the provisions of the *modus vivendi*. The pertinent excerpts from the *Journal Officiel* of August 15 and 17 are appended hereto (enclosures No. 4 and No. 5). Only the latter excerpt need be taken into consideration.

As may be observed from this last enclosure, in those instances where the new minimum tariff is higher than the old American intermediary rate, the new minimum rate is applied, and in the instances where the old American intermediary rate is higher than the new minimum rate, the old American intermediary rate remains unchanged. Where the United States previously benefited by the minimum duty, it continues to benefit by the new minimum tariff.

From a conversation held between the Commercial Attaché and an officer of the Ministry of Commerce, it would not appear that any effort to discriminate against the United States was intended in the initial assignment to it of the general tariff rates on certain imports. It was explained that when tariff changes are made, the customs authorities have no other recourse than to apply the general tariff until they receive instructions directing them as to the rates which are properly applicable under the *modus vivendi*. This observation is worthy of note since analogous situations may arise in the future. The Commercial Attaché will obtain from the customs authorities either a confirmation of this statement or a further explanation of the reasons for the temporary application of the general tariff to products imported from the United States that previously enjoyed either the minimum or intermediary rates.

Respectfully yours,

For the Ambassador:
ROBERT M. SCOTTEN
First Secretary of Embassy

INCREASE IN QUOTA FOR IMPORTATION OF FRENCH WINES AND LIQUORS IN RETURN FOR INCREASE BY FRANCE IN QUOTAS FOR CERTAIN AMERICAN PRODUCTS

611.516 Wines/1 : Telegram

The Acting Secretary of State to the Ambassador in France (Straus)

WASHINGTON, December 15, 1933—5 p. m.

369. Discussions looking to an increase in the temporary wine quota to France were completed this morning with the French Commercial Attaché. An exchange of notes is awaiting signature. It has been agreed that we will double the present quota of 783,000 gallons, and in exchange for that the French have agreed to increase the quota for the next quarter on apples and pears to 200,000 quintals, and for salt pork products and hams to increase the quota for the next quarter by 500 quintals. Announcement of this agreement will probably be made public tomorrow morning.

The Commercial Attaché proposed that in exchange for a yet further increase in the wine quota the French Government would be prepared to give an additional quota of 4,650 kilograms on patent leather, 40 quintals on radio tubes, 125 quintals on dynamos, and would increase the quotas on non-cutting tools and twist drills. They would, furthermore, be prepared to reduce the turnover tax on copper from 4 per cent to 2 per cent. Discussions with regard to this latter proposal will be renewed the latter part of next week. I will appreciate receiving any suggestions which you may have to make with regard to this proposal, or possible substitutes.

PHILLIPS

611.516 Wines/3

The French Ambassador (De Laboulaye) to the Acting Secretary of State

[Translation]

AIDE-MÉMOIRE

The Ambassador of France has the honor to confirm to His Excellency, the Acting Secretary of State the first agreement resulting from the conversations carried on between the Department of State and the Commercial Attaché of the Embassy with a view to increasing the importation of American fruits into France and of French wines and liquors into the United States.

The French Government will raise the quota of apples and pears originating in the United States that may be imported into France during

the first quarter of 1934 to 200,000 quintals. A quantity of 16,000 quintals will be authorized as an advance on this quota before January 1, 1934.

In addition, the quota of salt meats and hams for the first quarter of 1934 will be raised from 1,000 to 1,500 quintals. The American Government will allow to France, from now, for the corresponding period, a supplementary quota of wines and liquors amounting to 783,000 gallons divided into categories.

The study of a new quota to be granted to France in exchange for concessions applying to industrial products will be continued.

It is understood that the two governments will not take any administrative measure, sanitary or otherwise, which would constitute a means of disguised protection serving to impede the operation of the agreement.

M. de Laboulaye is glad to avail himself [etc.]

WASHINGTON, December 15, 1933.

611.516 Wines/2 : Telegram

The Chargé in France (Marriner) to the Acting Secretary of State

PARIS, December 16, 1933—2 p. m.

[Received December 16—1:15 p. m.]

558. With reference to the Department's telegram December 15, 5 p. m., I talked yesterday on this subject with De la Baume, head of the Commercial Section of the Foreign Office. There can be no question of the evident desire of the French to obtain increases in the wine quota and that they are showing willingness to improve commercial relations by rectifying various outstanding commercial difficulties. De la Baume earnestly expressed the hope that their efforts in this direction would be appreciated.

It is noted that the French wine quota restores France to its full pre-prohibition situation on this its most important export item. Would we not be justified in requesting general restoration of agricultural quotas to our quota status?

In connection with the matters discussed there is the vital question of protection against import quota license taxes which may be imposed, increased or diminished on extremely short notice and vitiate any possible advantages. For example, I have learned that the import license tax of francs 125 on one hundred kilograms of apples and francs 175 on a hundred kilograms of pears is proposed for the first quarter of the coming year. De la Baume explained to me that these import license taxes were intended to make up for the differences in the cost of production in America and France and that they would still leave adequate margin for profit to American producers.

Certain of the American fruit importers, however, feel that the increases suggested would practically nullify the increases in quotas as they would amount to approximately 30 francs per case for apples and 40 francs per case for pears. As apples are now being sold at 83 francs per case with the tax imposed they would sell for 95 francs; pears now selling for 90 francs to 100 francs per case would be increased to 110 francs to 120 francs by a similar tax. Therefore it would seem that the question of the amount or percentage of such a tax must inevitably be considered in negotiations.

Certain products which have been subject to ever increasing restrictions are not mentioned in the Department's telegram and may be worth consideration, namely, lard on which a quota license fee of 5 francs per kilo on crude and 7 francs 20 centimes on refined is proposed [apparent omission] radio sets and nitrates.

With regard to the decrease in the turnover tax on copper which would be of considerable value I believe that changes in this law were inevitably going through regardless of the present negotiations.

In connection with the whole matter of commercial relations American business in France is still hampered by the uncertainty of the tax question inherent to the fact that the double taxation treaty¹¹ has not yet been ratified by the French Parliament. I took occasion yesterday to mention this fact to De la Baume and I feel that it may be well to suggest that the French Government should attempt to arrange for its speedy ratification.

MARRINER

611.516 Wines/11 : Telegram

The Acting Secretary of State to the Ambassador in France (Straus)

WASHINGTON, December 21, 1933—6 p. m.

376. The French Ambassador called this morning and left a written assurance that the apple and pear importations will be effected, that if the ordinary importers fail, others would be substituted from the beginning of the second month and that should the tax unexpectedly prove prohibitive it would be reduced to the extent which may be necessary. With these assurances in hand we have completed negotiations. The press was informed this evening, in general terms, that the French Government has given written assurance that the importations will be effected and that it will do whatever is necessary for this purpose and that issuance of permits on the additional wine and spirits quota will proceed immediately.

PHILLIPS

¹¹ *Foreign Relations*, 1932, vol. II, p. 268.

REPRESENTATIONS REGARDING THE PROPOSED FRENCH
PETROLEUM MONOPOLY

551.6363/147

The Chargé in France (Marriner) to the Secretary of State

No. 3472

PARIS, April 7, 1933.

[Received April 15.]

SIR: I have the honor to recall that, as reported in the Embassy's despatch No. 3286 of January 26, 1933,¹² the Socialist group in January offered, in connection with the draft of the budget law, a proposal for the creation of a monopoly upon the importation of petroleum. It may be further recalled that a member of the staff made an informal visit of inquiry at the Ministry for Foreign Affairs in order that the French Government might not lose sight of the fact that developments which might lead to a monopoly inimical to American investments in the oil industry here were being closely watched. Whether or not as a result of this visit and a similar call made by a representative of the British Embassy, the Socialist proposal was temporarily sidetracked. As surmised might prove to be the case, however, the extreme left parliamentary group did not long abandon its efforts to secure some sort of governmental control of the petroleum industry.

Almost immediately the Socialist deputy, M. Lassalle, protested against the conditions under which the vote was taken by which the monopoly proposal had been ordered returned to the Commission on Mines (the vote of the Finance Commission had occurred at a time when a number of the Socialist group were absent). M. Lassalle proceeded to present a motion inviting the Government to insert provisions for the organization of a monopoly in the Finance Law, a motion which was carried by 20 to 6. This step, putting the monopoly question on the legislative calendar caused some uneasiness among petroleum interests, particularly when taken in conjunction with the reported statement of M. Daladier to Parliament to the effect that when the Government's program for balancing the budget should have been adopted, it would then be possible to consider the Socialist proposal for "the control of the nation over enterprises of general interest".

On February 28 the oil situation again came to the fore with the publication in the *Journal Officiel* of ministerial decrees, the texts of which are attached,¹³ reducing, for a period of six months, by 5% the individual allocations under the twenty year refining licenses and by 10% the allocations under the three year importation licenses. The ostensible purpose of the decisions was to stabilize market conditions in the face of oversupply. The measure was nevertheless disquieting since

¹² Not printed.¹³ Not reprinted.

it might well constitute an entering wedge towards progressive curtailments which would threaten American and other petroleum investments in France. In consequence the Second Secretary, Mr. Williamson, again called at the Foreign Office, leaving with M. Coulondre of the Commercial Section an *aide-mémoire*, dated March 8, and its accompaniment, a transcript of a letter of March 1 from Mr. G. H. Michler, written on behalf of the American petroleum interests affected by the decisions. Copies and translations of both documents are attached.¹⁴

M. Coulondre inquired whether there was really any disequilibrium brought about by the curtailment, since all companies would seem to be reduced by the same percentage. He was informed that he had touched upon one of the very points in which the Embassy was most interested, since the *Compagnie Française de Raffinage* secures its oil on a different basis (a percentage basis rather than a fixed amount) and is therefore not directly affected by the ministerial cuts. The result, it was further explained, is that the foreign and other French companies are penalized to the benefit of the *Compagnie Française*.

M. Coulondre appeared to recognize this distinction. He added that as it happened, he was a member of the oil commission and that he would make a point of attending the next meeting of the commission in order to lay the Embassy's observations before that body. Some two weeks after this interview, on March 22, M. Pineau, Director of the Office National des Combustibles Liquides, communicated with the Commercial Attaché, advising him that the Embassy's *aide-mémoire* had been referred to him for consideration. He said that prior thereto he had already conferred with Mr. Michler regarding the situation and an exchange of correspondence had resulted, establishing a practical accord. It would appear, none the less, that while the assurances given Mr. Michler by M. Pineau are reasonably satisfactory, they are not absolute. The Embassy hardly expects an answer to its inquiries since they were made orally.

On March 25 the American oil interests were again disquieted by press reports that the Prime Minister had promised to introduce into the Finance Law certain of the steps advocated by the Socialists, among them the principle of the petroleum monopoly and that Mr. Baron, President of the Commission on Mines of the Chamber, had made a study of the oil regime in France and intends to make a comparative study of the monopolistic regime as it exists in Spain. The Second Secretary called at the Foreign Office to make informal inquiries as to the accuracy of these reports.

While the Embassy is naturally anxious over the situation, it is of

¹⁴ Not printed.

course possible that it will not develop along the unfavorable lines now indicated. There are many obstacles for the protagonists of a monopoly to overcome between the aforesaid action of the Finance Commission and acceptance of the proposals by both houses of Parliament. This is not the first time that the shadow of petroleum monopoly has raised its head without bringing about the results feared by oil interests; and furthermore, the press, with the exception of the organs of the extreme Left, has shown itself bitterly opposed to an extension of Government monopolies. Nevertheless it seems advisable to lay the facts before the Department against the event that it should be approached by petroleum companies in the United States. It is felt that the Embassy has done all it properly may at the moment in informally inviting the attention of the Ministry for Foreign Affairs to the probable attitude of the Government of the United States, should present monopolistic proposals crystallize. American oil interests here seem to appreciate what has already been done on their behalf and to understand that official representations up to this time would have been inappropriate.

Since a further informal repetition of the American viewpoint would be useless, the Department may care to consider whether, provided protests are received from the home offices of the oil companies in the United States, the time has not now arrived to instruct the Embassy to make formal representations in the matter. With this contingency in view, it may be stated that the situation is as follows. The Finance Commission has very adroitly taken no step looking towards the expropriation of the physical assets of foreign or domestic oil companies in France. That is, at the moment there is no tangible move towards taking over their storage tanks, equipment and refining facilities. On the other hand, the Commission has avowed its purpose of creating an import monopoly and studying the practicability of a refining monopoly, an intention which, if carried out, might destroy or greatly curtail the market for American oil and would probably reduce the status of American companies operating in France to that of mere middlemen. Furthermore, it would violate the system of licenses upon which these companies have predicated their investments in France.

It is understood that the Commercial Attaché is reporting to his Department concerning the situation in a communication, No. 1321, of April 1.

Respectfully yours,

THEODORE MARRINER

851.6363/146 : Telegram

The Chargé in France (Marriner) to the Secretary of State

PARIS, April 14, 1933—noon.

[Received April 14—8:50 a.m.]

160. Embassy's despatch 3472, April 7th. According to the press the Chamber yesterday adopted with slight modifications the text proposed by the Chamber Finance Committee of article 116 of the 1933 Finance Law relating to the setting up of a commission for the purpose of studying the creation of a petroleum monopoly in France. The essential provision of this article as adopted reads as follows:

“Not less than 3 months after the promulgation of the present law a commission will fix the practical conditions of organization of a monopoly of the importation of petrol and the possibility of establishing a refining monopoly in France.”

The article provides that the conclusions of the commission will be submitted to Parliament “not later than the opening of the extraordinary session of 1933”. This session in principle usually opens towards the end of the month of October.

The passage of this proposed legislation in the Chamber of Deputies was vigorously opposed by Paul Reynaud who emphasized notably that if the plan was adopted the state would have to pay out several billion francs in indemnities for rupture of contracts.

The Chamber early this morning completed its examination of the Finance Law for 1933 and adjourned until May 16th. The Senate is expected to commence its examination of the 1933 budget shortly after it convenes on May 2 and the article in question will undoubtedly meet with strong opposition in the Upper House not only from the Right but also from members of the Government's own party.

MARRINER

851.6363/151 : Telegram

The Ambassador in France (Straus) to the Acting Secretary of State

PARIS, June 2, 1933—noon.

[Received June 2—8:35 a.m.]

250. Reference Embassy's telegram No. 237 of May 24, noon.¹⁵ After repeated consideration by both Houses in which Chamber consistently voted for petroleum monopoly and Senate against it, compromise provision was adopted as article 117 of Finance Law, which has been signed and promulgated. The compromise provides that within 3 months special commission shall make a study for submission to

¹⁵ Not printed.

Parliament of the practical conditions for the institution of monopoly on the importation of petroleum and of the possibility of establishing a refining monopoly. Details by next pouch.¹⁶

STRAUS

551.6363/157 : Telegram

The Chargé in France (Marriner) to the Secretary of State

PARIS, September 26, 1933—1 p.m.
[Received September 26—12:35 p.m.]

428. The Embassy has learned that the Commercial Councilor of the British Embassy made official verbal representations to the French Foreign Office on September 22 to express the concern of his Government and the British oil interests operating in France over the persistent reports of the possibility of establishing a Government petroleum import monopoly here. He pointed out that since British oil interests had made large investments in France on 20-year contracts guaranteed by existing legislation the establishment of a monopoly would necessarily call for strong formal protests on the part of his Government and indemnification to cover investments made.

The best information seems to be that the likelihood of the Parliamentary Commission reporting in favor of the establishment of a monopoly has increased. The present efforts for bettering relations with Soviet Russia, the Herriot visit, the mission of Pierre Cot, Minister of Air, and the projected visit of Patenotre, Undersecretary of National Economy, are all giving rise to comment that the Soviet oil interests might be able to furnish oil to a monopoly in France far more cheaply than any of the existing companies. As it is to the present political interest of France in view of the German situation to gain Russian friendship it is possible that this project will have more backing from the Government this autumn than when it was first discussed last spring.

I have made no direct representations having contented myself with mentioning the matter informally to Paganon, Minister of Public Works, during a conversation after a lunch and to La Bonne, head of the American Section of the Foreign Office equally informally on another occasion.

Please inform Commerce of contents of this message.

MARRINER

¹⁶ Despatch No. 4, June 2, 1933, not printed.

851.6333/157 : Telegram

The Secretary of State to the Chargé in France (Marriner)

WASHINGTON, September 28, 1933—4 p.m.

287. Your 428, September 26. The American oil interests have been to the Department to present their position and to request that representations be made to the French Government.

In 1919, when a monopoly was first proposed following the war, you will find from your files that the Embassy made representations to the French Government and that the French Government replied to the effect that the question of establishing an oil monopoly was one of internal policy in which foreign governments may only find grounds to intervene if the monopoly jeopardizes any rights acquired by their nationals or if the monopoly deliberately favors exporters of certain nationalities to the prejudice of others. (See Embassy's telegram 1409, September 19, 1919.)¹⁷ The American companies maintain that through their license authorizations and by reason of the obligations which they have incurred thereunder, they have acquired rights for the period of the licenses in question, namely, 20 years. Upon the basis of these licenses they have gone into France with their capital and established import facilities and refineries at a cost of approximately \$50,000,000. If an import monopoly and/or a refining monopoly were established by the French Government the rights acquired under these licenses would be jeopardized. Furthermore, in the light of your telegram it would seem that the French have in mind the possibility of obtaining a large percentage of their petroleum needs from Russia. Thus both of the points which were brought out by the French in 1919 are involved in this case. The possibility of deliberately favoring imports of Russian oil is very important to the American interests because they have so developed crude oil production in this country as to meet the requirements of their French refineries. The French should not, therefore, especially in view of the position which they took in 1919, consider that representations by you will be in the nature of an interference with internal policy. I wish, therefore, that you will take this up orally but nevertheless as under instructions from your Government at your earliest convenience with the appropriate French authorities, making clear to them that this Government views with concern current reports indicating the possibility of establishing an oil monopoly, the effect of which would doubtless be seriously to jeopardize existing American licenses and investments. I suggest for your consideration an approach along the same lines as those taken by the British. I leave to your discretion whether you should add to your representations a statement to the effect that the

¹⁷ Not printed.

American Government will, in the event that a monopoly is established, expect full indemnification for injuries which may be sustained by American interests. Please keep in touch with the British Embassy and keep me fully and telegraphically informed with regard to developments in this matter.

HULL

851.6363/161 : Telegram

The Chargé in France (Marriner) to the Secretary of State

PARIS, September 30, 1933—noon.

[Received September 30—10:05 a.m.]

435. Department's 287, September 28, 4 p.m. As Paul-Boncour is absent from Paris I saw Leger, Undersecretary for Foreign Affairs, at noon today and without leaving any memorandum informed him that under instructions from my Government I wished to apprise him of the concern of the United States at the current reports indicating the possibility of the establishment of an oil monopoly. I discussed the matter in the light of the information contained in the telegram under reference with him and added that naturally in the case of such establishment the American Government would expect full indemnification for injuries sustained by American interests.

I informed the British Embassy of this action and will keep in touch with them.

Leger stated that even when such a recommendation should be made by the Committee, and he thought it would be made, he felt in view of the budgetary situation it would be difficult for the present Government to put into immediate effect as the items for indemnification would be so great in the first year of the establishment of such a monopoly as to disrupt the projects at present in course for balancing the budget. He said that he would keep in mind the attitude of the Government of the United States and see that it was brought promptly to the attention of the appropriate officials.

MARRINER

851.6363/168 : Telegram

The Chargé in France (Marriner) to the Secretary of State

PARIS, October 21, 1933—1 p.m.

[Received 2:25 p.m.]

475. Reference Embassy's telegram 435, September 30, noon. Article 3 of the budget now before Parliament provides that the state shall take an annual share of the profits of the imports of crude oil and petroleum and fixes the yield of this participation at 180,000,000 francs per year.

It further provides that in no case shall this tax be taken into account in fixing the limit prices of petroleum.

Considering that the sum is not fixed as a percentage of profit and that there is a prohibition of an alteration in price to meet such a tax it would appear that this was a governmental effort to appease the Socialist desire for an oil monopoly. Needless to say the American interests now functioning under licenses granted by the French Government would suffer under conditions not to be foreseen at the time the contracts were made.

The British Embassy has let the Foreign Office know that any action direct or indirect equivalent to confiscation or monopoly would bring about a consequent demand for indemnification of British companies.

I have let the Foreign Office know that the American Government has the same interest in this matter as any other country similarly affected.

MARRINER

851.6363/173

The Chargé in France (Marriner) to the Acting Secretary of State

No. 434

PARIS, December 2, 1933.

[Received December 13.]

SIR: Referring to my despatch No. 335 of October 20, 1933,¹⁸ I have the honor to report that the special petroleum commission, charged with reporting to Parliament with regard to ways and means for the institution of a monopoly on the importation of petroleum and as to the practicability of a refining monopoly, met again yesterday. According to the information given to the press, the commission issued a statement to the effect that, regardless of the ultimate recommendations of the commission, the present rights and powers of the Government in the matter of the importation of petroleum products and derivatives will not be curtailed in any way. This pronouncement is interpreted as an effort to conciliate Socialist opinion, it being evident from the subsequent deliberations of the commission that that body is not prepared to go to the lengths advocated by the Socialist group.

The commission then rejected by a large majority the proposal of M. Charles Baron, Socialist deputy and chief protagonist of a state monopoly. M. Baron's project would have given to the Government, represented by the Office of Liquid Combustibles, the right to conduct the operations of the purchase and importation of petroleum products, a less drastic plan than the outright monopoly originally advocated by him. The rejection of the Baron bill is warmly welcomed by oil interests since they feel that his project having been more simple and direct than

¹⁸ Not printed.

other proposals likely of consideration, the chances of the adoption at this time of monopolistic legislation are to that extent diminished.

It must nevertheless be remembered that it is not the prerogative of the special commission to approve or reject the principle of a monopoly. Its task is to report to Parliament regarding the practical means for a monopoly, the question of a decision lying with the legislative body. In that spirit the commission has now commenced the study of two projects for the organization of a "monopoly" presented by M. Poisson. The first would institute state administration (*régie*) and the second would group the several importing organizations and the refining organizations into two national companies (*sociétés*) with state participation. It is said that this state participation would follow the formula employed in connection with the Compagnie Générale Transatlantique and the Compagnie Air-France. That is, the Government would enjoy a 33% control. The attitude of the commission towards the Poisson proposal will not be known until after the next meeting, which is scheduled for Tuesday, December 5.

Respectfully yours,

THEODORE MARRINER

AGREEMENT BETWEEN THE UNITED STATES AND FRANCE REGARDING THE INTERPRETATION OF ARTICLE 7 OF THE CONSULAR CONVENTION CONCLUDED FEBRUARY 23, 1853, EFFECTED BY EXCHANGE OF NOTES SIGNED FEBRUARY 23 AND MARCH 4, 1933 ¹⁹

851.502/63

The Ambassador in France (Edge) to the Secretary of State

[Extract]

No. 3243

PARIS, January 10, 1933.

[Received January 18.]

SIR: I have the honor to report that a few days ago the Counselor of Embassy, Mr. Marriner, was asked to call upon M. Navailles,²⁰ of the Ministry for Foreign Affairs, to discuss developments in the situation as regards the rights of foreigners under the French Rent Laws.

As the Department may recall, although the lower courts have almost uniformly denied to foreigners the enjoyment of the privileges of rent legislation, the higher court or Cour de Cassation has, in numerous instances, upheld the rights to such privileges, particularly since the issuance of the circular letter from the Ministry for Foreign Affairs interpreting the treaty rights of foreigners under the Rent Laws, which was published in the *Journal Officiel* of August 13, 1929. M. Navailles

¹⁹ For previous correspondence regarding conflict between the French rent laws and the treaty of February 23, 1853, see *Foreign Relations*, 1928, vol. II, pp. 832 ff.

²⁰ M. de Navailles-Labatut, Secretary-General of the Immigration Commission.

stated that from information he had received, it appears that the Cour de Cassation is about to reverse itself and that in future rent cases involving foreigners the court will probably refuse to accord to them the same treatment that would be granted French citizens.

In order to meet this contingency, M. Navailles suggested that an exchange of notes take place between the Embassy and the Ministry for Foreign Affairs interpreting the rights of American citizens under the French Rent Laws as governed by the Consular Convention of February 23, 1853.²¹ He seems to feel that such an exchange of notes would materially strengthen the American position and that the binding quality of the notes would be given greater consideration than the interpretative circular of August 13, 1929, alluded to above. He suggested, as the most suitable model, the exchange of notes on the subject of Rent Laws which took place in July, 1929, between the Ministry for Foreign Affairs and the Swiss Legation in Paris, and which has been satisfactory to the Cour de Cassation in cases involving Swiss citizens. A copy and a translation of the Franco-Swiss notes are attached hereto.²²

In the Embassy's despatch No. 9738 of July 31, 1929,²² the interpretative circular of the Foreign Office was mentioned and the text thereof was forwarded with the Embassy's despatch No. 9786 of August 22, 1929.²² It was stated, in effect, in the prior mentioned despatch that, should the interpretative circular not prove effective in assuring the rights of American citizens under the French Rent Laws, it might be well to consider the possibility of an exchange of notes on the subject. To that possible end there was enclosed with the Embassy's despatch the text of analogous notes exchanged between the British and French Governments in May, 1929. A further copy of these notes is now appended hereto for the convenience of the Department.²²

Respectfully yours,

For the Ambassador:
THEODORE MARRINER
Counselor of Embassy

851.502/63

The Secretary of State to the Ambassador in France (Edge)

No. 1529

WASHINGTON, February 2, 1933.

SIR: Reference is made to a despatch from your Embassy No. 3243 dated January 10, 1933, regarding the rights of American citizens under the French rent laws.

²¹ Hunter Miller (ed.), *Treaties and Other International Acts of the United States of America*, vol. 6, p. 169.

²² Not printed.

You are authorized to enter into an exchange of notes in substance as follows:

"I have the honor to communicate to Your Excellency my Government's interpretation of Article seven of the Consular Convention between the United States of America and France concluded February 23, 1853, in relation to the rights of American citizens in France in connection with the French rent laws. It is my understanding that the following interpretation is concurred in by your Government.

"The effect of the provisions of Article 7 is to establish the right of citizens of the United States in France to enjoy the same treatment as French citizens in matters relating to the ownership, possession and disposal of property. Accordingly, citizens of the United States are entitled, to enjoy in France the benefit of all the provisions, whether applicable to owners or tenants, contained in the French law of April 1, 1926, as amended by the law of June 29, 1929, governing the relations between lessors and lessees of premises used for residential purposes, and in the law of June 30, 1926, as amended by the law of April 22, 1927, governing the relations between tenants and landlords of premises used for commercial or industrial purposes, notwithstanding article 11 of the Civil Code and the exceptions or restrictions applicable to foreigners under the aforesaid laws.

"I shall be glad to have your confirmation of the agreement thus reached."

For your guidance you will observe that the foregoing text contains no statement, such as appears in the Swiss and British notes, regarding the obligations of the United States under article VII of the convention. This article is construed as according national treatment to French citizens in the United States in respect of the possession and ownership of property only in so far as the then existing laws of the several states permitted and only "so long and to the same extent as the said laws shall remain in force". The records show that the draft of the consular convention used as a basis for the negotiations was drawn up by the French. In its original form it provided for reciprocal national treatment in respect of the possession of property. In submitting the draft the French pointed out that American citizens received national treatment in regard to ownership and possession in France whereas in the United States French nationals encountered difficulties, being subject to a different law in different states. Under our system of government legislation on the subject of ownership and possession was presumably regarded as a matter within the competence of the several states. However, in order to meet so far as possible the French viewpoint, this Government agreed on its part to recommend to the states the passage of such laws as might be necessary to give aliens the right to hold real estate, and the French text was revised accordingly. The President promptly brought the matter to the attention of the Governors of the various states with a view to eliminating the discriminations against

aliens. At the present time French citizens enjoy national treatment in practically all of the states.

In essence, therefore, the article is regarded as providing for the continued enjoyment of national treatment by American citizens in France in matters pertaining to the ownership, possession, and disposal of property, in consideration of the treatment then accorded or that might thereafter be accorded French citizens in the United States and of the President's recommending legislation to accord national treatment to aliens in those states that did not accord such treatment in regard to the holding of real estate. The French obligation, however, was conditioned on the ulterior right of France to require reciprocity, which is construed to mean that national treatment could be denied to residents of states of the United States which have not followed the President's recommendation. In view, however, of the fact that most of the states of the Union accord national treatment to French nationals and of the further fact that France has not raised the question, it is deemed inadvisable to limit at the outset the rights of American citizens in France to those citizens whose home states reciprocate. In so far as concerns the laws of the several states with respect to the renting or leasing of property, it is the Department's understanding that French citizens are accorded national treatment. In view of this fact, if the French Foreign Office insists on a statement of the rights French citizens enjoy in the United States being inserted in the exchange of notes, the existing situation in the United States could be set forth as the third paragraph in your note. Such a paragraph should be worded in substance as follows:

"I may add that, under the laws of the states of the United States and the District of Columbia, French citizens in the United States enjoy the same treatment as American citizens with regard to the leasing and renting of real property."

With reference to Navaille's inquiry regarding the word "possession" as used in the convention, the Department construes this word as applicable to any situation in which possession has been acquired as a result of lease, rental or ownership.

Very truly yours,

For the Secretary of State:
JAMES GRAFTON ROGERS

851.502/64 : Telegram

The Ambassador in France (Edge) to the Secretary of State

PARIS, February 14, 1933—1 p. m.
[Received February 14—11:30 a. m.]

57. Department's instruction No. 1529, February 2, 1933. Marriner discussed the Department's proposed note today with De Navailles who

feels that it would be acceptable if the third paragraph suggested in the Department's instruction were included and with the addition of the words "for the future application of the convention" at the end of paragraph 1.

De Navailles feels this phraseology is an improvement on that used in the case of the exchanges of notes with Great Britain and Switzerland since it does not imply that the interpretation is for the future but the application in the future shall be in accord with the given interpretation.

EDGE

851.502/64 : Telegram

The Secretary of State to the Ambassador in France (Edge)

WASHINGTON, February 16, 1933—6 p. m.

32. Your 57, February 14, 1 p. m. You are authorized to include optional third paragraph text in instruction No. 1529 of February 2.

In order to give clear expression to intent of change suggested by De Navailles in paragraph 1 last part last sentence may be amended to read "interpretation which has prevailed in the past is concurred in by your Government for the future application of the convention".

STIMSON

851.502/68

The Chargé in France (Marriner) to the Secretary of State

No. 3400

PARIS, March 7, 1933.

[Received March 14.]

SIR: Referring to the Embassy's telegram No. 64 of February 23/5 p. m., 1933,²⁵ I have the honor to transmit herewith for the Department's information and the completion of its files a copy and translation of the Embassy's note of February 23 and of the Ministry for Foreign Affairs' note of March 4, 1933,²⁶ in interpretation of the rights of American citizens under the French rent laws as governed by the Consular Convention of 1853.

Respectfully yours,

THEODORE MARRINER

[Enclosure 1]

The American Ambassador (Edge) to the French Minister for Foreign Affairs (Paul-Boncour)

No. 2246

PARIS, February 23, 1933.

EXCELLENCY: I have the honor to communicate to Your Excellency my Government's interpretation of Article 7 of the Consular Conven-

²⁵ Not printed.

²⁶ These two notes constitute Executive Agreement Series No. 44.

tion between the United States of America and France concluded February 23, 1853, in relation to the rights of American citizens in France in connection with the French rent laws. It is my understanding that the following interpretation which has prevailed in the past is concurred in by your Government for the future application of the convention.

The effect of the provisions of Article 7 is to establish the right of citizens of the United States in France to enjoy the same treatment as French citizens in matters relating to the ownership, possession and disposal of property. Accordingly, citizens of the United States are entitled, to enjoy in France the benefit of all the provisions, whether applicable to owners or tenants, contained in the French law of April 1, 1926, as amended by the law of June 29, 1929, governing the relations between lessors and lessees of premises used for residential purposes, and in the law of June 30, 1926, as amended by the law of April 22, 1927, governing the relations between tenants and landlords of premises used for commercial or industrial purposes, notwithstanding Article 11 of the Civil Code and the exceptions or restrictions applicable to foreigners under the aforesaid laws.

I may add that, under the laws of the states of the United States and the District of Columbia, French citizens in the United States enjoy the same treatment as American citizens with regard to the leasing and renting of real property.

I shall be glad to have your confirmation of the agreement thus reached.

I avail myself [etc.]

WALTER E. EDGE

[Enclosure 2—Translation]

The French Minister for Foreign Affairs (Paul-Boncour) to the American Ambassador (Edge)

PARIS, March 4, 1933.

MR. AMBASSADOR: By a letter of the 23rd of last month you acquainted me with your Government's interpretation of Article 7 of the Consular Convention concluded on February 23, 1853, between France and the United States of America, dealing with the rights of American citizens in France in relation to the French rent law.

I have the honor to inform Your Excellency that the French Government accepts, for the future application of the Convention, the following interpretation, already valid in the past.

The effect of the provisions of Article 7 is to secure for citizens of the United States residing in France the right to enjoy the same treatment as French citizens in matters relating to the ownership, possession, and

disposal of real property. Consequently, citizens of the United States will enjoy in France the benefit of all the provisions, whether applicable to owners or tenants, of the French law of April 1, 1926, amended by the law of June 29, 1929, governing the relations between lessors and lessees of premises used for residential purposes, and the law of June 30, 1926, amended by the law of April 22, 1927, governing the relations between tenants and landlords of premises used for commercial and industrial purposes, notwithstanding Article 11 of the Civil Code and the exceptions or restrictions applicable to foreigners under the aforesaid laws.

I take note that, under the laws of the different States of the United States and of the District of Columbia, French citizens residing in the United States enjoy the same treatment as American citizens in regard to the leasing or renting of real property.

Kindly accept [etc.]

J. PAUL-BONCOUR

851.802/09

The Chargé in France (Marriner) to the Secretary of State

No. 3592

PARIS, May 15, 1933.

[Received May 24.]

SIR: Referring to my despatch No. 3400 of March 7, 1933, I have the honor to state that the texts of the notes exchanged between this Embassy and the Ministry for Foreign Affairs in the interpretation of the rights of American citizens under the French rent laws as governed by the Consular Convention of 1853 have been embodied in a Presidential decree of May 9, 1933, and published in the *Journal Officiel* of May 13, the pertinent extract of which is attached hereto.²⁷ It is to be hoped that added weight will be given to the exchange of notes through the provisions of the decree, Article 1 of which states, in translation, "The interpretative accord of Article 7 of the Franco-American Consular Convention of February 23, 1853, resulting from the letters exchanged on February 23 and March 24, 1933, between the Ambassador of the United States of America and the Minister for Foreign Affairs, the content of which letters follows, is approved in order that it may be given full effect."

Respectfully yours,

THEODORE MARRINER

²⁷ Not reprinted.

GERMANY

POLITICAL DEVELOPMENTS IN GERMANY UNDER THE NATIONAL SOCIALIST REGIME¹

862.00/2809

The Chargé in Germany (Kliefoth) to the Secretary of State

No. 2163

BERLIN, January 31, 1933.

[Received February 11.]

SIR: In amplification of my telegrams Nos. 10, 11 and 12, of January 28 and 30, 1933, respectively,² and in continuation of section 2 of despatch No. 2159 of January 30, 1933,³ I have the honor to report that, following the President's refusal to authorize von Schleicher to dissolve the Reichstag, the entire Schleicher Cabinet resigned on January 28, and that a new Cabinet headed by Hitler was appointed within forty-eight hours. The Hitler Cabinet is based on the support of the Nazis, Hugenberg Nationalists and the Stahlhelm, and thus constitutes the "national concentration" for which Hugenberg and von Papen have been striving right along.

Von Schleicher's downfall is attributed largely to his failure to secure the cooperation of the Nazis, his conciliatory attitude toward organized labor, and his refusal to yield to unreasonable demands by the powerful agrarian interests. He was the victim of political intrigue by a small group of Nationalists who desired a purely reactionary government and through personal contact with President von Hindenburg and his immediate advisers succeeded in undermining his position.

While it passed as an open secret that von Schleicher did not enjoy the President's confidence in the same measure as his predecessor, von Papen, few people expected that this Machiavelli of post-war Germany, who is reputed to have made and unmade chancellors, would suffer shipwreck so soon and as a result of similar machinations by his former political collaborators.

It appears now that von Papen, whose downfall about two months ago was attributed to his successor, General von Schleicher, was chiefly instrumental in causing the latter's own defeat. There can be no doubt now that von Papen's secret meeting with Hitler about four weeks ago was a plot against von Schleicher's chancellorship and that the attacks

¹ For previous correspondence, see *Foreign Relations*, 1932, vol. II, pp. 276 ff.

² None printed.

³ Not printed.

upon von Schleicher by the Landbund and the Hugenberg Nationalists which followed had been deliberately planned with a similar purpose in view.

The fact that von Papen was able to form the new Cabinet in such a brief space of time shows clearly that he had prepared the ground long before von Schleicher's resignation. With the formation of the Hitler Cabinet the reconciliation between Hugenberg and Hitler, the restoration of the so-called Harzburg Front, has at last been achieved. Cooperation between the Nazi and Nationalist members of the Cabinet may prove difficult because of the divergent interests of these two parties. However, the indications are that Hitler will at first concentrate his efforts on the struggle against the Social-Democrats and Communists—the common political enemy of the groups represented in his Cabinet—in order to detract attention from what seem to be unavoidable conflicts within the Government.

As matters now stand, the two Catholic parties (Center and Bavarian People's Party) will occupy a pivotal position in the Reichstag. Without the support of these parties Hitler cannot hope for a workable majority. It appears that von Papen deliberately failed to inform the Center Party of the progress of his negotiations with the Nazis which made the Hitler Cabinet possible. These negotiations were conducted with unusual secrecy, reminiscent of von Papen's activities during the war.

While the Center favors Nazi participation in government, the structure of the Hitler Cabinet is not to its liking. The only available portfolio is that of Minister of Justice, and it is not likely that this party will agree to share responsibility of government in return for this politically unimportant post.

Attempts are now being made to induce the Center at least to "tolerate" the new Cabinet. As pointed out in my telegram No. 12 of January 30, 5 p.m., Hitler can count at best on about 270 votes in the Reichstag out of a total of 584. In order to escape parliamentary defeat he must at least make certain that the Center will not vote against him. Unless an arrangement along this line is reached, a dissolution of the Reichstag and new elections seem unavoidable.

The Nazis are now endeavoring to dispel the apprehensions which the formation of the Hitler Cabinet evoked among the republican elements and in the ranks of organized labor. Dr. Frick, the Nazi Minister of the Interior, declared in reply to questions by representatives of the German and foreign press, that the new Cabinet was not planning to change the Constitution or to suppress the Communist Party.

According to circles close to the new Government, the Nazis were actually considering the possibility of outlawing the Communist Party

and expelling the Communist deputies from the Reichstag, which would then give the Hitler Cabinet a majority without the Center Party. It is now stated on good authority that this question was brought up at the first meeting of the new Cabinet yesterday, but that the matter was finally dropped by the Nazis owing to opposition by Baron von Neurath and other members of the Cabinet, who pointed out that Moscow would not fail to resort to reprisals and that Germany, especially in view of the present heavy unemployment, could not afford to jeopardize her trade with Russia.

The new Government has thus far made no enunciation of policy. The reactionary and monarchist influence which predominates in the new Cabinet, however, indicates clearly what course it may be expected to pursue.

The Social-Democrats and the trade unions have issued an appeal to the German workmen to disregard "the premature and therefore harmful" attempts by irresponsible elements to call a general strike as a means of retaliation against the new reactionary régime. Attempts by the Communists to incite the workmen to a general strike have thus far been without success.

It is understood that Dr. Plank, the Secretary of State in the Chancellor's office, and Herr Marcks, the head of the Government Press Bureau, are to be replaced by dyed-in-the-wool Nazis. I have been informed, in confidence, by Dr. Ritter, the Chief Economist in the Foreign Office, that the new Government intends to exert pressure on Dr. Luther to resign in order to make Dr. Schacht president of the Reichsbank.

The Steering Committee decided yesterday to convene the Reichstag on February 7, unless the Government should desire to read its declaration of policy earlier.

The new Cabinet is constituted as follows:

Chancellor:	Adolf Hitler
Vice-Chancellor and Reich Commissioner for Prussia:	von Papen
Minister for Foreign Affairs:	Baron von Neurath
Minister of the Interior:	Dr. Frick
Minister of Defense:	General von Blomberg
Minister of Finance:	Count Schwerin von Krosigk
Minister of Economics and Minister of Agriculture:	Dr. Hugenberg
Minister of Labor:	Franz Seldte
Minister of Posts and Transportation:	Baron von Eltz-Rübenach
Minister without portfolio:	Captain Göring

Herr Göring has also been appointed Reich Commissioner for Aviation and Reich Commissioner in charge of the Prussian Ministry of the

Interior. Dr. Gereke has been retained as Reich Commissioner for Productive Unemployment Relief. A Minister of Justice is to be appointed later.

Respectfully yours,

ALFRED W. KLIEFOTH

862.00/2894 : Telegram

The Chargé in Germany (Kliefoth) to the Secretary of State

BERLIN, February 2, 1933—11 a.m.

[Received February 2—9:25 a.m.]

15. Yesterday evening I dined with Dr. Schacht at his invitation. He stated that Hitler had urged him to become Minister of Finance in his Cabinet. He declined because he prefers to be President of the Reichsbank intimating that Luther will be eventually forced out. Schacht took pains to impress me with the fact that he is Hitler's financial and economic adviser and that he is constantly in consultation with the new Chancellor. He stated further that Von Krosigk was retained as Minister of Finance upon his advice.

I asked him if it were true that Hugenberg would be the guiding spirit in the new government. He replied that Hugenberg was taken in largely for tactical reasons, that he is expected to cause much trouble in the Cabinet but it is hoped that this will lead eventually to his elimination as the leader of the Nationalist Party. Hugenberg's policies will receive little consideration and Schacht himself will make it a point to kill Hugenberg's proposal for a drastic reduction of interest rates on foreign private debts.

He assured me that in the field of economics and finance the Nazis will make no attempt to carry out any of their well known demagogic reforms, that they will not be permitted to engage in experiments likely to jeopardize big business and banking in Germany and that American business in Germany had nothing to fear. He told me that all big business viewed the new regime with sympathy. I have good reason to believe, however, that this statement is an exaggeration. A leading executive official of the Reichsverband der Deutschen Industrie told me only this morning that the 4-year plan announced by Hitler last night was an absurdity and that this organization viewed the latest political developments with scepticism and reserve.

I gathered from Schacht's remarks that Hindenburg obtained assurances from Hitler that he will observe the Constitution.

KLIEFOTH

826.00/2897

*Memorandum by the Under Secretary of State (Castle) of a
Conversation With the German Ambassador (Von Prittwitz)*

[WASHINGTON,] February 2, 1933.

The German Ambassador talked freely about the political situation in Germany. He said that the main thing he wanted to make very clear was that the policy of the new Government, so far as external relations were concerned, would not differ from that of the former Governments. He said that on disarmament, for example, there would be no change in policy, that, of course, Germany to a man wanted equality, but that, as a matter of fact, the men in power, including Hitler, had almost a pacifist mentality. The Ambassador is inclined to believe that in the elections on March 5th the present parties forming the Government will secure a real working majority. He thinks that the Centrists will lose to some extent, that the Social Democrats will make overtures to the Communists, which will result in a decreased Communist representation without probably an increased Social Democrat representation. He thinks that the slogan "Hindenburg and Hitler" will carry a really large number of votes as the people who have been afraid of Hitler will, nevertheless, vote for a combination of this sort on account of their confidence in the President.

I asked the Ambassador whether this new Government would affect his job. He said that it probably would, that, of course, he could not tell definitely, but that he felt his days as ambassador would be numbered if the elections gave the Government a majority. He said that Hugenberg has been steadily working to get rid of any one with a Stresemann taint, that, although he has never been in politics, he is certainly not representative of the parties in power and that in the key positions he thinks they will want to have their own people. He does not believe that Hugenberg will have very much influence in the new Cabinet, although he will have to be retained until after the elections to secure the votes of the Nationalists.

W. R. CASTLE, JR.

862.00/2896 : Telegram

The Ambassador in Germany (Sackett) to the Secretary of State

BERLIN, February 6, 1933—5 p.m.
[Received February 6—2:55 p.m.]

19. The emergency decree mentioned in my No. 17, February 4, 7 p.m.,⁴ was issued today. It contains drastic regulations pertaining to

⁴ Not printed.

political meetings and demonstrations as well as restrictions on the press. The latter provide for the suppression of daily newspapers and periodicals for incitement to violation of laws and regulations, general strike or strikes in vital industries, for vilification of members of the Government and high officials and for disseminating incorrect news likely to impair vital interests of the state. The provisions of this decree are more drastic in both penalties and scope than the Papen decree which was withdrawn by Schleicher.

By another Presidential decree based on paragraph No. 1 of article No. 48 (see despatch 2005, of October 28, 1932) ⁵ the titular Prussian Government is deposed and the Minister President's functions transferred to Von Papen who is to take the place of Social Democrat Braun on the "triumvirate collegium" for the purpose of effecting a dissolution of the Diet. This decree may lead to court action.

SACKETT

862.00/2914

The Ambassador in Germany (Sackett) to the Secretary of State

No. 2187

BERLIN, February 13, 1933.

[Received February 23.]

SIR: In continuation of despatch No. 2163 of January 31, 1933, I have the honor to report further on the Hitler Cabinet, with particular reference to the scope of the work of the respective Ministers and the relations between the political groups on which the present Government is based.

The Hitler Cabinet, based on the so-called Harzburg Front, is a strange coalition of political extremists, with strongly divergent views on social, economic, and financial policies. The principal cohesive force is a fanatic chauvinism coupled with a common hatred of democratic government and the parliamentary system. According to the Constitution, Hitler as Chancellor determines the policy of the Government. In reality, however, Hugenberg and von Papen are the guiding spirits in so far as fundamental and vitally important national problems are concerned. A glance at the Cabinet list shows that the Nazis have taken charge of the purely political and administrative departments of the Government, leaving to others those ministries in which constructive work requires unpopular measures.

With Dr. Frick as Reich Minister of the Interior and Captain Göring in charge of the Prussian Ministry of the Interior, the Nazis now control the administrative machinery in the Reich and the largest German state. These ministers have promptly installed their party colleagues in

⁵ Not printed.

prominent and influential positions. In certain cases, where civil service regulations or budgetary restrictions made the appointment of a Nazi official impossible, the Nazi ministers appointed party colleagues as assistants, or special commissioners without pay. In Prussia, even to a greater extent than in the Reich, the Nazis now practically control the civil service, the police, schools, universities, and other educational institutions.

The work of purging the administrative departments of democratic and republican influence set in with an avidity and swiftness unprecedented in German political life. Avowedly republican officials, who escaped dismissal under the Papen régime, are being systematically replaced by registered members of the Nazi Party, and, to a much lesser degree, by Hugenberg Nationalists. This has caused considerable feeling between the Nazis and the Hugenberg Nationalists, who naturally resent a Nazi monopoly of political patronage.

The ministries charged with less popular tasks than the distribution of political plums have been left to the Nationalists, or the so-called specialists, who have administered these departments in preceding cabinets. Baron von Neurath, a career diplomat, has been left in charge of the Foreign Office, thus relieving the Nazis of direct responsibility for an eventual failure of the Government to achieve a satisfactory solution of the disarmament problem and a revision of the Versailles Treaty, which they promised their followers immediately after accession to power. Count Schwerin von Krosigk has retained the Ministry of Finance and thus is directly responsible for the unpopular taxation measures which the Government may have to take in order to put the budget on an even keel.

The greatest responsibility was assumed by Hugenberg, who, as the present election campaign doubtless shows, is still Hitler's political rival, despite their cooperation in government. The tasks assumed by Hugenberg are gigantic: he is practically economic dictator. He is in charge of the Reich Ministry of Economics and the Reich Ministry of Agriculture, the Prussian Ministry of Agriculture and the Prussian Ministry of Commerce. He is also Commissioner for Agrarian Relief (*Osthilfe*). Moreover, through his friend and political collaborator, Minister of Labor Seldte, Hugenberg will doubtless indirectly also shape the policy of that important department. The indications are that in all of these departments Hugenberg rather than Hitler will be the decisive factor.

The Reichswehr, which the Nazis were so anxious to control, is practically the only arm of the executive branch of the Government which they do not control. The Embassy has been informed that, contrary to newspaper reports, General von Blomberg is not politically affiliated

with the Nazis and that he has been appointed Reichswehr Minister at the express wish of President von Hindenburg, in order to keep the Reichswehr out of politics.

For the time being, both Hitler and Hugenberg are concentrating their main efforts on the election rather than on the conduct of government affairs. After the election, however, when the Cabinet is faced with the task of doing constructive work, it will become apparent whether or not Hitler's and Hugenberg's conflicting views can be reconciled. The only thing certain at present is that both are determined to stay in power regardless of the outcome of the election, and that, with this end in view, both are making strenuous efforts to fortify their own respective positions.

Hitler's tactics of waging the campaign in a way that would strengthen the position of his own party rather than that of the Cabinet, if necessary at the expense of the Hugenberg group, was viewed by the latter with manifest alarm. Realizing that Nazi gains on March 5 without corresponding gains by his own party might enable the Nazis and the two Catholic parties to form a workable majority in the next Reichstag without his support, Hugenberg had to take prompt and extraordinary steps to meet such a contingency.

The result is that the Nationalist Party has discarded its name—at least for the duration of the present campaign. Its candidates are running on a ticket called "Kampfblock-Schwarz-Weiss-Rot," headed by Hugenberg, Seldte and von Papen. Seldte's candidacy is intended to attract the votes of the war veterans, while von Papen is making a strong bid for the Catholic elements of the Right.

At this writing, the consensus is that the parties in power will not succeed in obtaining the desired clear majority in the Reichstag. In that event, the question of Centrist participation in government will again come to the fore. It passes as an open secret, however, that Hitler would prefer to cooperate with the Catholic parties rather than with Hugenberg, but that President von Hindenburg and his principal adviser, von Papen, are opposed to the elimination of Nationalist influence from government.

Respectfully yours,

FREDERIC M. SACKETT

802.00/2900 : Telegram

The Ambassador in Germany (Sackett) to the Secretary of State

BERLIN, February 16, 1933—6 p.m.

[Received February 16—2:50 p.m.]

24. The Nazis by replacing Prussian officials with their own adherents are swiftly and systematically fortifying their position in the administrative branches of the government. The indications are multiplying that the non-Nazis members of the Cabinet are becoming disturbed at the course events are taking but apparently are impotent and evince a reluctance to seek Presidential assistance even if it would be forthcoming. Practically all police commissioners throughout Prussia have been replaced by Nazis with ultrareactionary records mostly former Army and Navy officers of the daring type. I understand that Goering intends to use the Brown Army as auxiliary police even going to the extent of alleging the existence of emergencies and that elections meetings of political opponents are to be sabotaged by Fascist methods.

The muzzling of the opposition press especially of the leading moderate journals (already quite evident from their current tone) has curtailed this valuable source of information and the lack of reliable press news gives rise to disquieting rumors.

SACKETT

702.00/66

The Ambassador in Germany (Sackett) to the Secretary of State

No. 2204

BERLIN, February 20, 1933.

[Received March 6.]

SIR: I have the honor to report that certain foreign political developments in Europe which followed the formation of the Hitler Cabinet are viewed in Germany with manifest uneasiness. Those political groups which condemned the policy of conciliation with France, initiated by Stresemann and continued by Curtius and Bruening, are beginning to realize that in the field of foreign politics Germany must proceed cautiously in order to avert the danger of political isolation.

As an opposition party, the Nazis asserted that the German policy of striving for conciliation with France tended to strengthen the latter's hegemony in Europe without bringing appreciable alleviation to Germany. They repeatedly proclaimed that after their ascendancy to power Germany would form an alliance with Italy and Hungary and seek closer cooperation with England in order to isolate France, "Germany's hereditary enemy."

In view of Mussolini's policy against the German-speaking population of South Tyrol, and the fact that Italy had broken faith with Germany during the war, a new alliance with that country was open to strong criticism. However, to most of their adherents the Nazis' argument that Italy's difference with France made that country a natural ally for Germany was convincing enough to overcome this criticism.

It was widely expected, therefore, that the formation of the Hitler Cabinet would be followed by a change of German foreign policy along this line. The Hitler Government's manifesto, however, carefully abstained from any statement which might be interpreted as a deviation from the foreign political course pursued by preceding German cabinets. Nevertheless, the enthusiastic supporters of the new régime inclined to view this as a tactical move rather than as an indication that the foreign policy is to be continued along the same lines. The manifest rebuff which Ambassador de Jouvenel met in Italy was hailed as an encouraging sign that, with Mussolini's cooperation, Hitler would succeed in checking France's influence in Europe.

Within the brief space of a few days, however, foreign political developments in Europe took a turn unforeseen by German chauvinists, who had condemned the policy of conciliation with France and had urged a shorter and more promising course to a revision of the Versailles Treaty.⁶ The rumors of a secret alliance between Germany, Italy, and Hungary evoked distrust of Germany in the smaller countries of Europe. The situation was further aggravated by the French ultimatum to Austria in connection with the Hirtenberg munitions affair, and the announcement of a consolidation of the Little Entente (see despatch No. 2200 of February 18, 1933⁷).

The German plans of an alliance with Italy and Hungary envisaged Austria as the connecting link between Germany and Italy on the one hand, and Hungary and Italy on the other. The ultimatum to Austria in connection with the munitions affair is therefore regarded here as a challenge to Italy, as well as a tactical move to force Austria into the Little Entente, in order thus to make that country a barrier to such an alliance rather than a connecting link. The fact that the French ultimatum to Austria is reported to have been transmitted with the approval of England has evoked unconcealed disappointment and even bitterness among leading Nazis, who have been striving to gain England's support for their plans of an alliance with Italy and Hungary.

Perhaps even more serious misgivings were aroused in Germany by the reports of Herriot's activities looking to a revival of the pre-war alliance between France and Russia. As pointed out in despatch No. 2147 of January 20, 1933,⁷ the foreign policy pursued by Stresemann,

⁶ *Treaties, Conventions, etc.*, 1910-1923, vol. III, p. 3329.

⁷ Not printed.

and continued by his successors up to now, was based on the idea that, by virtue of her geographical position as well as her economic and cultural structure, Germany was the natural "bridge between East and West," the connecting link between Soviet Russia and the capitalistic countries of the West.

While the Nazis would like to isolate France through an alliance with Italy and Hungary, they have no desire to alienate Russia. The Hitler Government doubtless realizes the inherent dangers to Germany of a Franco-Russian alliance, and that repressive measures against German Communists may make Russia more inclined to conclude such an alliance with France. This consideration—even more than the fear of the withdrawal of Soviet trade orders from Germany—doubtless explains why the measures against the German Communists have not been as drastic as was generally expected from a Nazi regime.

In this connection, a statement made by Dr. Frick, the Nazi Minister of the Interior, at an election meeting in Dresden yesterday, is especially significant. Dr. Frick said that, contrary to current rumors, the Government would not suppress the Communist Party, but would seek to overcome the Communist menace in Germany by convincing its followers of the error of their ways. This sounds more like the preaching of a missionary rather than the songs of hate against the Marxists that one is accustomed to hear from Nazi leaders.

Dr. Frick's statement shows without doubt that the Hitler Cabinet realizes that in order to avert the danger of political isolation, Germany must not only continue a pacific and conciliatory policy abroad, but must also abstain from too drastic measures against the Communists. Russia has even now ceased to be a trump card in the hands of German diplomacy, and the German Government cannot well afford to carry out its threat to exterminate the Communists by brutal force, as a serious attempt in this direction may throw Russia into the open arms of France.

Respectfully yours,

For the Ambassador:
ALFRED W. KLIEFOTH
First Secretary of Embassy

882.00/2924

The Consul General at Stuttgart (Dominian) to the Secretary of State

No. 899

STUTTGART, February 21, 1933.

[Received March 13.]

SIR: I have the honor to submit below, as of possible interest, the striking similarity observable between internal political developments in Germany since National Socialist success culminated in the appoint-

ment of Adolf Hitler as Chancellor of the Reich and the events which unfolded themselves in Italy in the Fall of 1921 and led to the establishment of Fascism in that country. My former assignment to Rome enables me now to make interesting comparisons.

Perhaps the most striking development since the accession of Mr. Hitler to the premiership has been the great increase of political brawls and fights reported throughout the country. Street fighting in large cities and small villages between National Socialists on the one hand and, generally, Communist or Socialist bodies or individuals on the other has become a daily occurrence since February 1 and is steadily augmenting in intensity and extent. The number of fights increases considerably on week-ends when laborers spend a good deal of time in beer halls and cafés. In Italy these week-end brawls were known as the dominical quarrels and their recurrence in Germany at this time is the result of causes similar in every respect to those formerly at play in Italy.

The extent to which these encounters are definite provocations cannot be determined with any degree of accuracy. It is believed, however, that the aggressiveness and militancy which are primary tenets and methods of operation of Fascist organizations would not preclude intentional preparation, through these brawls, of the necessary circumstances which would enable the government to invoke a state of exceptionally grave conditions and adopt measures tending to suppress many forms of liberty granted by the German Constitution. Such a move, it is believed, is favored in National Socialist circles in order to ensure success of this party at the elections on March 5. As a matter of fact, matters are fast reaching the stage at which doubt is felt at the holding of a free election in Germany on that day.

The essential characteristic of Italian Fascism in regard to internal politics is found in the suppression of constitutional rights which has led to the negation of all personal liberty in Italy since the beginning of 1922. Concurrently a strict censorship of the Italian press was established which soon developed into simple suppression of all opposition papers. Consequently there has been no freedom of the press in Italy for a period of over ten years and, strangely enough, the Vatican organ *L'Osservatore Romano*, published within the confines of the Vatican City, may be considered at present as the only uncensored daily paper published in the Italian peninsula.

Today a drift toward a similar state of affairs in Germany is distinctly perceptible. The number of newspapers temporarily suspended has increased considerably since January 30 and the temporary prohibition of publication is directed not merely to Communist papers as in the past but increasingly to Socialist newspapers and, surprisingly, even to conservative Center party newspapers.

That German public men are concerned about the curtailment of the liberty of the press as well as the suppression of free public opinion is shown by the speech of the State President of Württemberg, Dr. Bolz, at Hechingen, Hohenzollern, on February 17. Dr. Bolz ranks high in the Center party and is perhaps one of the most conservative Reichstag deputies. He admitted frankly, however, that the present trend was leading the country to civil war and revolution, and it was his opinion that the German people would not stand for the suppression of their liberties as the Italian people had done.

Another feature of resemblance to Italian developments is seen in the high-handed and illegal assumption of authority by organized National Socialist bodies. Within the past two weeks reports have been heard of bands of National Socialists traveling about from village to village in trucks owned by their party and entering the homes of private citizens there to inquire whether the inmates are members of the National Socialist party or not or requesting to know whether there are Jews in the household, and in general assuming an intimidating and terrorizing attitude which conforms so minutely with the methods adopted by the Italian Fascists during the first three years of their organization that one is led to suspect that coaching from Italian masters may have led to the adoption of similar methods in Germany.

In the streets of Stuttgart the spectacle of Fascist bravoos, clad in the military uniforms of the National Socialist army and going about in groups of four or five, with arrogant and swaggering attitude, may be seen daily, though more particularly on Sundays and holidays. As in Italy, these Fascists carry arms openly and it is evident from their manner that their marching about is intended as a deliberate provocation to create disturbances and to intimidate peaceable citizens.

Throughout the last two weeks the sessions of the small Württemberg Landtag or State Parliament have strongly reminded me of the vicissitudes of the Italian Parliament throughout 1922 and 1923. In both instances an utter defiance of constitutionality was manifested by the Fascist deputies. In the Württemberg State Parliament, which is now presided by a National Socialist President, this official exhorts from the chair he occupies his party members to eject bodily members of the opposition from the session halls.

The Italian Fascists lost no time in replacing the entire government personnel by Fascists. In this process it was apparent that the pressure of members of the Fascist party for positions was less taken into account than the definite intent of building up a Fascist State and the furtherance of a policy of immediate and thorough fascistization of Italy.

Again in this respect there are signs of similarity in Germany. Recent press notices indicate that chiefs of police in many cities are being

replaced and it appears that the destituted officials are functionaries whose loyalty to a republican régime is undoubted. Similar changes among army officers in the military establishment within this consular district have been noted in my despatches No. 886 and No. 898 of February 7 and 20, 1933, respectively.⁹

There is, of course, a certain amount of resistance which emanates primarily from Socialist and Communist circles and which also is found in Center and Democratic circles. It is doubted, however, whether this opposition will assume the concrete form of an armed civil struggle, in spite of statements made by the State President of Württemberg, as reported above. It would seem as if the number of Germans definitely in favor of Fascism is too large and that a sufficient majority cannot be found to oppose the National Socialists either by constitutional methods or by means of open rebellion. The situation here is interestingly different from that in Italy where a Fascist minority has imposed its will on the majority of the Italian people. Indeed it is my personal belief that were a free election held in Italy today the Fascist government would not be returned, whereas it is not unlikely that, even in the event of a free election being held in Germany on March 5, the National Socialist party may obtain a majority of the votes.

But even were the election results not any more decisive than those of 1932, it is possible that the National Socialists will force their stay in power through the well equipped party army they have built up. There has been no lack of public assertion in the past weeks by leaders of the National Socialist party that they intend to maintain themselves in power irrespective of election results. This is in keeping with Fascist methods and with Italian precedents.

Assumption of authority by the National Socialists is viewed with particular alarm in academic circles where faculties and the teaching staff are government appointees. It is recalled how in Italy competent teachers and scholars of international reputation were arbitrarily dismissed by the Fascists in power because of refusal to take part in Italian politics. It is felt that a similar fate is in store for the university teachers who have sufficient courage to assert their independence of political affiliation. The Fascist policy of ousting from office those teachers who are not militant Fascists has already found expression, according to local press reports, in Berlin where National Socialist students are reported to have bodily thrown out of the State Art School a number of their teachers on allegations that they were Marxists and Jews. This action is considered as ominous and as boding ill for the future of German education under National Socialist auspices.

⁹ Neither printed.

Still another method of action by the National Socialists which resembles closely Italian Fascist practice is the impeding by violence of campaign meetings, as happened at Oberndorf in Württemberg on February 17. Here the Württemberg Minister of National Economy, who is a member of the German Democratic party, had been scheduled to address a meeting of members of his party. At the very beginning of the session a group of National Socialists in the audience tried to prevent the speaker from making his address and continued their tactics throughout the meeting. They even attempted to use bodily violence on the Minister but were prevented by the policemen present. The newspaper account of the resort to violence recalls vividly similar scenes in Italy at the very beginning of the establishment of the Fascist régime.

In Germany these days, as in Italy under the Fascist régime, the National Socialists claim that their party alone can meet the communist danger. The argument is exaggerated and may be discounted as the highly efficient German police together with the Reichswehr, not to mention the thousands of orderly German citizens in every city suffice amply to prevent the setting up of a communist régime in Germany. The exploitation of communism by reactionary bodies in many countries is now too well known to need elaboration here. That communism will continue to exist in the country is probable because of existing industrial conditions. At the same time it appears true that the growth of National Socialism and of Fascist developments in Germany is contributing to bring new recruits to the communist party. The same results followed the establishment of Fascism in Italy, where anarchism and communism, although not openly avowed, are believed to be much more widespread today than at the beginning of the Fascist régime. In Italy also a strange process of Communist workmen turning to membership in the Fascist unions was noted and several instances of like changes have come to my knowledge in this district. This may be explained by the similarity between the radicalism of Fascists and Communists and by analogies such as disregard of law and constitutionality found among both. One only needs to recall here the similarity in methods of government in Soviet Russia and Italy and note the gradual drift of very recent German government methods in the same direction.

That the German people will act as the Italians and submit to Fascist rule is believed possible. The basis of this possibility is found in the toleration by the German people of the military clique headed by the former Kaiser which ruled them up to the end of 1918. A people which submitted to such a rule in the twentieth century may be considered as unlikely to oppose another militarist government such as the National Socialists are organizing.

It may be inferred, by analogy, that should the spread of Fascist authority meet no opposition in Germany it may not be long before considerably restricted personal liberty will be observable in the country as in Italy. It will then be possible to obtain a fairly accurate idea of future developments in Germany, both as to internal and foreign affairs, by confrontation with Italian precedents. In the sphere of foreign affairs, however, allowance will have to be made for differences in aims in both countries in spite of the similarity which is to be found in some of their policies as, for instance, in the field of colonial expansion.

Respectfully yours,

LEON DOMINIAN

862.00/2909 : Telegram

The Ambassador in Germany (Sackett) to the Secretary of State

BERLIN, February 23, 1933—3 p.m.

[Received February 23—12:35 p.m.]

25. Goering issued extraordinary instructions to the Prussian police practically demanding from them protection of the Brown Army and Stahlhelm in the election campaign but the treatment of similar organizations of the opposition parties as enemies of the state which must be put down ruthlessly. These orders have encouraged the Nazis to apply terrorist methods in the campaign against the Center Party as well as the parties of the Left. The breaking up of a Centrist meeting in Crefeld at which the principal speaker, former Minister of Labor Stegerwald, was beaten up by Nazis is viewed with alarm as an indication of the course developments are taking in the closing days of this unusually stormy campaign. The Centrist *Germania* has appealed editorially to Hindenburg to assert his authority as President in order to check such political outrages.

Hitler's and Goering's public appeals of yesterday to their followers to exercise discipline attributed the attacks on Centrist meetings to "provocative elements". This is only a tactical maneuver.

Alarming rumors of plans by the Government to violate openly the Constitution after the election if the parties in power fail to obtain a clear majority are becoming widespread. Resumed muzzling of the press contributes to the circulation of such rumors.

The process of purging the administration of Republican officials is continuing.

SACKETT

862.00 P.R./130

The Ambassador in Germany (Sackett) to the Secretary of State

[Extract]

No. 2211

BERLIN, February 27, 1933.

[Received March 11.]

SIR:

2. *The Election Campaign.* The high-handed methods by which the Nazis are conducting the campaign; the systematic breaking up of meetings of political opponents; the tactics of intimidating and terrorizing the population; the arbitrary suppression of left newspapers, while the Nazi press continues to defame and vilify political opponents; the refusal of Nazi police commissioners to permit popular Social-Democratic leaders to speak at political meetings; the confiscation of placards and literature; the systematic attempts on the lives of republican leaders; and, above all, the condoning of acts of terrorism by the Nazi-controlled police if the victims are so-called Marxists, clearly indicate that the election on March 5 will not be "a free expression of the will of the people" even if the ballot-boxes should not be tampered with.

In the course of this month, approximately 150 newspapers have been suppressed, most of which are Social-Democratic or Communist organs, though a large number of Centrist organs have also been suppressed for publishing an election appeal by leading Catholic associations. However, following a conference between Centrist leaders and Minister Goering, the ban was raised after being in effect only one day. The prohibition of many Left journals in Prussia is being daily rescinded by the Supreme Court, but the work of suppression continues unabated.

Accurate descriptions of existing conditions in Germany appear only in the foreign press. The journals published in the Reich are not only afraid to print what happens at home, but are even careful about printing statements concerning the situation in Germany appearing in the foreign press. The official statements about political disturbances are deliberately colored, and it is becoming increasingly difficult to obtain impartial information. Even most cautious criticism of the actions of the Government is becoming increasingly scarce.

Apparently not satisfied with the results already achieved by his repressive measures, Minister Goering has issued instructions for the application of the Decree of February 4 restricting the freedom of the press and the freedom of assembly, which imply that offenses are to be dealt with rigorously only when committed by persons and journals opposed to the Government.

By another decree, Minister Goering instructed the Prussian police to cooperate with and protect the Brown Army and Stahlhelm, but to treat political organizations opposed to the parties in power as enemies of the State which must be put down ruthlessly. In this extraordinary decree he ordered the policemen to make liberal use of their firearms in case of emergency. He promised protection to policemen who used firearms freely, but threatened disciplinary measures against those who failed to do this.

Under the pretext that political disturbances allegedly instigated by the Left parties are endangering public security, Goering has issued an ordinance authorizing the appointment of members of the Brown Army and Stahlhelm as Auxiliary Police, who will wear, while on duty, the uniforms of their respective organizations and a white armband with the inscription "Auxiliary Police."

It will be seen that Goering deliberately draws the line between the so-called National organizations and all others, without even a pretense to impartiality or fairness. The employment of young men with fanatic political ideas as special policemen is regarded by the parties of the Left as a provocation and, in view of Goering's decree demanding ruthless repression of political opponents, may lead to serious complications with far-reaching consequences.

The Prussian Staatsrat, which, unlike the Diet, was not dissolved, has passed a resolution protesting against Goering's decrees to the police. Dr. Adenauer, the President of the Staatsrat, was authorized by resolution to approach President von Hindenburg in person with a view to securing a rescission of these decrees. Through the intercession of Vice-Chancellor von Papen, a meeting was arranged between Goering and Adenauer, as a result of which it is expected that Goering will issue a supplementary ordinance modifying certain objectionable provisions of the decrees in question. In consequence, Dr. Adenauer's audience with President von Hindenburg will not take place.

Meanwhile, the Nazis and Nationalists continue to assert that they will remain in power after March 5 regardless of the outcome of the election. With this aim in view, they are consistently pursuing the policy of purging the administration in Prussia and the Nazi-controlled states of republican officials.

Respectfully yours,

FREDERIC M. SACKETT

862.00/2935

The Ambassador in Germany (Sackett) to the Secretary of State

No. 2222

BERLIN, March 3, 1933.

[Received March 25.]

SIR: As pointed out in my telegram No. 27 of February 28,¹⁰ the burning of the Reichstag gave the Nazis the pretext which they needed for further repressive measures against political opponents. In addition to the planned decree, sharpening the penalties for treason, sedition and subversive activities which now provides the death penalty for the betrayal of military secrets, the Government promptly issued a presidential decree putting into effect a state of exceptional emergency, suspending those articles of the Constitution which practically constitute the German Bill of Rights. (See my telegram No. 28 of March 1, 4 p.m.)¹⁰

According to a semi-official statement, "it has been proved beyond doubt that Communist leaders were directly connected with the incendiarism and that Communists had planned other acts of terrorism." Furthermore, the Dutchman arrested as the incendiary is reported by the Prussian authorities to have admitted in his confession that he had connections with the Social-Democrats.

On these grounds, and by virtue of the unlimited powers granted him by the Emergency Decree, Minister Goering immediately ordered a wholesale arrest of Communist deputies in the Reichstag and Prussian Diet, as well as prominent pacifists, journalists, authors, educators and lawyers who defended Communists in political trials, and a number of Social-Democrats. Several thousand persons, many of whom are intellectuals and not registered members of a political party, are now being detained in custody on the basis of this decree, which permits their confinement in prison for an unlimited time, without being informed of the reason. At a meeting of his party last night, Minister Goering boasted that alone in the Rhineland and Westphalia 2000 persons have been put behind the bars.

All Communist newspapers have been prohibited in Prussia for four weeks, Social-Democratic newspapers for two weeks. A similar prohibition has been imposed on all periodicals, handbills and placards of the two parties. In other states, except those controlled by the Nazis and Nationalists, only the Communist press has been suppressed. In Prussia, Social-Democratic as well as Communist meetings have been prohibited, and the placards of these parties on billboards and on the advertisement kiosks have been torn down by the police.

¹⁰ Not printed.

In Prussia and other parts of Germany, the Auxiliary Police—composed of members of the Nazi Storm Detachments and the Stahlhelm—are being mobilized in large numbers, and cases are reported where uniformed Nazis acting as police have searched the homes of individuals and organizations opposed to the present régime. To demonstrate that the Communists have been definitely downed, a Nazi Storm Detachment paraded before the Karl Liebknecht House, Communist headquarters in Berlin recently closed by the police, and, with appropriate ceremonies, hoisted the Nazi flag over the building.

Of the opposition parties, aside from the very small Staatspartei, only the Center Party is still able to conduct its campaign in Prussia and other states dominated by the Nazis, despite the drastic restrictions imposed by the decrees. The Centrist Party can still hold political meetings and appeal to the voters by means of placards and election literature; its press has not been suppressed. As far as the Left parties are concerned, however, the campaign was definitely over immediately after the fire in the Reichstag. For these parties the election on March 5 is a farce, as they have been completely deprived during the last and most important week of the campaign of the constitutional right to appeal to their following. In most parts of Germany, the Social-Democrats have been so completely muzzled and repressed that, outwardly at least, they have ceased to exist.

On the other hand, the Nazis are winding up the campaign in very impressive style. The numerous brown uniforms, the huge Nazi placards with which the cities and the countryside are dotted, the frequent parades of the Brown Army, the mass meetings and the daily broadcasting of election speeches by Nazi leaders, tend to create the impression even now that there is only one large party in Germany.

Minister Goering's attempt to link up the Social-Democrats with the fire in the Reichstag, on the basis of the alleged confession of the arrested incendiary, has evoked an emphatic statement from the executive committee of that party, which rejected as an untruth "the assertion of the criminal on the basis of which the complete tying up of the election work of the party is being justified." Under the existing gag-rule in Germany, this is as far as the Social-Democratic leaders dare to go in repudiating Goering's charge.

While most people are ready to believe that the Communists are capable of such a monstrous act, few people, except fanatic followers of Hitler and Hugenberg, can conceive of the Social-Democrats resorting to such terrorist methods. Even journals of the moderate Right, despite the risk of being suppressed, declare that cooperation of the Social-Democrats with the arrested incendiary is exceedingly improbable.

The fact that Minister Goering, in his last election speech, abstained from attributing the fire to the Social-Democrats as well as to the Com-

munists, would seem to indicate that he realizes that this charge could not long be sustained. However, it gave him the desired pretext to paralyze completely the hated Social-Democrats in the crucial week of the campaign and in this respect at least the work of the incendiary came at a most opportune moment.

Hitler and Goering are very indignant that certain foreign journals refuse to believe that the German Communist Party had anything to do with the arrested incendiary, some even attributing the crime to the Nazis themselves. While there is no reason to doubt the official statement on this point, one can readily understand why some foreign correspondents in Berlin take such an attitude. Deliberate acts of terrorism have up to now seldom been attributed to the Communist Party as such. In recent years their crimes consisted for the most part of so-called literary treason or sedition, of subversive acts such as attempts to disintegrate the Reichswehr and the police, and frequent instigation to a general strike. The German Communists have not, to my knowledge, resorted to anarchist methods with which Bolsheviks in the United States and other countries are usually identified. It is a well-known fact that political assassinations in the past, such as the murders of Rathenau and Erzberger, and attempts on the lives of other prominent politicians, have been committed by Right radicals.

It is a fact that many people in Germany really believe—though they are afraid to say so openly—that the Dutchman arrested is an *agent provocateur*, or that he acted on his own initiative, without the knowledge of the Communist Party. They contend that the Communists had little to gain from such an act of terrorism and that the Communist leaders must have known that the Nazis would not fail to exploit it in order to hasten the advent of a purely Fascist regime in Germany. It is pointed out that the circumstances under which the incendiary was arrested, and the readiness with which he allegedly associated the Social-Democrats with the crime, without, however, divulging the identity of his accomplices, has led many to view the Government's assertions with skepticism. According to the official investigation, inflammable material had been set on fire at more than twenty different points and the arrested Dutchman must therefore have had at least from seven to ten accomplices.

However that may be, the fact remains that at the moment the propaganda value of the fire in the Reichstag is perhaps as valuable to the Nazis as the Zinoviev letter was to the British Conservatives in the elections in the fall of 1927. The Nazis have exploited the incident to the utmost, in their press and political meetings, as well as in broadcasts of strongly colored reports from the scene of the fire. Past masters of propaganda that they are, they have managed to stir up the country

to a pitch comparable only to war-time hysteria. The enthusiasm of the growing Nazi following knows no bounds, while the rest of the population—intimidated and nervous—is awaiting the week-end with anxiety and misgivings.

Conscious of their growing strength, the Nazis will stage, on the eve of the elections, impressive demonstrations throughout Germany, with torchlight processions and, what Dr. Goebbels calls, "liberation bonfires" along the German frontiers. Hitler will speak in Königsberg, the capital of East Prussia, on the night before the election. The speech will be broadcast over a national hook-up and Dr. Goebbels, as chief propagandist of the party, has ordered that loud-speakers be set up in all public squares throughout the country, and that people with radios in their homes open the windows "in order that every man in the street may hear the words of the Führer."

The fire has caused the heaviest damage to the assembly hall of the Reichstag, completely destroying that chamber, while the main structure of the massive building, which outwardly resembles the Library of Congress in Washington, has suffered comparatively little damage. It has been estimated that it will take at least a year to restore the building. In the meantime, the Cabinet has decided to convene the new Reichstag in the historical Garnisonskirche in Potsdam, within the walls of which repose the remains of Frederic the Great, the choice having been made at the instance of the Hugenberg Nationalists as symbolic of the revival in Germany of the spirit of Potsdam.

A brief analysis of the Presidential Decree suspending constitutional liberties, on the basis of which the Government has been given practically dictatorial power, is transmitted by despatch No. 2223 of March 4, 1933,¹¹ going forward in this pouch.

Respectfully yours,

FREDERIC M. SACKETT

862.00/2926

The Ambassador in Germany (Sackett) to the Secretary of State

No. 2223

BERLIN, March 4, 1933.

[Received March 14.]

SIR: In amplification of my telegram No. 28 of March 1, 4 p.m.,¹² and in continuation of despatch No. 2222 of March 3, 1933, relative to the political consequences of the burning of the Reichstag, I have the honor to report that the Government has issued two presidential decrees on February 28. One decree provides sharper penalties for treason, sedition and subversive acts, imposing the death penalty for the betrayal of military secrets, while the other decree, issued as a direct result of the

¹¹ *Infra.*

¹² Not printed.

incendiarism in the Reichstag, puts into effect a severe curtailment of constitutional liberty. Of the two decrees, the latter is practically all-embracing and is of more immediate importance than the former.

This decree, ostensibly "for the protection of the nation from the Communist danger," is already being applied on an unprecedented scale not only to Communists but to all other political opponents of the present regime as well. It temporarily suspends all Articles of the Constitution pertaining to the liberty of the person, freedom of speech and of assembly; to the inviolability of postal, telegraph, and telephone communications, and to the privacy of domicile. It imposes the death penalty for attempts on the life of the President or members of the Reich or State Governments, or for conspiring with others in such an attempt, or for incitement to such an attempt; for offenses in connection with grave disturbances of the peace, deprivation of personal liberty for the purpose of making hostages, high treason, incendiarism, causing of floods and explosions, and the poisoning of food and water.

Unlike previous similar decrees temporarily suspending constitutional liberty, this decree does not institute summary courts or transfer the executive power to the Reichswehr. It will be recalled that under the exceptional state of emergency proclaimed for Berlin last summer, when von Papen was made Reich Commissioner for Prussia, the police powers were transferred to the Reichswehr, under the General commanding the Berlin district (see despatch No. 1841 of July 25, 1932¹³). The present decree declares a state of emergency in the whole Reich, without transferring the police powers to the Reichswehr. Dr. Frick, Reich Minister of the Interior, and, especially, Minister Goering, as Reich Commissioner in charge of the Prussian Police, have thus been given extraordinary powers.

On the basis of an earlier decree, persons could be taken in custody only if urgently suspected of sedition or betrayal of military secrets or crimes with the aid of firearms, and detained up to a period not exceeding three months. This provision has now been lifted, leaving the period of confinement to the discretion of the police. Furthermore, the police can now take into custody any person, without giving any reason, and detain him as long as such action is deemed necessary in the interest of public security and order.

The privacy of domicile has been abolished and the police has the right to search the homes of any individual or organization, without due process. The authorities have been vested with similar rights in respect to the inviolability of mail, telegraph and telephone communications.

According to the Constitution, the press is not subject to censorship. This provision has now also been lifted and newspapers can be forced

¹³ Not printed.

to submit to censorship all articles before publication. Moreover, newspapers and periodicals can now be suppressed indefinitely without any grounds, whereas heretofore they could be suppressed only for printing articles regarded as being against the Government. The right of assembly has been lifted and restrictions in this respect can be imposed without limitation. The inviolability of property, guaranteed by the Constitution, has been lifted and the Government may now confiscate the property of individuals and political organizations.

The application of the provisions of this decree has been left to the State Governments. However, should any State Government fail to carry out these provisions, the Reich Government is empowered to order such action and to resort to military force if necessary. This particular provision of the decree is of especial interest and importance as it leaves considerable room for the interpretation as to whether or not, and to what extent, a State Government has failed to comply with the provisions of the decree.

Violations of the decree are subject to severe penalties; if such violations involve the death of persons, the death penalty may be imposed.

Respectfully yours,

FREDERIC M. SACKETT

862.00/2933

The Ambassador in Germany (Sackett) to the Secretary of State

No. 2236

BERLIN, March 9, 1933.

[Received March 25.]

SIR: In amplification of my telegram No. 29 of March 6, 11 a.m.,¹⁴ I have the honor to report that in the Reichstag elections on March 5 the Nazis have won an unprecedented victory, having polled 17.2 million votes, or 44 per cent of all the votes cast. The Hugenberg Nationalists polled only 3.1 million votes, or 8 per cent. The two parties combined obtained 52 per cent of all the votes cast, and, with 340 seats out of a total of 647 seats, they will have a clear majority in the new Reichstag. The participation by the electorate was approximately 88.5 per cent, the highest in German parliamentary history. In Prussia, where simultaneous elections were held for the State Diet, the Nazis and Nationalists polled together about 52.5 per cent of all the votes cast. With 254 seats out of 474, they will now also have a clear majority in the Diet.

The Nazis made substantial gains in every one of the 35 electoral districts comprising the Reich, the greatest gains being in the South German States, where they managed to double and triple their following. In eight of the 35 districts, the Nazis polled more than 50 per cent

¹⁴ Not printed.

of all the votes cast. In the predominantly agricultural districts of East Prussia and Pomerania, they obtained 56.5 per cent.

In the Reichstag election in November of last year, the Nazis lost two million votes. Last Sunday, four months later, they not only regained the ground lost in November, but managed to obtain an additional three and a half million votes. Hitler's gains were recruited chiefly from the army of habitual non-voters and also from practically all other parties. An examination of the election returns clearly shows that about four million persons who usually stay away from the polls must have voted this time for the Nazi party and that about 400,000 persons, who formerly supported parties of the moderate Right, and more than one million Communists, shifted to the Nazis.

As reported in despatch No. 2187 of February 13, 1933, page 6, the Hugenberg Nationalists entered the election as "Kampfblock Schwarz-Weiss-Rot." Hugenberg, Vice-Chancellor von Papen, and Stahlhelm leader Seldte headed the new ticket. However, despite the new label and the advantage of having three members in the Cabinet, who shared with the Nazis the use of the radio and other Government facilities of propaganda, the Nationalists barely managed to retain ground. It is widely believed that without von Papen they would have fared even still worse. While the Hugenberg press acclaims the result of the elections as a "great national victory," an ill-concealed undertone of resignation is clearly discernible. The Nationalists realize that they will have little to say in the Third Reich and this realization mars the rejoicing over the decisive defeat of democracy in Germany.

Though the Center Party, with 4.4 million votes as compared with 4.1 million in November, withstood the Nazi attacks, it has lost the pivotal position which it held in the Reich and in Prussia for many decades. For Hugenberg this is perhaps a greater triumph than the complete elimination of the Social-Democrats. The Weimar coalition, in which the Center played a dominant part and which governed Prussia practically without interruption during the past fourteen years, until the appointment of a Reich Commissioner last summer, will now have only about 30 per cent of the seats in the Prussian Diet. This situation is a result of the huge Nazi gains and the weakening of the Left parties.

With 7.1 million followers, the Social-Democrats managed to poll 18.2 per cent of all the votes cast as compared with 7.2 million, or 20.4 per cent in November. Their heaviest losses were in Prussia and other sections of Germany where their entire press and campaign activities were prohibited, thus depriving them of all means of replying to the Nazis' charge that all of Germany's ills were attributable to the Left parties. In the Reichstag and in the Prussian Diet the Social-Democrats will still be the second largest party, but the preponderance of the Nazi

strength in both parliaments will practically reduce the Social-Democratic deputies to a negligible political factor. In both parliaments the Nazis are, for the first time, stronger than the two labor parties of the Left combined.

The Communists lost approximately 1.1 million votes, their biggest losses being in Prussia, where their following has been reduced by about 800,000 as compared with the Reichstag election in November of the last year. Many incline to the view that the Communist losses presage the beginning of the end of this radical party. While the Communist Party has doubtless been weakened, the fact that it managed to retain over 80 per cent of its following, though deprived of all means of appeal to the voters and with practically all of its leaders in prison, would seem to indicate that Communism in Germany has by no means been decisively defeated, at least not for the time being. The fact cannot be ignored that, despite their heavy losses in Prussia, the Communists gained six seats in the Prussian Diet, having polled about 316,000 votes more than in the Prussian election in April of last year.

The greatest surprise of the election was the Nazi gains in the South German States and the lack of resistance capacity displayed by the Bavarian People's Party which, like the Center Party, was generally regarded as invincible. Though the losses of the Bavarian People's Party were comparatively slight, the political constellation in Bavaria has been completely changed by the phenomenal Nazi gains. In Upper Bavaria they managed to increase their following by 200 per cent, and in Lower Bavaria by almost 300 per cent. A similar trend is reported from Württemberg and Baden. For the first time the Nazis have become the strongest party in the South German States, which, almost up to the time of the election, were regarded as the chief bulwark against the Nazi wave.

The tactics of defending states' rights, and even the prospects of a restoration of the popular Wittelsbach dynasty in Bavaria, failed to check Hitler's irresistible appeal to the Bavarians. As a result of the Nazi gains in the South German States as well as in Prussia, the *Mainlinie*, the German Mason and Dixon line, has practically ceased to exist. The Nazi landslide will make it possible for Hitler to pursue a uniform policy throughout the Reich, unhampered by the opposition of state governments with which preceding governments in the Reich had to contend.

Perhaps the most remarkable thing about this election is that an anti-democratic party, with avowed dictatorial aspirations, has managed to obtain power by means of the secret ballot, which constitutes the very foundation of democracy. If Hitler wishes he can govern on constitutional grounds. By expelling the entire Communist delegation from the

Reichstag for a large number of sessions—under the existing rules of procedure this should be a comparatively easy matter—the 81 seats held by the Left radicals can be practically eliminated, thereby giving the Nazi Party alone a majority in the Reichstag. For constitutional amendments, however, a two-thirds majority is required, and the co-operation of the Center Party is still indispensable.

From the standpoint of stable political conditions, it is perhaps well that Hitler is now in a position to wield unprecedented power and still, at least formally, observe the Constitution. Indications are not lacking that if the Nazis had failed with the support of the Hugenberg Nationalists to obtain a clear majority, they would not have hesitated to violate the Constitution in order to remain in power. A presidential crisis may have become unavoidable, as President von Hindenburg would then have been faced with the unpleasant alternative of either condoning a breach of the Constitution or of defending it with the aid of military force.

While the freedom of the polls was safeguarded—the unusually high participation by the electorate shows that few people failed to exercise their right to vote—the election of March 5 can not well be regarded as a free election. The terrorist methods which the Nazis adopted in the campaign, and especially the suspension of the most elementary liberties, without which a civilized state is hardly conceivable (see despatches Nos. 2211 and 2223 of February 27 and March 4, 1933, respectively), deprived the election of its fundamental character of a free expression of the will of the people. If in a forthcoming general election in Poland or Czechoslovakia the German minority were repressed and intimidated as the Left and Middle parties were in Germany in this campaign, the Nazis would doubtless be the first to raise loud protestations.

However, the fact remains that Hitler has won an unprecedented triumph. Democracy in Germany has received a blow from which it may never recover. Germany has been submerged under a huge Nazi wave. The much heralded Third Reich has become a reality. What form this Third Reich will finally take is not yet clear in these critical days of political confusion and uncertainty.

The preliminary official returns are attached herewith.¹⁵

Respectfully yours,

FREDERIC M. SACKETT

¹⁵ Not printed.

862.00/2921 : Telegram

The Ambassador in Germany (Sackett) to the Secretary of State

BERLIN, March 10, 1933—5 p. m.

[Received March 10—2:05 p. m.]

32. Nazi Reich Commissioners have taken over the police and other administrative functions in the Hanseatic cities and all German states not already controlled by Nazi governments including Bavaria. Reports of terrorist activities by members of the Brown Army against individuals and trade unions are daily reaching the Embassy from our consular officers and other sources. The regular police is entirely powerless or reluctant to take action. In some parts of Germany troops of uniformed Nazis have forced Jewish-owned department and chain stores to close. In Berlin similar groups in front of such stores are intimidating the public into buying only German goods and in non-Jewish stores.

The Nazi flag, and to a much lesser extent the old Imperial flag, have been hoisted over all public buildings the Republican flag having disappeared entirely. Officials who dare to resist the hoisting of Nazi flags over public buildings are subjected to assaults and indignities.

The Reichstag will convene presumably March 21. The indications are that the Communist deputies, without being formally outlawed, will not be admitted to the deliberations.

There is a growing opposition among the Nazi leaders to the leading officials in the Foreign Office, practically the only Ministry not already reorganized by the Nazis. I understand that the Nazis intend to replace Neurath with Papen in order to eliminate the latter's influence in Prussia. In this respect they are meeting with opposition from the small group of Hindenburg's advisers which, however, they expect to overcome.

SACKETT

862.00/2939

The Ambassador in Germany (Sackett) to the Secretary of State

No. 2261

BERLIN, March 21, 1933.

[Received March 30.]

SIR: In continuation of despatch No. 2255 of March 20, 1933,¹⁸ going forward in this pouch, I have the honor to report certain domestic political developments which took place during the past week, which may be regarded as the finishing touches in the first stage of the national revolution.

The ruthlessness with which the Nazi Commissarial Government in Bavaria proceeded to wipe out all trace of opposition in that State, arresting Bavarian legitimists suspected of conspiring to restore the

¹⁸ Not printed.

Wittelsbach dynasty, as well as leaders of the Left parties, soon convinced the titular Bavarian Government of the futility of further resistance. Dr. Held, the Bavarian Minister-President, has now resigned, with the result that all the functions of the Bavarian Government have been taken over by the Nazi Commissioners.

For similar reasons, the titular Prussian Ministry has now decided to withdraw its suit against the Reich, contesting the validity of the Presidential Decree of February 6, which deprived it of the few remaining functions left to it by the Supreme Court's decision last fall (see despatch No. 2177 of February 7, 1933¹⁷).

The lack of vigorous resistance with which the Prussian ministers capitulated before the *Machtspolitik* of the Reich Government has resulted in a signal loss of prestige by the Social-Democrats. The resignation with which Otto Braun, the Prussian Minister-President, who since the death of Ebert was looked upon as the leader of the party, accepted the latest developments in Prussia, especially his departure for Switzerland on the day of the elections and his refusal to accept a seat in the Reichstag and the Prussian Diet, has dealt a very heavy blow to the party.

It is generally known that Otto Braun's wife has been very ill during the past years, that he was tired of office and wished to retire from politics altogether. However, the fact that he practically deserted a loyal and well-disciplined following at a most critical time must have a demoralizing effect on the already discouraged rank and file of the party, which his political opponents will not fail to exploit.

The repressive measures pursued by the new regime against political opponents, the purging of the administration of republican officials, as well as the suppression of newspapers and periodicals, continue unabated. While the number of political excesses by members of the Brown Army—in so far as reports of such cases are at all available—seems to have dwindled during the past week, Goering's determination to "extirpate the Marxists" is reflected in further house searchings by the police and numerous arrests of Left republicans and Communists. According to a statement by the Nazi Reich Minister of the Interior, all Communists and other "dangerous persons" held in custody by the police are to be confined in concentration camps and put to work at manual labor until they have become "useful citizens."

In Berlin last week a thorough search by the police of several blocks of houses occupied by actors, authors and journalists, known as the *Künstlerkolonie*, resulted in the arrest of about a dozen persons suspected of Communist activities. In Freiburg, in Baden, a Social-Democratic deputy shot down two policemen as they were attempting

¹⁷ Not printed.

to enter his home in order to arrest him. By way of retaliation, the Nazi Reich Commissioner in Baden thereupon ordered the arrest of all Communist and Social-Democratic deputies representing Baden in the Reichstag and in the State Diet. Over 100 deputies and functionaries of the two labor parties of the Left are now being held in custody as a result of this shooting. In addition, all organizations affiliated with these two parties, as well as the Social-Democratic newspapers and periodicals not already proscribed, have been suppressed.

Simultaneously with such sharp repressive measures against political opponents, the Commissarial Governments in Prussia and other German states are granting full pardons to Nazis who have been convicted for political murder and other political crimes, or who are awaiting trial for such offenses. The first to be thus released from prison were the five Nazis who were sentenced to death by a special court at Beuthen last August for an exceptionally brutal murder of an alleged Communist. (See section 4 of despatch No. 1888 of August 23, 1932.)¹⁸ Upon their release the men were hailed as heroes and given ovations by the local Storm Detachments of that city.

The pardoning of convicted Nazi murderers on the one hand, and sharp retaliatory measures against large groups of persons for the crime of an individual, on the other, tend to create a most dangerous atmosphere. The present situation is such that any attempt, whether successful or not, on the life of a Nazi member of the Government may perfectly conceivably lead to sanguinary pogroms against Jews and a wholesale massacre of political opponents.

In Prussia and other states, the suppression of the Social-Democratic press has been prolonged. This is in accordance with Goering's threat in a recent public speech that so long as journals of the Left in foreign countries continued to attack the present regime in Germany, the Social-Democratic press would remain suppressed. However, the muzzling of the press and the repressive measures against journalists are by no means confined to the opposition of the Left. Leading members of the editorial staff of the *Münchener Neueste Nachrichten*, a prominent Bavarian journal of conservative monarchist leanings, have been taken in custody by the police in Munich.

The democratic *Berliner Tageblatt*, in order to secure a reduction of the period of suppression and in order to avert financial ruin as a result of further suppressions, was forced to make changes in its editorial staff acceptable to the Nazi authorities. Among the foreign newspapers and periodicals barred from Germany for periods ranging from six weeks to six months are the Russian *Izvestia* and the *Pravda*, the Paris *Le*

¹⁸ Not printed.

Populaire, the *English Week-End Review* and the *New Statesman and Nation*.

On the basis of a recent presidential decree, the old imperial flag and the Nazi swastika flag are to be displayed hereafter together, until the question of a new national flag is definitely settled. This decree—practically abolishing the black-red-gold of the Weimar Constitution—offers a most eloquent illustration of the radical political change which has taken place in Germany during the past weeks. Perhaps the last outward sign of the Weimar Republic disappeared as a result of another presidential decree, ordering the removal from the Reich military standard of the small inset of republican colors, and restoring the old black-white-red cockade in the service and field caps of the members of the Reichswehr.

Respectfully yours,

FREDERIC M. SACKETT

562.00/2930 : Telegram

The Ambassador in Germany (Sackett) to the Secretary of State

BERLIN, March 24, 1933—10 a.m.

[Received 11:05 a.m.]

44. The empowering law submitted to the Reichstag by the parties represented in the Government and passed last night gives the Hitler Cabinet practically unlimited powers. It transfers certain Presidential prerogatives to the Chancellor while the legislative powers of the Reichstag and Reichsrat are to be assumed by the Cabinet as a whole. It gives the Cabinet the right to enact legislation modificative of the Constitution which normally requires a two-thirds majority in the Reichstag, with the sole limitations that the President's powers are to remain unaffected and that the Cabinet may not enact laws abolishing the Reichstag and the Reichsrat as such. The prerogatives of these two bodies, however, are quite thoroughly emasculated by the very next article of the law.

On the basis of this law the Hitler Cabinet can reconstruct the entire system of government as it eliminates practically all constitutional restraints. The law remains in effect till April 1, 1937 unless the present Reich Government is sooner replaced by another in which event it becomes void.

Law was passed by 441 votes against 94 belonging entirely to the Social Democrat Party. The two Catholic parties swallowed the bitter pill, the spokesman of the Center saying that his party would vote for the law in spite of many misgivings "which in normal times could scarcely have been overcome".

Upon the announcement of the result of the vote the Reichstag was adjourned sine die.

Text and translation of the law being forwarded by mail.¹⁹

SACKETT

862.00 P.R./132

The Chargé in Germany (Gordon) to the Secretary of State

[Extract]

No. 2272

BERLIN, March 27, 1933.

[Received April 7.]

SIR:

3. *Three New Decrees.* On March 21, the day on which the Reichstag was solemnly convened at Potsdam, the Reich Government announced the promulgation of three new decrees. The first two—a new political amnesty and a decree to combat treacherous attacks against the Government—are presidential decrees based on Article 48 of the Constitution. The third decree institutes once more special courts, which, it will be recalled, were in existence during von Papen's chancellorship; it is an executive decree based on the Presidential Decree of October 6, 1931.

The amnesty is confined to political offenses committed by followers of the so-called national parties in the struggle for national resurgence.

The decree to combat treacherous attacks against the Government provides severe punishment for the wearing or possession of uniforms of political organizations supporting the Government, such as the Brown Army and the Stahlhelm, without being a member of such an organization. Punishment is also provided for the wearing of emblems of such an organization by unauthorized persons. Criminal offenses committed by persons wearing uniforms or emblems of such an organization, without being a member thereof, are punishable by terms in the penitentiary. If the offense is committed with the intention of causing an uprising, alarming the population, or causing foreign political complications, the penalty ranges from three years to a life term in the penitentiary. In especially grave cases the death penalty may be imposed. Under these provisions, a German can also be prosecuted if the offense was committed in a foreign country.

Deliberate assertion or dissemination of untruthful or distorted statements likely to impair the welfare of the Reich or a German State, or the reputation of the Reich or State Governments, or the parties or organizations supporting these Governments is punishable by imprisonment up to two years, in so far as a more severe penalty is not other-

¹⁹ Not printed.

wise provided. Should, as a result of such offense, the Reich or a State suffer severe damage, a penitentiary sentence may be imposed.

The executive decree governing the special courts specifically states that these courts are courts of the German States. Their competence is restricted to offenses coming under the Presidential Decree of February 28, issued as a result of the fire in the Reichstag, or the decree of March 21 to combat treacherous attacks against the Government. Special courts are to be set up in Prussia in thirteen cities.

4. *The Burning of the Reichstag.* A member of the Supreme Court at Leipzig charged with the legal investigation in connection with the fire in the Reichstag (see despatch No. 2222 of March 3, 1933) has prepared a report of the result of his investigations which was released to the press by the Ministry for Propaganda. According to this report, the Dutchman arrested as the incendiary had, immediately prior to the fire, been in contact with German and foreign Communists including some who had been sentenced to death or terms in the penitentiary in connection with the outrage in the Cathedral in Sofia in 1925. The persons in question were arrested. The investigations failed to give the slightest indication that non-Communist circles were connected with the fire in the Reichstag.

With the last sentence of this report the authorities for the first time officially admit that the Social-Democrats had nothing to do with the fire, thus refuting the statements of the Prussian police, and especially those of Minister Göring, issued immediately after the fire, that the arrested incendiary had admitted in his confession that he had connections with the Social-Democrats. It will be recalled that this alleged confession formed the only basis for the Government's most drastic action against the Social-Democrats, completely paralyzing this party in the crucial week of the election campaign.

However, despite this official exoneration, the Social-Democratic press remains suppressed in accordance with Minister Göring's recent threat in a public meeting that as long as journals of the Left in foreign countries continued to vilify the present regime in Germany the ban on the Social-Democratic press would not be lifted.

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Respectfully yours,

GEORGE A. GORDON

762.00/69

The Consul General at Stuttgart (Dominian) to the Secretary of State

No. 948

STUTT GART, April 4, 1933.

[Received April 24.]

SIR: As an indication of the definitely militaristic policy of the party in power in Germany, I have the honor to report the dissolution of the Stuttgart branch of the International Women's Organization for Peace and Liberty as reported by the local press of March 27. The Stuttgart branch of this international organization was summarily disbanded and its property was given to the Youth Welfare Section of the city's Welfare Bureau.

This is only one instance of a number in which societies organized for the purpose of increasing cordiality between Germans and other nationalities have been suddenly dissolved. In line with the present feeling is reported the suspicious attitude of the authorities towards local Rotary clubs. These are signs which reveal a determined policy on the part of the present authorities to prevent German citizens from enjoying the advantage of foreign intercourse.

Also in accordance with this attitude on the part of the present rulers of Germany is the positive hatred which is noticeable whenever mention of liberalism or democracy is made. The disdain with which anti-reactionary ideals are now considered equals in intensity the same feeling which was observed among German military officers of the former imperial period. In these aspects it may be stated that Germany has finally reverted to the political philosophy which guided its leaders since 1871 up to 1918 and that official intercourse with German representatives must take cognizance of the fact that they represent the cynical militarism of their predecessors of pre-Weimar days.

Respectfully yours,

LEON DOMINIAN

862.00/2947 : Telegram

The Chargé in Germany (Gordon) to the Secretary of State

BERLIN, April 9, 1933—8 p. m.

[Received April 10—9:55 a. m.²⁰]

61. From Norman Davis.²¹ It is difficult to appreciate to what extent Germany has gone through, and still is in the throes of, a real revolution without actually coming here and talking both with the leaders of that revolution and other observers as I have done during the past 2 days. While there was not the spectacular "March on Rome" which dramatized

²⁰ Telegram in three sections.

²¹ Head of the American Delegation to the Disarmament Conference; for correspondence concerning the Conference, see vol. I, pp. 1 ff.

the Italian revolution, many of the essential elements of the situation are similar. The immediate consequences of the revolution chiefly affect internal policy and conditions. Its effect on international policy will make itself felt more slowly and can hardly be determined at the present time. The revolution was undoubtedly attended by certain excesses which has been fully reported and possibly somewhat over-stressed in our press.

In my talk with Hitler I told him frankly that the reports of these excesses had been very disturbing abroad and undoubtedly had reacted very unfavorably on American public opinion. He made no direct reply. Other Government officials alleged that the reports of excesses had been greatly exaggerated but they and private persons with whom I spoke stressed the extraordinary extent to which the various professions, particularly the law, had been monopolized by the Jews resulting in such a nationwide resentment that Hitler could not fully control the anti-Jewish movement which he and his associates had started.

The revolution had brought fundamental governmental changes which have transformed Germany into a completely centralized state and to all intents and purposes made the Hitler Government the supreme legislative as well as the executive body. In fact, this power is so absolute that among the Nazis there is now no prospect of a return to the monarchy as this would limit their power. We may later find the rather extraordinary situation of the Center and Socialistic groups attempting to turn to the monarchy as a protection against the absolutism of the Nazis.

The revolution has not yet resulted in eliminating all of the old functionaries and the Nationalists still remain at least nominal partners of the Nazis. It is possible that such men as Vice Chancellor von Papen, Foreign Minister Neurath and Finance Minister Krosigk will retain their portfolios at least for a time but presumably under careful Nazi supervision. Within the Nazi party there are special bureaus which decreed [*decide?*] such questions as foreign affairs, finance, et cetera, which will probably have considerable influence and possibly control the ministries still headed by officials of the former Government. We thus find the rather extraordinary situation of looking to the ministers of the Nationalist wing of the Government, who until a short time ago were considered reactionary and monarchistic, to maintain some semblance of common sense in internal and international affairs.

It is too early yet to judge the course the revolution will take. It depends upon Hitler's ability to withstand the radical leaders in his own party and also his hold upon the forces particularly the semi-military formations which he organized for the purposes of the revolution. Yesterday and today I had conversations with Von Hindenburg,

Hitler, Neurath and numerous other persons. My call upon Hindenburg was of a courtesy nature, but I gained the impression that despite his great age his health is sound and he spoke with vigor and directness. He is still a factor to be reckoned with if he should wish to appeal to the people or should decide to declare martial law even though the power which Hitler has assumed under the empowering law has deprived the office of the President of a large share of his prerogatives.

In my conversation with Hitler it was difficult to get him off the topic of the necessity for an immediate revision of the Versailles Treaty. At times he spoke in an excited and oratorical manner. He stressed again and again the intolerable conditions for Germany, exposed as she was to attack on the Polish frontier. In fact, he came back to this so often that it made me wonder whether he did not have a purpose in doing so in order to help prepare public opinion in case later an incident should occur or be manufactured on that frontier. I made it clear to Hitler that while there was considerable sentiment outside of Germany favorable to reasonable modification of the Treaty any attempt to effect a forceful revision would destroy confidence internationally, that by making a public issue of revision he would defeat his own ends and that the only solution I saw was to work quietly toward the rectification of specific points where hardship for Germany might be involved. Hitler stated categorically that Germany did not intend to attempt Treaty revision or, to regain the Corridor by use of force. In one excited moment he did say that irrespective of all opposition Germany will insist upon and obtain the armaments necessary for defense of her Eastern frontier.

In discussing the specific question of disarmament he stated that there was to be no change in the policy which Neurath had laid down and that they wish to achieve their equality through the lowering of the armaments of others rather than by building up themselves.

The following are the significant points of several long talks which we had with Neurath. He feels that the Four-Power Pact is apt to be buried by the French.²² In its original draft as proposed by Mussolini it is considered satisfactory to the Germans. Then MacDonald changed it and it became much less satisfactory to them. He felt that the French memorandum would probably change the original project beyond recognition. Neurath is anxious to press the work of disarmament and is willing to take the British plan as a basis for discussion and he did not reject a suggestion which the French had made to me and which I repeated to him that the proposed treaty should run for 10 and not for 5 years. He and Von Bülow suggested that if the treaty were to con-

²² For correspondence concerning the Four-Power Pact, signed at Rome, July 15, 1933, see vol. I, pp. 396 ff.

tinue beyond the 5-year period proposed by MacDonald further measures of disarmament than here envisaged would be necessary. Neurath emphasized the need for private conversations by a small group of powers to prepare the way for Geneva work and he and his associates seemed to have little hope of anything resulting from the publication of meetings at Geneva. He and Von Bülow stressed that it would be wise to let the new German Government have a few more weeks to formulate its policy before pressing them for final decisions on disarmament. Granted this time they feel confident it will be possible to reach a disarmament agreement which they think is essential to political stability and economic recovery and to the success of the Economic Conference.²³ They seemed to be impressed with the necessity of reaching an agreement on disarmament so as to quiet the agitation here and give them an opportunity to solidify their position. On the naval side they emphasized that Germany did not wish to build up a navy and I gained the distinct impression that something might be done with them on this score to help tranquilize the French and possibly thus make it unnecessary for the French to carry through the building of the *Dunkerque*. I feel this point is well worth exploring.

I discussed the Economic Conference with Posse²⁴ and Ritter,²⁵ who informed me that the Germany which originally had desired an early meeting would now much prefer that the preliminary work be carried to a point where the Conference could be assured of success. In fact Posse told me that if at the last moment before the Conference met it seemed doubtful whether positive results could be achieved, Germany would decline to attend the Conference. This I feel is significant of an attitude which we will probably find in dealing with the new German Government which will consider it vital that its first adventures in the field of foreign affairs should be successes so as to strengthen their prestige internationally and their position with their own people. The preliminary conversations in Washington are clearly welcome here and Luther's designation as Ambassador was for the purpose of permitting them to take an effective part in such conversations.

Unfortunately, Schacht was absent in Basel so I could not get his views on financial problems. I found a general impression here that Germany may shortly have to cut down the service on her funded debt as a result of the force of circumstances following the recently disastrous fall in her favorable balance of trade. Hitler stated, however, that the

²³ See vol. I, pp. 452 ff.

²⁴ Dr. Hans Ernst Posse, official in the Ministry of Economics, who later participated in the London Economic Conference.

²⁵ Dr. K. Ritter, Foreign Office official in charge of economic matters and the Reparations Commission affairs.

new Government had no intention of repudiating its financial obligations and would fulfill them to the extent of its ability.

In general, in dealing with Germany we must realize that the new Government is too preoccupied with internal problems to have been able as yet to establish any clear-cut policies in foreign affairs and its eventual policy will be greatly influenced by the course which the revolution has begun. In important matters of policy such as conference with [*sic*] and preparation for the Economic Conference I feel we would be better advised to allow them a little time to formulate their views because if we press for a decision now they are likely to be improvised and hardly calculated to promote international agreement. The one policy to which the Hitler Government has definitely committed itself is that of trying in every way to effect an early revision of the Versailles Treaty but they seem to have no clear-cut idea as to how they should go about this.

Gordon has collaborated on the preparation of the general political section of this cable and I have had the benefit of several long conversations with Messersmith.²⁶ [Norman Davis.]

GORDON

862.01/87

The Chargé in Germany (Gordon) to the Secretary of State

No. 2291

BERLIN, April 10, 1933.

[Received April 22.]

SIR: In continuation of despatch No. 2289 of April 10, 1933, section 7,²⁷ going forward in this pouch, I have the honor to report that at its last meeting before the Easter holidays the Cabinet passed another law for the consolidation and centralization of government power in Germany, which was promulgated on April 7. This law alters radically the structure of the Reich, leaving only the faintest semblance of the old federal structure.

The law provides for the appointment of Statthalter, or Governors, in the German States, who must see to it that the Reich Government's policy, as determined by the Chancellor, is carried out. (A Statthalter may be defined as a person who represents and executes the authority of a higher power). These Governors are appointed and dismissed by the President of the Reich on the recommendation of the Chancellor. In Prussia the rights of the Governor are to be exercised by the Reich Chancellor.

These Governors have far-reaching powers. They can appoint and dismiss the heads of the State Governments, as well as other officials,

²⁶ George S. Messersmith, Consul General at Berlin.

²⁷ Section 7 not printed; for an extract of despatch No. 2289, see p. 272.

and judges, dissolve the State Diets, and hold new elections. They promulgate State laws, and exercise the power of pardon. Though they can not be members of the State Governments, they may preside at the meetings of these governments. The Governors must be citizens of the State to which they are appointed. The law further provides that members of the Reich Government may at the same time be members of the Prussian State Government.

This law is, in fact, a continuation of the Reich administrative reform and centralization of authority initiated by the appointment of a Reich Commissioner in Prussia on July 20, 1932 (see despatch No. 1841 of July 25, 1932²⁸) and carried a step further by the Empowering Law of March 24, 1933, (see despatch No. 2665 [2265?] on March 24, 1933²⁸). Since the Chancellor himself is assuming the functions of the Governor in Prussia, the post of Reich Commissioner in that State, now held by Vice Chancellor von Papen, will be abolished. The President of the Reich will revoke the two emergency decrees, by which the functions of the Prussian Ministry were transferred to the Reich Commissioner for Prussia (see despatch No. 1841 and despatch No. 2177 of February 7, 1933²⁹).

The Governors appointed by the Reich will occupy in the States a position somewhat analogous to that of the President of the Reich, the outstanding difference being that the President derives his authority direct from the people, whereas the Governors are appointed by the President and can be recalled by him at will.

The fact that the State Diets will no longer have the right to elect the State Government or individual members thereof, or to force them, by a motion of lack of confidence, to resign, deprives these parliamentary bodies of one of their foremost rights. They have thus been emasculated, just as the Reichstag and the Reichsrat were as a result of the Empowering Law of March 24. The State Governments have at the same time become merely executive organs of the Reich Government. The last remnants of federalism in Germany have thus been removed and the question of States' rights, which played such a prominent part in the past in the relations between the South German States and the Reich, has thus disappeared—for the present, at least.

Under the new arrangement, the German States will still have a measure of local autonomy, but they will no longer be able to exert influence on the policy of the Reich Government, which is now the only sovereign power in Germany and whose strong arm extends to the remotest corner of the Reich.

²⁸ Not printed.

²⁹ Neither printed.

The original text and translation of the law are transmitted herewith.³⁰

Respectfully yours,

GEORGE A. GORDON

862.01/90

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1231

BERLIN, April 10, 1933.

[Received April 24.]

SIR: I have the honor to inform the Department that there is, in effect, in Germany a dual form of Government which closely affects the problem of the protection of the interests of American citizens and firms. In fact in order to understand what is passing in Germany today and to interpret some of the events and acts reported upon in the series of despatches which this Consulate General has been transmitting, it is essential to bear in mind that this dual Government exists and has existed since March 6, 1933.

There is first of all the regularly constituted and legal Government machinery for the Reich and for the states, which is the legal and constitutional Government and there is the extra legal Government of the National Socialist Party organization, and from the course of events there is much reason to believe that the extra legal Government is the stronger and influences definitely in most instances the acts of the legal and constitutional Government. A brief analysis of the actual situation may be helpful to the Department as it shows the actual problems which the Embassy and the Consulate General have to meet almost daily and sometimes several times each day.

The constitutional legal Government remains in outward form the same as before March 5, 1933 except as it has been changed by the various emergency decrees issued since that date in order to bring about a closer coordination between German states and the central Government and to centralize power in the central Government at Berlin. In order not to complicate the discussion of the major problem which is the subject of this despatch, I shall make no reference to these structural changes effected since March 5 in the Government of the Reich and of the states and communes; but these have been many and far-reaching and effective, and have resulted in the centralization of power in the Ministries in Berlin and a corresponding decrease in powers of the states and communes which in themselves are extraordinary and significant. Although the National Socialist Party received something less than 50% of the total votes in the election of March 5 and has associated with it in the Government and in the cabinet the *Deutschnationale*

³⁰ Not printed.

Party, the latter party has practically no power in the Government outside of the fact that a few Ministers affiliated with it remain in the cabinet without, it is generally believed, any power. The Reichstag through its own vote has given the present Government what is equivalent to absolute power for the next four years and there is no prospect at present of a meeting of the Reichstag during that period. The predominance of the National Socialist Party in the legal Government is seen in the fact that practically all office holders, high and low other than National Socialists, have been removed; and that practically all new appointments have been men from the National Socialist Party. It is a question as to how long those persons in the cabinet who are not National Socialists will be permitted to remain.

The constitutional legal Government with practically absolute powers for four years and with a Reichstag not functioning, is therefore absolutely dominated by the National Socialist Party, and it may be definitely said that the National Socialist Party is the legal constitutional Government. In order to carry its decrees and acts into effect it has behind it the army and the entire police force of the country.

The extra legal Government is the organization of the National Socialist Party which still maintains its headquarters at Munich. This party organization is very thorough and complete as may be judged from the fact that it was able to bring the Party into power. Connected with the organization of the Party itself are various other organizations known as "Kampfbunde" which are completely controlled by the Party organization but which cover its activities in certain trades. The completeness of the Party organization is readily apparent from the fact that it has recently appointed Dr. Rosenberg in what is the equivalent of the position of Foreign Minister for the Party. To carry its wishes into effect as a Party, this extra legal Government has at its command the S.A.,³¹ the S.S.³² and the Stahlhelm.

From the foregoing it is clear that the constitutional legal and the extra legal Government now operating side by side in Germany are really under one control, that of the National Socialist Party.

That in practice the extra legal and Party Government is at least for the present the most powerful and the controlling force, is brought out by various concrete examples, the most outstanding of which is the boycott. The boycott was ordered by the National Socialist Party as a defense measure against the so-called anti-German propaganda and anti-German boycotts abroad. It was therefore a party measure and was put into effect by the armed force of the Party composed of the S.A. and S.S. with the cooperation of the Stahlhelm. The legal and

³¹ Sturm-Abteilung.

³² Schutz-Staffel.

constitutional Government took the attitude that the measure was a party measure and that the Government would not interfere with it, and on the actual day of the boycott the police of the legal Government extended their cooperation to the armed force of the Party. The decision that the boycott should continue only for a day and the decision not to renew it on the Wednesday following April 1, had to be taken by Mr. Hitler as the "Fuehrer" of the National Socialist Party and was taken in that capacity and not in his capacity as German Chancellor although it was undoubtedly considerations as German Chancellor which influenced him to abandoning it as the leader of the Party.

The Consulate General has had to take up with the police presidency in Berlin a number of cases of Americans who have been molested, imprisoned or assaulted since March 5, and the conversations in these cases have usually been with either the Police President von Levetzow or Police Vice President Dr. Mosle. In my despatch No. 1212 of March 31³⁴ reporting on the second attack on Mr. Julian Fuhs, I brought to the attention of the Department the fact that during the conversation with Police Vice President Mosle I really had to convince the officer from the political division of the police that something had to be done and to help support the authority of the Police Vice President who is an old official, as against the authority of the young man from the political section who is new in the police presidency and a strong National Socialist. As of further interest in this connection the Department will be interested to know that when Consul Geist saw Police Vice President Mosle a few days ago and brought to his attention the further cases of Americans reported upon in my despatch No. 1221 of April 6,³⁴ after expressing regret that these further incidents had occurred and assuring him that the police would take action at once, Dr. Mosle said to Consul Geist that he would like to speak off the record. He then said to Mr. Geist that for his personal information he would like to tell him that if the Consulate General would also take up these cases with the Ministry of the Interior at the same time that we took them up with him, it would greatly facilitate action. In making this statement Dr. Mosle was merely telling us what we already knew; that although the police wished to do everything in their power to carry on their former functions unhindered, they are unable to do so when acts of the National Socialist Party or its adherents are concerned. The Ministry of the Interior is controlled by Captain Goering who is one of the three outstanding leaders of the National Socialist movement, and what Dr. Mosle wished to say in his personal suggestion to Mr. Geist, was that if we really wished for action in the cases of these attacks on Americans

³⁴ Not printed.

we would have to hold up his hands by at the same time convincing the Minister of the Interior under whose direction the police presidency is, that action is necessary. This is a concrete evidence that the police, as the arm of the constitutional and legal Government, are really powerless unless supported by the extra legal Party Government even though the constitutional and legal authorities are also members of and appointees of that Party.

In a separate despatch I shall bring to the attention of the Department interference by Party organizations with the business of American firms, interference of a serious and of a far-reaching character. When I personally brought this interference with the treaty rights of American firms in Germany³⁵ to the attention of Dr. Bang who is a Staatssecretar in actual charge of the Ministry of Commerce, I had a sympathetic and understanding hearing and he assured me that there was no question but that the acts I brought to his attention violated the treaty rights of these American firms and he said: "I will do everything in my power at once", emphasizing the word "my". In continuing the conversation he then said that it would be of very real help if we could also bring this matter to the attention of the Reichskanzlei which is the office of the Chancellor. I told him that we could not do this as our only methods of approach are the Ministry of Commerce and then the Foreign Office; but that it was not customary either for the Embassy or for the Consulate to take up such matters with the office of the Chancellor. What Dr. Bang wished to tell me was that while he as the head of the Ministry of Commerce wished to do everything to stop the interference with the business of American firms organized under German law, what he could do as such would depend upon the attitude of the Party which was the one really doing the interfering through its organization of agents, and that it would strengthen his hands if we would get the attitude of the Party and its organizations changed, that is the extra legal Government through representatives in the office of the Chancellor as the head of the legal and extra legal Governments.

Another interesting case was that of Miss Kathleen Kersting, the circumstances of which have been recited in my despatch No. 1224 of April 8.³⁶ Miss Kersting was an American singer given compulsory leave of absence by the Koenigsberg Opera, on whose behalf we used our good offices with the Prussian Kultusministerium and received its assurances of action. I happen to know that the Kultusminister, Dr. Rust, who is a very strong personality and a member of the National Socialist Party, needed two weeks before the "Betriebszelle" of the National Socialist Party in the Koenigsberg Opera could be persuaded to

³⁵ See pp. 418 ff.

³⁶ Not printed.

permit Miss Kersting to return. Had it not been for the insistence of the Consulate General on a proper solution, and a fear that the circumstances would become known in the press, the extra legal Government as exercised through the National Socialist Cell in the Opera would not have given way before the legal Government as exercised through the Prussian Kultusministerium.

It may be asked very pertinently, why this dual form of Government should exist when both the constitutional and extra legal Governments are under the control of the same party and of the same leaders. It may be stated in answer that it is not improbable that this is only a phase of what the leaders of the National Socialist Party call a real revolution. They found a legal Government which had to be turned into a Party Government; so the Party machine is for the time being the real power until it has made the constitutional Government the completely subservient instrument which it desires it to be. There is also reason to believe that the legal Government serves as a convenient alibi for the illegal acts and terror exercised by the Party organization and for getting control of the courts, finance, business, the professions, cultural institutions, the theatre, the radio, press, opera, schools, the church and even private social and sports organizations. It is the undisguised intention of the National Socialist Party to get absolute control of all forms of German Government, intellectual, professional, financial, business and cultural life, and the acts towards this end which have been described in despatches already transmitted to the Department, have for the most part been taken by the extra legal Party Government rather than by the Government itself.

It is convenient for the legal Government to point to these acts as acts of the Party or as voluntary acts of these organizations and professions; so that when the legal Government has to act it is accepting merely the *status quo* as expressing the will of the people although in fact it may be action forced upon a majority by an armed minority with all police and other force in its power. The forcing of the Jewish judges from the courts, the interference with business, the resignations of theatre conductors, etc., are all brought about by Party pressure and action; so that the legal Government can disclaim any responsibility. It is also quite likely that this dual Government is being maintained for some time in order to make it possible to keep certain experts in Government office temporarily who are not National Socialists. In a despatch which Consul General Dominian has sent to the Department from Stuttgart, he has shown how in the state Government of Wuerttemberg certain particularly efficient officials who are not National Socialists have been retained in power but have had placed side by side with them

a National Socialist who undoubtedly will eventually take their places and who in the meantime will control their actions.

It is a question as to whether such direct ruthless and complete control of a civilized people has ever been achieved in so short a time by a minority.

It is naturally of interest to all foreign Governments including our own, how long this extra legal Government will last and how soon it will be found possible to merge the two. Indications are that if the National Socialist Party can remain in power, and there is every indication for the present that it will, as long as it is in power it has no immediate interest in merging the two Governments. It is very convenient for it to have the Party Government to exercise the real power and to provide an alibi before the world for the constitutional and legal Government which it controls just as much as it does the extra legal Government. Dr. Goebbels who with the Chancellor, Mr. Hitler, and Captain Goering is one of the three great leaders of the revolution and the new regime and who is the head of the Ministry of Propaganda and Public Education, has declared that the object of his Ministry is to make all Germany one Party and he has just yesterday declared that he can see no possibility of giving up the complete control of the press and all public opinion forming means for some time to come, probably years.

The foregoing is transmitted to the Department merely for background purposes as it will be explanatory of many problems which will from time to time be brought to it by the Embassy and the Consulate General as well as explanatory of the difficulties which the officers of our Government have to deal with in Germany at this time in protecting the interests of our citizens and of American business. It is evident that the officers of our Government cannot deal with a party and can only deal with the constitutional and legal authorities and yet, in order to secure results, the efforts of the constitutional authorities have to be supported before the extra legal Government. No compromise can be made by our officers with principle and no improper precedents built up and yet at the same time the interests of our Government and our citizens must be adequately protected. This requires an exercise of discretion and ingenuity which is by no means always easy, as frequently many decisions have to be made quickly in the same day. While the foregoing is only a partial picture of the operation of this dual Government, the principal object of this despatch has been to bring out that these two Governments exist and create a situation which must be dealt with daily, as a concrete and real matter in connection with the protection of interests.

Respectfully yours,

GEORGE S. MESSERSMITH

862.00/2963

The Consul General at Stuttgart (Dominian) to the Secretary of State

No. 959

STUTTGART, April 10, 1933.

[Received May 2.]

SIR: I have the honor to submit below a partial list³⁷ of political personalities who have been confined in jails in this consular district because of their political affiliation. I am abstaining to include any Communists in this list. The professions or occupations accompanying the names in the list indicate the concern with which the present reactionary government is endeavoring to prevent liberal thinking Germans from expressing any opinion against its methods and actions. The list has been taken from the daily papers which contain almost every day names of prominent political persons who have been placed in confinement by the police. It may be stated that while this list is confined to southwestern Germany it may be considered as representative for the entire country.

According to the local press, high officials in the State of Baden appear to have suffered more than elsewhere in southern Germany. At the very beginning of the National Socialist regime the State President of Baden, a member of the Center party, was confined to his house by order of the National Socialist State Commissioner and was kept there in a state of virtual arrest. Subsequently the next ranking official, also a member of the Center party, and counselor for the Ministry of the Interior of the State of Baden, was taken to jail at Karlsruhe, along with a colleague of his who was secretary to the Minister of the Interior. A large number of Social Democrat deputies to the state parliaments in Wuerttemberg and Baden have been arrested and confined either to jails or to concentration camps. The list as culled from the daily newspapers includes judges, clergymen, teachers, lawyers and officials of every rank. In some instances the arrested officials have been released after an investigation of their cases. The impression, however, is acquired that in the case of many of the officials the arrests were the result of personal vengeance on the part of National Socialist officials who resented the manner in which they were treated by former officials before their party came into power. It also seems that arrest of prominent political personalities is a deliberate measure of intimidation by the National Socialists to quell any opposition against their party.

Respectfully yours,

LEON DOMINIAN

³⁷ Not printed.

862.00/2971

The Chargé in Germany (Gordon) to the Secretary of State

[Extract]

No. 2350

BERLIN, May 1, 1933.

[Received May 13.]

SIR: . . . Wherever the *Gleichschaltung* can not be obtained openly, the Nazis have resorted to other means of extending their influence. Nazi commissariats in various departments of the Government, and newly-created departments in the Nazi Party serve as preliminary training for higher official positions. The foreign political department of the Nazi Party, headed by Rosenberg, brings the party in closer contact with the work of the Foreign Office; the Nationalist Minister of Justice in the Reich had to accept a Nazi Reich Commissioner for the unification of legal procedure and administration, while the activities of Dr. Darré, the Nazi agricultural expert, would seem to indicate that he is being held in readiness to take over Hugenberg's agricultural portfolio in the Reich Cabinet. A similar situation obtains in other departments of the Government. The *Gleichschaltung* principle is being applied relentlessly, largely at the expense of the Hugenberg Nationalists.

To make matters worse, Hitler has succeeded in winning over Seldte, the leader of the Stahlhelm, which up to now has been regarded as the private army of the Hugenberg party. The announcement that Seldte had joined the Nazi Party, thus subordinating the Stahlhelm to Hitler, had the effect of a political sensation. This latest development deprived the Hugenberg Nationalists of their semi-military organization, and, at the same time, increased Hitler's private army to over one million men.

Seldte's announcement that he has submitted completely to Hitler's leadership was preceded by the peremptory dismissal of Lt. Colonel Duesterberg, the second leader of the Stahlhelm, who had been in active command of that organization since Seldte became Minister of Labor on January 30. Duesterberg left the Stahlhelm ranks with a significant farewell letter, in which he said that he was laying down his office under compulsion, in the interest of the Stahlhelm to which he belonged since 1919, and admonished all his comrades to subordinate themselves unreservedly, as he had done, to the political leadership of Chancellor Hitler.

The brusque dismissal of a man who has played an important part during the past fourteen years in building up the Stahlhelm is one of the results of Hitler's negotiations with Seldte for a consolidation of the two organizations, to which Duesterberg was vigorously opposed. Duesterberg, it will be recalled, was the joint candidate of the Stahlhelm and the Nationalists in the presidential election in March of last year

(see despatch No. 1562 of March 14, 1932³⁸). Later, the Nazis discovered that he had a Jewish grandfather. Duesterberg thereupon handed in his resignation, but was prevailed upon by Seldte to remain.

President von Hindenburg who is honorary president of the Stahlhelm, has transmitted a letter in his own handwriting to Duesterberg, thanking him for the part he played during the past fourteen years in building up this organization. In recognition of this work as well as for his distinguished military career during the war, Hindenburg presented Duesterberg with a photograph of himself.

In a radio speech explaining his action, Seldte declared that through his entry into the Nazi Party he subordinated himself and the Stahlhelm as a unit to Hitler. According to an official interpretation by the Nazi Party, however, this should not be taken to mean that the Stahlhelm has gone over in a body to the Nazis. Seldte's action is regarded by the Nazis merely as a "symbolic act" of recognition of Hitler's successful leadership. Individual members of the Stahlhelm are to decide whether they are to remain Stahlhelmers or become members of the Nazi Party. Membership in both bodies is not to be permitted, except, so far, in the case of Seldte himself who is at the same time a member of the Stahlhelm and of the Nazi Party.

As Seldte was elected to the Reichstag on the Nationalist ticket, which, it will be recalled, was labeled for the purposes of the election "Kampfblock Schwarz-Weiss-Rot," the Nationalists are now naturally demanding that Seldte surrender his seat in the Reichstag.

Seldte's going over to the Nazis is perhaps one of Hitler's greatest achievements, for it is doubtless an important step toward the professed Nazi goal of a "total State," that is, State control of the social, political and economic life of the country. Seldte's action has certainly not tended to improve Hugenberg's influence in the Reich Cabinet, nor the prospects of the Nationalist Party with respect to retaining its independence.

Respectfully yours,

GEORGE A. GORDON

862.00/3010

The Chargé in Germany (Gordon) to the Secretary of State

No. 2482

BERLIN, June 17, 1933.

[Received June 29.]

SIR: With reference to despatch No. 2399 of May 13, 1933,³⁸ I have the honor to report that the future of the Center Party as well as that of other political parties in Germany which have thus far managed to re-

³⁸ Not printed.

tain a semblance of independence, is anything but promising. Indications are many that the Nazis feel that the time has now come for the complete absorption of all political parties in accordance with their philosophy of a "total State," in which there can be no room for any party other than the Nazi Party.

Following the recent reorganization of the Center Party on the principle of authoritative leadership which now rules supreme in Germany, and the conversations between Hitler and Dr. Bruening, the new leader of the party, there was hope in certain quarters that some form of cooperation might be established between the Center and the Nazi regime. The frequent attacks by Nazis upon individual members and whole groups of the Center Party, as well as certain other developments, show, however, that an improvement in the tense relations between these two parties is not likely, at least in the near future.

Arrests of Catholic leaders and the suppression of Catholic journals have been reported from various parts of the country. In Baden, former Minister of Finance Köhler, a leading member of the Center Party, has been taken in custody, allegedly "for his own safety," because a large crowd had assembled in front of his house and assumed a threatening attitude. The leading organ of the Center Party in Baden has been suppressed for one week, while in Bavaria an edition of the official organ of the Bavarian People's Party, which is affiliated with the Center, has been confiscated.

An outstanding manifestation of Nazi hostility to organized Catholics was a brutal attack by uniformed Nazis upon visitors to the first convention of the Association of Catholic Apprentices and Journeymen, which was held in Munich last week. The reluctance with which the Bavarian authorities granted permission to hold the convention (the permission had been granted, withdrawn, and granted anew with restrictions) showed that the Nazis viewed the rally with disfavor. As a result of clashes between Nazis and members of this association, the convention, which was attended by about 28,000 persons, was prematurely closed. An open-air mass, at which Cardinal Faulhaber was to preach, was called off because the leaders of the convention were unable to obtain assurance from the Bavarian authorities that police protection would be given.

According to the police, there had been considerable feeling in Munich against Catholic demonstrations because the Nazi "Horst Wessel" song had been sung with a different text, and Catholic priests had been heard to say to Nazi spectators during the procession "You shout 'Hail Hitler,' but you will be glad some day when we liberate you from this Hitler." Moreover, many of the participants in the convention appeared in a uniform similar in color to the brown shirt of the Nazis, who regarded

this as misuse of their uniform. The police also charged that the convention leaders failed to inform Vice Chancellor von Papen and Bavarian Minister of Economics Count Quadt, who attended the meeting as Government representatives, of the true reasons why permission to hold the convention had been at first withdrawn. The police report admitted that there had been numerous clashes, responsibility for which it attributed to lack of discipline by the visitors to the convention.

To a careful observer familiar with official communiqués issued by Nazi authorities, it seems beyond question that the police report must have been colored and that the Nazis with whom the Catholic youths "clashed" could not have been as innocent as the authorities wished the public to believe. Subsequent reports did not fail to confirm this impression. It appears that the Nazis not only attacked and maltreated the Catholic journeymen and apprentices, who came to the convention in their usual orange-colored shirts, worn by them for years, but that they also forced their way into the dormitories where the young men were quartered, brutally assaulting the delegates and several of the priests. The convention was attended also by representatives from foreign countries and some of these delegates were likewise maltreated.

The Bavarian Minister of the Interior has now issued an order prohibiting until further notice all open-air and indoor meetings in Bavaria, with the exception of those permitted by the political police. It is reported that Vice Chancellor von Papen, who was the principal speaker on the occasion, protested to Hitler against the premature closing of the convention and denied the statement of the Munich police that he had been misled by the leaders of the convention, pointing out that the convention had placed on record its loyalty to the Government and to the new Reich.

The brutal Nazi assault upon the peaceful non-political gathering at Munich, without effective interference by the police, is certain to evoke deep indignation among the Catholic population and make cooperation between the two Catholic parties and the Nazis even more difficult. The Nazis fear the strength of Catholic organizations, and the purpose of such bullying action was doubtless to discourage further gatherings of this kind by showing the visitors what was in store for them if they should come again. This view is confirmed in an interesting despatch on the subject to the Embassy (No. 122 [120] of June [May] 13, 1933),⁴⁰ a copy of which has been transmitted to the Department, from the Consul General at Munich, who reports the appearance of subversive talk hitherto unheard.

The present conflict between the Reich and Austria has served still further to intensify the hostility of the Nazis to the two Catholic

⁴⁰ Not printed.

parties. The Nazis are now accusing the Center of conspiring against them with the Dollfuss regime in Austria. Dr. Bolz, former head of the Württemberg Government, and former Chancellor Wirth are the specific targets of the Nazis in this connection. The Nazis in the Reich are demanding repressive measures against the Center Party in retaliation for the measures taken by the Dollfuss Government against the Austrian Nazis.

Last Sunday a Pastoral Letter issued by the Catholic Bishops of Germany was read from the pulpits of all Catholic churches. In this letter the Bishops pointed out that the German Catholics had no need to adopt a new attitude towards the Fatherland as a result of the national revolution. At most, they must continue with greater emphasis what they had already acknowledged and fulfilled as their natural and Christian duty. The Catholic Church, in which the value and sense of authority had particularly been asserted, expected, however, that the authority of the State would not restrict human freedom any further than was necessary in the interest of the nation's welfare, but would administer justice and thereby grant to every subject of the State his property, honor and liberty. The Bishops rejected the racial principle as a sole basis for national unity, declaring that racial discrimination must lead to injustice. On various other essential points the Catholic Bishops could not agree with the declared aims and policy of the Nazis.

It will be seen from the various developments mentioned above that the possibilities and causes for friction between the Catholic parties and the Nazi regime are many and varied. The Center Party has repeatedly stressed its desire for loyal cooperation; it is striving hard to retain its independence at all costs, but this is precisely what the Nazis do not wish.

Respectfully yours,

GEORGE A. GORDON

862.00/3004 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, June 23, 1933—2 p.m.
[Received June 23—11:45 a.m.]

107. Events of the past few days have made it clear that what may be termed a new wave of the revolution is now definitely under way.

The "wild men" now appear to be that group of secondary leaders who can perhaps best be characterized as the old guard of the Munich Brown House, and who more directly represent the storm detachments and the lower strata of the party who have been becoming increasingly restive under what they consider the meager rewards given them for militant party service and the failure of the higher leaders to fulfill a

large portion of the wild promises made by them prior to coming into power (see my despatch No. 2428 of May 22, page 5 ⁴¹). At the present moment Goebbels is to be included in the wild men and Goering apparently not.

The failure of Hindenburg to react to Nazi activities of the last few days which in large measure have constituted attacks upon members of the Junker circles who stand closest to him personally, has been both significant and disquieting (see despatch No. 2255 of March 20, final paragraph ⁴¹).

The fruits already borne by the conference of Nazi leaders held in Berlin last week make it now seem clear that the party has a definite program of repressive measures which it intends to push through integrally and it seems to me that Germany is in for another stormy period.

It is also my opinion that a failure of the World Economic Conference to reach tangible results would clearly be calculated to stimulate the development of the Nazi movement towards national bolshevism. Amplifying despatch in next pouch.

GORDON

862.00/3017

The Chargé in Germany (Gordon) to the Acting Secretary of State

[Extracts]

No. 2498

BERLIN, June 23, 1933.

[Received July 8.]

SIR: I have the honor to refer to my telegram 107 of this date and, in amplification thereof, to report as follows.

• • • • •

Dr. Brüning and Treviranus were able to keep their postponed engagement to dine alone with me last night. The former was profoundly disturbed by the recent events and especially by the apathetic attitude evinced by President von Hindenburg and his immediate entourage. Brüning and Treviranus stated that two nights ago S.A. bands had taken aggressive action against various Junker neighbors of the President, who is at his summer estate of Neudeck in East Prussia, of such a nature that it could only be interpreted as being in the nature of a veritable challenge and of wanting to see how far they could go. The President had done nothing whatever about it, and Brüning felt that this was a clear indication that he had lost his grip and that it could now no longer be expected that he might rouse himself to make an appeal

⁴¹ Not printed.

to the people or to call upon the Reichswehr to repress Nazi acts of lawlessness. In fact, Brüning made it clear that he had been forced to the conclusion that an abdication in the comparatively near future was a possibility that had definitely to be faced—a conclusion with which, I regret to say, I agree.

Brüning had hitherto always had the hope that if the worst came to the worst the day could be saved by means of Presidential action but he now feels that this hope is no longer justified and that in a very brief while the possibility of such action, even if the will were there to call it forth, will have vanished.

I should here observe that at different times in the past weeks and months other opponents of the Nazi régime, of various shades of political allegiance, have expressed similar views to me. I could not therefore help being impressed with the fact that while they all were proving themselves incapable of achieving any sort of unity to defend themselves against the common enemy and oppressor—and instead were all fatalistically, in the face of freshly accumulating adverse facts, clinging to what in their inmost hearts they must have considered at best a faint hope—the Nazis, resolute and ruthless, and knowing just what they wanted, had every day been coming nearer to the point of rendering the materialization of that hope impossible.

Aside from the information thus given me by Dr. Brüning, I have had corroborative information in this connection: for instance, the Stahlhelm Guard (you are of course aware that President von Hindenburg is the Honorary President of that organization) at Neudeck has just recently been disbanded and replaced by an S.A. detachment, without asking the President's leave or consent and without, according to my informant, his doing anything about it.

It is quite apparent, in spite of recent press speculations to the contrary, that under present conditions there is no possibility of Dr. Brüning being included in the Hitler Cabinet. In fact, Dr. Brüning indicated clearly that his own arrest and imprisonment in the comparatively near future would come as no surprise to him. By the same token, he could not be other than anxious about the immediate future of the Center Party, though—being the man of splendid moral courage which you are well aware he is—he of course would not consider resigning his newly accepted leadership of the Party or seeking to leave the country.

I gathered from Dr. Brüning that in his view the aggressive leaders in the Nazi Party, representing the S.A. as well as the other non-militarized lawless and communistic elements in the Party, would always by their determined persistence prevail over Hitler in the long run; that is to say that even if on various occasions he should succeed in resist-

ing their revolutionary incitations on one ground or another, they would unremittingly return to the charge until at last he would capitulate and agree to such illegal action as they might have in mind at the moment.

Respectfully yours,

GEORGE A. GORDON

862.00/3020

The Chargé in Germany (Gordon) to the Acting Secretary of State

[Extracts]

No. 2496

BERLIN, June 24, 1933.

[Received July 8.]

SIR: In amplification of my telegram No. 107 of June 23, 2 p.m., I have the honor to report that more than heretofore the Nazis have recently been stressing the principle of "totality," that is, an exclusive one-party State. The Nazis contend that there is no room in the Third Reich for political parties other than the Nazi Party and that all political organizations must be subordinated to the "Führer." Especially after the conference of Nazi leaders in Berlin last week, this thought was expressed in public speeches by various Nazi leaders in such a way as to indicate clearly that "a new revolutionary wave" was about to sweep the country.

Even while the impending "new revolutionary wave" was thus being proclaimed, there was widespread evidence that the new revolutionary activity was assuming definite form. Repressive measures against political groups and organizations whose very existence, according to the Nazis' philosophic outlook, is incompatible with the principle of "totality," were already initiated. The first to be hit by these measures were the Nationalist Kampfringe, then came the Stahlhelm, the Juvenile organizations, the Bavarian People's Party, the Christian Trade Unions, and the Social Democrats. When it is borne in mind that all this happened in one crowded joyous week—from a Nazi point of view—the lengths to which this pace of achievement may lead are not pleasant to contemplate.

The suppression of the Nationalist Kampfringe was followed on the same day by the incorporation of the Stahlhelm in the Nazi Party. Unlike the Kampfringe, the Stahlhelm was at least nominally a non-partisan organization. It will be recalled that for some time past there has been growing tension between the Stahlhelm and the Nazi S.A. Of

late this tension has led to open conflicts between the two rival groups in various parts of the country, particularly Brunswick, Western Germany and East Prussia. Only a few days ago the Stahlhelm was prohibited in the whole of the Rhine province. Since the last Reichstag election in March, the Stahlhelm has been growing rapidly through the absorption of former members of the Reichsbanner and even of Communist organizations, and the Nazis also resented this because they wished to enroll these elements in their own ranks.

After a conference between Chancellor Hitler, Minister Seldte, the leader of the Stahlhelm, Vice-Chancellor von Papen, and the Reichswehr Minister, the following solution of the problem was agreed upon: The main Stahlhelm units as originally founded by Seldte in 1918, are to remain under his leadership, but they are specifically prohibited from belonging to any political party other than the Nazi Party. It will be recalled that when the Stahlhelm was subordinated to Hitler some weeks ago (see despatch No. 2350 of May 1, 1933), Seldte, its leader, was the only one who became a member of the Nazi Party, while the other Stahlhelmers were expressly barred from membership in this party. Until Seldte definitely threw his lot in with the Nazis, the Stahlhelm was regarded as the semi-military organization of the Hugenberg Nationalists. Through the new arrangement, however, the Stahlhelm will practically become an organization of the Nazi Party.

Like other semi-military organizations in Germany, the Stahlhelm consists of three distinct groups. The Scharnhorstbund, comprising youths from 9 to 16 years of age; the Juvenile Stahlhelm, comprising youths from 17 to 22 years of age; and the main Stahlhelm units, to which men over 22 years of age belong. As the youths grow up they pass on from the first group to the second group and finally to the main Stahlhelm units. The Juvenile Stahlhelm has now been put under Captain Röhm, the head of the S.A., and its leader, Morozowicz, has been assigned to Röhm's staff, while the Scharnhorstbund has been completely consolidated with the Hitler youth. It is obvious, therefore, that in course of time the Stahlhelm will automatically cease to exist.

That the Nazis attach particular importance to the rearing of the nation's youth as a means of achieving their goal of a one-party State is evidenced further by the Chancellor's recent ordinance creating a new department of the Reich Government in charge of all juvenile activities and the appointment of Baldur von Schirach, the leader of the Nazi youth, as the head of the new department. Hereafter the formation of new juvenile organizations in Germany requires the approval of the Reichsjugendführer, which is Baldur von Schirach's official title. This new instrument of the Reich was put into operation without delay, to further the attainment of a 100 percent Nazi State. One of the first

acts of the Reichsjugendführer was to dissolve the "Grossdeutscher Bund," a juvenile organization comprising various groups of boy scouts headed by Admiral Trotah, and to confiscate its property. In issuing his first official order, Baldur von Schirach, a young man himself, took the occasion to declare that the youth of Germany is to be reared in a spirit of socialism and anti-capitalism.

In stressing the importance of rearing the nation's youth, Chancellor Hitler, in a recent public speech, practically delivered a threat to parents who felt unable to reconcile themselves with the changed political condition in Germany, that their children would be taken away from them in order that they may be reared in the spirit of the new German State. Hitler's plan to attain his goal of a one-party State from the bottom up, that is, by coordinating all juvenile activities under a Nazi official of the Reich, is certain to evoke serious opposition in church circles. The Catholic bishops have issued a manifesto rejecting interference with the rearing of organized Catholic youths, and even Chaplain Müller, Hitler's candidate for Reich Bishop of the unified Evangelical Church, has deemed it necessary to obtain definite assurance from the Reichsjugendführer that a dissolution of the Protestant juvenile organizations was not contemplated.

The repressive measures against the Catholic parties, particularly the police raid on the offices of the Bavarian People's Party, the homes of its leaders, and the suppression of its newspapers, as well as the arrest of Herr Bolz, a Centrist leader and former head of the Württemberg Government, are clearly in line with the Nazis' aim of a one-party State. This is equally true of the recent arrests, on political grounds, of Catholic priests in the Palatinate and Württemberg.

An outstanding instance of the application of the principle of "totality" was a recent order by Dr. Ley, the head of the German Labor Front, practically outlawing the Catholic and Protestant workmen's organizations because "it is the will of the Führer that there should be no workmen's organizations except those of the Labor Front." Following the forcible seizure of the trade unions affiliated with the Social-Democrats, the intimidated Christian Trade Unions "voluntarily" submitted to Nazi leadership (see despatch No. 2362⁴²). Under pretexts, which may be described as grotesque to say the least, Dr. Ley has now ousted all the leaders of the Christian Trade Unions from the Labor Front, replacing them with Nazis.

In the light of preceding events, the ordinance of the Reich Minister of the Interior, prohibiting the Social-Democrats from engaging in political activity in any form, and confiscating their property, thus outlawing the second largest party in Germany, was not at all surprising.

⁴²Dated May 5, 1933, p. 273.

This ignominious end of a once influential political party will be discussed at some length on another occasion. For the purpose of this despatch it will suffice to point out that the elimination of the Social-Democrats and Communists from the Reichstag reduces the membership of that body from 647 to 446 deputies. The Nazis alone control 288 seats in the Reichstag, 10 short of a two-thirds majority required for measures modifying the Constitution—and these few votes they will doubtless find no difficulty in securing whenever the necessity may arise. Thus the elimination of the Social-Democrats is in fact another step in the direction of the realization of the Nazis' goal of an exclusive one-party State.

The complete absence of editorial comment in the Hugenberg press on matters of such vital importance to the Nationalist Party as the suppression of its Kampf fringe, the incorporation of the Stahlhelm in the Nazi Party, and the elimination of Nationalist influence over their juvenile organizations, clearly reflect Hugenberg's present critical position. Political developments in Germany have now taken a turn which Hugenberg and his adherents hardly expected when they joined forces with Hitler in January. It is difficult to see how Hugenberg can continue his hopeless fight much longer.

Sooner or later, it seems, the Nazi *Gleichschaltung* steam-roller will pass ruthlessly over the Nationalist Party, absorbing what is still left of it. The final struggle for the attainment of the "total" State will then narrow down to a fight between Hitler and the Center Party. Whether or not the fate of the Popolari actually awaits this party, as Kube predicted, time alone will show. In any event, the proverbially unshakable Zentrumsturm is certain to prove the stoutest stronghold Hitler has yet tried to capture.

Respectfully yours,

GEORGE A. GORDON

862.00/3022

The Chargé in Germany (Gordon) to the Acting Secretary of State

No. 2504

BERLIN, June 30, 1933.

[Received July 11.]

SIR: In amplification of my telegram No. 113 of this noon⁴³ and in continuation of despatch No. 2496 of June 24, 1933, I have the honor to report that the new revolutionary wave, which began to sweep the country almost immediately after the conference of Nazi leaders in Berlin about two weeks ago, has submerged practically all political parties and organizations which have thus far managed to retain at least a semblance of independence. All potential sources of resistance to the

⁴³ Not printed.

Nazi regime—except the Reichswehr and the police—have now been either absorbed by the Nazis or largely, if not totally, crushed.

This development towards an exclusive one-party State, in accordance with the Nazi principle of "totality," has proceeded with startling rapidity, for with the exception of the Evangelical Churches, which valiantly, though in vain, fought against the threatened Nazification, no group in Germany actually offered serious resistance.

Several weeks ago, the Center and the Nationalist Parties proceeded to reorganize along lines which suggested that they did not intend to submit complacently to their threatened absorption by the Nazis (see despatch No. 2399 of May 13, 1933⁴⁴). Dr. Brüning was made the leader of the Center Party, with complete full powers. The party was to be revitalized and reorganized on the principle of authoritative leadership which now rules supreme in Germany. A somewhat similar development took place in the Nationalist Party which, in keeping with the times, changed its name to Nationalist Front (see despatch No. 2371 of May 6, 1933, section 4⁴⁴).

The Social-Democrats, in an attempt to escape proscription, elected a new executive committee, which promptly dissociated itself from the anti-Nazi activities of its party colleagues in foreign countries, expressly repudiating the claim of Wels and other Social-Democratic leaders to speak in the name of the German Social-Democratic Party. These attempts, however, failed to check the Nazi advance.

The Social-Democrats soon met the fate of the Communists. The lively activity of the old executive committee of the party, which settled down in Prague and attempted to direct the affairs of the Social-Democratic Party from this safe retreat, furnished the pretext for a final Nazi blow against the hated Social-Democrats.

Contending that the disavowal by the party leaders in Germany of their party colleagues in Prague, was merely a tactical maneuver calculated to deceive the German authorities, the Nazis began to arrest prominent Social-Democratic leaders. Former President of the Reichstag Löbe, and other prominent Social-Democrats, as well as large numbers of party officials were arrested. Reports of wholesale arrests all over the country would seem to indicate that thousands of Social-Democrats were put into concentration camps during the past two weeks.

The procedure followed with the Social-Democratic Party was the same as in the case of the Communists. On the basis of the Presidential Decree issued immediately after the burning of the Reichstag (see despatch No. 2223 of March 4, 1933) the party was prohibited from engaging in political activity in any form, its property was confiscated,

⁴⁴ Not printed.

its newspapers and periodicals were prohibited, and its deputies were expelled from all legislative bodies.

The outlawing of the second largest party in Germany did not come unexpectedly. The party has never recovered from the decisive blow it suffered by the appointment of a Reich Commissioner for Prussia and the ousting of its Ministers from the Prussian Government. The cowardly way in which the Social-Democratic leaders, with a few notable exceptions, fled from Germany when the Nazis came into power, leaving their stunned following in the lurch, and the repressive measures of the Nazi regime, completely undermined the morale of the party. The seizure of the trade unions (see despatch No. 2362 of May 5, 1933 ⁴⁵) finally deprived the party of its main pillar of support. The ignominious death of this unfortunate but well-meaning party cleared the way for the final attack on the Nationalists and the Center.

Influential Nazi leaders made it clear that Hitler's philosophy of a one-party State required the complete elimination even of those parties which voted for the empowering law giving Hitler unprecedented powers. The proscription of the Nationalist Kampfring and other organizations of this party clearly showed that the Nazis were determined to destroy it. A Nationalist meeting in Berlin at which Hugenberg was to be the principal speaker was prohibited by the police at the last moment. Soon afterwards, on June 27, Hugenberg transmitted his resignation to President von Hindenburg.

The fact that the resignation was not accepted immediately, and the announcement that Chancellor Hitler was proceeding to Neudeck for a conference with the President, gave rise to the rumor that the latter was loath to drop Hugenberg, who was regarded in business and industrial circles as the only member of the Cabinet who might still be able to resist successfully the complete Nazification of all spheres of German life. However, Hugenberg's resignation was accepted.

Meanwhile, the Nationalist Party decided to dissolve itself. This decision was apparently taken against Hugenberg's wish. The dissolution of the party was decided upon following a written agreement between the party leaders and Hitler, whereby the latter, in recognition of their action, permitted the Nationalist deputies in the Reichstag and other legislative bodies to join the Nazi delegations. This agreement was signed by Hitler and former leaders of the Nationalist Party, but not by Hugenberg.

According to this agreement, former members of the dissolved Nationalist Party will be given full and equal recognition by the Nazis as "fellow combatants of National Germany" and are to be protected against all discrimination. This applies in particular to civil servants

⁴⁵ *Post*, p. 273.

and employees who were members of the Nationalist Party. Former members of this party at present in custody for political offenses are to be released immediately.

With the absorption of the Nationalists and Stahlhelm by the Nazis, the so-called Government of National Concentration, which was originally based on a coalition of Nazis, Hugenberg Nationalists and Stahlhelm, has now become a purely Nazi Government, since those members of the Cabinet who are not Nazis are regarded as experts without party ties.

The Nazis owe their phenomenal growth during the past years largely to two factors: The chronic unemployment in Germany and the active support which Hugenberg has been giving them in the Reichstag and through his chain of newspapers. In fact, the Nazis owe their initial success at the polls in the fall of 1930 to the publicity which Hugenberg's powerful press gave them in the preceding campaign for the referendum against the Young Plan. Without Hugenberg the formation of the Hitler Cabinet would not have been possible. It must be humiliating and infuriating for Hugenberg to have to withdraw from the political arena under pressure from those very elements which he had helped to put into power.

Hugenberg was convinced that after paving the way for the Nazis, he could harness them to his cart. With the support of the masses which flocked to Hitler he hoped to destroy the hated Weimar Republic and prepare the way for a return to monarchy. He helped Hitler to crush the Weimar Republic, but in his blind fanaticism he failed to realize—what was apparent to political observers long ago—that he was dangerously weakening the position of his own party.

The main Nazi attacks on the Catholic parties have thus far been concentrated on the small but formerly influential Bavarian People's Party. Nazi leaders in Bavaria have made it perfectly clear that they considered this party superfluous. The political police in Bavaria has raided the offices of this party and the homes of its leaders. All of the Party's deputies in the Reichstag and State Diet, as well as other prominent members of the party, have been arrested. Among those arrested are such notables as Prelate Leicht, the party's floor leader in the Reichstag, Dr. Schaeffer, the chairman of the party, Dr. Emminger, former Reich Minister of Justice, and Ritter von Lex, leader of the Bayernwacht, the semi-military organization of the party. As a result of the Bavarian Government's action, Count Quadt, the Bavarian Minister of Economics, who is a member of the Bavarian People's Party, has resigned.

The repressive measures against the Bavarian People's Party were first taken on the ground that it was suspected of treasonable relations

with the Dollfuss regime in Austria. It is now charged that the material seized during the raid proved that the proscribed Bayernwacht was still active, that the party was evading the prohibition against meetings and that it was attempting to sabotage the decrees of the State Government. The diversity of the reasons successively advanced is pretty good proof of their flimsy character.

In combating the Catholic parties the Nazis take pains to stress that their action is not in any way directed against the Catholic Church, but only against political Catholicism. They contend that the elimination of the Catholic parties would make for a better understanding between the Catholic and Protestant sections of the population.

While the Center Party has thus far been treated with more consideration than its sister party in Bavaria, it too now seems doomed to an early death. The absorption of the Nationalists by the Nazis has not been without influence on the Center Party. Desertions from this party are now reported from various sections of the country. At the moment the national leaders of the party are assembled in Berlin to decide whether or not the party should follow the example of the Nationalists and submit "voluntarily" to absorption by the Nazis on the basis of an arrangement similar to the one agreed upon between Hitler and the Nationalists.

Political developments in Germany have been moving with such amazing rapidity that at this writing the situation is very different from what it was only a week ago. The Center Party which has been regarded in the past as the impregnable citadel of political Catholicism in Germany, is apparently about to surrender to the Nazis without a siege. The State Party has been proscribed because in the last Reichstag election it put up joint lists in the Reich with the outlawed Social-Democrats. Other "splinter" parties have been absorbed, or are about to be absorbed, by the Nazis. The Nazis' goal of an exclusive one-party State has become a fact much sooner than they themselves apparently dared to hope only a few months ago. The main factor in making this possible has been the attitude of President von Hindenburg which, at this juncture, must be characterized as disastrously weak (see my telegram No. 107 of June 23).

In accepting Hugenberg's resignation President von Hindenburg appointed as his successors, Dr. Kurt Schmitt, President of the Allianz Versicherung, Reich Minister of Economics and Dr. Walter Darré, the head of the agricultural bureau in the Nazi Party, Reich Minister of Agriculture. The two new members of the Hitler Cabinet were appointed at the same time by Prussian Minister-President Goering, in his capacity as Acting Statthalter for Prussia, as the heads of the corresponding ministries in that State. Dr. Bang, Hugenberg's Secretary of State in

the Ministry for Economics, has been replaced by Dr. Feder, the author of the original Nazi economic program. This is a distinct loss, as the former was an experienced official with rather unusually clear ideas for this country as to the value of good international relations.

In the early years of the Nazi movement Dr. Feder was the economic expert of the party. In recent years, this position has been held by Dr. Wagener, the present Reich Commissioner for business and industry. It will be recalled that at the time of Hitler's break with Gregor Strasser last winter, Dr. Feder requested leave of absence because he was dissatisfied with certain administrative changes in the party (see despatch No. 2070 of December 14, 1932⁴⁶). Since then Feder had remained conspicuously in the background and his position in the party was not clear. His pronounced socialistic tendencies and strong leaning to financial and economic experiments will probably make cooperation between him and the new Minister of Economics very difficult.

Respectfully yours,

GEORGE A. GORDON

862.00/3029

The Chargé in Germany (Gordon) to the Acting Secretary of State

No. 2527

BERLIN, July 10, 1933.

[Received July 21.]

SIR: In continuation of despatch No. 2504 of June 30, 1933, relative to the further sweep of the new revolutionary wave and the end of the political parties in Germany, I have the honor to report that with the dissolution of the Center Party, which until a few weeks ago was regarded by non-Nazi circles as an organization so deeply rooted that even the Nazis would scarcely be able to annihilate it, the last of the old political parties has disappeared. The Nazi principle of "totality" has become a fact; Hitler's triumph over the political parties is complete.

The dissolution of the Center Party was preceded a few days earlier by the dissolution of the Bavarian People's Party and the German People's Party which was headed by Dr. Stresemann for many years. These two parties dissolved themselves unconditionally, without negotiations with the Nazis.

The Center Party sought to assuage the agony of impending death by negotiating with the Nazis, in the hope of obtaining an arrangement for its absorption by them similar to the one agreed upon between Hitler and the Nationalists. However, the Nazis were relentless and refused to accept the Centrist deputies in the Reichstag and other parliamentary bodies on the same basis as the Nationalist deputies. The final communiqué of the Center Party expresses only pious hopes in this respect.

⁴⁶ *Foreign Relations, 1932, vol. II, p. 321.*

Applications by Centrist deputies to join Nazi parliamentary delegations must be made individually, the Nazis reserving the right to decide each case on its own merits.

Thus the party which successfully offered resistance to Bismarck and in post-war Germany became the most influential party by virtue of its pivotal position, has now met an inglorious end. To most minds, six months, or in any event one year, ago this situation was hardly conceivable. In addressing an S. A. rally at Dortmund last Sunday, Hitler himself said that no one could ever have believed that only five months after the Nazis' accession to power the Center Party "would haul down its flag."

With the disappearance of the Center Party, Vice Chancellor von Papen, who negotiated the Concordat with the Holy See, will doubtless seek to regain his impaired influence and prestige as the political representative of German Catholicism.

While the Center Party has ceased to exist in the Reich, the local groups of this party in Danzig and the Sarre region have refused to disband, declaring that they still have a "great mission to fulfill."

Respectfully yours,

GEORGE A. GORDON

862.00/3023

The Chargé in Germany (Gordon) to the Acting Secretary of State

No. 2529

BERLIN, July 10, 1933.

[Received July 21.]

SIR: With reference to my confidential despatch No. 2498 of June 23, 1933, I have the honor to report as follows.

In that despatch I gave a general picture of the tremendous pace at which the new revolutionary wave was sweeping over Germany, with the resultant uncertainty as to the point at which the Nazi leaders would call at least a temporary halt and consolidate their gains before proceeding to a fresh advance.

It now appears that Hitler has decided that such a moment has come and the chronology of the events of the last ten days is of interest.

On June 30, four Nazis, rather prominent as subordinate leaders in Nazi industrial and commercial circles, were expelled from the party and arrested. The ground given was that they had attempted to "rob the Führer of his freedom of decision" by stirring up various personal and business organizations to exert pressure on the Chancellor. It eventually transpired that the object of this pressure was to bring about the appointment of Reich Commissioner for Industry Wagener as Minister of Economics in Hugenberg's place; it also is generally believed that Wagener, who as such Commissioner had enjoyed great power and influ-

ence, was himself arrested and that, though he was shortly afterwards released and is for the moment at large, he is now very much out of favor.

Likewise on June 30, President von Hindenburg roused himself to write an open letter to Hitler, deploring the conflict in the Evangelical Church and expressing the hope that its unity might soon be reestablished by the Chancellor—a request with which the latter ostensibly lost no time in complying. However, in despatch No. 2516 of July 8,⁴⁷ going forward in today's pouch, which deals specifically with this church conflict, I felt constrained to point out that this compliance might well be more apparent than real, and constitute only a slight "face-saver" for the President in return for the bitter pill he had had to swallow in agreeing to the dismissal of Hugenberg and the annihilation of the Nationalist Party. It must, however, be noted that this incident might also be interpreted as indicating that under certain conditions Hitler may find it convenient to use the President's position and personality as a check on his followers rather than to issue direct repressive orders of his own.

On July 2, the Chancellor held another meeting of party leaders at Bad Reichenhall, the whole tone of which was quite different from that of the party leaders' meeting held some two weeks previously in Berlin. In his Reichenhall speech the Chancellor took occasion impliedly to rebuke those orators—including incidentally Minister Göbbels—who had recently been indulging in more than the usual inflammatory talk concerning the imminence of a Second Revolution (see pages 5 and 6 of my despatch under reference). He said that he would relentlessly and brutally suppress all attempts by reactionary or other circles to overthrow the present order. However, he would also relentlessly turn against a so-called second revolution, for such a revolution would have chaotic results.

On July 5, in an open letter to the Statthalter of Brunswick, Hitler further cautioned against wholesale arrest and trial of business men and industrialists on charges based largely on personal denunciations and prompted by motives of personal revenge or private business rivalries.

On July 6, the Minister of Labor issued a statement to the effect that in industrial labor disputes the Reich regional trustees of labor, and not the innumerable and irresponsible individual Nazi Cell Organizations, should have competence.

Again on July 6, at a meeting of the various Statthalters held in Berlin, the Chancellor delivered a speech which went way beyond any of his previous utterances in showing his recognition of the need for moderation in the process of making *Gleichschaltung* experiments in

⁴⁷ Not printed.

business and industry, and of putting an end to the existing insecurity of business conditions. The salient passages of this speech are reported in despatch No. 2524 of July 10,⁴⁸ going forward in this pouch.

Two days later, Rudolf Hess, to whom it will be remembered Hitler transferred the active leadership of the Nazi Party, issued an order revoking previous measures adopted against department stores and prohibiting all Nazi activities hostile to them.

The foregoing constitutes a striking week's record of events. It shows, as I have often pointed out to the Department (see e.g., confidential despatch No. 2428 of May 22, page 5⁴⁸), that what is known here as the "Druck von unten"—that is to say, the pressure from below on the part of the rank and file of the Nazi Party who feel that, with the coming into power of that party, they have in no wise obtained the material benefits which should accompany such a development and which they feel are due them for their past party services—is still a very acute reality. It also indicates, however, that, whatever his motives, and in spite of very certain opposition, the Chancellor has decided to take the bolder and more statesmanlike line of trying to curb the illegalities and excesses of his followers which are doing so much to perpetuate tension and unrest throughout the country.

I do not mean to give the impression that this tension and unrest will be eliminated from the daily lives of Jews or of active opponents of the Nazi régime, but the Chancellor does seem to have in mind a definite effort to allay the uncertainty now existing in the business world.

The entire elimination of all other political parties, which culminated with the dissolution of the Center Party on July 5, thus completing the materialization of the Nazi principle of political "totality", has of course made it easier for the Chancellor to turn his attention and efforts to putting his own Nazi house in order; nevertheless, he is certain to encounter fierce resistance springing from disappointed egotism, and the big question, determinative of the future course of the Nazi Revolution, still is of the same nature as it always has been, namely, whether the Chancellor will be strong enough to follow along the line which, as hereinabove indicated, it is believed he has now adopted.

Respectfully yours,

GEORGE A. GORDON

⁴⁸ Not printed.

862.00/3043

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 27

BERLIN, July 28, 1933.

[Received August 8.]

SIR: In continuation of despatch No. 7 of July 17, 1933,⁵⁰ I have the honor to report that considerable speculation was aroused by the news of a secret meeting last week of the Prussian Cabinet on the Island of Sylt, in the North Sea, where Captain Göring, the head of the Prussian Government is spending his vacation. No less sensational was the urgent meeting in Berlin on the following day, to which Göring summoned all the Prussian public prosecutors, police chiefs, presiding judges of the provincial high courts, local heads of the secret police, and the senior commanders of the S.A. and the S.S.

On his arrival in Berlin, by airplane, Göring said he was determined to intervene "with an iron hand" against the enemies of the State. The laws and regulations announced soon thereafter showed that the Prussian dictator meant what he said, though it was not clear as to who besides the Communists were the enemies of the State that he had specifically in mind. It was evident, however, that something unusual was going on.

Göring's measures clearly reveal two distinct purposes. On the one hand, they provide the death penalty or long terms in the penitentiary for attacks or even plans for an attack upon members of Hitler's Brown Army and the Stahlhelm for subversive activity and dissemination of "atrocious propaganda"; on the other hand, they seem to be clearly directed against rebellious elements within the Nazi ranks.

Though the first purpose is especially stressed, the impression is inescapable that the unruly elements in the Nazi Party constitute the primary motive for Göring's action, and that the measures against the Communists—who are hardly in evidence as all of their leaders are in concentration camps—are perhaps only camouflage to conceal the embarrassing fact that the Nazi leaders have to combat rebellious elements in their own ranks.

Göring's extraordinary measures, which he expounded at a press conference in Berlin, are in substance as follows:

1. A law revoking the existing Article of the Prussian Constitution whereby amnesties require the approval of the State Diet.

2. An order by Captain Göring transferring the right of pardon assumed by himself to the Prussian Minister of Justice, with respect to penal offenses committed in connection with the National-Socialist revolution between March 21 and July 15.

⁵⁰ *Post*, p. 277.

3. An order of the Prussian Minister of Justice constituting a central public prosecutor's office to deal, in cooperation with the secret police, with political offenses such as attacks on members of the Brown Army, Stahlhelm, and the Police. The dependents of persons convicted for such offenses are not entitled to public financial support such as unemployment relief, poor relief, etc.

4. An order by Captain Göring to the effect that all such offenses must be tried without delay in order that members of the Brown Army, Stahlhelm, and the Police may enjoy the feeling of "complete legal security." The order expressly states that now that Hitler has proclaimed the end of the revolution and the constructive work has been begun, all violations of the law will be ruthlessly punished "no matter by whom they are committed."

5. A draft bill submitted to the Reich Government, for urgent approval, which provides the death penalty or terms of from 15 years to life in the penitentiary for any person who kills, plots, or instigates to kill, a policeman, a member of the Brown Army, or Stahlhelm; or who brings into Germany foreign periodicals or pamphlets with political content, which may be regarded as treasonable in the sense of existing decrees or as violations of the regulations proscribing certain associations and organizations, or of the law forbidding the formation of new parties.

At the press conference Göring explained, that on the basis of this bill the death penalty could be inflicted for the dissemination of "atrocious propaganda". He stressed the fact that by virtue of the Prussian amnesty bill he not only had the power of pardon, but could also quash proceedings in cases where he was convinced that the offender had erred against the letter of the law, but only in order to help further the "national revolution".

It will be recalled that on the occasion of the meeting of the Reichstag in Potsdam, an amnesty was proclaimed by Presidential Decree of March 21, 1933, for political offenses committed by patriots in connection with the "national revolution." The new amnesty covers similar offenses committed between that time and July 15, the day on which the authorities apparently consider the revolution as definitely terminated (Dr. Frick's order proclaiming the end of the revolution was published on July 11). The threat of speedy and severe punishment for offenses committed beyond July 15 is clearly directed against arbitrary actions by members of the Brown Army and other organizations of the Nazi Party.

Only about two weeks ago, a law was enacted prohibiting the formation of new parties. In the light of the latest developments, there can be little doubt now that this law was directed not so much against the defunct political parties as against attempts to split the Nazi Party from within.

An illustration of typical Nazi word-twisting to conceal the true underlying motive for official orders, was an order by Herr Hess, the deputy leader of the Nazi Party, issued at the same time that Göring's measures were announced. Between the lines of this order one can easily read an admonition to the Brown Army to abstain from further revolutionary activity. In this order Herr Hess said that the "atrocities propaganda" having been proved untrue, for no revolution in the world had been as disciplined as the National-Socialist revolution, the enemies of the Nazis were sending spies into their ranks to instigate their members to mishandle political opponents in order that evidence might be subsequently adduced to make these lies appear true. Members of the Brown Army were therefore urged to hand over to the police anyone who wished to mishandle prisoners or instigated them to do so. Any Nazi "who might fall a victim to the wiles of such provocateurs" would be put into a concentration camp.

On July 25, two days after Göring's measures were announced, the authorities resorted to another sensational move. At 12, noon, sharp, all automobiles, railroad trains, railroad stations and waiting rooms were searched by the police with the assistance of S.A. and S.S. The trains were searched only during stops at important stations. In less than an hour the search was over. It is estimated that one million men took part in this unusual raid throughout Germany.

Göring's "iron hand" was felt all over Germany, as the Governments of the other States cooperated with his secret police. Such raids will probably become a frequent occurrence in the Third Reich. In conjunction with the extensive application of the death penalty and trial by summary courts, such raids are, in a way, a form of legal terrorism calculated to nip in the bud subversive activities by political opponents as well as to intimidate the rebellious elements in the Nazi ranks.

According to an official communiqué, the police raid was directed against "Communists and other enemies of the State". Who are meant by the latter it is not difficult to guess when one recalls Dr. Frick's stern order proclaiming the end of the revolution and forbidding further revolutionary activity under threat of severe punishment. (See, particularly, last paragraph of despatch No. 7 referred to above).

Respectfully yours,

WILLIAM E. DODD

862.00 P.R./140

The Ambassador in Germany (Dodd) to the Acting Secretary of State

[Extract]

No. 35

BERLIN, July 28, 1933.

[Received August 8.]

SIR:

4. *Political Prisoners.* A foreign news agency reported about two weeks ago that there are about 100,000 political prisoners in German concentration camps. This was promptly denied in an official Prussian statement which gave the total number of political prisoners in Germany at 18,000, and in Prussia alone, 12,000.

The wholesale arrests of political opponents since the burning of the Reichstag and the daily announcements of new arrests in conjunction with the "second revolutionary wave," which set in about the middle of June and which is now supposed to be at an end, would seem to indicate that the actual number of political prisoners is far in excess of the official figures.

The Nazi Minister of the Interior in Saxony boasted recently that in that State alone there were twice as many political prisoners as in Prussia, which comprises about two-thirds of the Reich in area and population, while a member of the Württemberg Government is reported to have said that there were more political prisoners in Württemberg than in any other German State. Moreover, during the past few weeks alone, many hundreds of persons have been arrested in Bavaria.

Most of the Social-Democratic leaders who remained in Germany have been put in concentration camps. The arrest of Herr Löbe, who was for many years President of the Reichstag, was soon followed by the arrest of Fritz Ebert, the son of the first President of the German Republic.

The frequent reports that political prisoners, especially Communists, have been shot in flight give ground for the suspicion that political prisoners are encouraged by their Nazi guards to flee in order to be shot in ambush.

About a week ago it was reported in the press that the body of Dr. Schaeffer, a former Nazi, who was responsible for the disclosure of the notorious Boxheim documents which revealed the ruthless measures which the Nazis were planning against Jews and political opponents upon their accession to power (see despatch No. 1312 of December 1, 1931⁵¹), was found on a railroad track near Frankfort. Dr. Schaeffer

⁵¹ Not printed.

was apparently shot by former party colleagues who then threw his body from a bridge to the railroad tracks, about fifty feet below.

As a rule, renegades from the Nazi Party have been put out of the way without attracting public notice. Such instances appear now and then in the foreign press, but seldom in the German press. In permitting the publication of the report of Dr. Schaeffer's death, the authorities apparently had in mind its effect as a warning to recalcitrant members of the Nazi Party who are dissatisfied with the turn "the national revolution" is now taking.

Respectfully yours,

WILLIAM E. DODD

862.00 P.R./141

The Ambassador in Germany (Dodd) to the Secretary of State

[Extracts]

No. 66

BERLIN, August 12, 1933.

[Received August 24.]

SIR:

3. *Repressive Measures against Political Opponents.* Goering's announcement of drastic measures against further revolutionary activity, reported in despatch No. 27 of July 28, has been followed by frequent raids on Communists, severe penalties for Marxists tried for political offenses committed even prior to the Nazi regime, and the enactment of a law modifying penal procedure in Prussian prisons with a view to more severe punishment.

During the past fortnight there have been numerous police raids throughout the country which have invariably led to a wholesale arrest of Communists on the charge of subversive activities. The newspapers have been devoting considerable space to vivid accounts of the Communist danger. Judging by newspaper reports, hundreds of persons must have been arrested. These arrests are not confined to Communists alone but include former Social-Democrats, members of the republican Reichsbanner, and even individuals more to the Right.

An outstanding instance of the severe punishment being meted out by the summary courts to Communists, while Nazi offenders go unpunished, was furnished by the trial of Communist workmen at Altona for the murder of two Nazi storm troopers during the disturbance in that city last summer. It will be recalled that in July, 1932, a Nazi parade in a

Communist bailiwick in Altona, resulted in serious disturbances and street fighting in which many were killed and wounded, and that this disturbance, deliberately provoked by the Nazis, served as a pretext for the appointment of a Reich Commissioner for Prussia (see despatch No. 1841 of July 25, 1932⁵²). On June 6, a summary court at Altona sentenced four workmen to death and six to penitentiary terms ranging from 3½ to 10 years. The men condemned to death were executed on August 1, following Captain Goering's refusal to commute the sentence to life imprisonment.

In marked contrast to the execution of these four men was the pardoning of five Nazis who last summer entered the home of an alleged Communist, brutally killing him in the presence of his aged mother (see despatch No. 2261 of March 21, 1933). These Nazis were first sentenced to death, but the sentence was later commuted to life terms in the penitentiary. Last March they were released and were given a rousing ovation by the Nazis of their home town.

Persons who have the misfortune of being confined in a Prussian prison will hereafter be subjected to more severe punishment than heretofore. Goering's law modifying penal procedure abolished the prison reforms introduced under the Weimar Republic. A sharp distinction will now be made between penal servitude and ordinary imprisonment. The "humanitarian fads" (*humanitätsduselei*) have been abolished and the standard of living of prisoners will be lowered. In future the death penalty will be inflicted with the axe, unless otherwise specified.

In addition to these unconditional general repressive measures, the policy of taking hostages and indulging in other forms of political reprisals is now extensively applied by the German authorities as a means of intimidating political opponents at home and abroad.

In an endeavor to check the anti-Nazi activities of Social-Democratic émigrés, prominent Social-Democrats in Germany, some of whom were arrested some time ago, were recently transferred to concentration camps and subjected to the routine of forced labor and military drill under Nazi instructors. Herr Loebe, the former President of the Reichstag who commanded the respect even of political opponents because of the impartiality and skill with which he conducted his office, was transferred from Berlin to the concentration camp at Breslau. At the same time, Frau Luedemann, the wife of a former Oberpräsident in Silesia, was taken to the same camp where her husband was also interned (see section 4 of despatch No. 2519 of July 8, 1933⁵³) because she made "untrue assertions about conditions in the concentration camp."

⁵² Not printed.

⁵³ For extract of despatch, see p. 276; section 4 not printed.

The family of former President Ebert has been especially hard hit by the present policy of reprisals. Friedrich Ebert, former Reichstag deputy and son of the first President of the Reich, who was arrested some time ago, has now been put in a concentration camp. The same fate befell Dr. Jaenecke, son-in-law of the former President and formerly an official in the Foreign Office. Ebert and two other prominent Social-Democrats were taken to the concentration camp at Oranienburg. On their arrival at the camp the authorities released six workmen who had been "misled by Social-Democratic leaders."

Because some unknown persons destroyed the Hindenburg oak planted by the Nazis in the Tempelhofer Feld on May Day, the Prussian Police ordered by way of reprisal that all Communists interned in concentration camps be deprived of their midday meal for three days.

The Nazi chief of police in Hamburg announced that hereafter Communist leaders already under arrest will be held responsible for acts committed by persons who cannot be immediately identified. For every case of leaflet propaganda, attacks on Nazis or anti-Nazi agitation abroad, at least 10 Communist leaders already in concentration camp will be punished. In cases where offenders are known but cannot be apprehended their relatives will in future be imprisoned.

Because a former Prussian official, now a political émigré, made a speech against the Nazi regime over the wireless station in Luxembourg his brother-in-law living in Germany was imprisoned.

In the concentration camp at Dachau, near Munich, the prisoners were forced to erect a monument to Horst-Wessel, the leader of a Nazi storm detachment in Berlin and composer of the Nazi national anthem bearing his name, who was killed by Communists and later made a national hero.

Aside from intensified punishment as a retaliatory measure, political prisoners are also faced with the grave prospect of being shot "while attempting flight." Such deaths have become almost a daily occurrence. An outstanding recent case is that of Felix Fechenbach, a newspaper editor who was formerly private secretary to Kurt Eisner, the Bavarian Minister-President assassinated by Count Arco in Munich in 1919.

8. *The New Citizenship Laws.* The new Reich citizenship law referred to in despatch No. 18 of July 21, 1933,⁵⁴ has not yet been promulgated. However, new regulations governing naturalization in the various German States are being formulated, which reflect the spirit of the impending law.

Such regulations, which have already been announced by the Government of the Free State of Baden, show that the Third Reich is in prin-

⁵⁴ Not printed.

ciple opposed to naturalization of non-Germans. Hereafter naturalization is to be regarded as a special privilege. Non-Aryans, that is Jews, will not be admitted to citizenship. If one of the applicant's forebears, even beyond the grandparents, is known to be of Jewish extraction, the application is to be rejected. Exceptions are possible only if the applicant performed meritorious service for Germany. Aliens who lived in Germany during the war are eligible for citizenship only if they volunteered to serve in the German army or in the army of one of Germany's allies. Persons who are not members of a religious community must furnish proof that they are not Marxists. Applications of persons married to a non-Aryan are to be rejected on general principles.

The provisions governing the application of the law for the revocation of citizenship, which have now been published in the *Reichsgesetzblatt*, show that the law is directed against Jews naturalized in Germany since the war and Germans actively opposed to the Nazi regime. It has been estimated that about 15,000 Jews acquired German citizenship during the past fourteen years. The authorities will now examine each of these cases separately to determine whether citizenship should be revoked. Those Jews who were formerly citizens of countries in eastern Europe stand to lose their German citizenship unless they fought on the German side during the war or performed some other meritorious service for their adopted country.

The authorities are not required to state the reason for the revocation of citizenship and their decision can not be contested in a court of law. Persons living in Germany are notified of the revocation of their citizenship by an official notice transmitted through the mail. Persons living abroad are to be notified by the respective diplomatic or consular missions. If notice of revocation is returned undelivered, it must be published in the *Reichsanzeiger* in order to become effective.

Germans guilty of disloyalty to the Reich—active opposition to the Hitler Government is regarded as such an offense—can be deprived of citizenship and their property confiscated.

Respectfully yours,

WILLIAM E. DODD

862.00/3056 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, August 18, 1933—1 p. m.

[Received August 18—11:50 a. m.]

129. The following circular invitation issued to the entire diplomatic corps was received yesterday:

"In his capacity as leader of the National Socialist German Labor Party the Reich Chancellor apprised the Foreign Office of the fact that he would be pleased if he could welcome the accredited chiefs of mission in Berlin as his guests participating in the ceremonies which will take place in Nuremberg on September 2nd and 3rd on the occasion of the caucus of his party.

It is planned to despatch a special train of sleeping cars from Berlin to Nuremberg on the eve of September 1st which would also be at the disposal of the chiefs of mission during their sojourn in that city and would bring back to Berlin the guests of honor of the Reich Chancellor on the eve of September 3rd. The attending gentlemen shall consider themselves the personal guests of the Reich Chancellor during the trip and during their sojourn in Nuremberg. Special notification will be issued later regarding the exact schedule of the special train.

In order to be able to make the necessary arrangements in good time the Foreign Office would appreciate information by August 21 as to whether the participation of the Chief of your Mission in the above mentioned ceremonies in Nuremberg may be depended on. ["]

Preliminary inquiry indicates that the invitation has caused much perturbation among the chiefs of mission aside from those (Italian, Hungarian, et cetera) who automatically would accept.

Although something like this may have occurred in the earlier days of the Fascist régime I have as yet encountered no one who can recall it and various chiefs of mission, feeling that this is an entirely unprecedented matter, are referring it to their Foreign Offices. I believe that many of these latter are inclined to regard the invitation as provocative and would be glad to refuse it if they could see their way to doing so.

It must also be taken into account that the Government has shown no interest whatsoever in letting the various chiefs of mission, waiting to present their letters of credence, know when they might expect to be received by the President. Now, upon the issuance of this invitation, the Foreign Office intimates that the President will come to Berlin on August 30th or 31st to receive these chiefs unless they all decline the invitation in which case it is intimated that he may delay his return until October; as there are some eight chiefs of mission in this situation including the Hungarian, this latter contingency can scarcely be expected to materialize.

You will readily appreciate the fundamental substantive importance of the issue raised and I urgently request full instructions.

Dodd

862.00/3057 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, August 19, 1933—noon.

[Received August 19—8:45 a.m.]

130. Department's telegram No. 98, August 18, 1 p.m.⁵⁵ Have conferred with Gordon and Messersmith. The facts set forth in the latter's cable to the Department of this date⁵⁶ as well as reports in the pouch now en route furnish full information as to the critical trend here. The situation set forth in my 129, August 18, constitutes to my mind further evidence thereof. Largely on account of this latter development I feel that it would be better to delay protest; I think that if the British and ourselves decline the Nuremberg invitation it would strengthen the hand of the liberal and peace forces in Germany.

In this connection it should be noted that the new British Ambassador is not here now having only visited Berlin for a day or two at the beginning of August; I therefore hope that the Department may feel it advisable to take this matter up immediately either in Washington or through our Embassy in London.

DODD

862.00/3057 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, August 19, 1933—2 p.m.

100. Your 129, August 18, 1 p.m., and 130, August 19, noon. I do not feel that it would be advisable for the Department to take any initiative or act directly in this matter. The implications of the local situation are better known to you than to the Department and I rely on your judgment to deal with this question with the minimum of embarrassment to yourself or to this Government. It is suggested that consultation with the British and French chiefs of mission in Berlin might be helpful to you in determining your course of action.

PHILLIPS

862.00/3058 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, August 20, 1933—2 p.m.

[Received August 20—1:15 p.m.]

131. Department's 100, August 19, 2 p.m. I venture to press Department to reconsider the question which I deem a vitally important one.

⁵⁵ *Post*, p. 385.⁵⁶ Not printed.

I feel that if the diplomatic corps is dragooned into going to Nuremberg not only will a vicious precedent have been established but also the event will be exploited intensively to the entire world as an indorsement of the present regime and accept the theory that the Nazi Party is synonymous with the German Government and nation.

We had of course already inquired as to the British and French attitude. . . . I understand that he⁵⁷ had recommended to Phipps⁵⁸ that he should accept but this morning he intimated to me that Phipps may decline the invitation "for urgent family reasons".

The French Ambassador had immediately referred the question to the Quai d'Orsay but has not yet received a reply. He authorizes me to say that his own personal view is strongly against acceptance of the invitation; feeling it imperative that the attitude of the British and French should be identical he has counseled his Foreign Office to consult with the British Foreign Office.

I may add that the Spanish Embassy will definitely not be represented at Nuremberg.

I again venture strongly to urge the Department to take this matter up immediately either in Washington or through our Embassies in London and Paris in order that this Embassy may not have to undergo the unnecessary risk of taking an isolated position. Please instruct me further.

DODD

862.00/3058 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, August 20, 1933—7 p.m.

101. In spite of the presentation made in your 131, August 20, 2 p.m., I continue to feel that this Government should not take the lead in this matter. The British and French have as much if not more at stake than we, and I should not wish to give them an opportunity later to justify a decision by claiming that it was made at the instance of this gov't. or in pursuance of its advice. In leaving the matter to your discretion, we are of course prepared to support you in any decision you may make.

PHILLIPS

⁵⁷ i.e., the British Chargé.

⁵⁸ Sir Eric Clare Edmond Phipps, British Ambassador in Germany.

862.00/3061 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, August 23, 1933—11 a.m.

[Received August 23—7:30 a.m.]

133. Your 101, August 20, 7 p.m. I yesterday declined the invitation on the ground that I could not absent myself from Berlin long enough to have the pleasure of accepting and I understand that the French and British will not go to Nuremberg.

Copy of my note sent by mail.

DODD

862.00 P.R./142

The Ambassador in Germany (Dodd) to the Secretary of State

[Extract]

No. 108

BERLIN, August 28, 1933.

[Received September 9.]

SIR:

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3. *Revocation of Citizenship.* The Law for the Revocation of Citizenship of July 14, 1933 (see despatch No. 92 of August 22, 1933⁵⁹), has now been applied for the first time. On the basis of Section 2 of this law, the Reich Minister of the Interior, in concurrence with the Reich Minister for Foreign Affairs, has published in the official *Reichsanzeiger* a list of 33 Germans, resident abroad, whose citizenship has been revoked "because they have injured German interests by conduct conflicting with the duty of loyalty to the Reich and nation." Simultaneously with the revocation of their citizenship the property of these persons was declared confiscated.

The Law for the Revocation of Citizenship applies to two groups of German citizens. In the first group are persons charged with disloyal conduct injurious to the Reich. In the second group are German citizens residing abroad who fail to return to Germany if demanded by the Reich Minister of the Interior.

The 33 persons whose citizenship has now been revoked come under the first category though they all happen to reside outside of Germany at the present time. According to the law, such revocation of citizenship can apply also to the wife or husband of the person affected, and to their children. Each case requires a separate decision by the Reich Minister of the Interior and the Reich Minister of Foreign Affairs. In the absence

⁵⁹ Not printed; see sec. 8 of despatch No. 66, August 12, 1933, pp. 252, 254.

of such a decision the wife and children of a person whose citizenship has been revoked retain their German citizenship.

In announcing the initial list of proscribed political opponents, the Reich Minister of the Interior specifically stated that the Government reserved its decision with respect to the revocation of the citizenship of the members of their families. This would seem to indicate that the citizenship of the wives and children of at least some of the men in question will be revoked. It has been explained semi-officially that the decision on this point depends in large measure on the conduct of the members of the family of a person thus affected, and on whether they still live in Germany or have emigrated to another country.

The bulk of the names of the proscribed persons consists of Social-Democrats, pacifists, and Communists. The list includes the names of Georg Bernhard, the former chief editor of the Democratic *Vossische Zeitung*; Lion Feuchtwanger, the well-known author; Dr. Foerster and Lehmann-Russbüldt, two prominent pacifists; Helmuth von Gerlach, a former Junker who turned pacifist and was for many years editor of the *Welt am Montag*; Grzesinski, formerly Social-Democratic Police Commissioner of Berlin; Dr. Alfred Kerr, prominent dramatic critic; Heinrich Mann, author and brother of Thomas Mann, the Nobel prize winner; Scheidemann, the first Social-Democratic Chancellor, whose relatives, as will be recalled, were arrested, and later released, in reprisal for his article reprinted in the *New York Times* of July 9, condemning the Nazi regime; Robert Weissmann, for many years Secretary of State in the Prussian Ministry of the Interior, and Otto Wels, the head of the executive committee of the Social-Democratic Party, which has transferred its seat to Prague.

Respectfully yours,

WILLIAM E. DODD

362.00 P.R./146

The Ambassador in Germany (Dodd) to the Secretary of State

[Extract]

No. 225

BERLIN, October 26, 1933.

[Received November 7.]

SIR:

2. *The Election Campaign.* The campaign for the Reichstag election and referendum on November 12, has set in with great vehemence. Outward manifestations of the campaign are daily increasing. Huge placards exhorting the people to vote for the Government have been put up in

Berlin and other cities throughout the Reich bearing such inscriptions as: "In eight months 2,250,000 persons have been given work and bread." "Everyone votes, Yes!" "Hitler's Struggle is the Struggle for the Real Peace of the World." "With Hitler for Peace and the Right to Equality."

Ten million copies of a pamphlet on Germany's decision to withdraw from Geneva⁶⁰ have been printed for distribution during the campaign at the exceptionally low price of 5 pfennig (an ordinary newspaper costs from 10 to 20 pfennig). The pamphlet discusses the peace treaties, the failure of the victorious nations to keep their promise to disarm and the armaments of other nations.

The printed ballots for the referendum on November 12 contain the question: "Do you, German man, and you, German woman, approve the policy of your Government and are you ready to recognize it as the expression of your own view and your own will and solemnly pledge yourself to it?" Below this text are two circles enclosed in squares above which are printed the words Yes and No. It will be observed that this question fails to mention directly the ostensibly main purpose of the referendum which was to determine to what extent the German people approved Germany's withdrawal from Geneva. It reads like a request for a national vote of confidence in the general policy of the Government.

In view of the absence of all opposition and the nature of the issue involved, the intensive "election" campaign launched by the Government is really a campaign to increase the following of the Nazi Party, and to win the sympathy and support of those elements which up to now have been reluctant to accept a Nazi régime. Judging by the skilful manner in which the campaign is being conducted there can be no doubt that the affirmative vote will be overwhelmingly large. Only a hopeless minority will have the courage to vote in the negative, even though the balloting will be secret.

Hitler's appeal to the German people in his first election speech in Berlin on October 24 was cleverly calculated to arouse the patriotic feelings not only of his following but also of many who still stand aloof. It would be an easy task for an impartial observer to point out the numerous contradictions and distortions of facts in the Chancellor's speech, but this speech was intended for the man in the street, not for the informed political observer. Viewed from this angle it has undoubtedly achieved its purpose of convincing many of the wisdom of a "down-trodden" nation's decision to withdraw from Geneva and the necessity of putting up a stiff front vis-à-vis the "oppressors."

It is not improbable that when Goebbels announced several weeks

⁶⁰ For correspondence concerning the Disarmament Conference at Geneva, see vol. I, pp. 1 ff.

ago that beginning October 1, no fewer than 150,000 public meetings would be held throughout Germany in the course of the next two months, the Nazi leaders already had in mind Germany's eventual withdrawal from the League of Nations and the Disarmament Conference.

When the Nazis came into power Hitler boasted that the new Reichstag would last out its full term and that there would be no more general elections during the next four years. The referendum will undoubtedly demonstrate that the German people for obvious reasons can be lined up solidly behind the Government on the disarmament question. The simultaneous Reichstag election appears to be superfluous as a gauge of public opinion on this question.

However, the seemingly superfluous Reichstag election is no less important for Hitler than the referendum.

In the late Reichstag, the Hugenberg Nationalists, the Center and the Bavarian People's Party were represented by 145 deputies, most of whom were absorbed by the Nazis when these parties were dissolved (see despatches Nos. 2504 of June 30 and 2527 of July 10, 1933). The Minister of the Interior, Dr. Frick, has announced that the list of candidates for the Reichstag to be elected on November 12 will contain 685 names of which approximately only 40, or slightly less than 6 per cent will be those of persons who were formerly members of the dissolved parties.

However, this sop to the non-Nazi elements was a clever tactical move on Hitler's part, as many Germans who formerly supported these defunct parties but were reluctant to accept the Nazi regime, will now be more willing to vote in the affirmative on November 12. Considerable surprise was evoked by the announcement that Dr. Hugenberg's name is included among the names of the ten leading names which top the list of candidates. It is not clear at this writing whether or not pressure was brought to bear on Hugenberg to run for the Reichstag on a Nazi ticket. In any event by making Hugenberg one of the ten leading candidates Hitler has undoubtedly made an especially clever move as Hugenberg still has a loyal, though suppressed, following.

As pointed out in despatch No. 211 of October 17, 1933,⁶¹ there have been several indications during the past week that Hitler is displeased with Göring. The latter's silence seemed to confirm the rumors of a possible break between Hitler and one of his most important henchmen who has a very strong following of his own. Göring's actions were therefore watched with keen interest. However, in Stettin yesterday Göring made his first campaign speech in which he did not fail to stress his loyalty to the "Führer". As far as the Embassy is aware this was

⁶¹ Not printed.

Göring's first public appearance in Germany since the opening of the Prussian Staatsrat on September 15.

Respectfully yours,

WILLIAM E. DODD

862.00/3131

The Ambassador in Germany (Dodd) to the Secretary of State

No. 246

BERLIN, November 4, 1933.

[Received November 20.]

SIR: In continuation of section 2 of despatch No. 225 of October 26, 1933, I have the honor to report that the campaign for the election on November 12 is now in full swing. Since the writing of the above despatch it appears even more certain that Hitler will obtain an overwhelmingly large affirmative vote which the Nazis will not fail to exploit as wide popular approval of the Government's general policy at home and abroad. However, in the Germany of today where everything has been *gleichgeschaltet*, where a demagogue like Goebbels moulds public opinion and the least criticism of the Government's policy is vigorously suppressed and severely punished, even one-hundred per cent victory at the polls could hardly be regarded as a free expression of the will of the people.

Opponents of the Nazi regime are being systematically intimidated. Nazi speakers have openly boasted that, though the balloting will be secret, a way has been devised of checking up on all the "traitors" who fail to vote for Hitler. In circles opposed to the Nazi regime it is whispered that the election judges have been secretly instructed to mark the envelopes containing the ballots scratched by persons known or suspected of being hostile to the Nazis. A more likely story is that good Nazis have been ordered ostentatiously to open and mark their ballots so that anyone in the polling booth may see the vote they cast; anyone, therefore, who tries to cast a really secret ballot will almost automatically invite suspicion.

The German Jews in particular are between the devil and the deep sea. They are being cowed and intimidated into expressing their approval of a Government which brought them political and economic ruination. By staying away from the polls they would become traitors to the country which tolerates them as a "guest people"; by voting against the Government they run the risk of inviting further political reprisals against them. In private conversation German Jews have made it clear that disfranchisement would be less humiliating than going to the polls on November 12.

In his campaign speeches Hitler takes pains to stress Germany's love of peace. The old argument that the Brown Army is no more capable of military employment than firemen or the Salvation Army is again brought to the fore. The absurdity of this argument was pointed out in the Embassy's report on Hitler's speech before the Reichstag on German foreign policy and disarmament (see despatch No. 2421 of May 20, 1933⁶²). This absurdity was most strikingly illustrated by the German Government's own action in arresting Mr. Noel Panter, the Munich correspondent of the *Daily Telegraph*, on the charge of espionage because of his report describing a parade and exercises by the S.A. at Kelheim. If the S.A. is as harmless as the Salvation Army it has nothing to conceal and the charge of espionage is incomprehensible. By accusing the correspondent of the *Daily Telegraph*, the German Government is really accusing itself.

Only a comparatively small number of the more intelligent Nazis realize, or are willing to admit, that the primary purpose of the election is to strengthen Hitler's position at home. Most Nazis are convinced that "a victory at the polls" can not fail to make an impression on foreign countries, and that the former Allies will then be more inclined to concede to Germany the right to possess at least defensive armaments. These elements have unbounded faith in the daring, courage and pertinacity of their political leaders, as they see it. Their optimism springs from a widespread belief, that the men who hold the reins in other countries are of an inferior calibre, and, if faced with a momentous decision, are certain to make concessions to Germany rather than take the risk of involving their countries in another war. It is the same line of reasoning with which the Nazis operated against the Weimar regime in Germany, and their phenomenal success in the field of domestic politics only tends to enhance the inherent danger of such logic.

Respectfully yours,

WILLIAM E. DODD

862.00/3141

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 263

BERLIN, November 15, 1933.

[Received November 25.]

SIR: In amplification of my telegram No. 190 of November 13,⁶³ and with particular reference to despatch No. 246 of November 4, 1933, I have the honor to report that the elections last Sunday, as widely expected, resulted in an overwhelming victory for Hitler.

⁶² Vol. I, p. 159.

⁶³ Not printed.

In the referendum on the Government's foreign policy 43,460,529 votes were cast, representing 96.3 per cent of a total electorate of 45,146,277. Of this number 40,609,243 persons affirmed the Government's policy, while 2,101,004 persons rejected it and 750,282 cast invalid ballots. In the election to the Reichstag 42,995,718 or 95.2 per cent of the electorate participated. Of this number 39,646,273 supported the Nazi ticket, while 3,349,445 expressed their disapproval by casting invalid ballots, as this was the only way of voting against the Nazi Party.

After casting his ballot, the voter was asked to purchase at the polling booth a small metal badge bearing the word "Yes" to show that he voted for the Government. This was the only form of pressure exerted upon the voter at the polling booth. As far as the Embassy has been able to ascertain the actual balloting was otherwise secret.

However, as pointed out in the despatch referred to above, there was a wide-spread belief among the German people that the voting would not be secret and that in some manner the Government would find out who voted against it. The Government's assurances that the election would be free and secret failed to allay this apprehension.

The central organization of German Jews, for instance, recommended that its members should vote for the Government. This recommendation somewhat recalls certain "voluntary" denials of atrocity stories which Jewish organizations were forced to send to foreign countries during the period of Nazi outrages following their victory at the polls last March; or sundry "voluntary" contributions which Germans are compelled to make periodically and which are equivalent to regular taxes.

Moral pressure was exerted upon the voting population to induce them to vote. Voters were visited in their homes and in certain portions of the country motor cars were stopped by SA men and not allowed to proceed until the occupants could show they had voted.

Another instance of the pressure to which the population was subjected is indicated in a report from Worms to the effect that three factory managers who were listening to Hitler's address on November 10 had been placed in a concentration camp because they went away before the speech was over. Further illustrations are offered by the election returns from various concentration camps for political prisoners. Thus, in the concentration camp at Dachau 2,231 inmates voted for the Government, while only 9 cast invalid ballots and 3 voted against the Government. In the concentration camp at Frankfort 99 political prisoners were permitted to vote; of this number 97 voted for Hitler.

Though all overt opposition was lacking, the Government conducted a most intensive campaign in which the press, the church, the radio and the cinemas served as vehicles of Nazi propaganda. Streamers

strung across the principal streets proclaimed Germany's desire for peace and her demand for *Gleichberechtigung* (equality of rights). Nazi leaders who only a few months ago glorified war and death on the field of battle addressed political meetings as apostles of peace.

Hitler's speech to the workmen at the Siemens factory in Berlin on Friday preceding the election was the culminating point in the campaign. This speech was cleverly staged in a setting designed to produce a maximum of propagandistic effect. All shops and places of business throughout Germany ceased work at 1 o'clock for one hour to enable the employees to listen to the speech which was broadcast on a nation-wide hook-up. Employers had to provide loudspeakers for this purpose, and no employee could leave his shop or office while the Chancellor spoke. At 1 o'clock sharp the wailing of the sirens at the Siemens factory, which was broadcast to the furthestmost corners of Germany, announced one minute of silence during which all work and traffic ceased. Dr. Goebbels delivered an introductory address, which was interrupted by the one minute's silence, and then the Chancellor began to speak.

This speech, like the theatrical setting in which it was made, was cleverly calculated to appeal to the hearts of the German workmen. Mr. Hitler began by stressing the fact that he also was once a workman and that he served as a private during the war. He praised the diligence and industry of the German workmen and declared that it was his faith in the German workmen and peasants, not in the intellectual sections of the population, that gave him the courage "to begin this gigantic task". His statement that he destroyed all political parties, not only the two labor parties of the Left (Social-Democrats and Communist), was clearly intended to appease the workmen who formerly looked to these parties for political guidance.

To lend emphasis to his appeal for the workmen's support in the referendum, Mr. Hitler went so far as to say that without equality of rights for Germany an improvement in the German economic situation was not possible. To any impartial observer the absurdity of this argument is only too obvious. However, millions of Germans doubtless believe this, forgetting that unemployment in Germany increased more rapidly after the evacuation of the Rhineland and the cessation of reparation payments.

In an attempt to repudiate assertions in foreign countries that he was preparing for war, the Chancellor declared that any one who like himself had served at the front and was familiar with the ravages of war had had enough of it. President von Hindenburg, in his radio appeal to the nation on the eve of the election to support the Government in the struggle for *Gleichberechtigung*, resorted to a similar argument. The President said that anyone who like himself had experienced the horrors

of three wars could not desire another war. For the German people the logic of such arguments is doubtless convincing. Few Germans realize that this argument could also be invoked, and with no less justification, by army officers in France and other countries, and if carried to a logical conclusion could be used to prove that all army officers who had seen war service are most convinced pacifists.

While it is true that the elections on November 12 can not well be regarded as an entirely free expression of the will of the people, there is no gainsaying that the referendum on foreign policy received widespread approval and that the German people have solemnly endorsed the Chancellor in this respect. They have also given him a homogeneous Reichstag with the aid of which he can now enact the Constitution of the Third Reich. Whether or not millions of Germans voted against their own conviction out of fear of political reprisals or because they succumbed to the influence of the one-sided intensive campaign conducted by the Government, the fact remains that Hitler has received an overwhelming vote of confidence and that he is now the undisputed ruler of Germany.

The future of the present Government affords an interesting subject for study. The German nation, as a whole, likes and respects authority even though that authority may deprive it of many individual rights and privileges which the Anglo-Saxon demands. This accounts to a certain degree for the success of the National Socialist movement. If the Nazi Government can divert public attention from economic problems by pursuing a successful foreign policy and can avoid giving undue offense to the religious sensibilities of important portions of the electorate, its tenure of power would appear to be a prolonged one.

Respectfully yours,

For the Ambassador:

J. C. WHITE

Counselor of Embassy

862.00/3158

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 292

BERLIN, November 24, 1933.

[Received December 5.]

SIR: I have the honor to inform the Department that since the transmission of my despatch No. 263 of November 15, additional information received by the Embassy tends to confirm the statements in that report regarding the pressure exerted upon the voters to cast their ballots.

The Consul at Stuttgart states that from four until six p.m. uniformed National Socialists visited the houses of delinquent voters who were

practically forced to go to the polls in automobiles provided for that purpose. The same procedure is reported by the Consul in Breslau. Copies of these reports have been forwarded to Washington.⁶⁵

In an interesting letter to me, dated November 14, Consul General Simmons at Cologne reports to the same effect regarding the balloting in the Rhineland. The pertinent passages are enclosed herewith.⁶⁵

The Consul at Leipzig has written me that "Storm Troopers and Steel Helmet men were busy all day of the election seeing that every elector cast his vote, as otherwise many electors might have stayed away from the polls."

From the foregoing it seems clear that the National Socialist organization not only exercised pressure on the voters to go to the polls, but to a definite degree influenced the character of the votes cast, despite official assurances concerning the secrecy of the ballot.

Respectfully yours,

WILLIAM E. DODD

862.00/3163

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 308

BERLIN, December 4, 1933.

[Received December 14.]

SIR: I have the honor to report that the Reich Chamber of Culture, mentioned in section 10 of despatch No. 172 of September 29, 1933,⁶⁵ was formally constituted in Berlin on November 15 with impressive ceremonies.

The Chamber of Culture, according to Dr. Goebbels, is to be the representative body of German intellectual life. It is presumably another step towards a corporative system of "estates" which is to constitute the structure of the Third Reich. Membership in the various chambers composing the Reich Chamber is compulsory for all intellectual workers as well as for those who are engaged in the reproduction, sale or the dissemination of the products of their labor. Thus the Press Chamber will include the typesetters, the Chamber of Music, the music publishers, etc.

The Minister for Propaganda, Dr. Goebbels, is President of the Chamber, while Dr. Funk, the Secretary of State in his Ministry, is Vice President. Dr. Richard Strauss, the renowned musical director and composer, is President of the Chamber of Music; Professor Eugen Hönig, a member of a well-known firm of Munich architects, is President of the Chamber of Creative Arts; Herr Otto Laubinger, the head of the State Workers Society, is President of the Theater Chamber; Herr Hans

⁶⁵ Not printed.

Friedrich Blunck, a novelist, is President of the Chamber of Literature; Herr Max Amann, for many years head of the National Socialist Publishing Association is President of the Press Chamber; Herr Horst Dressler-Andress is President of the Chamber of Broadcasting; Dr. Fritz Scheuermann is President of the Film Chamber. It should be pointed out that apart from Dr. Richard Strauss, the heads of the other chambers are men of whom little is known outside of Nazi circles.

The press, the radio, and the film became vehicles for Nazi propaganda immediately after Hitler's accession to power. In addition, the theater, literature, the creative arts, and even music, are now to be subordinated to the Nazi aims and ideals. Through this control over all cultural life in Germany, the Minister for Propaganda will be able to regiment and mould public opinion to an extent inconceivable in the United States and many other countries. That the effect will be stimulating to the artist, the author or the composer seems extremely doubtful.

Respectfully yours,

For the Ambassador:
J. C. WHITE
Counselor of Embassy

762.65/89

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 379

BERLIN, December 22, 1933.

[Received January 6, 1934.]

SIR: In continuation of despatch No. 341 of December 12, 1933,⁶⁶ I have the honor to report that the visit of the Italian Secretary of State in the Foreign Ministry, Suvich, to Germany took place exactly according to the program outlined in the despatch above under reference.

On December 16, the day after Suvich had left Berlin for Cologne, the entire German press published a communiqué stating that:

"The visit of the Italian Secretary of State Suvich to Berlin offered an opportunity to discuss at length quite a number of political and economic questions. All matters which there was occasion to discuss in this connection were discussed in these conversations. The discussion was conducted throughout in a friendly spirit. On the other hand, decisions were not reached, and no common action was planned. Neither the one nor the other was, from the beginning, the object of this visit. Nevertheless these conversations brought about very valuable results as it thereby again proved to be the case that a decided parallelism of interests and actions exists on both sides."

The semi-official *Deutsche Diplomatisch-Politische Korrespondenz* devoted its issue of December 15 to Suvich's visit, saying that it, as well as Russia's new contacts with America and Italy, indicated that, in

⁶⁶ Not printed.

addition to the League of Nations and the military alliances, there also existed normal friendly relations between independent and equal powers which were far more suitable for the solution of international problems than all "artificial constructions". The Italian Government had now been informed of Germany's policies, thus obviating the possibility of misunderstandings. Disarmament, the League, and Central Europe had doubtless been the main subjects discussed. Italy was the only one of the victor countries whose official policies had been dictated by recognition of the faulty construction of the present European status, and had thus for years shown great understanding for Germany's fight for equal rights and security.

In this connection it is interesting to note that, according to reports from Rome and Vienna, published in the German press today, Suvich is to go to Vienna the middle of next month to pay a return call for Chancellor Dollfuss' recent visit to Mussolini. Following so shortly after his visit to Germany, Suvich's trip to Austria admits of two interpretations. Either he is to contribute to a solution of the Austro-German problem, or the impression so assiduously propagated here, that Mussolini is particularly friendly to Germany, is to be counteracted by a similar exhibition of attention to Austria.

Inside information has not been forthcoming as to the tenor of the conversations between Mr. Suvich and the German Government. One colleague, however, had the information that the Italian Government did not view with favor the proposed increase of the German army, as it would call for an increase of the Italian army, which in turn would mean added expenses.

Respectfully yours,

WILLIAM E. DODD

THE NAZI CONTROL OF BUSINESS, INDUSTRY AND LABOR
IN GERMANY

862.4016/620

The Chargé in Germany (Gordon) to the Secretary of State

No. 2287

BERLIN, April 6, 1933.

[Received April 22.]

SIR: In continuation of my telegram No. 43 of March 23, 11 a.m.,⁶⁷ with regard to the plan of the Nazis to remove important industrialists and replace them by Nazi and Nationalist henchmen, as a part of the general movement for obtaining control of every phase of German activity, I have the honor to report the following developments in this field.

⁶⁷ *Post*, p. 328.

The key organization of German industry is the Reichsverband der Deutschen Industrie. This group embraces the bulk of German industry and furthermore is well organized and disciplined. It is, of course, a conservative organization, and the bulwark of capitalism in the country. In view of the socialistic character of the German governments after the War, the Verband was unable to express its loyalty to the Republic until as late as 1928. It was thereafter, however, on close terms with the subsequent governments until the appointment of von Papen as Chancellor. With the formation of the Hitler Cabinet, it, too, took a "wait and see" attitude. This was true in particular of Dr. Kastl, the business manager of the Verband. (See the Embassy's telegram No. 15 of February 2, 11 a.m., third paragraph.)⁶⁸ The Verband, however, was unable to withstand the pressure put on it by the Nazis, and, consequently, on April 2nd, the *Voelkische Beobachter*, the official organ of the Nazi Party, announced the retirement of Dr. Kastl, the reorganization of the management of the Verband, and the inclusion in the managing-board of Dr. Hans von Lucke, a trusted Nazis representative, and of Herr Alfred Nöllers, a Nationalist member of the Reichstag and chairman of the Bund für National Wirtschaft und Werkgemeinschaft, as the representative of German national industrial circles. The announcement added that with this change in the industrial policies of the country the complementary foreign policies of the Nazis would be reflected in the Verband.

Inasmuch as Dr. Kastl was neither a Jew nor a Socialist, but, on the contrary, a former German officer and an official in the colonial service, with strong Nationalist leanings, his retirement caused much surprise. In his capacity as a member of the German Standstill delegation he was well known to American and other foreign bankers. In tariff policies he opposed the Government's plan of export contingents.

On April 6, the Board of Directors held a meeting and "unanimously" decided that, in agreement with the responsible authorities, a committee would be named which would advise and consult with the Government concerning the complete reorganization of the Verband and its affiliated societies.

A similar step was next taken by the Nazis in connection with the Langnam-Verein, the most important organization of the West German heavy industry. This Verein was completely reorganized on April 4th, on the new basis of the *Gleichschaltung*, or equal direction. In accordance with this principle of equalization first applied in the political life of the country, and now to be extended to economic and other fields, the conduct of the organization hereafter, including all its technical as well as administrative functions, is to be controlled by a new group of

⁶⁸ *Ante*, p. 186.

officials, representing both the Nazis and the Nationalists. The object of the reorganization is to bring the activities of the Verein into line with the tendencies of the new Government, and to abolish the friction between organized industry and the authorities.

The same procedure was followed on April 4th in regard to organized agrarian interests. Hitler personally has taken over the "protectorate" of the newly-united societies of German agriculture. It was also decided to reorganize the state and provincial agrarian societies on a new basis, in accordance with the principle of *Gleichschaltung*.

Chambers of Commerce throughout the country, including those of the Cities of Berlin, Cologne and Königsberg, are being reorganized along similar lines. The employers' association, the Deutsche Gross und Überseehandel, and the Union of Wholesale Merchants, and other societies have effected similar reorganizations. Although the *Gleichschaltung* has not yet been applied to all private industrial concerns, a similar procedure has been followed in many cases; in addition numerous enterprises, including the General Electric Company, and Karstadt, and Leonhard Tietz (two of the largest German department stores) have upon their own initiative announced the outright replacement of Jewish directors by Gentiles.

Respectfully yours,

GEORGE A. GORDON

862.00 P.R./133

The Chargé in Germany (Gordon) to the Secretary of State

[Extract]

No. 2289

BERLIN, April 10, 1933.

[Received April 22.]

SIR:

2. *Reorganization of Industry, Agriculture, and Commerce.* The political revolution in Germany is now being followed by a radical reorganization of the leading organizations representing business, industry and agriculture, along lines corresponding to the political alignment in the Reich. (See despatch No. 2287 of April 6, 1933, going forward in this pouch.)

Leaders in business and industry, who until a few months ago were regarded as the pillars of national economy and who in many respects were more powerful than Reich Cabinet Ministers, have given up their positions of power under pressure from Nazi quarters. Dr. Luther had to leave the Reichsbank, Dr. Kastl had to withdraw from the Reichsverband der Deutschen Industrie, while Dr. Silverberg, the prominent

Rhenish industrialist, has resigned from the Cologne Chamber of Commerce of which he was President. These men were replaced by Nazis or persons acceptable to them. Similar changes took place in practically all chambers of commerce, wholesale and retail associations, associations of department stores, exporters' and importers' associations, etc. Certain organizations of this type, in anticipation of Nazi pressure, hastened to assure the Government of their unqualified support. The various peasants' associations and the leading agrarian Landbund have been consolidated into one gigantic agricultural organization under Nazi leadership.

These sweeping enforced changes in all branches of the national economy are perhaps even more revolutionary than the political upheaval which preceded them. They probably constitute the transition from the political phase of the national revolution to the social revolution and may prove to be the foundation for the new social order in the Third Reich as envisaged by the Nazi leaders.

Respectfully yours,

GEORGE A. GORDON

862.5043/13

The Chargé in Germany (Gordon) to the Secretary of State

No. 2362

BERLIN, May 5, 1933.

[Received May 20.]

SIR: With reference to confidential despatch No. 2357 of May 2, 1933,⁶⁹ and to section 5 of despatch No. 2314 of April 22, 1933,⁷⁰ I have the honor to report that on the day following the May Day celebration, the trade unions affiliated with the Social-Democratic Party were taken over by the "Nazi Factory and Office Cells' Organization."

This *Gleichschaltung* of the principal trade unions in Germany, with over three million members, was carried out by the Nazi Storm Detachments under the direction of a newly created "Committee for the Protection of Labor," headed by Dr. Ley, the Nazi President of the Prussian Staatsrat. The plan for the seizure of the trade unions, which had been kept secret up to the last minute, was carried out with the usual Nazi ruthlessness and completeness. Punctually at 10 a.m., all of the offices of the trade unions throughout the Reich affiliated with the Social-Democrats, as well as the Workmen's Bank, were occupied by Storm Detachments. Union leaders, editors of union journals, and

⁶⁹ Not printed.

⁷⁰ Section 5 of despatch No. 2314 not printed; for an extract of the despatch, see p. 313.

directors of the Workmen's Bank were arrested. Among the fifty officials arrested are such prominent labor leaders as Leipart, Grassmann, and former Minister of Labor Wissell. The arrests were made by uniformed Nazis.

A few hours after the seizure of the trade unions, Dr. Ley stated to representatives of the press that he was selected for this task because he enjoyed the confidence of Chancellor Hitler. The seizure of the unions, he said, was an important step in furthering the revolution. Various labor organizations had been in process of dissolution, and there was danger that the workmen, who paid dues to these organizations, would lose their insurance and other social benefits.

The head of the press section of the "Nazi Factory and Office Cells' Organization" emphasized that the Nazis did not intend to destroy the trade unions and that this applied also to the trade union journals, which would be taken over by his organization. Hereafter, the press section of the Nazi Cells' Organization would direct the policy of the trade union journals, and the official organ of the Nazi Cells' Organization would become the official organ of the trade unions.

In a manifesto to the German workmen and employees, Dr. Ley pointed out that with the seizure of the trade unions the second stage of the National-Socialist Revolution had begun. In a few weeks the Nazis, as the May Day celebration had shown, had achieved more in the interest of labor than the corrupt Marxist parties had been able to do in years. Though the trade union leaders had pretended to be loyal to Hitler, it was safer to take them in custody. By taking over the unions, the Nazis had wrested from the Marxists their main weapon. He assured the workmen that the trade unions and their institutions were regarded by the Nazis as sacred and inviolable, and that they would be preserved, after reorganization, in the interest of the workmen. The Nazis would retain what was good in the unions and would further extend the rights of the workmen in order to give them a place in the Third Reich as respected members of the community, on a footing of equality with the rest of the population. The reorganized unions would serve as the foundation for the corporative State.

Intimidated by the fate of the Socialist trade unions, the Christian Labor Unions and the minor unions have declared, in writing, that they are willing to submit unreservedly to Hitler's leadership. Thus, all the trade unions, comprising 8 million organized workmen and employees, have now been put under direct Nazi control. According to an order issued by Dr. Ley, the chairman of the Committee for the Protection of Labor, all negotiations for collective wage agreements hereafter are to be conducted by this committee only.

Dr. Ley is now the head of all organized labor. Two other members

of the committee, Herr Schumann and Herr Forster, have been appointed as heads of the manual workers, and clerical workers' unions. This would seem to indicate that the Third Reich is to have one central union consisting of two distinct units of manual and clerical workers.

Storm Detachments, not the regular police, were employed in taking possession of the trade unions. It is characteristic of the political situation in present-day Germany, that the duly constituted authorities remained in the background, even Minister of Labor Seldte not being in any way identified with this seizure. It shows to what extent the State and the Nazi Party have become, to all intents and purposes, identical. Of especial significance is the fact that Goering's order of last week, to the effect that only regular police had the right to make arrests, was completely disregarded. Only after the Nazis had gotten complete control of the unions did the Government state semi-officially that it approved this action as being in line with the Chancellor's fight against Marxism.

Immediately after the Nazis took possession of the trade unions they began to publish stories with startling headlines of corrupt practices by the deposed labor leaders that had been discovered by their investigators. It is asserted that prominent trade union officials were guilty of padding their accounts and of other irregularities. The report that Herr Löbe, the former Social-Democratic President of the Reichstag, who had always enjoyed a reputation for political integrity, had an account of 3 million marks in the Workmen's Bank at Munich was especially exploited by the Nazi press, although Herr Löbe promptly informed the press that he had addressed a letter to Dr. Ley denying that he ever had such an account.

The previous attempts of the trade union leaders to come to terms with the Government, in order to be allowed to function as non-political organizations and to continue their social insurance and savings-bank activities, proved entirely futile. While the union leaders were still negotiating with the Nazi leaders with this end in view and permitted their members to take part in the Nazi May Day celebration, the Nazis were secretly preparing for this final blow, which they carried out with such cunning that the trade union leaders were taken completely by surprise.

Through the subordination of the trade unions to Nazi control, the link between the Social-Democrats and the principal trade unions has been completely severed. This move on the part of the Nazis is perhaps the severest blow which they have thus far dealt to the hated Social-Democrats. It shows that the capacity for resistance of the trade unions has been widely over-estimated and that the Nazis are determined to make no compromise with political foes.

In view of alleged attempts by union members to sabotage the work of the Committee for the Protection of Labor, the Prussian Minister of Justice has ordered the formation of a special section in his Ministry, to be charged with the task of combating such sabotage. Even an article in the *Berliner Tageblatt* of May 4, discussing the possible form which the reorganization of the unions might take, was considered by Dr. Ley as sabotage because the views expressed in that article are apparently not in conformity with the Nazi plans. The author of the article in question has been threatened with arrest. The Nazi leaders are very sensitive; they not only brook no opposition, but want no suggestions from outsiders, however competent they may be.

Respectfully yours,

GEORGE A. GORDON

862.00 P.R./139

The Chargé in Germany (Gordon) to the Acting Secretary of State

[Extract]

No. 2519

BERLIN, July 8, 1933.

[Received July 21.]

SIR:

2. *The German Labor Front.* The tasks of the trustees of labor were defined recently by Dr. Seldte, the Minister of Labor. He said that, according to the Nazi concept of government, business and industry must be subordinated to the whole nation and that it was the task of the State to lead and supervise. The days of arbitration of labor disputes in industry in the sense of liberalism and democracy were over. Until the corporative organization of the Third Reich was completed, the State, through the trustees of labor, must regulate wage tariffs and settle disputes between industry and labor. The trustees embodied the highest authority of the State and were bound only by the wishes and instructions of the Reich Government.

A prominent Nazi labor leader recently said that, in view of the dictatorial power of the trustees of labor, it would not be so easy hereafter for employers to shut down their plants or to dismiss a part of their workmen on the ground that business was bad. In such cases the management itself must first accept a cut in salary.

In fact, several cases of employers having been arrested for shutting down their plants or dismissing some of their help have already been reported in the press. Officials of coal mines in East Upper Silesia were arrested only a few days ago for closing down their mines. By order of the labor trustee, operation of the mines has been resumed. The officials

have now been released, but they are facing indictment for violating the economic truce. In East Prussia, the trustee of labor removed the board of directors of the Standard Gummi-Werke, replacing them with men of his own choice; this action was taken on the ground that the main stockholder of the concern, a Polish Jew, did not operate the plant in the interest of German economy.

A further illustration of the part employers are expected to play in the German Labor Front, which comprises organizations of employers, employees and workmen and which is to constitute one of the main "estates" in the corporative State, was a statement—which, in view of the prevailing atmosphere of intimidation is probably expected to have the effect of a peremptory order—by Dr. Ley, the head of the Labor Front, to the effect that employers must attend mass meetings of their employees and march with them in street parades, in order to demonstrate that class struggle has been completely overcome.

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Respectfully yours,

GEORGE A. GORDON

862.00/8037

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 7

BERLIN, July 17, 1933.

[Received July 27.]

SIR: In continuation of despatch No. 2524 of July 10, 1933,⁷¹ and with reference to despatch No. 2529 of the same date,⁷² I have the honor to report that the "end of the revolution" was officially proclaimed last week in a stern order issued by Dr. Frick, the Minister of the Interior, forbidding further revolutionary activity, especially interference with business, and threatening offenders with severe punishment. This was followed by other developments, which clearly show that Hitler realizes that any further attempts at Nazification of business and industry might throw German economy completely out of joint and thus imperil the existence of his regime. Inexorable economic laws have proved stronger than the Nazi monster known as *Gleichschaltung*, which in the course of five months has devoured almost everything in its path and has transformed Germany into a "totalitarian" Nazi State.

Dr. Frick's unusual order was addressed to all the Statthalter and to the Governments of the German States. It pointed out that in recent speeches to the S.A.⁷³ leaders and to the Statthalter, the Chancellor had

⁷¹ Not printed.

⁷² *Ante*, p. 245.

⁷³ Sturm-Abteilung.

made it clear beyond a doubt that the "German revolution" was finished. All political parties except the Nazi had dissolved themselves, and the Nazi Party had thus become the sole pillar of the State. All power was now concentrated in the Government, led by the Chancellor, and in it all decisive posts were occupied by reliable Nazis. The victorious German revolution thus entered the stage of evolution, that is, of normal, lawful constructive work.

This task, Dr. Frick's order continued, was seriously impaired by further talk of a continuance of the revolution or of a second revolution. Whoever continued to talk about a second revolution must realize that by doing so he was rebelling against the "Führer" himself, and would be treated accordingly. Such utterances were clearly a sabotage of the national revolution, particularly calculated to expose the German economic system—which was now on the upward grade as a result of the Government's measures to solve the unemployment problem—to new disquietude and thus to injure the whole nation. Any attempt to sabotage the German revolution, particularly by unauthorized interference in business and industry and by disregarding the orders of the authorities, must therefore be punished by the severest measures (at the least by *Schutzhaft*) on the basis of the Presidential Decree of February 28, 1933 (the decree issued after the burning of the Reichstag—see despatch No. 2223 of March 4, 1933⁷⁴). Interventions, in so far as they were necessary and justified, could be made only by the "bearers of the State authority," at their express command and on their sole responsibility.

Dr. Frick then pointed out that it was the duty of the various Statthalter and the State Governments to prevent any organizations or officials of the party from arrogating to themselves governmental powers, declaring that he was especially charged by the Chancellor to request the Statthalter and the State Governments to oppose ruthlessly, with all means at their disposal, any attempt to undermine or even dispute the authority of the State. He specifically requested that the practice of installing commissars be discontinued, as the State apparatus, now completely under Nazi control, was in a position to deal with all matters alone. Commissars whom the Statthalter or State Governments might consider indispensable, the order stated, must be incorporated into the regular apparatus of the State, "as any form of auxiliary government is incompatible with the authority of the totalitarian State."

The new Minister of Economics has now formally withdrawn the commission of Dr. Wagener as Reich Commissar for Business and Industry, which his predecessor, Hugenberg, was forced to grant him. Dr. Wagener's collaborator, Herr Moellers, has also been dismissed.

⁷⁴ *Ante*, p. 204.

All powers transferred by them to subordinate commissars are automatically cancelled.

Even before Dr. Wagener's dismissal was made public, it was announced that Chancellor Hitler had appointed Herr Wilhelm Keppler, a member of the German delegation to the World Economic Conference, an official in the Reich Chancellery as his special representative for economic questions. Herr Keppler was at the same time deputized by Hitler as his representative within the Nazi Party in charge of all Nazi economic organizations. Whereas Wagener was a theoretician inclined to economic experiments, Herr Keppler has acquired considerable experience as active head of various industrial enterprises.

In a speech to the regional Nazi leaders, to the labor trustees, and to the leaders of the Nazi Cells' Organization, Hitler again urged moderation with respect to changes in the economic system. Political power, he said, had to be seized swiftly and at one blow. The field of economy, however, was governed by entirely different laws. In the field of economy the Government must proceed step by step. The German economic system could not be built up on bureaucratic schemes. Individual ability had made Germany great, and only by adhering to this principle could the present work of reconstruction succeed. The subordination of higher ability to lesser ability could not be tolerated. The task was to find a common denominator for National-Socialist ideals and the actual requirements of the economic system.

Vice Chancellor von Papen declared in a public speech that a continuous revolution was dangerous as it might lead to anarchy, and a nation like Germany, whose foreign political position was endangered, could least afford to run such a risk.

Finally, at a meeting of prominent leaders of German business and industry, Dr. Schmitt, the new Minister of Economics, expounded the new economic policy in unequivocal terms. The whole tone and content of his speech was clearly calculated to restore economic confidence and to encourage business and industry to greater activity and initiative. He condemned unauthorized interference in business, especially by the so-called Kampfbünde, and rejected all experiments by unauthorized persons. He declared that in order to restore economic stability even the work of organizing the various branches of German industry in line with the Nazi aim of a corporative State was to be discontinued temporarily.

To lend proper emphasis to Hitler's exhortations and the admonitions of other members of the Reich Government, the Prussian Minister of Justice instructed the prosecuting authorities to drop temporarily all other matters, in order to bring to trial without delay persons guilty of rebelling against the "Führer" or of sabotaging the work of the Govern-

ment by unauthorized interference in business or by talk of a second revolution. Such acts of sabotage are to be punished swiftly and with extreme severity. In certain cases the offender can be sentenced to long terms in the penitentiary, or even to death.

That the Government is from now on determined to pursue a more cautious economic policy was further demonstrated by the appointment of a special Council to advise it on all economic questions. The composition of this Council, which will meet from time to time on invitation of the Government, clearly shows the present intention to check revolutionary activity in business and industry.

Among the members of the Council are such prominent business leaders as Karl Friedrich von Siemens, Fritz Thyssen, Albert Vögler, Krupp von Bohlen und Halbach, and August Diehn, the head of the German potash syndicate. A less encouraging factor is that Dr. Ley, the head of the German Labor Front, is also a member of this Council. It is of interest that Baron von Schroeder, President of the Cologne Chamber of Commerce, at whose home, it will be recalled, the secret meeting was held between Hitler and von Papen which resulted in von Schleicher's downfall and the Nazis' accession to power (see despatch No. 2125 of January 13, 1933 ⁷⁵), is also a member.

In all justice to Dr. Hugenberg, who had helped to put the Nazis in power but had failed, as he had hoped, to harness them to his cart (see despatch No. 2504 of June 30, 1933 ⁷⁶), it must be said that Hitler is now doing precisely what Hugenberg had been vainly striving for during his brief and ill-fated career as Reich Minister. As long as Hugenberg was Minister, the Nazi leaders stressed their socialistic philosophy, thus encouraging those elements in their party who sought to translate into action the anti-capitalist points in the party's program which had been hammered into them during the past fourteen years. Now that practically everything has been subordinated to Hitler and the Nazi Party has become identical with the State, the activity of overzealous subordinate leaders has proved to be a serious hindrance.

There is no doubt that many of Hitler's followers will resent this sudden change of policy as a betrayal of the party's program, which had helped to put him into power. Viewed in this light, Hitler's latest action is undoubtedly a courageous step. Judging by his tactics in the past, he will seek to conceal his complete change of front by new slogans. However, the danger that the numerous extremists in the Nazi Party may get out of hand once they realize that they have been deceived, cannot be disregarded.

Respectfully yours,

WILLIAM E. DODD

⁷⁵ Not printed.

⁷⁶ *Ante*, p. 239.

862.60/105

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1489

BERLIN, August 9, 1933.

[Received August 26.]

SIR: I have the honor to inform the Department that according to the newspapers of August 7 and 8, Dr. Ley, the head of the "Deutscher Arbeitsfront" has made a public statement to the effect that the "Kampfbund fuer gewerblichen Mittelstand" has been dissolved, and the functions which are to remain are to be incorporated in the so-called "Deutscher Arbeitsfront", of which he is the head. This is in a way an epoch-making event in the history of the National-Socialist movement.

The "Kampfbund fuer gewerblichen Mittelstand" was created through an order of the present Chancellor, Mr. Hitler, in 1932, as leader of the Party. As I have informed the Department in previous despatches, it was to be the fighting organization of the German middle-class merchants and manufacturers. Its organization led to the creating of many similar "Kampfbünde" or fighting bodies, which were pressing the aims of individual sections of industry and trade. When the National-Socialist Party came into power, the "Kampfbund fuer gewerblichen Mittelstand" became a very important organization and as the Department is aware from the reports of this Consulate General, became the means through which were put into effect many of the measures from which our trade in Germany is suffering today. It is the organization which had for one of its objects the practical destruction and elimination of all foreign capital and which aimed to destroy the American owned and other foreign owned manufacturing plants in Germany through unfair competition measures. In other words the "Kampfbund" was the first means of the Party to put into effect its economic program and had it been successful in its efforts, or had its efforts not been curbed by the Party which created it, it would eventually, in the opinion of all thinking persons, have destroyed the whole German economic structure. It was made up of selfish individual interests which knew only individual problems and had no idea of foreign trade or foreign relations.

In a conversation with Minister President Goering several months ago when we were discussing the unfair methods which were being used against American interests in Germany, I pointed out to him that the "Kampfbund" was the most dangerous instrument which the Party had and that it would find that the "Kampfbund" would have to be dissolved and that in their own interests it would be better to dissolve it before it had done too much harm. Minister President Goering at the time indicated that he understood the situation and that he was about to dissolve the smaller fighting organizations but would let this

one stand. I stated that I felt this would have the contrary effect, as by dissolving the smaller ones he would merely make the main one stronger, but that on the other hand if he dissolved the strongest organization first, it would be very easy to destroy the smaller ones afterwards. In making this statement I knew that it was good advice both from the point of view of our very important interests in Germany as well as from the point of view of the German economic system. This conversation was shortly thereafter followed by an order of the Minister President, dissolving all the "Kampfbünde" with the exception of the "Kampfbund fuer gewerblichen Mittelstand".

Thereafter the "Kampfbund fuer gewerblichen Mittelstand" increased in power and became increasingly arrogant until its activities became a subject of very serious concern to the Party and to the Government. The declarations of the Chancellor and of the leading officials of the Government that peace must be brought back into the industrial and business field, did not have their full effect although they were well meant, because the radical elements had concentrated in this "Kampfbund" and were loath to give up any of the measures for which it was striving. One by one the "Kampfbund" had to give up its main objectives; but with every decrease in its power certain radical elements in it became more disturbed until recently it was apparent that the dissolution of the organization could no longer be put off. The order of August 6 dissolving it, therefore, and incorporating some of its functions in the "Deutscher Arbeitsfront" is not unexpected and was a necessary development as part of the decision of the higher authorities that peace must be established in the economic field.

Although the "Kampfbund" is now incorporated in the "Deutscher Arbeitsfront", it is not believed that it is entirely dead. Some of the elements in the "Kampfbund" will be slow to die and Dr. Ley himself, who is the head of the "Deutscher Arbeitsfront", is a radical at heart and is only moderate when he is forced to be so by his superiors. He is now the principal spokesman of the radical economic advisers of the Party.

I am confidentially informed that Dr. Ley is one of the men who is slated for gradual retirement from the public eye. I am informed that the retention of men like Ley and Feder is for the time being necessary, as after all perhaps a majority of the membership of the Party is still more in accord with their views than with the more moderate views which the primary leaders now have and are trying to carry into effect. The present movement, therefore, seems to be one where the more moderate higher leadership is trying to put its views into effect but is permitting men like Ley and Feder to continue to make an inflammatory and radical speech now and then in order that the mass of the Party may not be too rapidly disturbed by the change of front.

As the Department is aware, the so-called "Deutscher Arbeitsfront" is supposed to have consolidated in it all the former trade organizations and unions which have now been dissolved. The working class miss their trade unions and trade organizations, and I am informed that they have no enthusiasm for the "Arbeitsfront". They feel that instead of bread they have been given a stone. Those who are in contact with the working class are of the opinion that this particular situation represents quite a real danger. The inflammatory and radical nature of Dr. Ley's speeches with which he is trying to keep alive the enthusiasm of the working classes is clearly indicated by a speech which he made in Breslau on the 20th July. A translation of the principal parts of his speech is given in a letter dated July 21, 1933 which Consul Heard at Breslau addressed to the Ambassador and of which the Department has a copy.⁷⁷ The following paragraph, however, is significant and worth quoting here:

"The age-old fight between blood and gold will remain no matter how firmly the state is ruled or how rigorously industry is regulated, and the new Germany will have to give the signals in this struggle for Europe to follow. If Fascism in Italy rightly says that it is not an export article, then we say that the Socialism of Adolf Hitler is and will be an export article".

The dissolution of the "Kampfbund fuer gewerblichen Mittelstand" can be considered, so far as our interests are concerned, as a very great step in advance as it is the organization from which have come so many of the difficulties which American firms and American goods in Germany are experiencing. On the other hand it is quite clear that there is not yet room for optimism, for although the "Kampfbund" has been dissolved, the "Arbeitsfront" remains, and the ideas for which the "Kampfbund" was fighting are ideas which are held by a very considerable mass of the German people and for which the present movement will directly or indirectly continue to strive.

Respectfully yours,

GEORGE S. MESSERSMITH

⁷⁷ Not found in Department files.

862.00 P.R./148

The Ambassador in Germany (Dodd) to the Acting Secretary of State

[Extract]

No. 312

BERLIN, December 4, 1933.

[Received December 14.]

SIR:

3. *Reorganization of the Labor Front.* After the forcible seizure of the German trade unions by the Nazis, in May, it was not clear whether these unions would remain component parts of the German Labor Front. It now appears that these organizations, which at present comprise the Labor Front, are eventually to be dissolved and the Front is to consist of individual members only, employers as well as employees.

With this end in view, Dr. Ley, the head of the Labor Front, has issued an order prohibiting the admission of new members into the various organizations which were taken over by the Labor Front. Hereafter all new members are to be enrolled in the Labor Front direct. Thus, until the individual organizations are eventually dissolved, the Labor Front will consist of three kinds of membership: those belonging to the trade unions taken over by the Nazis; those belonging to organizations like the Chamber of Culture (see despatch No. 308 of December 4⁷⁸ transmitted in this pouch) which has now become a part of the Labor Front; and those who will be enrolled direct.

In anticipation of the final reorganization of the Labor Front, a drive has been launched through the Nazi Cells Organizations (the political groups of the National Socialist Party in shops and factories) for the enrollment of individual members in the Labor Front. While membership in the Labor Front is not obligatory, there can be little doubt that few individual workmen and employees will have the courage to stay out. In keeping with Nazi principles, Jews are of course barred from membership.

An appeal to all industrial employers to join the Labor Front was issued by Herr Krupp von Bohlen in his capacity as leader of the Reich "estate" of industry. (It appears to be the purpose of the National Socialist Party to separate the commercial, professional and other groups throughout the nation into so-called "estates.") It is of interest that the Association of German Employers promptly responded to this appeal by dissolving itself. It is expected that 30 million wage and salary earners together with thousands of industrial employers will eventually be enrolled in the Labor Front. By putting the employers

⁷⁸ *Ante*, p. 268.

and employees into one organization, the Nazis have definitely done away with collective bargaining in industry.

Further details of the Government's plans to organize the leisure hours of the German workers (see despatch No. 287 of November 24, 1933 ⁷⁹) have now been made known. "Nach der Arbeit," the name first proposed for this movement, has been dropped; it will hereafter be known officially as "Kraft durch Freude" (Strength through Happiness). At the first meeting of the new organization, Dr. Goebbels said that a "totalitarian" State, which was really bound up and identical with the people, could not leave the people to itself but must organize its leisure as well as its working hours. Dr. Ley declared on this occasion that not those who had money and property had a claim to the enjoyment of German culture, but only he who had an inward need for it, regardless of whether or not fate had endowed him with earthly possessions.

The centers of the "Kraft durch Freude" movement will be the Houses of Labor in every community, which will remain open to all who work "whether with hand or brain." The recently constituted Chamber of Culture will look after the entertainment. There will be, in addition, a travel department, a vocational department, as well as several other departments for the recreation and training of the German workers. The physical training department will doubtless afford opportunity to drill the workers in the various kinds of *Wehrsport* which plays such an important part in the training of the S.A. and the German school children. As the Department is doubtless aware, this includes marching in military formation, field scouting, hiking with heavy knapsacks, the throwing of imitation hand grenades, and other forms of military training.

Respectfully yours,

For the Ambassador:
J. C. WHITE
Counselor of Embassy

862.504/365

The Consul at Berlin (Geist) to the Acting Secretary of State

No. 1804

BERLIN, December 19, 1933.
[Received January 8, 1934.]

SIR: I have the honor to inform the Department that during the last month the German authorities have been increasing their activities in consolidating the German Labor Front (Deutsche Arbeitsfront). As the

⁷⁹ Not printed.

Department knows from previous despatches and reports in the premises, when the Hitler Government came to power they dissolved all the trade unions in the country. Labor was reorganized in a great organization called the Deutsche Arbeitsfront (German Labor Front). The purpose of this consolidation was to bring about a decided accomplishment in the realization of the totalitarian idea. The Hitler Government refuses to tolerate in the social and political unity of Germany any organizations and groups which are not directly under the tutelage of the National-Socialists. The old labor unions with the Socialist and Communist tendencies were incompatible with the new order of things, and so far as organization is concerned they were totally wiped out. However, it was realized by the authorities that among the great mass of workers in Germany almost ineradicable [ineradicable] political opinions of a Socialist and Communist nature were held by millions of individuals. The idea has been to allow groups no longer openly to hold or propagate such ideas. Not only was it necessary to annihilate officially such organizations, but to commence a vigorous campaign to bring the members into line with the National-Socialist principles, not only through teaching, but also through encouragement and active propaganda. This campaign has been going on violently since the elections of November 12. The official spokesmen of the Government, not only Hitler himself, but particularly responsible Ministers such as Dr. Schmitt, the Minister of Commerce, Dr. Goebbels, Minister of Propaganda, and above all Dr. Ley, head of the German Labor Front, have put themselves at the head of this campaign and spared no efforts to bring the workers into line. Certainly these leaders are showing a great deal of tact in handling this ambitious program. The newspapers carry items from day to day, proclaiming the grandiose schemes which the present Government intends to carry out for the benefit of the workers, and it may be said that the workers are indeed getting steadily into a better frame of mind. The millions of workers in Germany realize that opposition to the present regime is impossible, particularly from the point of view of any concerted action. Groups, small or large, are not free in any part of the country to voice disapproving sentiments, nor does any organization exist by which disapproving sentiment could be translated into action.

The workers have come to realize that the worst they may do in the present situation is to carry out individual acts of passive resistance. In the Germany of to-day, if such acts come to public notice a person is branded as a traitor and would find himself presently in a concentration camp where he would soon be cured of any passive resistance. The result has been that all the workers throughout Germany have accepted the situation in a spirit of expectancy. They realize that nothing is to

be gained by opposing the irresistible tide of enthusiasm and rejuvenation which is the order of the day in Germany. Propaganda for the national resurgence is so continually poured into the ears of the people over the radio and presented to them in the public press, that the masses which cannot resist such influences are coming more and more, so to speak, to get into the swim.

How this propaganda is carried out and the results it is obtaining may be of interest to the Department.

Dr. Ley early in November made a tour of Germany and visited a good many of the great plants. The Krupp Works at Essen, where in previous years thousands of Socialists and Communists have held sway, have been one of the centers of the Government's attack. On November 5 Dr. Ley visited this plant and gathered an immense crowd of workers in the factory where the National-Socialist ideas were proclaimed and where all sorts of promises were made to the workers, and at the end of which meeting allegiance was pledged to Adolf Hitler, the Fuehrer. Alfred Krupp, the founder of the factory, it was emphasized at the meeting, during his lifetime had declared himself to be "der erste Arbeiter" (the first laborer) of his factory. Krupp von Bohlen und Halbach, the present owner of the works, publicly acknowledged his membership in the German Labor Front and his devotion to the Hitler idea.

The Reichstag deputy Selzner, who has charge of the details of organization in the German Labor Front, has been making glowing promises of the future of the German workman. His speeches have been featured in the daily press, particularly where he lays emphasis on the necessity of leading the workers out of the proletarian class. The German worker, he says, must become settled in his home and on the land, and he has announced a program of providing for each worker 1,000 quadrat-meters of land and a house in the suburbs of the cities and towns where these workers live. But, he emphasizes, these privileges and this process of redemption are to affect only those who belong to the National-Socialist organizations. All this is to be accomplished by the end of 1935. 3,900,000 workers, according to Dr. Selzner, will be helped to own their own homes. An investment of 2,000 marks is to be made in the case of each person. 1,000 marks is to come from the Labor Front itself, 500 marks from the State, and 500 marks from the banks. The first 500 marks is to be paid back by the worker at the rate of 25 marks a month, i.e. to the bank. The rest is to be paid back as he can. To carry this through, a new department is to be erected in the German Labor Front, called the "Entproletarisierungs-Amt", which means "deproletarianisation office". It is stated that at first 1,000 workers who show greatest promise for being "deproletarized" will form the nucleus of the action. The

promise of bestowing these benefits upon 3,900,000 workers is characteristic of the manner in which grandiose schemes of betterment are placed before the working masses.

The most pretentious scheme, however, that has been proclaimed, is known as the "Nach der Arbeit", the N.d.A., which literally means "after working hours". The program for this great scheme was announced by Dr. Goebbels and Dr. Ley and other important party leaders, in a great mass meeting held in Munich. The purpose of this N.d.A. is to bring up the worker in proper National-Socialist ideas during his leisure hours. The *Manchester Guardian* reported on this interesting speech of Dr. Ley's as follows:

"Guiding the Nation: The first great offensive in the fight for the conquering of the heart for National-Socialism is won (he said). Now we must build on the position thus won. In all we do we must be governed by the National-Socialist idea. The success at the elections revealed Marxism in ruins. Two million opponents cannot be counted as opposition to the State. The whole nation now is one organism with one point of view. The National-Socialist party supplies the teachers, while the workers organized in the "Work Front" form the flock which carry into practice the ideas of the leader.

Thus the party will always be small, and the "Work Front" must comprise the whole nation. Party officials are not representative of special interests, but representatives of National Socialism. The party is responsible for the formation of a unified will in the people, and no material antagonisms may be found in its ranks. As party officials, our function is not to lead merely workers, office workers, employees, and artisans, but to guide the whole nation into National-Socialism.

We are members of a political organization with a particular job. We have to make the path free, but the people themselves must march along it. We must create a new spirit. The social problem is not one of hours and wages, but one of education and training. We must create a new type of German worker, one who is the product of discipline."

The basic idea of the N.d.A. is to give the German labor organization other outlooks than those which heretofore have been shared by trade unionists. The trade unionists had considered their organizations as existing for the purpose of obtaining better working conditions, especially wages, hours and conditions of labor. The purpose of the N.d.A. is to throw these considerations into the background and to secure the benefits through more positive and higher aims, i.e. the workers hereafter in Germany will not have to worry about wages and hours of labor, as the paternal state will see to it that these conditions are fulfilled, but the worker will have to share the National-Socialist view of existence and progress in order to avail himself of the cultural advantages which the N.d.A. will provide. Strike funds need no longer be raised as there will be no reason for strikes, but the contributions of the workers will be employed entirely in the process of "deproletarizing"

and in providing the special benefits which the N.d.A. will afford. Dr. Goebbels, who also spoke at Munich, explained the idea when he said: "The State should not at any time separate itself from the people. It should not leave the people to themselves. The State should direct and provide their entertainment and amusement." Dr. Goebbels said that it was not only the duty of the State to see that the stomachs of the people were filled, but the State should direct their enjoyment of art, music, the theatres and the beauties of the country, even their sports must be organized and directed by the State. For this reason, the House of German Labor will be erected in Berlin. This is all tied up to the Reichs-Cultural Chamber, which was recently established under the leadership of Dr. Goebbels. There will be a bureau for "revirtuizing" the people, under the direction of the Reichs-Sport commissioner. There will be a bureau for traveling and hiking, a bureau for mutual self-help, and a bureau devoted to the dignifying and beautifying of labor, a bureau for vacations and holidays, and a bureau for instruction and education. Dr. Ley proclaimed at the end of his speech the encouraging phrase: "The very best for the people." It is contemplated that artists are to be drafted for the entertainment of Labor, and they are to be sent even into the remotest villages. The announcement of this program took place at a great demonstration at Munich, but there was an immediate reaction on the part of all those professionally engaged in amusement enterprises. The question was raised as to whether or not it is intended to set up a great stage organization to compete with amusement enterprises. This of course was immediately denied, and it was explained that these amusements would be provided for the people through the existing organizations. It was explained there is to be no competition with regular theatres, music halls, etc. The meaning is simply that the workers will have opportunities which they did not have before.

Exactly how this is to be done, has not been pointed out. The realization of this scheme lies entirely in the future. But it is promised that every man will have an opportunity freely to go where he wishes.

One practical step to the advantage of the worker has been accomplished. A voluntary action has been started all over the country to afford the workers better protection in their jobs. This was started by the director of the Berlin Transportation Company, which operates the streetcars, busses and subways. Director Thomas voluntarily pledged hereafter to give all the workers in his organization fourteen days' notice of dismissal. The Oberbuergermeister of Berlin, Dr. Sahn, proclaimed that as the employer of the largest number of people in Berlin, he accepted this condition. All the printing establishments followed suit as well as the chemical industries. Among those who publicly

proclaimed their adherence to this principle was the Woolworth organization in Germany. Some organizations went so far as to pledge themselves to give a month's notice. It will be remembered that under the old regime and under the wage agreements that existed in years past, the majority of workers in Germany were protected with regard to dismissal. For the most part, however, simple workmen could be dismissed on seven days' notice. All employees throughout Germany had protection as high as a month and a half. In fact, some employees could only be dismissed six weeks before the end of a quarter. Germany under the old Socialist practice afforded the utmost protection for the workers. With the destruction of the trade unions and for the most part the cancellation of the wage agreements, some sort of action was necessary in view of the absence of any legislation. The workers in Germany, however, have not been fooled, as they realize that their protection in their positions was very adequate under the former regime. The management of the German Labor Front has been conducting campaigns all over Germany to get the workers in various trades, such as the printers, lithographers, etc. to hold demonstrations in order to give these organizations en masse an opportunity to pledge their allegiance to the "Fuehrer". These demonstrations have been partially given a military character. There was, for instance, on November 20 an "Aufmarsch der Graphiker", i.e. a demonstration of the lithographers. This demonstration was interpreted as a pledge of allegiance of the whole trade in Germany which comprises about 200,000 workers. All the lithographers in Berlin assembled in a great hall on the Kaiserdamm. They were gathered from all sections of the city and marched in a solid procession in military formation to the assembly hall where their coming was preceded by a great array of flags and a brass band. The speakers sketched the history and the rise of the National-Socialist Government and paid direct compliments to those engaged in the lithographic profession, who were characterized as the "spiritual elite". The leader of the association of lithographers also spoke and pledged the allegiance of the 200,000 workers in Germany to the National-Socialist State. These demonstrations have been arranged for a great many professions, and during them the members are made to feel that they are a very important integral part of the National-Socialist movement. In commenting on this method of propaganda it may be explained that when these workers are gathered together and brought to a public demonstration where their leaders pledge their allegiance, nobody is given an opportunity to decline taking part; in fact nobody dares. Those employed in the various establishments are rounded up by the local chief of the N.S.B.O. (National-Socialist Betriebszellen Organization). When these public demonstrations are

arranged, no individual would venture so far as to make himself a marked man. It is estimated certainly that fifty to sixty per cent of those who participate in these meetings, are not active sympathizers with the present regime. These propaganda methods, however, are arranged with a great deal of cleverness, and it is safe to say that an increasingly large percentage of the workers is won over into the fold.

There is probably no organization in Germany which is putting so much pressure of propaganda upon its members as the German Labor Front. The fact that it has been impossible up to the present time really to bring about a betterment of the position of the workers, makes it necessary to work all the harder to persuade the laboring masses that conditions in Germany are better. Discontentment naturally exists among those whose hours of labor have been cut down to afford opportunities of labor for those previously unemployed. The simple worker, too, has realized that a great deal has been done to make the position of members of the party more prosperous. Thousands of jobs have been created for the National-Socialist stormtroopers, and hundreds of thousands of the less fortunate have been shoved off into voluntary labor camps. The necessity for continuous propaganda is apparent to the leaders. Fraternal organizations of all sorts, the so-called Verbaende, which were more or less affiliated with the old labor unions, were allowed to continue their existence in a strictly unpolitical way since the Government came into power. It has been lately realized that these Verbaende have neutralized the desired unanimity in the German Labor Front. Therefore these Verbaende have now been forbidden.

During the first few days of this month prominent persons here and there have publicly announced their adherence to the German Labor Front. Dr. Krupp von Bohlen und Halbach became a member on December 4. Dr. Keppler, the economic adviser to the Chancellor, became a member on December 2. Oberbuergermeister Dr. Sahm enrolled among the members of the German Labor Front.

The individuality of this great organization has been emphasized through several outward signs, which are calculated to induce a greater solidarity in the ranks of the German Labor Front. All the members are to have a "Festanzug", that is a holiday uniform, and a badge. The uniform is to consist of a double-breasted coat and trousers of dark blue color, with a blue cap similar to those worn by naval officers. It is in fact copied from one of the uniforms of the old army. Instead of a cocarde, the embroidered badge of the organization is to be placed on the cap. The badge consists of a cogwheel with the swastika in the center. With the blue suit, a white shirt, a black tie and black shoes must be worn. As the Government is not to pay for this uniform, it is not known how universally it will be worn. The cost, however, is fixed

as low as twenty marks, and great efforts are being made to produce the cloth cheaply, and an arrangement has been made with tailoring establishments all over Germany to produce these suits at the very lowest cost and all according to the official model. Besides, the German Labor Front is to have its own anthem. Regarding the anthem, which has been composed by one Dr. Eckert and one Pietzner-Clausen, it is stated that it has a rhythm and a melody that get into the blood. The introductory words indicate the character of the song: "In die Arbeitsschlacht" (on to the battle of labor). After it was announced that all members of the German Labor Front would be required to wear a uniform, "Der Deutsche", the organ of the Labor Front, came out and announced that the textile industry and the tailors in Germany would find full employment for a year. It is thought, however, in order to realize this vast scheme that it will be necessary for the Government to provide an ample subvention for the textile industry in order that it may be able to produce the cloth cheap enough to be within the reach of the mass of workers.

Respectfully yours,

RAYMOND H. GEIST

RELATIONS OF THE NAZI REGIME WITH THE EVANGELICAL AND
ROMAN CATHOLIC CHURCHES

862.404/11

The Chargé in Germany (Gordon) to the Secretary of State

No. 2319

BERLIN, April 21, 1933.

[Received May 5.]

SIR: I have the honor to report that the question of *Gleichschaltung* (see despatch No. 2287 of April 6, 1933⁸⁰) has now been extended to the relation of the Church to the State. In this connection, an intense dispute has broken out in evangelical church circles. The interesting thing about this dispute is that the heads of the evangelical church, who until a few months ago were the target for attacks from Left political circles because of their lukewarm attitude toward the Republic, are now being attacked most violently by the "German Christians," the Nazi organization within the evangelical church.

The "German Christians" want a State church headed by Nazis, and with this end in view they are striving to force out the present heads of the evangelical church, who are largely conservatives and monarchists. In Prussia, they are demanding the revocation of the present Constitution of the evangelical churches and the calling of a new constitutional assembly for the purpose of adopting a Constitution in uniformity with the political complexion of the Government. The conflict

⁸⁰ *Ante*, p. 270.

is extremely bitter because the present heads of the evangelical church are energetically opposed to a State church controlled by the Nazis.

At their first national convention held in Berlin early this month, the "German Christians" passed a resolution to the effect that the State needed the church as an instrument to educate the people and to inculcate in them the spirit of the new State, and that the church must therefore be made uniform with the Government in the Reich. They contend that this can not be accomplished merely by replacing the present heads of the evangelical church with Nazis, and demand the abolition of the present church parliamentary bodies based on a democratic Constitution. They have in mind a uniform State church headed by a bishop.

The Nazis want a thoroughly "Germanized Christianity". The church envisaged by them would be based on "the trinity of the divine creation of state, nation and race," and would be imbued with an "heroic" godliness. In line with this, they demand that the church revise its attitude towards the Old Testament, which they wish replaced by the old sagas and legends immortalized in the Wagnerian operas, and that the Bible be also revised in accordance with this new spirit of Christianity. Needless to say, the new church, like the state, must expressly uphold the principle of racial purity. The heads of the church must not only be politically acceptable to the Nazis, they must also be of pure Aryan origin. Members of the evangelical church who marry a non-Aryan are to be expelled. The present church tax is to be abolished and, instead of this tax, a state cultural tax is to be introduced, with which other institutions as well as the churches are to be financed.

The "German Christians" believe in the training of youth by the state, and it is planned to assign this function in large measure to the new state church. They apparently have in mind organizations of the evangelical German youth which would in effect be ecclesiastical storm detachments imbued with a militaristic spirit, from which members for the regular storm detachments could later be recruited. In order to expedite matters, the Nazis are urging the appointment of state commissioners to be charged with the task of reorganizing the church.

The head of the "German Christians," Nazi pastor Hossenfelder, who performed the services at the state burial of a member of a Nazi Storm Detachment in Berlin who was shot by Communists after the torchlight procession in honor of Hitler's appointment to the Chancellorship (see despatch No. 2178 of February 7, 1933, page 3⁸¹), has been assigned to the Prussian Ministry of Education, in charge of the preliminary work. This appointment is looked upon with misgivings by the present heads of the church. Pastor Hossenfelder is a rabid Nazi and at the recent

⁸¹ Not printed.

convention of the "German Christians" he openly declared that a pious Protestant has the right to revolt against church authorities who are reluctant to recognize the victory of the national revolution.

In anticipation of a reorganization of the evangelical church by the Nazis, the Supreme Council of the Evangelical Church is itself taking steps for a reorganization, in order to prevent the church from becoming a purely Nazi institution. It has also appealed to the Reich Government, pointing out that in his speech at Potsdam, Chancellor Hitler recognized the existence and independence of the church and that the demands of the "German Christians" are incompatible with this standpoint. However, the "German Christians" appear determined to thwart any attempt to reorganize the church along lines that would not give complete control to the Nazis. By withholding appropriations and the confirmation of appointments of new heads of the church, the Nazi-controlled Government in Prussia is in a position, on the basis of the existing agreement between the church and the Prussian State, to exert the necessary pressure in order to achieve this end. A threat to this effect has already been made by Herr Kube, the leader of the Nazi delegation in the Prussian Diet.

While the *Gleichschaltung* of the Protestant churches in Germany may be a comparatively easy matter, despite the vigorous resistance by the present heads of the church—and even here the possibility that certain groups may secede from the church should not be disregarded—the appointment of state commissioners for the Catholic church is certain to meet with great difficulty. Though the Catholics have shown a willingness to cooperate with the present regime in the Reich, it is inconceivable that they should agree to any infringement of Papal influence. The concordats concluded between the various German States and the Holy See constitute a serious obstacle to the application of the *Gleichschaltung* principle to the Catholic church. Vice Chancellor von Papen's recent visit to Rome may have some bearing on the present attempts of the Nazis to obtain control of the churches.

Respectfully yours,

GEORGE A. GORDON

862.00 P.R./136

The Chargé in Germany (Gordon) to the Secretary of State[Extract] ^{81a}

No. 2415

BERLIN, May 20, 1933.

[Received June 3.]

SIR:

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9. *The Reorganization of the Evangelical Church.* In accordance with Hitler's wish, Chaplain Müller, his personal representative in the negotiations with the Evangelical Churches, has taken over the leadership of the "German Christians," the Nazi organization in the Evangelical Church, replacing Pastor Hossenfelder. This change in the leadership is expected to clarify the situation created by the demands of the Nazis for religious *Gleichschaltung*. Chaplain Müller is a man of more moderate views than his predecessor, who believed apparently that the primary function of the Church should be to preach the gospel of the Third Reich. Under Chaplain Müller's leadership, an agreement with other Evangelical groups on the highly controversial question of a Reich Evangelical Church seems now more likely.

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Respectfully yours,

GEORGE A. GORDON

862.404/17

The Chargé in Germany (Gordon) to the Acting Secretary of State

No. 2456

BERLIN, June 2, 1933.

[Received June 16.]

SIR: In continuation of section 9 of despatch No. 2415 of May 20, 1933, and with particular reference to despatch No. 2319 of April 21, 1933, I have the honor to report that, while the foundation for a Reich Evangelical Church has now been definitely laid, the selection of a Reich Bishop for the unified church has resulted in a conflict with the "German Christians."

A special committee of three, representing the Federation of German Evangelical Churches, together with Army Chaplain Müller, who has been conducting negotiations with the churches as Chancellor Hitler's personal representative, has agreed upon the outlines of the new Reich Evangelical Church, which is to embrace the whole of German Protestantism under a Reich Bishop. Pastor v. Bodelschwingh, the head of the Bethel Institutions, a charitable organization of the Evangelical

^{81a} Another portion of this despatch is printed on p. 319.

movement located near Bielefeld, was selected by the committee as the first Reich Bishop. Pastor v. Bodelschwingh has not taken a prominent part in church politics, and this appears to be one of the main reasons for his selection.

The committee's choice has been approved by the heads of the regional Evangelical churches. However, the "German Christians," the Nazi movement within the Evangelical Church, refuse to recognize the new Bishop. They demand the appointment of Chaplain Müller, who has recently taken over the leadership of this militant Nazi reform group. Although the Reich Government is carefully abstaining from any action that might be regarded as an attempt to influence the decision of the representatives of the churches, Chaplain Müller's frequent conferences with Chancellor Hitler and the liberal use of the Government-controlled radio by the "German Christians" would seem to indicate that the Chancellor is not indifferent on this point and that he would have preferred the selection of his friend Chaplain Müller, or at least some other trusted person from the ranks of the Nazi movement.

In a radio broadcast, Chaplain Müller openly opposed von Bodelschwingh's selection on the ground that he was the candidate of the theologians who still dominated the Evangelical churches. These theologians, he charged, had not listened to "the call of the hour"—the call for the regeneration of the German people. The new Bishop did not meet the wishes of the entire Evangelical flock. The people who had fought for national regeneration during the past fourteen years wanted a man who would cheerfully take up the struggle against Marxism. The Nazi storm detachments, upon whom the State now rested, must feel that Christianity was an heroic faith; they must have the gospel preached to them in unadulterated words. The "German Christians" therefore refused to accept the decision of the Church representative and would continue the fight for an Evangelical Church under a Nazi Reich Bishop.

The "German Christians," contending that they have the support of a majority of the members of the Evangelical churches, have formally demanded that the question of a Reich Bishop be submitted to a referendum on October 31st. They maintain that until this takes place, Pastor von Bodelschwingh is not justified in calling himself Reich Bishop.

The representatives of the regional Evangelical churches, however, refuse to submit the question to a referendum. They contend that Chaplain Müller himself signed the agreement which specifically stated that the deliberations on the framework for a new church Constitution should include an agreement with respect to the selection of a Reich Bishop and that this was precisely what they had done. They deny that

the selection of a bishop requires further balloting, pointing out that this would mean a reversion to the democratic system which the "German Christians" themselves opposed.

The conflict in the Evangelical Church threatens to become very bitter. The new Bishop is a highminded man who has devoted his whole life to charity and to the care of the sick and needy. He is a spiritual Christian in every sense of the word. His whole character is in marked contrast to his Nazi opponents, Chaplain Müller and Pastor Hossenfelder, whose actions appear to be governed by political, rather than religious, motives. It will be recalled that because of his militant and aggressive spirit, Pastor Hossenfelder had to relinquish his leadership of the "German Christians" to Chaplain Müller, whose views were supposedly less radical. The manner in which Chaplain Müller has been opposing the appointment of the new Bishop, however, puts him in an entirely different light.

Tomorrow, Whitsunday, greetings from the new Reich Bishop are to be read to the congregations from every pulpit. Chaplain Müller and Pastor Hossenfelder will jointly conduct divine services in Silesia. It is significant that whereas the Bishop's message will be read from the different pulpits, the services of the two Nazi ministers will be broadcast over the Government radio.

Fired by the triumph of the national revolution, the Nazi organization within the Evangelical Church is demanding its unification on the *Gleichschaltung* principle, which has been applied so thoroughly in all branches of German national life. For obvious reasons there has been no notable attempt to bring about the Nazification of the Catholic Church in Germany. It is significant that the Nazis took the line of least resistance, concentrating their efforts on the loosely organized Protestant churches. As in business, industry and educational institutions, the purpose of the demanded *Gleichschaltung* of the Evangelical churches is, of course, to put them under Nazi control.

However, as a result of vigorous resistance by the heads of the Evangelical churches on the one hand, and their tactful negotiations with the representatives of the "German Christians" on the other, the unification of the churches was achieved without *Gleichschaltung*. Pastor von Bodelschwing's selection was clearly a victory of the Evangelical Church over those elements within the church which wished to subordinate it to the Nazi State. Since the framework for the new Constitution of the Unified German Evangelical Church, which is apparently to be its official designation, has been accepted by the "German Christians," the reorganization of the Evangelical churches may be regarded as an actual fact.

This reorganization runs parallel to the administrative reform in the

Reich. Up to now the 28 regional churches, comprising the Federation of Evangelical Churches, have been governed by a Reich parliament in conjunction with the Church Federal Council, representing the administrative bodies of the individual churches. In future, a national synod consisting partly of elected and partly of appointed members is to take the place of the church parliament. In line with the Nazi principle of leadership, the initiative in all measures will rest not with the synod but with the Reich Bishop, who must be of Lutheran faith and who will be assisted by a so-called clerical ministry consisting of representatives of the Lutheran, Reformed and Unionist movements—the three groups comprising the Unified German Evangelical Church.

Respectfully yours,

GEORGE A. GORDON

762.66A/11

The Chargé in Germany (Gordon) to the Acting Secretary of State

No. 2522

BERLIN, July 10, 1933.

[Received July 21.]

SIR: In continuation of despatch No. 2508 of June 30, 1933,⁸² I have the honor to report that the initialing of a Concordat between the Holy See and the Reich was announced on the evening of June 8 in an official communiqué which reads in translation as follows:

"The Reich Concordat was initialed at 6 o'clock this evening by Vice Chancellor von Papen and Cardinal-Secretary of State Pacelli."

Simultaneously, Chancellor Hitler issued the following decree:

"The conclusion of the Concordat between the Holy See and the German Reich Government seems to me to furnish sufficient guaranty that the Reich citizens of Roman Catholic faith will from now on place themselves unreservedly in the service of the new National Socialist state.

"I therefore decree:

"1. The dissolution of those Catholic organizations which are recognized by the present treaty and whose dissolution took place without instruction from the Reich Government is to be immediately rescinded.

"2. All compulsory measures against priests and other leaders of those Catholic organizations are to be repealed. A repetition of such measures is in future not permitted and will be punished in accordance with the existing laws.

"I am happy in the conviction that an epoch has now been concluded in which unfortunately all too often religious and political interests came into apparently inextricable conflict.

"The treaty concluded between the Reich and the Catholic Church will serve, in this field as well, the establishment of that peace which all need.

⁸² Not printed.

"I entertain the strong hope that the settlement of the questions affecting the Protestant faith will shortly happily complete this act of pacification.

Signed Adolf Hitler."

The Department will note the convenient distinction made concerning anti-Catholic action undertaken "without instruction from the Reich Government."

The text of the agreement—the first Concordat between the Holy See and the entire Reich as such—is to be published here at the time of signature, which is expected to take place in two or three weeks.

Respectfully yours,

GEORGE A. GORDON

762.66A/13

The Ambassador in Italy (Long) to the Acting Secretary of State

No. 81

ROME, July 14, 1933.

[Received July 27.]

SIR: I have the honor to inform the Department that the Concordat between Germany and the Vatican, referred to in my despatch No. 71 of July 7, 1933,⁸³ was initialled on July 8th by the German Vice Chancellor, von Papen, and the Papal Secretary of State, Cardinal Pacelli. Following the initialling of the Concordat, Herr von Papen, who departed immediately afterward for Germany and who will return in about two weeks' time for the formal signature,⁸⁴ made the following statement to the press:

"The Concordat between the Holy See and the German Reich has been approved today, is historically important, since for the first time since the foundation of the Reich the latter has regulated its relations with the Holy See, whereas heretofore this matter had been left to the jurisdiction of the individual states of Germany. No less important, however, is the fact that the two highest authorities upon whose cooperation the welfare of the people depends—namely the Church and the State—ensure by this agreement their respective spheres of influence as established by God and reciprocally delimit them in order more harmoniously to serve the spiritual, cultural, and national interests of the country. The clear definition of respective competences will in the future eliminate all conflict between Church and State. I am accordingly convinced that the Concordat just concluded will favor the spiritual mission of the Church and contribute greatly to the internal peace of the German people and the future of the new State."

Since the new Concordat, it is said, includes all the guarantees made to Catholics by concordats now in existence between the Holy See and

⁸³ Not printed.

⁸⁴ The Concordat was formally signed on July 20, and the exchange of ratifications took place in Rome on September 10, 1933 (762.66A/15, 19).

individual German State, practically it replaces, although formally it does not annul, these. The agreement, no text of which is as yet available,⁸⁵ is stated to cover the following points:

The Church guarantees that priests and religious associations will not carry on political activity.

The State agrees to the continuance of Catholic religious associations whether clerical or laic, as long as they do not have political aims. A list of associations to which the provision is to be applied will be drawn up through an agreement between the authorities of the German Government and the Vatican and will be inserted in the Concordat when it is formally signed.

Religious instruction in elementary schools will be compulsory, but will be protestant or catholic according to the faith of the majority of the children in the school district. This does not, however, apply to the minority, who will receive religious instruction in their own faith apart.

The Pope has full liberty to appoint bishops, the Government holding no power of veto. In practice, however, the present custom of consulting the Government will be followed.

Civil marriage by a magistrate will still be required in addition to the religious ceremony.

Respectfully yours,

BRECKINRIDGE LONG

862.404/28

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1560

BERLIN, August 31, 1933.

[Received September 11.]

SIR: I have the honor to inform the Department that the *Berliner Tageblatt* of August 29, 1933, carries an item, which reads as follows:

“CROSS OF CHRIST AND HAKENKREUZ:

In Mainbernheim in Bavaria (according to the V.d.Z. agency) on the completion of the repairs to the Evangelical church, a large Hakenkreuz was attached to the church tower that in the future shall decorate the tower. This seems to be the first church in Germany on which in this symbolical manner the Cross of Christ has been united with the Hakenkreuz.”

As the Hakenkreuz is purely a party symbol it is significant of the close union which the party is endeavoring to bring about between Church and State, that on the tower of an Evangelical Church the Cross of Christ should be united with this symbol of the National-Socialist party. In view of the servility with which such examples are followed in Germany at present it is not unlikely that a similar action

⁸⁵ For text signed at Vatican City, July 20, 1933, see *British and Foreign State Papers*, vol. cxxxvi, p. 697.

will take place in connection with other churches unless the Government and the party should find it advisable to stop such a procedure, at least for the present.

I have thought it worth-while to transmit this item to the Department as it is very indicative of the state of mind which prevails in the country.

Respectfully yours,

GEORGE S. MESSERSMITH

562.404/32

The Ambassador in Germany (Dodd) to the Secretary of State

No. 174

BERLIN, September 30, 1933.

[Received October 12.]

SIR: In continuation of despatch No. 139 of September 12, 1933,⁸⁶ I have the honor to report that Chaplain Müller, the new State Bishop of Prussia, was elected Reich Bishop by the National Synod of the unified Evangelical Church at its first meeting in Wittenberg this week. At a ceremony held in that city in commemoration of the 450th anniversary of the birth of Martin Luther it was announced that Wittenberg would be made the center of church life and that the Reich Bishop would reside there at times.

Bishop Müller's selection was widely expected, as he was Hitler's own candidate for the highest office in the unified Church. It will be recalled that the failure of the church heads to respect Hitler's wishes by selecting Pastor von Bodelschwing for this office resulted in a sharpening of the conflict within the Evangelical Church. This conflict subsided, at least outwardly, after the church elections in July (see section 10 of despatch No. 66 of August 12, 1933⁸⁶) which gave the German Christians, the Nazi extremists, complete control of the Church.

Upon assuming office the Reich Bishop appointed the four members of the clerical ministry which, according to the new Church Constitution, consists of three theologians representing the Lutheran, Reformed and Unionist movements and one jurist (see despatch No. 2456 of June 2, 1933). The Unionists will be represented by the Bishop of Brandenburg, Hossenfelder; the Lutherans by the Bishop of Hamburg, Schoeffel; the Reformists by Director Weber-Elberfeld. Dr. Werner, the head of the Church Senate, is the jurist in the clerical ministry.

As the structure of this body shows, the German Evangelical Church consists of three religious groups. The controversy in connection with the conflict between the Nazi extremists and the moderates in the Church showed, however, that the fundamental differences between these denominations have been greatly attenuated in the course of years

⁸⁶ Not printed.

that many German Protestants prefer to regard themselves simply as "evangelisch". The Lutherans are, of course, the followers of Martin Luther. The Reformists are the followers of Zwingli and Calvin. These two groups differ only in their conception of the holy communion, but even this difference is no longer as great as it was. The Unionists, the result of the first attempt to unify the Evangelical Church early in the 19th century, are composed of both former Lutherans and Reformists.

The new Reich Bishop, in addressing the National Synod, referred to the National Socialist movement and its leader, the Chancellor, as a gift from Heaven at a decisive moment "when the enemies of the Cross of Jesus were about to destroy our people completely, internally and externally". He expressed deep appreciation for the part the German Christians played in unifying the Evangelical Church. A new Reich, he said, was being formed, and it was up to the Church not to wait until the people came to it. The Church must go to the people—the German people of today, "the SA ⁸⁷ man and SS ⁸⁸ man, the man in the labor camp, the man at the plow, the man in the shop, the student, the youth, and especially the woman and mother." Bishop Müller declared that the new Evangelical Church did not wish to cut the ties with the churches of other nations, but, he said, "equality before God does not exclude the inequality of men among themselves."

The Nazification of the Unified Evangelical Church has evoked vigorous but apparently futile protests from the moderate groups in the Church outside of Prussia. I have been informed that ten Protestant Bishops, representing virtually all the Protestant leaders outside of Prussia, signed a protest against the personal union of the Reich and Prussian Churches because they fear that as a result of the centralization of ecclesiastic authority in the person of the Bishop of Prussia the Prussian Church will be predominant. The Bishop of Hamburg, one of the signers of this protest, represents this group in the clerical ministry. I have also been informed that 2,000 Protestant Ministers protested against the centralization of ecclesiastic authority and that Marburg University protested against the application of the Aryan Paragraph to clergymen and officials of the Church (see despatch No. 139).

Needless to say, none of this information was published in the German press, which took pains to create the impression that the reorganization of the Evangelical Church was effected with a minimum of friction and opposition.

Respectfully yours,

WILLIAM E. DODD

⁸⁷ Sturm-Abteilung.

⁸⁸ Schutz-Staffel.

862.404/36

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 274

BERLIN, November 16, 1933.

[Received November 25.]

SIR: With reference to my despatch No. 174 of September 30, I have the honor to inform the Department that the pressure exerted by the National Socialist authorities upon German Protestants to accept the new unified Evangelical Church continues unabated.

It will be recalled that several thousand Protestant ministers have expressed their disapproval of the centralization of religious authority, their opposition being directed principally against the "Aryan clause" in the fundamental laws of the church. The leader of this important group is Pastor Niemoeller of Dahlem, a suburb of Berlin. The Embassy has been informed that Pastor Niemoeller and two other prominent clergymen have been summarily dismissed from their positions for having offered resistance to the National Socialist Party in its "necessary reconstruction of the German National Church." The dismissal of these ministers was postponed until after the elections of November 12 by the Prussian Minister of Education, following a protest made by the pastor of the Kaiser Wilhelm Gedächtnis Kirche of Berlin, the inference being that the Government authorities feared the effect that might be produced on the minds of the electorate.

As of possible interest in this regard, I have the honor to state that Dr. MacFarland, the former head of the American Federation of Churches, visited Chancellor Hitler some weeks ago and informed him that the American Protestant denominations would view with regret any harsh treatment of the dissenting pastors. The Chancellor is said to have consented to receive representatives of the protesting clergy, but it is not believed that the interview actually took place.

Relations between the Nazi officials and the Roman Catholics also leave much to be desired, despite the Concordat recently concluded between the Vatican and the Government of the Reich. It is stated that the appointment of a new Bishop of Berlin has occasioned difficulties, as the candidate approved by the Papal authorities is not considered by the National Socialists to be sufficiently loyal to their cause. Further evidence of friction between the authorities and the Catholic population appears in reports that indictments have been issued against such prominent laymen as former Chancellor Marx and Messrs. Brauns and Stegerwald, ex-Ministers of Labor of the Reich, for alleged misappropriation of funds belonging to a workmen's bank. It is also reported that ex-Chancellor Brüning has incurred the disfavor of the National

Socialists for his alleged failure to cooperate in the elections and that his position is a difficult one.

The Reich Government has been attempting to settle with the Vatican controversies relating to the Concordat and according to reliable information sent to Rome Herr Buttmann, a Nazi leader in the Bavarian Diet, with this end in view. He failed, however, to reach an agreement with the Vatican. An effort alleged, whether correctly or not, to have been made by Minister Göring to see the Pope during his recent visit to Rome was also devoid of success.

Notwithstanding these difficulties it should be pointed out that the proportion of favorable votes received by the Government on November 12 in the Catholic regions of Germany equalled that accorded to it in other regions. This may be due to a variety of reasons such as patriotism, the intensive propaganda undertaken by the Nazis or their repressive measures. The last alternative is not improbable, at least so far as Bavaria is concerned, as the Consul General at Munich reports that discontent is smouldering in that country.

Another phase of the confused religious situation in Germany is the agitation of the German Christians, the radical element in the Unified Evangelical Church, for a thoroughgoing change in religious teaching and practices. At a large meeting held in Berlin on November 13 it was decided that the Old Testament should be excluded from the teaching of the Church and the New Testament should be purged of "superstitious" information. Every foreign influence should be excluded from the German Church, holy places should be found at home and not in Palestine, and a close relationship must be made evident between the Nordic spirit and the heroic Jesus, so that the victory of the former over Oriental materialism may be achieved. These startling decisions were too much even for Dr. Müller, the new Nazi Bishop and head of the unified church. He has issued a public statement roundly condemning the resolutions approved on November 13 and upholding the Bible as the "single and immovable foundation of the church."

The foregoing information indicates that in spite of the success achieved by the National Socialist Party in the political field, its attempts to obtain complete control over the religious life of the country are encountering great difficulties. It is predicted that the meeting of the new Reichstag will afford an opportunity for this discontent to find expression, although the members of that body were probably selected with care by the party officials.

Respectfully yours,

For the Ambassador:
J. C. WHITE
Counselor of Embassy

862.404/37

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 284

BERLIN, November 23, 1933.

[Received December 5.]

SIR: In continuation of my despatch No. 274 of November 16, 1933, I have the honor to report that the new conflict in the German Evangelical Church, which became acute as a result of the ultra-radical demands put forward at the demonstration of the "German Christians" in the Sportpalast in Berlin on November 13, has taken an unexpected turn. For the first time the Nazi *Gleichschaltung* steamroller, which has crushed all opposition in practically every other branch of German national life without notable resistance, has struck a formidable obstacle.

In order to prevent a schism occurring in the Church as a result of vigorous and decisive demands submitted by some 3000 pastors who have bound themselves by a "Covenant of Resistance" to resist interference of the State with the exercise of a free religious conscience and the attempts to impose the Aryan paragraph upon the Church, Reich Bishop Müller was constrained to make important concessions. His public statement in which he sharply denounced the resolution passed at the meeting in the Sportpalast was followed by the suspension from all ecclesiastical offices of Dr. Krause, the head of the Berlin branch of the "German Christians".

A more important concession to the moderate clergymen was the promulgation of a Church law suspending, until the promulgation of a general law governing the policies of the new Evangelical Church, all legislation enacted by the regional Churches since January 1, 1933, governing the legal status of their clergy and other officials. In practice this law suspends for the time being the application of the Aryan paragraph adopted by the old Prussian union and other regional Churches. It does not, however, affect action already taken by the regional Churches in pursuance of the foregoing. The orders dismissing clergymen and Church officials on racial or political grounds issued before the enactment of this law remain in effect, but all pending proceedings are cancelled.

The fact that this law was passed unanimously by the Clerical Ministry (see despatch No. 174 of September 30, 1933) of which Dr. Hossenfelder, the Bishop of Berlin-Brandenburg, who only recently ordered the Prussian Church Council to enforce the Aryan paragraph in Prussia, is a member, shows the difficult position into which this militant leader of the "German Christians" has maneuvered himself.

The ultimatum submitted by the opposition pastors included a demand for the removal of Bishop Hossenfelder and other leaders of the "German Christians" who were present at the meeting in the Sportpalast. By reversing his stand on the Aryan question, Bishop Hossenfelder is apparently seeking to save his own jeopardized position in the Church. Whether or not this sudden change of front will enable Reich Bishop Müller to resist successfully the demand for the dismissal of his principal henchman remains to be seen.

Bishop Hossenfelder enjoys a large measure of popularity in the Nazi Storm Detachments. He was the moving spirit in the successful campaign of the Nazi extremists in the Evangelical Church against Dr. von Bodelschwingh, the moderate leader who was first nominated as Reich Bishop. The present Primate of the Reich Evangelical Church owes his position in large measure to Hossenfelder's militant tactics. Under these circumstances it is only natural that Bishop Müller should be reluctant to sacrifice Hossenfelder.

Apparently in order to gain time, Bishop Müller has instituted an investigation of the complaints against Bishop Hossenfelder and other leaders of the "German Christians". He even went so far as to promise the suppression of the "German Christians" if the league of opposition pastors agreed to dissolve itself. This was flatly refused, the representatives of the league declaring that they had risked their lives for the true faith, whereas the "German Christians" and the high Church officials who applauded Dr. Krause's heretical demands had betrayed Christianity.

Contending that Bishop Müller's present efforts to protect the pure doctrine of the Church would be without avail so long as Bishop Hossenfelder and other Nazi extremists remained in high ecclesiastical offices, the opposition pastors proceeded to carry out their plan, as threatened in their ultimatum to the Reich Bishop, to read from their pulpits a declaration to their congregations explaining their standpoint and the reason for their insistence on the dismissal of the "German Christian" leaders who condoned the heretical views put forward at the meeting in the Sportpalast. They reasserted their acknowledgment of the Bible, the Old and New Testament, as the one and only guide of their life, and concluded by an appeal to their congregations to hold firmly together against heretical influences.

While this declaration which was read last Sunday—the day on which the 450th anniversary of Martin Luther's birth was commemorated in Germany—contained no direct reference to a schism, its general tenor would seem to indicate that the opposition pastors are determined to break away from the Church, if necessary, rather than submit further to certain Nazi ecclesiastical authorities.

The league of opposition clergy represents Protestant communities in all parts of Germany. It is of interest, however, that the most vigorous opposition to the Nazi extremists in the Reich Evangelical Church comes from Protestant communities in certain sections of Germany which have a predominantly Catholic population, notably Bavaria and the Rhineland. On the other hand, the Protestant population in Eastern Germany is considered fertile ground for Nazi fanatics who wish to establish a purely Germanic religion.

These ultra-radicals seem to have much in common with the "German Faith Movement" headed by Count Reventlow and Professor Hauer of the University at Tübingen. This movement is striving for a revival of old Germanic mythology as the basis of a new Germanic religion with a purely German and Nordic god like Wotan. Before Hitler's accession to power these Wotan worshipers formed a small and little known sect. Since then, however, they have been steadily growing in numbers and now claim a membership of about 100,000. It is understood that they are seeking State recognition as a religion on an equal footing with the Catholic and Protestant Churches and, according to some of their leaders, Chancellor Hitler is willing to give them full rights as a Church.

To what extent this movement has already taken root in Germany may be seen by certain utterances and actions by Nazi Church dignitaries. The Bishop of Brunswick is reported to have blessed the dead for their entry into Valhalla. Bishop Hossenfelder spoke of Horst Wessel's Storm Detachments in Heaven. At a convention of "German Christians" in Saalfeld, Churchwarden Leutheusser declared: "We have but one task; and that is, to become Germans—not Christians." The same Church dignitary referred to Hitler as the "Saviour" of all Germans. This tendency was perhaps most strikingly expressed by Baldur von Schirach, the Nazi head of the German Youth Organization, in these words: "I am neither Catholic nor Protestant; I believe only in Germany!"

With reference to the religious situation in Bavaria, the Department's attention is invited to despatch No. 132 of November 22, 1933, addressed to the Embassy by the Consul General in Munich, a copy of which has been sent by him to Washington.⁸⁹

Respectfully yours,

WILLIAM E. DODD

⁸⁹ Not found in Department files.

362.404/40

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 338

BERLIN, December 12, 1933.

[Received December 26.]

SIR: In continuation of section 2 of Despatch No. 312 of December 4, 1933,⁹⁰ and with special reference to Despatch No. 284 of November 23, 1933, I have the honor to report that Reich Bishop Müller has been making unsuccessful efforts to put an end to the conflict in the German Evangelical Church caused by the efforts of Nazi extremists to change the doctrines of the Church and the unexpectedly vigorous opposition thereto made by the orthodox pastors.

At this stage of the conflict, four active groups in the recently "unified" German Evangelical Church are clearly distinguishable: (1) The Nazi Extremists headed by Dr. Krause; (2) The German Christians in Thuringia; (3) The main group of the German Christians under Hossenfelder's leadership; and (4) The Pastor's Emergency League.

The immediate occasion for the present conflict in the Church was furnished by the radical demands made by the Nazi extremists. From all indications, this group of ultra radicals which is headed by Dr. Krause (see Despatch No. 284) is apparently determined to continue its campaign for a new Germanic religion which, as pointed out in the despatch last mentioned, seems to have much in common with the ancient Teutonic mythology.

The German Christians in Thuringia seceded from the German Christians in the Reich because Reich Bishop Müller and Bishop Hossenfelder made concessions to the orthodox pastors. These Thuringian secessionists are in sympathy with the Nazi Extremists headed by Dr. Krause. Contending that in Hitler's Third Reich there is no room for Protestants and Catholics, they demand the formation of a national German Church embracing all Christian denominations.

The German Christians, who still accept Bishop Hossenfelder's leadership, desire Nazi control of the Reich Evangelical Church and the application of the Aryan principle. This group is in sympathy with Reich Bishop Müller, who, while rejecting a conglomeration of Christianity and Nordic heathenism, is in favor of the Aryan paragraph in the Church, on the ground that Christianity was not born of Judaism but out of the struggle against Judaism. This point is vigorously rejected by the orthodox pastors and by prominent Catholic bishops.

The Pastors' Emergency League, under the leadership of Pastor Niemöller, a former naval officer of distinction, who commanded a

⁹⁰ Section 2 of despatch No. 312 not printed; for an extract of the despatch, see p. 284.

submarine during the war, is opposed to all spiritual coercion and especially the attempts to impose the Aryan paragraph upon the Church. The courageous fight which this league has been conducting against the heretical ideas of the extremists has won for it widespread sympathy and support among the moderate elements in the Church. A large number of well-known theologians who at first supported Hossenfelder's German Christian movement have now joined forces with the Pastors' Emergency League. It is also upheld by German Christians in Bavaria and Württemberg, who have refused to follow Bishop Hossenfelder any longer, as well as by the Bishops of the Evangelical Church in Bavaria, Württemberg, Hesse, The Palatinate, and Baden.

As a result of the growing opposition, Bishop Hossenfelder's position became untenable, and he finally resigned, under circumstances which are not clear, as a member of the Clerical Ministry—the principal body in the Reich administration of the Evangelical Church (see Despatch No. 174 of September 30, 1933). Twenty-four hours after his resignation had been made public, it was announced that the whole Clerical Ministry had resigned. However, Hossenfelder's elimination from the Reich administration of the Church came too late to be of tactical value to Reich Bishop Müller. Encouraged by the growing support in most parts of Germany, the Pastors' Emergency League demanded that only men enjoying the confidence of the Church parishes should be appointed to the new Clerical Ministry.

According to the new Church Constitution, the regional churches submit the names of candidates from which the Reich Bishop can choose the four members of the Clerical Ministry. The regional churches, however, submitted a joint list for all four seats in that Ministry, representing, as the Church Constitution provides, the Lutherans, the Unionists, and the Reformists, and one jurist. This proposal was submitted in the form of an ultimatum and was therefore rejected by Dr. Müller on the ground that it left him no choice in the matter and was therefore contrary to the Nazi principle of leadership.

The Bishop then appointed men of his own choice: Dr. Lauerer (Lutheran), Dr. Weber (Reformist), and Dr. Bayer (Unionist). The appointment of a jurist was postponed. The moderates contend, however, that by ignoring the nomination submitted by the regional churches Bishop Müller violated the Church Constitution. A formal protest against his appointments was submitted to the Reich Minister of the Interior. However, two of the newly appointed members (the Lutheran and the Reformist) soon resigned under pressure of their respective churches, and it is understood that the Reich Bishop is contemplating the formation of another Clerical Ministry.

The Department will recall that Dr. Müller was the patron of the German Christian movement headed by the militant Bishop Hossenfelder. One of the demands submitted by the Pastors' Emergency League was that the former should sever his connections with the German Christians. Although he at first flatly refused to yield to ultimatums, his own position became so precarious that he has now openly complied, basing his action on a Church law passed by the new Clerical Ministry on December 4, 1933, which prohibits members of this body, as well as other officials of the Church administration, from belonging to church organizations, groups, and movements concerned with church politics. The purpose of this law was apparently to save the new Clerical Ministry. However, as the prompt resignation of two of the newly appointed members of this body showed, it failed to appease the orthodox pastors.

That the situation has taken a decidedly unfavorable turn for the German Christians is further manifested by an official announcement, to the effect that Chancellor Hitler, whose personal influence was in large measure responsible for Müller's appointment as Reich Bishop, has expressly forbidden the Government authorities to interfere in the Church conflict. Hitler's action was taken presumably in anticipation of reported attempts by the Prussian authorities to intervene in support of Bishop Hossenfelder's German Christians. The present attitude of the Government is in marked contrast to its actions during the Church conflict last summer, when the Prussian authorities appointed Nazi commissars to expedite the Nazification of the Evangelical Church and openly supported the German Christians in their campaign against von Bodenschwingh, who was first nominated as Reich Bishop. (See Despatch No. 2450 [2456?] of June 2, 1933.)

Bishop Müller is now attempting to settle the conflict with the aid of an arbitration committee appointed by the Clerical Ministry. Whether or not a satisfactory solution can still be reached is open to doubt. It is not even certain whether Reich Bishop Müller will remain Primate of the Evangelical Church, as the orthodox pastors may even go so far as to challenge his election by the National Synod at Wittenberg, in September, on the ground that this body was constituted by the German Christians, whose victory in the Church election last summer was achieved by high-handed methods. (See Despatch No. 26 of July 27, 1933⁹¹).

It should not be assumed, however, that the growing opposition to the German Christians is necessarily directed against the National-Socialist Party or against the Hitler regime, although the Embassy has heard that the orthodox group is receiving support from monarchist members

⁹¹ Not printed.

of the former Nationalist Party. The present struggle in the Evangelical Church appears to be principally doctrinal in character. Many German Christians who have now allied themselves with the orthodox pastors in opposing the Nazi extremists in the Church are still avowed National Socialists. According to present indications, a victory by the moderate elements in the Church over the radicals is not likely to have any perceptibly adverse effects on the Hitler regime.

Respectfully yours,

WILLIAM E. DODD

862.404/41

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 336

BERLIN, December 12, 1933.

[Received December 26.]

SIR: With reference to despatch No. 338 of December 12, 1933, relative to the conflict in the German Evangelical Church, which is being transmitted in this pouch, I have the honor to report that while the Nazis have used greater restraint in their dealings with the Catholic Church in Germany, the relations between this Church and the National Socialist authorities are by no means cordial.

Following the dissolution of the Center Party, large numbers of Catholic officials were replaced by Protestant Nazis who, according to some Catholics, are obstructing, either deliberately or because of inability to understand the Roman Catholic standpoint, the efforts of the Church to carry out certain provisions of the Concordat signed on July 20 of this year. Manifestations of friction between the Catholic Church and the National Socialist officials are frequent, especially in Bavaria and Baden where the Catholic clergy apparently cannot forget the brutal treatment to which the Nazis subjected leading members of the once influential Bavarian People's Party during the critical days immediately preceding and following the general elections in March.

In these States, Catholic priests have been arrested on the suspicion of having spread atrocity stories about conditions prevailing in the concentration camp at Dachau. A recent case of the arrest of Bavarian priests is reported at some length by Consul General Hathaway in a despatch to the Embassy (No. 133 of December 8, 1933), a copy of which he has transmitted to Washington.⁹²

Another aspect of the situation is furnished by the arrest of prominent and popular former leaders of the now defunct Center Party, who are charged with having misused the funds of the "Volksverein für das Katholische Deutschland," an organization with approximately one-half

⁹² Not found in Department files.

million members. Among those arrested are Dr. Wilhelm Marx, Dr. Stegerwald, Dr. Brauns (see my despatch No. 274 of November 16, 1933) and Professor Dessauer. Professor Dessauer is a scholar of reputation and was for many years a Reichstag deputy of the Center Party. It is difficult to believe that men of such high standing and integrity are guilty of the offense of which they are accused. The impression is inescapable that their arrest may have been impelled by political motives, as the news of their arrest was widely exploited by the Nazis apparently in order to discredit these men in the opinion of the public. Similar tactics were employed by the Nazis against former prominent leaders of the Nationalist Party and the once-powerful agrarian Landbund.

However, despite such instances of discord and repression the fact remains that no open attempt has been made to absorb the Catholic Church in Germany. The Concordat guarantees the complete independence of that Church. Furthermore Catholic Bishops have expressed views in public distinctly counter to Nazis tenets without being molested, a marked contrast to the treatment frequently accorded to Protestant clergymen.

Open and courageous criticism of the Nazi extremists in the Evangelical Church was expressed by Cardinal Faulhaber, the Archbishop of Munich, in his Advent sermon on December 3, in which he condemned the application of their principles to religion. Cardinal Faulhaber, who was formerly Professor of Old Testament History in the Universities of Würzburg and Strasbourg, said that there could be no doubt that Jesus Christ was a Jew, and that the attempts of extremists to reject Christ or to falsify history in order to declare Him an Aryan struck at the very foundation of the Christian religion, and he felt that he could not therefore remain silent. The Cardinal concluded the sermon with an offer to cooperate with the Protestant Church in combating the attacks on the Old Testament.

It is of interest, though not at all surprising, that only a brief extract of the Cardinal's sermon was published in the German press and that his offer to cooperate with the Protestant Church against the Nazi heretics was entirely omitted from these newspapers.

Respectfully yours,

WILLIAM E. DODD

NAZIFICATION OF GERMAN INSTITUTIONS OF LEARNING

862.00 P.R./134

The Chargé in Germany (Gordon) to the Secretary of State

[Extract]

No. 2314

BERLIN, April 22, 1933.

[Received May 6.]

SIR:

3. *Measures to Further the National Revolution.* In celebration of Hitler's birthday (see despatch No. 2313 of April 21, 1933,⁹³ transmitted in this pouch) the Nazi Commissioner for the Prussian Ministry of Education has issued several regulations designed to further the national revolution.

Three educational institutions in Ploen, Koeslin and Potsdam, which were cadet schools before the war, are to be reorganized, in accordance with their tradition, as "national political educational institutions" in keeping with the spirit of the national revolution. The teaching staffs are to be reconstructed and the curriculum changed. The students are to wear the Hitler uniform.

In North Germany a "high school for the training of teachers" is to be established at once, which, in the composition of its faculty and the framing of its scheme of instruction, is to take due regard to the heretofore neglected requirements of the national educational aim. School pupils who failed to pass to a higher grade because they took an active part in the national uprising are to be passed, provided the deficiency is not due to other reasons also. Disciplinary measures against students as a result of actions committed from national motives are to be revoked. Students who as members of Nazi storm detachments or similar organizations fought for the national uprising are to be given preference in connection with special benefits (such as reduced fees, scholarships, etc.). To Jewish and Marxist students, on the other hand, such benefits are hereafter to be denied.

The Ministers of Education from all the German States met in Brunswick last week to consider a proposed uniform history book for the whole of Germany.

Students' duels, prohibited by the republican governments (though they used to take place secretly), have now been openly resumed. The new regime encourages duelling as a means of rendering German university students *wehrhaft*, that is, capable of bearing arms.

The Prussian Minister of Justice has ordered that offenses committed

⁹³ Not printed.

out of patriotic motives in the struggle for the national uprising and which came under the last Presidential amnesty be deleted from the official records.

The criminal court at Offenburg has ruled that Schulz and Tillessen, members of a reactionary political organization who murdered Reich Minister of Finance Erzberger (Center Party) in the summer of 1921 and for whose capture the Reich Government promised a reward of 100,000 marks, come under the recent political amnesty. After successfully evading the police for twelve years, these men can now return to Germany to help further the national revolution.

• • • • •
Respectfully yours,

GEORGE A. GORDON

862.42/60

The Chargé in Germany (Gordon) to the Secretary of State

No. 2354

BERLIN, May 1, 1933.

[Received May 13.]

SIR: I have the honor to report that a law has been passed by the Cabinet governing the Studentenschaften, or student corporations, a translation of which is being transmitted to the Department by the Consulate General.⁹⁴ The Studentenschaften are statutory institutions with certain legal functions which gives them a voice in the administration of the university. Their status is without parallel in Anglo-Saxon countries. According to the new law, membership in these bodies is open only to German-speaking and non-Jewish students.

Inbued with the spirit of the national revolution, the Studentenschaften in Prussia, which are completely under Nazi control, are developing an activity which has led to conditions in the universities that may be described as chaotic. Parallel with the purging of the universities of all professors of Jewish extraction or Left political leanings, on the basis of the Civil Service Law of April 7, 1933 (see despatch No. 2309 of April 19, 1933⁹⁵), the Studentenschaften have been demanding and obtaining the dismissal of other professors objectionable to them. They have also resorted to excesses which have led to conflicts with the faculty.

At the Kiel University, the Studentenschaft demanded the immediate dismissal of no fewer than 28 professors, some of whom enjoy international reputation, threatening to take most drastic action to enforce its demand.

⁹⁴ Not found in Department files.

⁹⁵ Not printed.

At the University in Berlin, a tense conflict has developed between the Studentenschaft and Rector Kohlrausch because the latter demanded the removal of a manifesto containing "12 points against the non-German spirit" posted by the students on the university bulletin board. The 12 points were also posted on municipal advertisement kiosks in Berlin and attracted considerable attention because of their ridiculous demands. Dr. Kohlrausch objected in particular to two of the "points" as indicating contempt for fellow-beings whom, he said, one may combat but should not defame. One of the two objectionable points, Point 5, stated: "When the Jew writes German he lies." Point 7 stated: "Jewish works must be published in Hebrew; if they be published in German, they must be described as translations."

The mentality of the Nazi students was further exemplified by a retort to the Rector, which referred disdainfully to his criticism and declared in substance: The German students honor the few teachers at Germany's universities who teach in the spirit in which the students live and act, that is, the spirit of the storm detachments. They alone have the right to criticize because they have the confidence of the students.

Several professors have publicly protested against the new spirit which now pervades the universities. Professor Spranger, who stands close to the Nationalists, voluntarily resigned from the faculty of the Berlin University, giving his reasons in a letter to the *Deutsche Allgemeine Zeitung*, one of the few journals in Germany which is still permitted to express views not always favorable to the Government. Professor Spranger said that he was worried because the student organizations, which had recently been given important rights and privileges, were beginning to assume an attitude which reminded one strangely of Metternich's attitude towards professors and students. As an avowed believer in the principle of leadership, he was alarmed to see that neither the Rector of the Berlin University nor the Prussian Minister of Education was able to remove a manifesto from the University bulletin board which, "despite its good intentions," contained a couple of sentences that must offend even the "most national" reader. In conjunction with reports of happenings in other universities, he felt that he could not grasp the spirit of the new generation.

The new academic spirit in Germany was further reflected by the seizure in university and State libraries of works of Jewish authors and authors with Left political leanings. These works are to be publicly burned by the students, with appropriate ceremonies.

On April 26 [25], the Reich Cabinet passed a new school law against the overcrowding and over-alienization of the German schools and universities. In addition to a restriction on Jews, the law institutes a general *numerus clausus*, without any race or confessional angle, in all

secondary schools and universities, to keep down the number of graduates in accordance with the actual requirements in the various professions.

The law restricts the proportion of Jews in secondary schools and universities to 1.5 per cent of the total number of pupils. This figure is only for new admissions. Of the pupils and students already attending high schools and universities, a number corresponding to 5 per cent of the total may be allowed to remain. The law applies only to high schools and universities; the primary schools, in which attendance is obligatory, do not come under its provisions.

The restrictions with respect to Jews contain more liberal provisions than the civil service law. The percentage of admissions is higher. Moreover, pupils and students one of whose parents is Aryan do not come under the Jewish quota, whereas the civil service law defines as Jews persons one of whose grandparents was a Jew.

A translation of the law is being transmitted to the Department by despatch No. 2351 of May 2, 1933.⁹⁶

The Hochschule für Politik in Berlin has been transferred from the jurisdiction of the Prussian Minister of Education to the Reich Minister of Propaganda, and transformed into a State institution. Professor Jäckh, the President of the Hochschule, as well as the curatorium headed by Dr. Simons, former President of the Supreme Court at Leipzig, have resigned.

Respectfully yours,

GEORGE A. GORDON

862.42/61

The Consul General at Stuttgart (Dominian) to the Secretary of State

No. 998

STUTTGART, May 1, 1933.

[Received May 22.]

SIR: I have the honor to submit in the following lines certain methods now used in German universities and institutions of higher learning as a result of the establishment of a regime of suppression of liberties in Germany by the National Socialist party.

As described by a member of an important local faculty the situation in Germany for liberal-minded university teachers has become intolerable. Teachers whose views were free from prejudice or who belong to the Jewish faith have been compelled to resign from their faculties, this being particularly noticeable in the field of political science. In the universities of this district the National Socialist Government is appointing special commissioners known as "Beauftragte" or investigators

⁹⁶ Not printed.

whose business consists in investigating members of the teaching staff and determining whether these teachers make it a point to inject National Socialist viewpoints in their lectures. In one of the universities in question the first act of the Commissioner was to dismiss the Rector and the Pro-Rector. Both of these gentlemen whom I happen to know were inclined to be conservative in their views and their liberalism, if any, was of a mild variety. They were strong nationalists and could hardly be considered as favoring a republican form of government for their country. The Rector in particular stands high in his field of work. It appears however that his grandmother was a lady of Jewish faith. The dismissal of the Rector was all the more surprising as only three weeks more of his term of service as Rector remained.

As far as can be ascertained at present there exists great confusion in faculties all over the country. Reports at Stuttgart are to the effect that the entire faculty of Medicine at the University of Berlin has been depleted of its teachers as a result of resignations and dismissals. The Universities of Goettingen and Frankfort are stated to have suffered particularly because they were seats of liberal education. At Heidelberg and Tuebingen, however, the universities have been affected only slightly because both were centres of strong nationalism.

The situation as far as German universities is concerned may be summarized in the statement that a spirit of excessive and possibly harmful nationalism now prevails in all of them. For the first time in centuries doubt may be reasonably entertained as to whether education imparted in the conditions now prevailing in German universities is of sufficient value to prove attractive to foreigners.

Respectfully yours,

LEON DOMINIAN

862.42/63

The Consul General at Stuttgart (Dominian) to the Secretary of State

No. 1011

STUTTGART, May 5, 1933.

[Received May 29.]

SIR: I have the honor to report the existence of an anti-foreign attitude among the students at the University of Heidelberg according to information submitted by one of the American students attending the University. It appears that the feeling originated over a year ago among the National Socialist students' associations and has now spread to practically all the student body. As far as can be ascertained this anti-foreign hostility is not directed at any single nationality but embraces all foreign students. It is publicly manifested by murmurs of disapproval each time a foreign name is attained on the roll as it is being called out. This feeling is not to be confused with the usual anti-

Jewish sentiment according to my informant, but appears to be an expression of exaggerated nationalism. As such it seems unlikely to abate as long as the present regime lasts.

This situation tends to support the statement made in my despatch No. 998 of May 1, 1933 in which the value to foreigners of the education imparted at present in German universities was questioned. It also raises the question as to the wisdom of making monetary grants to German universities such as have been made abundantly in recent years to Heidelberg University by American citizens.

It may be added here that changes in the files of registration of American citizens at this Consulate indicate that a number of American students, mostly of Jewish faith, who until recently attended courses at Heidelberg have moved to Basel for the purpose of continuing their studies at the University of that city.

Respectfully yours,

LEON DOMINIAN

862.42/64

The Consul General at Stuttgart (Dominian) to the Secretary of State

No. 1025

STUTTGART, May 10, 1933.

[Received May 29.]

SIR: I have the honor to report that an interview today with an American student at Heidelberg afforded information relative to the position of foreigners in that University which may be of interest.

My informant stated that he matriculated at Heidelberg in October of last year with about twenty-five other American students. Of this new group of students he is at present the only one remaining. The others have either returned home or transferred their studies to other institutions in France or Switzerland. It appears that before being permitted to take the preliminary examination at the end of the first semester every student must file a petition with the Minister of the Interior of the State of Baden for approval. In the cases of the group of American students matriculating in October of last year every petition it appears has been disapproved. Without permission to take the examination for the various degrees, future study at Heidelberg would have been fruitless. Accordingly the exodus of American students has taken place.

It was further brought to my attention that the remaining American students of Jewish faith have been asked to appear before the Registrar of the University and to bring with them their approved course of study cards. My informant is of the opinion that the University authorities contemplate depriving them of further privileges.

It is believed that the situation above related is sufficient evidence to belie whatever assurance may have been given in the German press that

foreign students are free to enjoy on an equal basis the same advantages of study as are at present enjoyed by German citizens of non-Jewish faith.

Respectfully yours,

LEON DOMINIAN

862.00 P.R./136

The Chargé in Germany (Gordon) to the Secretary of State

[Extract] ^{96a}

No. 2415

BERLIN, May 20, 1933.

[Received June 3.]

SIR:

6. *Education of Youth in the Third Reich.* At a conference of State Ministers of Education in Berlin on May 9, Dr. Frick, the Reich Minister of the Interior, discussed the principles on which the German youth is to be educated in the Third Reich. The speech is of fundamental interest because it shows that the new regime in Germany intends to depart completely from the spirit of education as envisaged by the framers of the Weimar Constitution. Hereafter stress is to be laid upon such subjects as racial hygiene, the baneful effects of the Versailles Treaty, and the necessity for "Wehrhaftigkeit" or readiness to bear arms.

Liberal ideas in education, he said, had corrupted German educational methods and institutions. The schools had not reared but merely instructed their pupils. They had failed to develop in the pupils the qualities essential for the nation and State, and had merely imparted knowledge for the benefit of the individual. They had only served the education of the free individual and had failed to develop German manhood rooted in the people and bound to the State. They had not ensured the unity of the nation and devotion of its members to the State, but had merely furthered the decay of the nation and the victory of private interests over the State. In short, the individualist concepts of education had contributed considerably to the decay of national life.

The function of the new German school, continued Dr. Frick, was to develop the political individual who, in his thoughts and actions, was rooted in his nation and was inseparable from the history and destiny of his State. The new school must serve the entire nation, not the individual. The mother-tongue must be cultivated and German letters should be given preference over Latin type. Among the subjects of instruction, history must occupy a foremost place. The tremendous

^{96a} Another portion of this despatch is printed on p. 295.

experience of the World War with the heroic struggle of the German people against a world of enemies, the destruction of Germany's capacity for resistance through pacifist elements, the humiliation of the German people through the Versailles "dictate," and the collapse of the liberal Marxist philosophy, should be treated as extensively as the incipient awakening of the nation, beginning with the Ruhr struggle and continuing to the victory of the Nazi ideal of freedom and the restoration of a united nation as exemplified on the day of Potsdam.

Racial hygiene must become a regular part of the school curriculum. The mixing of German blood with that of other races, especially with Jewish and colored races, must be prevented at all costs. The rearing of German youth to *Wehrhaftigkeit* must begin in the schools. The germ of the *Wehrgedanke*, the idea of military defense, must be inculcated into the youth of the nation.

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Respectfully yours,

GEORGE A. GORDON

PERSECUTION OF JEWS IN GERMANY

862.4016/31 : Telegram

The Secretary of State to the Ambassador in Germany (Sackett)

WASHINGTON, March 3, 1933—5 p.m.

15. The following appeared as an Associated Press despatch from London today in the *Public Ledger*, Philadelphia:

"London *Daily Herald* said today plans were complete for Anti-Jewish program in Germany on a scale as terrible as any instance Jewish persecution in two thousand years."

The paper ascribed its information to "high source" and "whole Jewish population of Germany totaling six hundred thousand is living under shadow of a campaign of murder which may be initiated within a few hours and cannot be postponed for more than a few days".

While this Government is disinclined to lend credence to this report, it is causing widespread distress among a large section of the American people. You may, in your discretion, talk the matter over with the German Government and acquaint them with the apprehension and distress that is being felt here.

STIMSON

862.4016/34 : Telegram

The Ambassador in Germany (Sackett) to the Secretary of State

BERLIN, March 8, 1933—3 p.m.

[Received March 8—1:45 p.m.]

31. Consulate General reported yesterday morning three cases of American citizens Henry H. Sattler, Edwin F. Dakin and Nathaniel S. Woolf, all with the exception of the latter temporarily residing in Berlin, who have been subjected to violence and/or intimidation by armed groups of National Socialists. Woolf alleges under oath that he was practically kidnapped, held incommunicado and bound for a period of 3 hours as well as threatened. The Embassy immediately protested to the Foreign Office concerning these acts and the Ministry promptly expressed its keen regret assuring me that proper measures would be taken to prevent a repetition of similar occurrences and ordered a thorough investigation of the three cases. These occurrences are not restricted to non-Germans but are typical of the existing conditions in Germany arising primarily from the heat of the recent election campaign.

This morning the Consulate General reported a fourth and more serious case. Max Schussler, an American citizen, states that at the point of a pistol he was forced to sign an order rescinding an eviction order against a Nazi tenant of his in arrears for a year's rent. His wife also was subjected to indignities and his domicile invaded. The Embassy this morning also protested this case to the Foreign Office and the Ministry once more expressed its profound regret. At the same time the Foreign Office informed me that the first three cases were brought immediately to the attention of each member of the Cabinet including the Chancellor and that the Cabinet in session expressed its appreciation of the seriousness of these occurrences and discussed ways and means of preventing similar outbreaks and took steps effecting a thorough investigation. Inasmuch as similar cases were called to the attention of the German Government by other diplomatic missions in Berlin the Government according to the Foreign Office had already taken preliminary measures. A special decree was issued by the Prussian Minister of the Interior on March 3rd whereby only the regular communal police authorities would be charged with the application of the decree concerning the restriction on personal liberties. In addition stronger disciplinary measures are envisaged in view of the American instances.

The Foreign Office also stated that at the request of the Chancellor the investigation also includes the possibility that the mistreatment of these foreigners might have been instigated by *provocateurs*.

SACKETT

862.4016/35 : Telegram

The Ambassador in Germany (Sackett) to the Secretary of State

BERLIN, March 11, 1933—noon.

[Received March 11—10:35 a.m.]

33. Previous to the receipt of your 15, March 3, I had already conferred on the morning of March 3 with the Minister for Foreign Affairs concerning similar rumors long current here, in particular with regard to the fear of certain American correspondents in Berlin as to their treatment under the existing conditions. I stated that the mistreatment of Jews in Germany would have a disastrous effect in America and in molding world public opinion. I found my British colleague had made similar representations.

At the time the Foreign Minister told me as he also told the British Ambassador that the Government appreciated this but had the situation well in hand though election excitement had encouraged some difficulties and that there was no danger of pogroms or anti-Jewish discrimination in so far as foreigners were concerned. I, therefore, did not feel it necessary to make further representations after receipt of telegram under reference. However, as the Department was informed in my 31, March 8, there have been sporadic cases of assaults and indignities inflicted upon American citizens largely persons of obvious Jewish origin for alleged anti-Nazi leanings.

Furthermore, as pointed out in my 32, March 10,⁹⁷ demonstrations of anti-Jewish character have since the election been common throughout Germany. These manifestations are obviously of serious concern to the Government. This concern together with the complaints made by this Embassy and other foreign missions as well as last night's speech of a subversive character by Goering has resulted in Hitler in his capacity as leader of the Nazi party issuing in this morning's papers an order calling upon his followers to maintain law and order, to avoid molesting foreigners, disrupting trade, and to avoid the creation of possibly embarrassing international incidents. This order, as is believed in view of the good discipline generally obtaining with the Nazi ranks, should bring about a cessation of the anti-Jewish demonstrations.

SACKETT

⁹⁷ Not printed.

362.4016/315 .

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1196

BERLIN, March 21, 1933.

[Received March 31.]

SIR: I have the honor to refer to my despatches Nos. 1184 and 1187 of March 14, 1933,⁹⁸ in which I reported on the molestation of American citizens domiciled or temporarily in Berlin, by persons wearing the uniform of the National Socialist Party.

As the Embassy has already informed the Department by telegraph, no more cases of attacks on, or molestation of American Jews in Germany have come to the attention of the Consulate General or of the consular officers in Germany since March 11. The orders of the Chancellor, Mr. Hitler, and the instructions of Mr. Goering, the Minister of the Interior for Prussia that these attacks on individuals and the interference with stores, business, theatres, etc. must cease, have been effective. The fears of a good many people in Germany and of certain foreign observers that the National Socialist movement might get out of control of its leaders have not been realized. There are at least two fundamental facts which have so far emerged out of the new situation and which must be recognized in dealing with Germany. The first of these is that the National Socialist Party is to all intents and purposes in complete and sole control in Germany not only of the Central Government, but also of the States, Municipalities and Communes. The second fact is that order has been completely reestablished in a comparatively short time; that the police authority has been restored and that the present Government has the situation completely in hand with no organized or unorganized minorities at present existing which in any way can dispute its authority.

The steps taken by the Embassy and by this Consulate General to protect the lives and property of American citizens in Germany and to a lesser extent those taken by the representatives of other countries, and the newspaper publicity in other countries given to the molestation of, and attacks on persons on the streets and in their homes in Germany in the days immediately following March 5, undoubtedly resulted in these energetic steps to reestablish order and particularly to stop the molestation of Jews and Communists so far as attacks on their persons were concerned. As indicated, however, in my despatch No. 1187, although the persons of Jews in Germany are comparatively safe from unprovoked attack, the anti-Jewish sentiment which has been built up during the last years has in no sense abated and cannot be expected to abate for some time. The present Minister for Public Enlightenment

⁹⁸ Neither printed.

and Propaganda, Dr. Goebbels, has in his speeches and as the editor of the *Angriff* for some years been the leader in the anti-Jewish movement and in the various National Socialist groups throughout Germany the members had been told not only publicly, but in private assembly that when the Party came into power the members would have practically a free hand with the Jews. This meant that not only were they to be given an opportunity to harry the Jews and through fear to drive them out of the country, but also that the many places in the professions, business, the theatres and practically all walks of life occupied by Jews were to be cleared so as to make way for the adherents of the Party. It was not possible for the Party to permit the continued attacks on the persons of Jews which took place after March 5 and which undoubtedly were not altogether displeasing to many elements in the Party, on account of the publicity which these attacks received outside of Germany; so, as has already been brought out, physical persecution has ceased but a more serious and more significant phase has been definitely entered upon.

Reports from all over Germany indicate that Jews holding public office are being rapidly dismissed. This holds true in the Central Administration of the Reich as well as in the State and Municipal Governments. Practically all Jews in important positions in the Government have already been eliminated and this is rapidly going downwards into the smaller positions so that even the school physicians and similar minor office holders have been almost completely eliminated. Only a few occupying key positions whose technical skill is of very great value to the present Government, have been retained.

According to the *Berliner Tageblatt* of March 20, 1933 (night issue), in the Prussian courts practically all Jewish judges in the criminal courts have been displaced and certain ones of them are to be transferred to civil courts. All Jewish officials on the staff of the prosecuting attorneys are to be eliminated. As from April 1, 1933 no Jewish judges shall sit in the summary courts or in the juvenile courts. It is understood that similar steps are contemplated in the other German states.

In the legal profession a similar cleaning-out process is to be undertaken. In Breslau, of the seventy-two practicing Jewish lawyers only seventeen selected out of these seventy-two are to be hereafter permitted to appear before the Breslau courts. The others may continue their activities outside of the courts but it is obvious that in not being able to practice before the courts this decision is equivalent to eliminating them from the profession. Information from Leipzig this morning is to the effect that similar steps are being taken to eliminate practically all Jewish lawyers from activity before the courts. A letter from Consul Busser at Leipzig received this morning shows that the Supreme Court

of Germany which has its seat at Leipzig, has been affected by the movement against the Jews. He states that the "Court of Honor" of German lawyers, which is a court of legal ethics handling all complaints and proceedings concerning the standing, honesty or negligence of attorneys, is presided over by *Senatspraesident* David who is a Jew of outstanding reputation. The meetings of this court have been summarily suspended, undoubtedly because its presiding officer, Mr. David, is a Jew, and will not be continued until some one else will take his place. In this connection it is interesting to note that a *Senatspraesident* is the chief of one of the sections of the Supreme Court which in Germany has thirteen sections. It is evident from the foregoing therefore, that this movement against judges and lawyers has reached the Supreme Court, as everything points to the fact that *Senatspraesident* David will be forced to resign or will be replaced.

As is well known, Jews have played a very prominent part in the literary, scientific, musical and general cultural life of Germany. In the opera in Berlin and throughout the leading cities of Germany the Jewish conductors who are as well known outside of Germany as in the country, have practically all been displaced. As these operas receive subsidies, the State or Municipality has control so that the displacement of these artists has been a simple matter. In the theatre a similar movement has taken place. Practically all the directors of the State and Municipal theatres who are Jews have been dismissed. No discrimination has been shown, as for example yesterday the director of the Mannheim National Theatre, Herbert Maisch, was relieved of all duty. He had just recently brought the Mannheim players to Berlin where they gave a play known as the "Marneschlacht" which is the story of the battle of the Marne. It is a highly nationalistic and patriotic play and both from the artistic and national point of view was for weeks a subject of general conversation in Berlin. The fact that he had just produced in a way the outstanding play of Germany from an artistic and cultural and patriotic point of view, has not, however, saved Director Maisch from dismissal. A similar incident interesting in this connection, is the displacing of Bruno Walter who is one of the best known conductors in the world and one who has added a great deal to German prestige. An equally interesting case is the displacement of the director of what was before the establishment of the present Ministry for Public Enlightenment and Propaganda, the most important propaganda instrument in Germany. This was the "Auslaender Institut" in Stuttgart. The director who is a Jew and who has rendered what were considered great services to German culture and propaganda throughout the world, was attacked by men in Nazi uniform and has been replaced.

As many of the leading physicians and scientists in Germany are Jews and hold responsible positions in scientific institutions or hospitals, it is generally believed that the movement will strike them in the near future.

In the universities there are already indications that difficulties will be laid in the way not only of Jewish students from foreign countries, but of Jewish students who are German citizens. In this connection the letter of Consul General Simmons of Cologne, dated March 17 and addressed to the Embassy, will be of interest as it contains details. A copy of this letter has been transmitted to the Commercial Office of the Department by the Cologne Consulate.⁹⁹

Intimidation of Jews engaged in business is becoming apparent. Night before last one of the directors of the Deutsche Bank, who is one of the best known bankers in Berlin, was taken from his home at 4:30 in the morning by uniformed policemen of the regular force and by Nazi "Hilfspolizei", handcuffed, not permitted to dress himself properly, and taken to the nearest police station where during the course of the next day he was released as the charges which had been made against him were not established; but what the nature of the charges were it seems he was not informed. The measures taken against the Jews in business will undoubtedly be in the form of suits for alleged evasion of taxes or evasion of technical requirements of the law. As many of the leading business men in all parts of Germany are Jews and as in the private and public banks they hold important key positions, it will be of interest to note what action is taken with respect to these. It is particularly interesting to note that three of the directors of the Reichsbank which is the bank of issue, are Jews, Dr. Warburg of Hamburg, Dr. Wassermann of the Deutsche Bank of Berlin, and the venerable Franz von Mendelssohn of the private banking firm of that name.

It has been deemed advisable to give the Department the foregoing recital of facts without any comment. How far this anti-Jewish sentiment will be allowed to run and how long the steps now being daily taken will continue, it is impossible to forecast. What is taking place, however, is sufficient to indicate that although physical attacks have ceased on the persons of the Jews in Germany, more serious measures are daily undertaken to eliminate them from all positions of importance, influence, or profit in the country. Any further information of interest to the Department in this connection will be transmitted.

Respectfully yours,

GEORGE S. MESSERSMITH

⁹⁹ Not found in Department files.

862.4016/67a : Telegram

The Secretary of State to the Ambassador in Germany (Sackett)

WASHINGTON, March 21, 1933—6 p.m.

28. Press reports indicating widespread mistreatment of Jews in Germany, are causing deep concern and even alarm to a large section of our population. This is showing itself not only in press comment, but in a series of meetings and conferences, the most important of which is to be a mass meeting scheduled in New York for March 27. A delegation of important Jewish leaders called at the Department this afternoon.

Telegrams thus far received from the Embassy would not appear to bear out the gravity of the situation reported above. It is important, however, for us to have an exact picture of what is taking place. Please therefore telegraph us the facts as you see them, after consulting the principal Consulates, by telephone if necessary, with a view to ascertaining the situation throughout different parts of the country.

HULL

862.4016/173

*Memorandum of Press Conference of the Secretary of State,
March 22, 1933*

[Extract]

[WASHINGTON, undated.]

At the press conference this afternoon Secretary Hull said that the German Ambassador¹ at 11:30 this morning handed to Mr. Phillips² the following statement by Reichs-Minister Goering to the *Amsterdam Telegraaf*:

“Concerning attacks on Jews, he will maintain law and order under all circumstances. He has just dismissed fifteen SA³ men, has punished them because they attempted to act on their own authority. He does not believe that much will be heard in future concerning unlawful acts in Germany. If one considers that during the last weeks a revolution was witnessed, one will have to admit that it passed with very little bloodshed.”

A correspondent asked if the German Ambassador delivered a copy of the statement to the Department of State on instructions from his Government. The Secretary in reply said that he could not answer the question but that he imagined that the Ambassador's action was entirely agreeable to the German Government or he would not have brought it

¹ Friedrich W. von Prittwitz und Gaffron.

² William Phillips, Under Secretary of State.

³ Sturm-Abteilung.

to the Department. Asked then if we had made any formal protest to Germany concerning the persecution of the Jews by the Nazis, Mr. Hull replied that we had been endeavoring industriously to gather the actual facts about the situation in order that we might understand first of all accurately and authoritatively just what the conditions in Germany are. A correspondent then said that a late news despatch from Germany states that President von Hindenburg has signed a decree freeing the storm troops and the other Nazis who were arrested for making attacks on foreign and German Jews. The correspondent then asked if the Secretary had any comments to make on that report. Mr. Hull replied to the effect that he had not received any despatches on the subject and that therefore he had nothing to say.

862.4016/30 : Telegram

*The Counselor of Embassy in Germany (Gordon) to the
Secretary of State*

BERLIN, March 23, 1933—11 a.m.

[Received 1:20 p.m.⁴]

43. Department's 28, March 22 [21], 6 p.m. As Ambassador Sackett left for Southern Germany yesterday there was necessarily scant opportunity to discuss the matter and accordingly the Ambassador requested me to send this answering telegram in my own name.

Information received up to now indicates that the phase of physical mistreatment of Jews may be considered virtually terminated for the present at least; likewise it is my opinion that police authority—which prior to Hitler's injunctions of strict discipline (see Embassy's telegrams 33, March 11, 12 noon, and 35, March 13, 12 noon⁵) had to a dangerous extent been slipping into the hands of the irregular auxiliary police in Nazi uniforms—is once more held by the regular police.

Another phase of anti-Semitic action, however, is now manifest. Jews in administrative, executive, and even judicial positions in the Reich Government are being expelled from their positions in large numbers and the same is true in state, provincial and communal governments; moreover many instances of Jews being forced out of private positions have occurred. For instance, in the legal profession and in the operatic and theatrical world (largely state subsidized) Jews have been prevented from pursuing their profession and there is reason to fear that

⁴ Telegram in four sections.

⁵ Latter not printed.

this movement may spread even to physicians and scientists and that Jewish students in universities may encounter serious obstacles.

So far, aside from the picketing of Jewish merchandising stores—which in the last 10 days seems to have somewhat lessened—instances of intimidation of Jews engaged in ordinary business or banking have not yet been relatively numerous. Inasmuch as in Germany many leading business men and practically all of the important bankers are Jews the question of their removal may cause some hesitancy to those elements in the Nazi Party who are directing this anti-Semitic purge. However, if these more immoderate elements should prevail in the Nazi councils it would not seem unreasonable to apprehend that an attempt might be made to remove these important industrialists and financiers piecemeal more or less by way of experiment to see how successfully they might be replaced by men of lesser professional experience.

There is no doubt that a very definite struggle is going on between the violent radical wing of the Nazi Party, represented by Goering and Goebbels, and what may now be termed the more moderate section of the party, headed by Hitler himself, who so far (I use these last two words deliberately) are the Nazi's partners in the Government. The former have in their favor the considerations that for a long period the Nazi leaders, including Hitler himself, have indoctrinated their followers with anti-Semitic hatred and revenge, and that if the rank and file of the S.A. detachments are not given an outlet for the passions thus engendered and must in great numbers be removed from their pleasant new jobs as largely uncontrolled auxiliary police, serious trouble within the party is bound to result. The more moderate group have in their favor the ensemble of those considerations which appeal to all civilized and reasonable people plus a greater realization of the inevitable reaction in the outside world if the state of uncontrolled terrorism existing just after the elections were allowed to continue unchallenged.

At the present moment in my judgment the more reasonable element has the upper hand. However, it must be borne in mind that at any moment the present Government in which the Nazis are preponderant could by a decree outlawing the Communist Party give the Nazis a so-called legal majority of the remaining Reichstag without counting their Nationalist allies; this, be it added, quite aside from the possibility of the Nazis simply deciding to declare an out and out totally undisguised dictatorship. In either of these latter events the restraining influence of the Nationalist leaders would lose practically all its weight. Only last week Von Papen delivered a speech at Breslau of markedly temperate and statesmanlike tone in which he not only reinforced Hitler's appeals for discipline and abjured the victors of the last elections not to spoil their triumph by unworthy acts of revenge and

violence which could only bring discredit upon the new regime in foreign countries; it is significant, however, that this speech was constantly interrupted by large numbers of Nazi hecklers. In the foregoing I have pointed out the dangerous potentialities of the situation. On the other hand it is true that a far-reaching revolution has actually taken place in the last few [days?] and that necessarily under the best conditions it would take some time before a state of equilibrium can be reestablished. Such stabilization appears to have been reached in the field of physical violence and it may be—as the more moderate elements in the Government contend—that within a comparatively short time it will be attained as regards molestation of the Jews in civil life.

In our brief discussion of the subject the Ambassador expressed the opinion that this process of stabilization would be expedited if the Nazi leaders now flushed with their recent victory are not made more defiant by continued organized protests against their actions throughout the rest of the world based on what they may perhaps have some ground to consider as misrepresentation of what has actually occurred. On the other hand the German press of the last few days has displayed such marked sensitiveness to foreign comment that it seems to me that the publication abroad of actual facts, if unclouded by exaggerations from press or private sources which might serve as an excuse for irritation, cannot but have some deterrent effect.

Most of the consulates have been reporting copiously and very frequently. I may specifically refer to the Berlin Consulate General's despatch No. 1196⁶ now en route to the Department giving a recital of facts which may be read in connection with this telegram.

GORDON

862.4016/80 : Telegram

The Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, March 24, 1933—5 p.m.

31. Your 43, March 23, 11 a.m. Public opinion in this country continues alarmed at the persistent press reports of mistreatment of Jews in Germany. We are under heavy pressure to make representations in their behalf to the German Government. I am of the opinion that outside intercession has rarely produced the results desired and has frequently aggravated the situation. Nevertheless if you perceive any way in which this Government could usefully be of assistance, I should appreciate your frank and confidential advice. On Monday next there is to be held in New York a monster mass meeting. If prior to that date an amelioration in the situation has taken place, which you could

⁶ Dated March 21, p. 323.

report in form susceptible of release to the press, together with public assurances by Hitler and other leaders, it would have a calming effect.

HULL

862.4016/115 : Telegram

The Chargé in Germany (Gordon) to the Secretary of State

BERLIN, March 25, 1933—3 p.m.

[Received 5:05 p.m.]

47. I entirely agree with your view as to the effect upon the present situation of outside intercession. Representations by way of movements made here would very probably be met with recriminations as to the "atrocious propaganda" allegedly based on false or Teutonic [*sic*] reports now current in the United States. The local press of the last few days is increasingly full of this kind of thing and the more violent papers, apparently on the theory of the best defense being a good offense, are urging the Government to protest to the Foreign Missions here against the "campaign of calumny" in various foreign countries. At the moment the greatest press emphasis in this connection is being directed against the United States.

There is however one suggestion that I venture to make in case you have not already thought of it.

I am convinced that the general tenor of communication between foreigners and members of the Government here has necessarily been one of complaint and protest and it is possible that if the line were taken of expressing confidence in Hitler's determination to restore peaceful and normal conditions emphasizing what a great place he will achieve in the estimation of the world if he is able to bring it about it might have a helpful effect.

As indicated in my telegram No. 43, March 23, 11 a.m., Hitler now represents the element of moderation in the Nazi Party and I believe that if in any way you can strengthen his hands even indirectly he would welcome it. If this suggestion has any merit I feel that anything you might be able to say in this sense to Prittwitz would be received with far more attention here than any protest transmitted through him—especially in view of his rather peculiar present status. I should very much like to know if this suggestion appeals to you.

As to a possible press release the statements made in the second paragraph of my 43, March 23, 11 a.m., remain true and I should think that they might form the backbone of a release which, if it indicates that the Embassy while not minimizing what has occurred is given [*giving?*] the facts to the Department in their true proportion, should have a calming effect.

With regard to molestation of Jewish industrialists foreshadowed in the fourth paragraph of my telegram under reference, I have outlined additional evidence that certain Nazi circles advocate the application of the principle of *numerus clausus* to the business world, namely, that as Jews hold a number of important jobs which is entirely disproportionate to their percentage of the population enough of them must be dismissed to attain the correct proportion. There have been various instances of such dismissals but even here I think I can detect a certain slackening of the pace and a greater hesitancy to apply the theory integrally. I hope to have something further of great interest to report in this connection, perhaps Monday evening, as the subject is going to be taken up with Hitler by a leading industrialist who is prepared to give us information as to the result thereof.⁷

As a further suggestion with respect to a press release it should be noted that some Jewish organizations have recently been protesting against the false news spread abroad and even praising the action of the authorities where cases of excesses had been brought to their attention. This morning the Embassy received from the "Reich Association of the Jewish Front Line Bloc" a statement in this sense requesting that it be cabled to America in view of Monday's mass meeting. I replied by telephone thanking the secretary for his communication but suggesting that the proper channel for him to use would be the German Embassy or the German Consulate General in New York City. I have since learned that the *New York Times* is cabling this statement home. The *Frankfurter Zeitung* owned by Jews has likewise taken a very marked stand in the above sense.

Of course action of this kind is not free from the suspicion that it is dictated either under pressure or by self interest but it is just possible that in your press release you might find it helpful to mention the fact of these Jewish expressions of view. I also have good reason to believe that there are individual Jews of high standing in the community—perhaps principally in the banking field where they are less likely to be molested—who look upon this as an internal problem which they have to fight out themselves and genuinely feel that they can do so better without outside interference. Possibly some reference to this point of view might also find a place in the press release.

While on this general subject I might point out that such blanket denials of mistreatment of Jews as were made yesterday over the telephone by the Nazi press chief Haenfstaengl to the International News Service are palpably absurd—see section 2 of my telegram under reference; though on the other hand it can be pointed out that a large num-

⁷ See telegram No. 54, March 30, 5 p.m., from the Chargé in Germany, p. 335.

ber of public officeholders who are not Jews but are political opponents of the present Government have likewise lost their jobs.

Since dictating the foregoing I have talked with newspapermen who attended the interview given by Goering to foreign correspondents this afternoon which lasted well over an hour after which the correspondents were dismissed without any questions being allowed. While a vigorous defense of the regime and its actions it was decidedly more moderate in tone than various former utterances of his. The local Associated Press correspondent has just read me his story over the telephone and I think the Department will find therein statements which come within the category of public assurances mentioned in the Department's telegram under reference. There have not been any other such statements by Nazi leaders since Hitler's two appeals for discipline reported in the Embassy's telegrams 33, March 11, noon, and 35, March 13, noon, despatch 2247 of March 13.⁸ However, the Foreign Minister today gave an exclusive interview to the local Associated Press correspondent which the latter tells me was of a distinctly reassuring tenor. This will probably be published Monday morning and the Department might find it useful.

If there are any other points of fact or opinion on which further report would be helpful to you please let me know and I will be glad to furnish it immediately.

GORDON

862.4016/115 : Telegram

The Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, March 26, 1933—2 p.m.

33. Your 47, March 25, 3 p.m. The Department is today releasing for Monday morning newspapers appearing after 7 p.m., Eastern Standard Time tonight, the following telegram sent by the Secretary of State to Rabbi Stephen Wise and to Cyrus Adler.

"You will remember that at the time of your recent call at the Department I informed you that in view of numerous press statements indicating wide-spread mistreatment of the Jews in Germany, I would request the American Embassy at Berlin in consultation with the principal consulates in Germany to investigate the situation and submit a report.

"A reply has now been received indicating that whereas there was for a short time considerable physical mistreatment of Jews, this phase may be considered virtually terminated. There was also some picketing of Jewish merchandising stores and instances of professional discrimination. These manifestations were viewed with serious concern by the German Government.

⁸ Telegram No. 35 and despatch No. 2247 not printed.

"Hitler in his capacity as leader of the Nazi party issued an order calling upon his followers to maintain law and order, to avoid molesting foreigners, disrupting trade, and to avoid the creation of possibly embarrassing international incidents. Later, von Papen delivered a speech at Breslau in which he not only reiterated Hitler's appeals for discipline but abjured the victors of the last election not to spoil their triumph by unworthy acts of revenge and violence which could only bring discredit upon the new regime in foreign countries. As a result, the Embassy reports that the authority of the regular police has been reenforced.

"The feeling has been widespread in Germany that following so far-reaching a political readjustment as has recently taken place, some time must elapse before a state of equilibrium could be reestablished. In the opinion of the Embassy such a stabilization appears to have been reached in the field of personal mistreatment, and there are indications that in other phases the situation is improving.

"I feel hopeful in view of the reported attitude of high German officials and the evidences of amelioration already indicated, that the situation, which has caused such widespread concern throughout this country, will soon revert to normal. Meanwhile I shall continue to watch the situation closely, with a sympathetic interest and with a desire to be helpful in whatever way possible."

HULL

862.4016/116 : Telegram

The Chargé in Germany (Gordon) to the Secretary of State

BERLIN, March 26, 1933—3 p.m.

[Received March 26—12:15 p.m.]

49. My 47, March 25, 3 p.m. I spoke with several chiefs of mission last night who took occasion to express their opinion that outside intercession under the present circumstances would be very unwise.

Jewish owned *Berliner Tageblatt* has lined up with *Frankfurter Zeitung* in attitude reported in my telegram under reference.

Probably needless to say but I trust the allusion in yesterday's telegram to forthcoming interview of leading industrialist with Hitler will be treated in the strictest confidence.

GORDON

862.4016/227 : Telegram

The Chargé in Germany (Gordon) to the Secretary of State

BERLIN, March 29, 1933—5 p.m.

[Received March 29—2:55 p.m.]

52. The *New York Times* informs me that it cabled the complete text of the Nazi boycott manifesto in time for its appearance in this morning's edition, so I have not cabled a summary thereof.

This extraordinary action is in my opinion a manifestation of the same mentality as dictated the most ruthless war-time measures. Its evil consequences must be so apparent to the more reasonable members of the Nazi Party and of the Reich Government that when such a manifesto could be promulgated as a party measure and the Reich Government (as official circles are quoted as stated) intends to remain passive—i.e. to maintain the same attitude toward the Nazi boycott that the governments in foreign countries maintain towards anti-German demonstrations—it certainly indicates that in this instance the radical wing of the Nazi Party have been able to crack the whip to full effect.

Yesterday's incident in Brunswick where the Nazi Minister of the Interior dissolved the local Stahlhelm, to the accompaniment of over 1,000 arrests, on the ground that groups of the Reichsbanner and other Marxist organizations were being incorporated wholesale in the Brunswick Stahlhelm, I also consider very disquieting.

Although it is true that this morning a settlement of the incident was announced the affair seems to have the earmarks of an initial Nazi attempt—perhaps mainly by way of a trial of strength—to rid themselves of their Nationalist partners.

Under existing circumstances these two developments have necessarily changed the picture as presented in my telegrams 43, March 23, 11 a.m.; and 47, March 25, 3 p.m. As one immediate result I imagine that even before Saturday when the boycott is scheduled to begin there may be various molestations of Jews in their business—even if it stop short of physical violence—which will perhaps be played up with new vigor by local foreign correspondents who had recently been reporting in milder vein.

GORDON

862.4016/266 : Telegram

The Chargé in Germany (Gordon) to the Secretary of State

BERLIN, March 30, 1933—5 p.m.
[Received March 30—4:40 p.m.⁹]

54. Since preparing my telegram 52 of March 29, 5 p.m., reports have come to the Embassy from numberless sources which indicate that the situation is rapidly taking a turn for the worse. Although I have been physically unable to obtain actual confirmation of most of these reports as well as of some others reaching me since Saturday (including allegations of further cases of physical mistreatment of Jews and this morning even a report—as yet entirely unconfirmed—that last night a regular razzia occurred at Gleiwitz in which four Jews were killed and the

⁹ Telegram in three sections.

authorities were trying to conceal the fact) there are certainly indications that the lack of discipline which seemed for a time to have been checked by Hitler's orders to his followers is again raising its head.

The general view of various people whom I have seen in the last 3 days is that the radical wing of the Nazi Party is absolutely determined to make full use of the present opportunity to crush the Jews in Germany and in the process there is every prospect that the SA detachments will again get out of hand and quite possibly to a far larger degree than in the week following the Nazi electoral victory. There is evidence that Hitler himself favors the application of the boycott if foreign anti-German agitation does not abate in such measure as to justify the calling off of the boycott (I may say that in spite of all the allegations as to anti-German boycott in foreign countries I have as yet no definite confirmation of concrete action of such kind. Can the Department give me any official information in the premises?).

It is probable that if Hitler decides the boycott is to be applied he would wish it to be done without physical violence (hence the creation of responsible committees and the injunctions of discipline and order in the boycott manifesto) but it is very doubtful if the turbulent SA elements who [embody?] the ruthless temper of the radical Nazi leaders—and in fact look upon Goering as their direct chief—would continue to be amenable to Hitler's attempts at control.

A leading industrialist, known for his temperate views, in a conversation this morning with the Consul General gave it as his considered opinion that the only hope of preventing the situation developing into something closely akin to a veritable reign of terror now lay in Hitler but that it was a very slim hope inasmuch as his opponents in the party were stronger men than he. This industrialist suggested that in a situation of this gravity anything which might possibly be of help should be considered, and he felt that if I could go to Hitler informally and indicate to him in a friendly way the serious concern with which developments in Germany were being viewed in our country, together with a reminder of the friendly attitude which our Government had consistently maintained towards Germany, including his own Government, it might have a favorable effect; he said that he had every reason to believe that Hitler would listen to such a message from this Embassy more readily than from any other mission here.

The above is somewhat in line with the suggestion made to the Department in my telegram 47, March 25, 3 p.m. While in a situation of such seriousness I should be only too glad to undertake anything which has the slightest prospect of being helpful and while I am in favor of some message of the kind being conveyed, the drawbacks to the suggested conversation are quite apparent. Hitler would most probably ask

what events were causing concern to our Government and a specific reference to the projected boycott—perhaps leading further to something in the nature of an argument as to its merits—might then be difficult to avoid. Also if I were to try to see Hitler on such a mission I presume I should have to see the Foreign Minister first, asking if he had any objection to my seeing the Chancellor in the premises. In order to obviate these inconveniences, therefore, the Department, if it sees any merit in the suggestion, might prefer to send a message of this nature direct to Hitler through the German Embassy in Washington.

To sum up: the developments of the past 5 days have been distinctly adverse; events have been moving with such increasing rapidity and have now attained such momentum that—serious as it is to say so—I must give it as my present view that almost any development in the way of public disorder is possible within the near future.

GORDON

862.4016/283a : Telegram

The Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, March 30, 1933—7 p.m.

36. Reports received from Berlin this morning to the effect that there is or will be some form of Government support of the boycott of the Jews in Germany, have caused such anxiety in America that it seems desirable for you to have a conversation with von Neurath on the whole subject. You should make it clear that it is not the purpose of this Government to interfere in any way in matters which are essentially the domestic concern of Germany. The situation which is now developing, however, certainly without the intention of the German Government, has assumed an international aspect. I am informed that a retaliatory boycott is even now under serious consideration in certain American cities. More important, however, the German Government should appreciate that the human element involved in the situation is such that the friendship of the people of the two countries might not remain unaffected. You may express to the Minister of Foreign Affairs my deep concern and ask him whether, in his opinion, there is anything which the two governments might do either jointly or separately to alleviate the situation.

HULL

862.4016/568

*The Consul General at Berlin (Messersmith) to the
Secretary of State*

[Extracts]

No. 1214

BERLIN, March 31, 1933.

[Received April 14.]

SIR: I have to refer to my strictly confidential despatches No. 1196 of March 21, 1933, 1205 of March 25 and 1210 of March 28¹⁰ with reference to the displacement from public office and disbarment from the professions of Jews, and of molestation of Jews in various ways. Since March 28 the developments in the situation have been so rapid and of so momentous a character that as from yesterday a state of crisis exists and it is not possible for anyone, not even those who are supposed to be leading and directing the Government and the National-Socialist movement, to state definitely what will happen to-morrow and in the days immediately following. It is increasingly difficult in the face of these rapidly occurring events of such first importance for even a trained and objective observer to entirely maintain his perspective. During the two and a half years that I have been in Germany I have succeeded in making contacts in practically all classes of German life in the capital as well as in many of the major cities of the country and this has been of very particular help to me as an officer of our Government in Berlin at this time. It has in this way been possible for me to keep currently in touch with at least the major developments in the situation and I arrived at the conviction yesterday that a state of affairs existed which was of so precarious a nature that almost anything might happen and I felt it my duty to inform the Embassy to that effect. To give all the factors involved in arriving at this conclusion would be impossible even in a lengthy despatch. So I shall endeavor to set forth only a few of the major considerations.

The background of the anti-Jewish movement fostered by the National-Socialist party and its progress since the 5th of March 1933 has been set forth in previous despatches. It is now evident that the movement has reached an intensity and a diffusion of action which was not contemplated even by its most fanatic proponents, and there is real reason to believe now that the movement is beyond control and may have a bloody climax. If this will be avoided it will be by a miracle of power and resolution on the part of the Chancellor, Mr. Hitler, and a few moderates associated with him which it is almost too much to expect.

In Government office, whether it be national, state or municipal, practically all Jews have already been eliminated. Very few are left except in a few responsible positions in the Finance Ministry or in posi-

¹⁰ Despatches Nos. 1205 and 1210 not printed.

tions where the National-Socialists for the time being believe them indispensable because of their special knowledge. One must realize the important part which Jews played in the various administrations to be able to realize the intensity and extent of this movement in Government circles alone.

In the courts practically all Jewish judges have been removed and it is only a question of days before the last one will be out. In a previous despatch I recited the substantiated incident of an ordinary embezzler, but a member of the National-Socialist party, who asked that his case not be heard before the Jewish judge who was to sit, on the ground that he could not expect an unprejudiced decision, and that the judicial authorities decided that his objection had proper basis, suspended the action and ordered that it be heard by another judge. The newspapers of March 29 carry a similar incident where in a Potsdam criminal court one Hermann Panitsch of Berlin accused of embezzlement asked that the case not be heard before the judge who was to sit, on the ground that the judge was a Jew and he, the accused, had been a member of the National-Socialist party since 1923. In place of the presiding judge Dr. Lowenthal another judge was substituted.

In Goerlitz on March 29 Jewish judges and lawyers were taken into custody "in order to protect them". At the moment of writing this despatch authenticated information reaches me that before one of the principal courts in Berlin, the Landesgericht I, S.A. men assembled to prevent the entry of Jewish lawyers and raised such a disturbance that the building was closed by the President of the Court. At the present time it does not look likely that any Jewish judges will be allowed to sit in German courts in any part of the country, at least for a considerable period. It is impossible in this despatch to recite the reports which have appeared in even the controlled and thoroughly censored German press of the taking of judges into custody "in order to protect them" and of suspension or definite removal from office.

In previous despatches it has been reported that the national and local associations of lawyers have decided that no Jews shall be in the governing boards and that hereafter only a small percentage shall be admitted to practice or to continue to practice. It has been definitely decided that no non-Jewish lawyers shall be able to temporarily take over the practice of a Jewish colleague. This is intended in order to definitely divert the clients from Jewish lawyers. In legal circles it is still contemplated applying a *numerus clausus* in the profession and of permitting certain lawyers who served in the war to continue to practice, but the attitude has changed so rapidly during the past few days as a result of the boycott movement that it is a question as to how far this idea will be made effective. Under the boycott proclamation all persons

are to abstain during the period of the boycott from visiting any Jewish lawyers.

In the medical profession the national and local associations have taken action similar to that above recited on the part of the legal profession. Practically all the Jewish physicians associated with the social insurance and sick insurance organizations can no longer receive compensation for the services rendered to insured persons or contributors and this is equivalent to destroying their practice. The Jewish physicians connected with the state and municipal hospitals have for the most part been relieved from all duty. Under the boycott order of the National-Socialist party to be effective April 1 physicians are included and all persons are warned not to go near a Jewish doctor.

As illustrative of what is going on in the medical profession a well-substantiated incident is that of Professor Sauerbruch, one of the outstanding surgeons of Europe and of the world, who is the chief of the surgical staff of the famous Charite hospital in Berlin. The discharge of several of his Jewish assistants was ordered and Professor Sauerbruch stated that if they were let go he himself would immediately emigrate to America, and in order to avoid such action (he is not a Jew) he was permitted to keep these men who are apparently the only Jewish doctors retained on the staff of the city hospitals. There is an unauthenticated incident of a well-known Jewish doctor in one of the hospitals who was discharged and told by the National-Socialist officers that his automobile which stood before the hospital would be very helpful to the party during the next days as well as the chauffeur. The doctor in order to avoid what he believed to be certain physical injury permitted them to take his automobile with the chauffeur and is paying for its maintenance. An associate of his, a Jewish doctor in the same hospital, refused to resign voluntarily and the Consulate General is informed by a responsible physician that this doctor was thereupon taken into a room, made to sit in a receptacle containing cold water and given a large dose of castor oil. Incidents of rough and maltreatment of physicians came to me so frequently and from such good sources that there is no possibility of doubt that at least some of them are correct. I am informed from an entirely reliable source that a well-known Jewish physician and surgeon who had recently operated upon a person well-known to me here was compelled to resign from the hospital staff and asked that he only be allowed to remain and take care, without pay, of those patients on whom he had so recently operated, including this woman. He was not allowed to do so and she had to be cared for by a physician and surgeon who had not performed the operation and had no immediate knowledge of her case.

American newspaper correspondents in Berlin have brought to my

attention cases of maltreatment of all sorts of persons of various nationalities which they have personally investigated and found correct but which more recently they have not been able to publish. I can make no definite statement with regard to these cases as obviously the Consulate General has taken no action with regard to reporting them to the Department other than the cases of American citizens, but I have confidence in the correspondents who have been giving this information. All the information which I have is to the effect that they have been most careful in verifying the stories which they have transmitted.

The Department is probably aware through the Hearst press that Mr. Deuss, the head of the International News Service in Germany, was informed yesterday in a personal interview by Reichsminister Goering that all sources of information from the National-Socialist party would be closed to him and that he would leave it to Mr. Hearst as to whether he would permit him to remain in Germany. As Mr. Deuss is a careful and reliable correspondent I hope to send to the Department in the near future a despatch covering his interview with Reichsminister Goering.

The terror in which the Jews in Germany live and the suppression of honest opinion exercised upon other persons since March 5 is evident from the following circumstances: The Department is familiar with the boycott against Jewish firms, physicians and lawyers which has been ordered as from April 1, 1933. This boycott is naively pictured to the German people as a defense measure against the stories which have appeared in the foreign press with regard to what is going on in Germany and on the ground that these stories were instigated by Jews abroad. A Jewish organization which had been forbidden by the authorities and disbanded according to reports in the censored press was resurrected so that a telegram in its name might be sent to Jewish organizations abroad that all was quiet in Germany. Various business organizations of Jews and practically all existing Jewish organizations have sent telegrams to the effect that everything is normal in Germany. The same people who are sending these telegrams are living here in daily and in many cases abject terror and have only sent these telegrams in order to avoid what they believe to be sure physical consequences of a refusal.

It would be impossible within the limits of this despatch to review even a small number of the cases which have personally come to my attention, of endeavors to have people send out telegrams under pressure picturing conditions different from what they actually are.

Respectfully yours,

GEORGE S. MESSERSMITH

862.4016/324

*Memorandum of Trans-Atlantic Telephone Conversation*¹¹

MR. GORDON: Hello, this is Gordon speaking.

MR. PHILLIPS: All right, this is Phillips speaking. The Secretary of State is glad to respond to the suggestion made by you this morning, that he issue a statement immediately for release in tomorrow morning's papers along the lines indicated. You should make it clear, however, that he cannot issue such a statement unless you receive a definite assurance that the boycott will be called off. You will readily understand that the Secretary would be placed in a highly embarrassing position if, after issuing this statement, the boycott should commence. We shall, therefore, await a further message from you to the effect that the boycott will be called off before we issue the following statement. The statement is as follows:

"The situation in Germany is being followed in this country with deep concern. Unfortunate incidents have indeed occurred, and the whole world joins in regretting them. But without minimizing or condoning what has taken place, I have reason to believe that many of the accounts of acts of terror and atrocities which have reached this country have been exaggerated, and I fear that the continued dissemination of exaggerated reports may prejudice the friendly feelings between the peoples of the two countries, and be of doubtful service to anyone.

"I have been told that by way of protest measures are under consideration in certain American cities which would result in a partial boycott of German goods or other form of demonstration. Not only would such measures adversely affect our economic relations with Germany, but what is far more important, it is by showing a spirit of moderation ourselves that we are most likely to induce a spirit of moderation elsewhere."

That is the end. How soon can you get a reply back to us?

MR. GORDON: The Foreign Minister told me where to get him at dinner. I could be there in five or ten minutes. I can call you back in fifteen or twenty minutes hence.

MR. PHILLIPS: All right.

MR. GORDON: I may say in the meantime that he told me that Sir John Simon¹² had agreed to write a letter in this same sense, presumably to the German Ambassador in London, although that had not yet been settled, which together with this statement if made he assures me would bring about the calling off of the boycott.

MR. PHILLIPS: That is all right.

MR. GORDON: But I will call him at dinner at once and will call you

¹¹ Between Mr. Phillips in Washington and Mr. Gordon in Berlin, March 31, 1933, 4:35 p.m.

¹² British Secretary of State for Foreign Affairs.

back in thirty minutes. I will put the call in now while I am going around to see him.

862.4016/323

Memorandum of Trans-Atlantic Telephone Conversation^{12a}

MR. GORDON: Hello, Gordon speaking.

MR. PHILLIPS: Right here, this is Phillips.

MR. GORDON: I am sorry to give you the following news. We got hold of the Foreign Minister immediately after your message. He said, we thank you (along these lines) but with every evidence of great distress it is unfortunately too late now to try to call off the boycott for tomorrow morning. The Minister realized that you have done all you could and had gone along the terms he spoke of. This is my comment showing who is running the show. He told me that the Chancellor thought it was now too late possibly to stop it for tomorrow morning.

MR. PHILLIPS: Is that all?

MR. GORDON: No. The Chancellor, however, was out, the Foreign Minister had already when I saw him at 11:00 o'clock, about an hour ago, given orders that the boycott would cease tomorrow evening at 7:00 o'clock. It will be held in abeyance until Wednesday morning, April 5th, at 10:00 a.m., in order to see what the reaction abroad would be. In other words, if the propaganda has not decreased, the boycott will be resumed with greater intensity. I may add that this last phrase was given over the radio by Goebbels, the Minister of Propaganda, within five minutes of the time when I was speaking to the gentleman in question. In other words, the Foreign Minister did not put it quite that way, but by the time I had got to the Chancery it had gone out over the radio in the form I am telling you. The gentleman I was speaking to continued that if under these circumstances you still felt that you could make a statement along the lines indicated, let us say, on Monday morning or thereabouts, it would be tremendously helpful if you could see your way to it. Monday was only tentative. He said, somewhat later. In other words, Monday morning, Monday afternoon, Sunday evening, Tuesday morning, would be equally as good as Monday morning.

MR. PHILLIPS: I see.

MR. GORDON: You can readily see what is going on. As I told you this afternoon, it was an eleventh hour breakdown and may happen again.

MR. PHILLIPS: I understand.

^{12a} Between Mr. Phillips in Washington and Mr. Gordon in Berlin, March 31, 1933, 6 p.m.

MR. GORDON: I do not want to go much further into it, but that is the situation.

MR. PHILLIPS: Have you any suggestions?

MR. GORDON: My suggestion is as follows: If tomorrow should go by without such disorders as would be hard to control, I would still be in favor of doing anything possible that we could with dignity to save the situation on Monday. It all depends really on how they behave tomorrow, I think, as to how we should decide upon our own action.

MR. PHILLIPS: I see. Then we will not publish any statement tonight.

MR. GORDON: Of course, you cannot under the circumstances. Would you like me to call you up about this time tomorrow evening, or better still Sunday morning.

MR. PHILLIPS: I think Sunday morning might be a good time.

MR. GORDON: When would be a good time for you? Ten o'clock your time?

MR. PHILLIPS: Yes. Call me at the Department at 10:00 o'clock our time.

MR. GORDON: I will call you Sunday morning and I can make more suggestions then.

MR. GORDON: I am sorry about the proposed letter of Sir John Simon which I spoke to you about during our other telephone conversation this afternoon, that did not materialize in the form that had been hoped for, but it is expected here that it may eventually, just as they hope eventually we may be able to help out. The House of Commons is in recess this afternoon.

MR. PHILLIPS: So that no communication came through from London at all?

MR. GORDON: We are not certain, but if there was one, it was not in as complete form as he had counted upon when he spoke to me this evening.

MR. PHILLIPS: What was his reaction to our form?

MR. GORDON: Excellent, but so harrassed that there was very little analysis left. I hope you get that last phrase. I tried to convey a lot. I will call you at 10:00 o'clock Sunday.

MR. PHILLIPS: Thank you very much.

862.4016/370

*Memorandum of Trans-Atlantic Telephone Conversation*¹³

MR. GORDON: Hello, Mr. Phillips, this is Gordon.

MR. PHILLIPS: Hello, Mr. Gordon.

¹³ Between Mr. Phillips in Washington and Mr. Gordon in Berlin, April 2, 1933, 10 a.m.

MR. GORDON: The Foreign Minister has been sick since yesterday afternoon and is still in bed so he has nothing to give me today, but he is seeing the Chancellor tomorrow morning after which he will let me know how definite assurances he can procure that if we issue a statement in the form proposed Friday afternoon the boycott will not be resumed on Wednesday. The general opinion here, I am speaking on my own, now is that the boycott is not likely to be resumed on Wednesday. I will amplify that later. When I see the Foreign Minister on Monday he presumably will let me know just what he expects to get from the English. He hoped, apparently, according to his last statement Friday night, he hoped to get something promptly and completely satisfactory from the English on Monday. Well, that ends the official communication that I have had from his office. Now, may I go on?

MR. PHILLIPS: Yes, go right ahead.

MR. GORDON: The situation yesterday throughout Germany passed off extremely peacefully. There was only one death as far as I know in Kiel, and in Berlin and all the big centers there was not even any physical wild treatment reported or any of that kind of thing, so it went off far better than might have been expected. In fact, I may say that the troopers of the storm detachment, who were policing and patrolling, were taking it in pretty much of a holiday spirit. So that is that.

MR. PHILLIPS: All the press despatches from Berlin now just give about the same impressions that you give me.

MR. GORDON: If you wish me to take a chance on being overheard, I can give you a little more background.

MR. PHILLIPS: All right.

MR. GORDON: It was a very stormy day here in the Cabinet and in its environments. A very important resignation was put on the table and created consternation everywhere. It was not accepted—it was the gentleman that I was speaking to. That is my information, although I did not have it from him, himself. But, at any rate, the biggest power here in the country who has had a tendency heretofore to remain aloof, got into action Friday on the good side, so that the situation looks considerably better at the moment than it did then. I am telling you all this as having a bearing on issuing the statement on Monday, so that when the Ministry gives the word you will be prepared to issue it. I explained, without saying you would not; that you could hardly be waiting after these more or less surprises of Friday night to jump whenever the word was given so that is the way it remains now. Is that clear?

MR. PHILLIPS: Yes, perfectly.

MR. GORDON: May I go on?

MR. PHILLIPS: Just a minute, Gordon. Everything is quiet here and,

if it remains quiet, we shall have very little cause or justification to issue a statement.

MR. GORDON: That is what occurred to me, and may I ask a question in that connection?

MR. PHILLIPS: Yes.

MR. GORDON: Reports here are that the resumption of the boycott depends on atrocity propaganda. I have always said, what is the atrocity propaganda.

MR. PHILLIPS: There is no propaganda now at home. Absolutely none. Everything is quiet.

MR. GORDON: Exactly. I will repeat that again here. I have been in close touch with all the American correspondents here and, as far as they have shown me, their stories, they have reported in very moderate fashion; is that the way it appears at home?

MR. PHILLIPS: That is the way it now appears at home.

MR. GORDON: When I see the Foreign Minister tomorrow, do you wish me to say that there is not much cause for issuing a statement, or would you be prepared to do so if the Foreign Minister made it clear that it would really help that process about which I spoke to you awhile ago?

MR. PHILLIPS: We wish to cooperate with him but there seems to be, as I have just said, no justification for issuing any statement now under the present conditions over here.

MR. GORDON: Right. I will just give you a view that I know will bear on what will come up tomorrow. The conversation that I will have with him, he will probably present in the following fashion:

The force is working for good but it needs considerable support to consolidate their position and that if we could do this it would help a great deal in that process. I am sure he will put it to me in that way. Then I think the best thing will be to call you up right away again.

MR. PHILLIPS: I think you had better call me up again and then we will consider what he says and the present attitude over here.

MR. GORDON: Quite so. I can't tell you just what time but, roughly speaking, I should see him somewhere around eleven o'clock your time.

MR. PHILLIPS: Tomorrow?

MR. GORDON: Yes, I hope so.

MR. PHILLIPS: Then we will be ready to receive a call any time after that time.

MR. GORDON: I think that is the best way to leave it, Mr. Phillips.

MR. PHILLIPS: Yes, thank you very much. Good-by.

862.4016/587

The Chargé in Germany (Gordon) to the Secretary of State

No. 2279

BERLIN, April 2, 1933.

[Received April 14.]

SIR: With reference to my telegrams No. 52 of March 29 and No. 54 of March 30, and to recent telephone conversations with the Undersecretary of State, more especially the one this morning (Washington time), I have the honor to give you the following sketch of the very rapidly shifting events of the last week.

Although the idea of a boycott of Jewish stores had already been in process of formulation, the general situation at the close of the week of March 25 had seemed to be becoming so much more quiet and stabilized that it was hoped that the declaration of this country-wide boycott would not take place.

However, the Göring and Göbbels wing of the Nazi Party determined that it should be put through; these leaders, having for years excited their followers with anti-Semitic fulminations and promises of the pleasure and profit to be derived from the physical and material mistreatment of Jews, apparently felt that these followers could not forever be prevented from demanding some materialization of these promises and that the present occasion was too good a one to lose.

That the leaders of this wing of the Nazis were deliberately forcing the issue seems apparent from the fact that they based their action on the pretext of an "atrocities propaganda" abroad against Germany—or rather the actions of the new régime—especially in England and America, when to the best of one's knowledge here anything which might have constituted "atrocities propaganda", in the shape of exaggerated press reports abroad, had been gradually and consistently dying down throughout the preceding week or ten days. Unable to withstand this drive for direct action, Hitler acquiesced therein, stipulating however that the proclamation of the boycott should specify that it be conducted under the direction of responsible local committees and with discipline and order.

The conservative elements—relatively speaking—in the present Government, realizing what an adverse effect upon Germany in world opinion the application of this strange measure would have, at once set about to find some means of preventing it. As these moderate elements—outside of Hitler himself whose hands, as indicated above, were largely tied—consist of the Nationalist fraction of the Government, their struggle with the Nazi Party, which in this instance was thoroughly dominated by its radical wing, took on greater intensity and acerbity as a result of the Stahlhelm-Nazi clash in Brunswick, reported in my telegram No. 52, *supra*.

The conflict appears to have reached its peak on Friday last.

The Department is aware from my telephone conversations what efforts the Foreign Minister made to secure action in Washington and London which would strengthen his hands. It is common report that at one of the several Cabinet meetings held that day he insisted upon resigning but that President von Hindenburg and even Hitler, thoroughly disturbed by his action, induced him to reconsider. I personally can testify that the Foreign Minister was visibly under great pressure that day and gave every evidence of the stress of the conflict which was going on.

For his part, von Papen is reported to have exerted every effort to enlist the President's active aid in the struggle and to induce him to declare martial law if the boycott should be put into effect and persisted in.

On its part, the Göring-Göbbels faction pressed for action in such determined manner that, as the Department is aware, Friday evening Hitler was forced to declare that the plan for the projected boycott had been so fully developed that it was then too late to stop its application throughout the country at such short notice.

There is of course considerable comment to the effect—and the inference is certainly permissible—that Hitler feared that if he ordered the S.A. detachments, on the very eve of the day they were all keyed up to enjoying as one of pleasant and safe bullying and intimidation of the Jews, to desist therefrom, there would have been a large measure of refusal to obey his orders—which is of course a risk he can not run.

There is reason to believe that in one of their projected manifestos accompanying the inauguration of the boycott, the Nazis proposed using the name of President von Hindenburg without having duly consulted him beforehand. Whether or not it was this that enraged the aged President, or whether von Papen—who for some little time thitherto had seemed to be losing some measure of his influence—was able to persuade him that he should no longer hold aloof as he had recently appeared to do (his acquiescence in the Empowering Law—see despatch No. 2265 of March 24^{13a}—which took away from him even the prerogative of countersigning executive decrees, certainly indicated a tendency to disclaim responsibility for the acts of this Nazi controlled Government), at all events, the President appears to have once more definitely asserted his authority against a course of action destined to bring so much discredit upon his country.

The net result of the foregoing was the decision to apply the boycott throughout the day on Saturday, April 1st, and thereafter to discontinue it until Wednesday morning, April 5th, its resumption to depend

^{13a} Not printed.

upon the reaction abroad. This latter, of course, is a facesaver for the proponents of the boycott, even if it should eventually not be resumed.

Color to the foregoing exposition of events is lent by the fact that the declarations of Minister of Propaganda Göbbels, and other leading boycott advocates, concerning the resumption of the boycott with greater intensity than ever on Wednesday if in the meantime the alleged "atrocities propaganda" abroad does not abate in such measure as they deem satisfactory, have in the last two days grown consistently milder in tone.

As I said to Mr. Phillips over the telephone today, the chances at the moment seem to be at least as good as even that the boycott will not be resumed on Wednesday—though I hasten to add that this estimate may have to be corrected by cable before this despatch is well advanced on its way to the Department.

In fact I realize that the foregoing, together with my various cables of the last ten days, may well give the impression of a point of view changing almost from day to day, but I can assure the Department that this is exactly what the situation has been doing, and in this despatch I have tried to give the Department a picture of the situation as I see it today, pieced together from all the sources at the Embassy's command. Some of the items entering into the makeup of this picture I have been able to confirm; many more—including secondhand reports of various conversations with some of the personalities above mentioned, or with their close associates—it has been impossible to confirm; but I have rejected all so-called information which seemed devoid of plausibility or unsusceptible of even collateral collaboration.

If I may venture a general reflection in closing, it is this:

By an ordinary absolute standard the Germany of today as reflected by the present régime is unregenerate and insatiable. To make my point clear I may say that in normal times I do not believe that the average statesman in the world of western civilization would, for instance, consider Hugenberg—leader of the Nationalist Party, now the moderate co-partner in the present Government—a sound and reasonable political leader. When internal conditions are somewhat stabilized, this régime may be expected to make itself very troublesome in the field of foreign affairs: treaty revision—to the point of frontier rectification—question of colonies, change of status of Germany's foreign debt, et cetera. There are, however, degrees of relativity even in the chauvinistic Nationalism which is now triumphant, and the chief concern of the moment is that the comparatively moderate elements should not be swept out of existence in the same fashion as were—to all present intents and purposes—Dr. Brüning and General von Schleicher, to mention no others.

To the rank and file of the "rough and ready" S.A. detachments, Hitler is already a figure who has become somewhat remote and has to a certain extent lost his contact with them as a result of his necessary mingling with the more polite official world; they look primarily for leadership to Göring and his, at present, ardent supporter Göbbels. The radical element composed of these leaders and their followers is, in my opinion, animated by the same ruthless Prussian spirit, blind to and reckless of world public opinion, which manifested itself in such startling fashion two decades ago, as, for instance, in the inauguration of unrestricted submarine warfare. If this faction is for the moment checked, it is only unremitting vigilance and an application of brute force which will keep it under restraint, for this latter quality is what it deems the *summum bonum* and the only one to which it really responds.

Respectfully yours,

GEORGE A. GORDON

862.4016/362 : Telegram

The Ambassador in Italy (Garrett) to the Secretary of State

ROME, April 3, 1933—7 p. m.

[Received April 3—2:20 p. m.]

21. The British Ambassador tells me that in a talk this afternoon with the Chief of the Government, Mussolini told him that he was continuing to make the strongest possible representations at Berlin against the anti-Jewish action of the Hitler Government and that he, Mussolini, believed this agitation would shortly cease.

GARRETT

862.4016/412 : Telegram

The Chargé in Germany (Gordon) to the Secretary of State

BERLIN, April 4, 1933—6 p. m.

[Received April 4—4:15 p. m.]

56. The Foreign Minister has just sent me word that the boycott will not be resumed tomorrow. At the same time he wishes me to let you know that he felt it would be very helpful if you could still see your way to issuing a statement which even if it now could not be in the same general form as envisaged last Friday might be calculated to have a similar effect.

I again reminded the Minister (see my 55, April 3, 4 p. m.¹⁴) that there now seemed hardly to be any occasion for issuing a statement of

¹⁴ Not printed.

the nature previously contemplated. The reply was that he understood that and that the issuance of a statement on our part was in no sense a condition to the non-resumption of the boycott tomorrow but that he nevertheless would greatly welcome anything we might be able to do in this line. He added that if we were disposed to issue a statement, but that it was too short notice to issue it today, it would still be welcome tomorrow or next day.

The British Ambassador informs me that he has just received a similar communication from the Foreign Office and has referred it to London.

Please refer to the record of my telephone conversation with the Under Secretary on April 2d where I said that Friday was a very stormy day here in the Cabinet. The fight is still very much on and the present request is prompted by the Foreign Minister's need for all the help he and his moderate associates can get against the radical wing of the present Government.

If the terms of last Friday's proposed statement no longer seem to you to be apposite, I imagine that a reference to the orderly conduct of the boycott on Saturday and an expression of gratification at its being called off would be welcome.

It must be borne in mind that whatever kind of statement the Nazi-controlled press will comment thereon to the effect—no matter how illogically such comment is presented—that we are backing water as a result of vigorous Nazi action; nevertheless you may feel that the good which may be accomplished by the issuance of a statement would more than offset this adverse consideration.

GORDON

862.4016/414 : Telegram

The Chargé in Germany (Gordon) to the Secretary of State

BERLIN, April 5, 1933—noon.

[Received April 5—9 a. m.]

57. My 56, April 4, 6 p. m. If Department is still debating the question of issuing a statement and, as may well be the case, is reluctant to do so I may say that a message from the Foreign Minister this morning indicates that he does not wish to be insistent in the premises. In other words matters here have somewhat calmed down for the moment at least since yesterday evening.

GORDON

862.4016/412 : Telegram

The Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, April 5, 1933—2 p. m.

38. Your 56, April 4, 6 p. m. and 57, April 5, Noon. We have decided not to issue a statement at the present juncture, as the situation here no longer offers a suitable occasion for so doing.

HULL

862.404/13

The Chargé in Germany (Gordon) to the Secretary of State

No. 2352

BERLIN, May 1, 1933.

[Received May 13.]

SIR: As a further sample of the anti-Jewish drive now being carried on in Germany, I have the honor to enclose in original and translation a law and an executory decree, concerning animal slaughter, both of April 21, 1933, appearing in the *Reichsgesetzblatt* No. 39 of that date.¹⁵

As is well known, the physical side of kosher ritual requires that the animal be conscious and be killed by cutting the windpipe and throat with a special knife. This is to carry out the sacrificial idea on which the ritual is based.

The new German regulations prevent this in two main ways; first, by requiring that such animals (the ones coming under the kosher category, although this is of course not specifically mentioned) shall be "narcotized" before blood is drawn, and second, by prohibiting killing by a stab in the neck. Exceptions are made, as in the case of fowl and rabbits, which, however, it is believed may not be included among the kosher animals.

The reason offered for this new legislation was that of humane treatment. But inasmuch as slitting the windpipe (the kosher method) is held to cause instantaneous unconsciousness, the real underlying motive of the enactment appears plainly to be anti-Semitism.

Respectfully yours,

GEORGE A. GORDON

862.4016/691

Memorandum by the Secretary of State of a Conversation With the German Ambassador (Luther)

[WASHINGTON,] May 3, 1933.

The German Ambassador came in at my request, previously made of him, in order that I might ascertain from him in person whether it

¹⁵ Not reprinted.

would be agreeable for me to discuss with him in the most unofficial, personal and friendly manner the Jewish situation in Germany, and to make full and emphatic representations to him in this tone and manner of the state of sentiment in the United States, both among the Jews and the general public, relative to the reported atrocities and mistreatments of the Jews in Germany either by individual groups or by the Government, or both. I stated that my purpose in thus talking with him was to make fully possible the preservation of our friendly relations with the German Government by thus keeping up as clear understandings as possible.

I then called the attention of the Ambassador to the vast heaps of memorials, letters and other solemn and earnest protests by groups of American citizens of all religious denominations and racial persuasions earnestly protesting against the reported mistreatment of Jews in Germany and urging our Government to take all possible steps to terminate such treatment, even to the extent of making very definite and more or less peremptory demands of the German Government itself. I stated that I have been doing all within my power to carry out this spirit by exercising every possible resource to bring about a cessation of the reported acts or mistreatments in Germany and, gradually at least, to encourage a return to normal conditions but, since this problem was an internal problem within Germany and under the immediate jurisdiction of the German Government, I did not undertake bluntly or definitely to make complaint directly to the German Government. I did, however, in various representations and despatches endeavor to draw out the German Government, and in a favorable direction, towards the satisfactory treatment of this reported uprising against the Jews in Germany so that the Government would thereby be most disposed and calculated to assert its efforts to compose this situation and bring it back to normal.

The German Ambassador, although I did not request him to make reply to my statements unless he felt justified in doing so, proceeded with an elaborate statement, the central point of which was that a general civic revolution is taking place in Germany in which the young Germans are undertaking to bring into control the best pure German element. He stated that the mistreatment of Jews was only one segment of the conflicting conditions that developed under this revolution, against groups; that it included certain other groups, as well as Jews; that the Government is not a party to the Jewish antagonisms or persecutions, as the case may be considered; that the Jews comprise one per cent of the population of Germany, but that many hospitals are manned exclusively by Jews; that of four thousand lawyers in Berlin, three thousand are Jews; that Jews occupy key positions in all important walks and avocations entirely disproportionate to their relative

population in Germany, and that in the general movement to equalize the condition of the various groups and even nationalities, including certain other groups that poured into Germany following the War, it was not unnatural that these groups became a target for more or less rough treatment as a necessary part of this plan or general readjustment of the organic political structure of the German Government, of their organized Society, and of their general economic situation.

The Ambassador insists that the worst has been over for some time, so far as it relates to the Jewish troubles in Germany; that the situation is constantly improving; that there is no purpose to expel the Jews as a race from Germany; that many laws and court agencies are from week to week becoming more and more available for the protection of Jews and Jewish rights and property, and that it will only be a question of a reasonable time when normal conditions and relationships will, to a measurable extent, be brought about.

I repeated with much emphasis the deep seated feeling in this country and expressed the earnest hope that every possible step be taken to alleviate and relieve the acute situation in Germany as it relates to the treatment of the Jews. The Ambassador showed every disposition thus to confer personally and unofficially, both now and hereafter, relative to any subject where there might be a chance to promote better understanding and more friendly relationships between the Governments and the peoples of this country and Germany.

C[ORDELL] H[ULL]

862.4016/1210

The Chargé in Germany (Gordon) to the Acting Secretary of State

No. 2517

BERLIN, July 8, 1933.

[Received July 21.]

SIR: In continuation of section 6 of despatch No. 2447 of June 3, 1933,¹⁶ I have the honor to report that although the outward manifestations of official anti-Semitism are becoming less frequent, the enforcement of discriminatory measures against Jews shows no signs of abating. Consistently and relentlessly the Jews are being eliminated from practically all walks of life. This procedure is most effectively facilitated by the present organizing of the Reich as a corporative State, for Jews are not permitted to join the various "estates" now being formed.

Since the advent of the Nazi regime about five months ago, anti-Semitic activity in Germany may be divided into three distinct stages. The first stage was the period of atrocities which immediately followed the Nazi victory at the polls on March 5. These atrocities were encouraged by inflammatory speeches of Nazi leaders. It was during this

¹⁶ Not printed.

period that Minister Goering made his rabid speech at Essen (see section 3 of despatch No. 2247 of March 13, 1933¹⁷). The second stage was the period of official legislation and other measures against Jews, which began with the general anti-Jewish boycott on April 1 and in which such legislation as the *numerus clausus* for Jews in the professions, educational institutions, and in almost all walks of life was enacted. In the present, third period, the Nazis are concentrating on the enforcement and administrative amplification of anti-Jewish laws already enacted. The various regulations issued by the authorities in connection therewith show that the Nazis intend to carry the Aryan principle to the utmost limit. The severity of these regulations is intensified by the anti-Semitic activities of various Nazi organizations which feel that the pace of the revolution is not rapid enough.

Though the physical atrocities against Jews appear to have ceased on a systematic scale, sporadic cases are still not infrequent. The Embassy was informed from reliable sources that as late as three weeks ago a small group of prominent Jews who gathered in a private dwelling in Berlin to discuss ways and means of relief for their needy co-religionists were dragged out by uniformed Nazis and taken to a secret Nazi haunt, where several of them were beaten up. This incident was later reported in the London *Times*. Only a few days ago, the Advisory Bureau for Physicians was raided by the police because the local Nazi Medical Organization charged that its members were Marxists and that it disseminated atrocity propaganda in foreign countries. Eighty Jewish physicians were arrested. It appears that the work of this bureau, which was formed as a result of the discriminatory measures against Jews in the professions, consists solely in advising Jewish physicians as to the possibilities of earning a livelihood in other countries, and that the charge of disseminating atrocity propaganda arose from the fact that the bureau corresponds with Jewish organizations in foreign countries.

The official boycott against Jewish business in April was followed by private boycott measures by various Nazi organizations. The National-Socialist Economic League has announced that framed signs with the legend "German Business", surmounted by the Nazi swastika, were now available for display by non-Jewish firms, in exchange for an annual payment, the proceeds to be used for creating employment for jobless members of Nazi Storm Detachments. In various small cities, under pressure of Nazi organizations, newspapers refuse to accept advertisements from Jewish firms. In Nuremberg, the official advertising agency refused to accept an advertisement for the local telephone directory "in view of the Jewish character" of the firm in question.

¹⁷ Not printed.

Nazi organizations of doctors and lawyers especially are conducting a bitter and relentless boycott against their Jewish colleagues. On the basis of the new civil service law, Jewish doctors have been excluded from all social insurance organizations in Germany. Not satisfied with this, the leading German medical association has now concluded an agreement with private sick benefit insurance companies whereby the latter agree not to pay bills submitted by Aryans for treatment by Jewish doctors.

The Berlin Chamber of Lawyers passed a resolution prohibiting members of the bar from having any professional relations, especially partnership arrangements, with Jewish lawyers who had been disbarred. Any such arrangement entered into since September, 1930, must be dissolved. This means that disbarred Jewish lawyers who sought to evade the "Aryan clause" by forming a partnership with a lawyer entitled to practice in court must give up all hope of earning a livelihood in their profession.

Even private teachers come under the "Aryan clause." Persons who conduct private preparatory schools, language schools, art schools, dramatic and cinema schools, and athletic gymnasiums, and persons who teach in such schools, must furnish evidence of Aryan origin by August 1, otherwise their license will be revoked.

Racial hygiene has been elevated to primary importance in the curriculum of schools and universities. Particular emphasis is being placed on the evils of miscegenation. According to the latest official interpretation of the new civil service law, a person married to a non-Aryan may not be appointed to the civil service; civil servants who marry a non-Aryan must be dismissed. Certain recent remarks by the Reich Minister of the Interior indicate that a law prohibiting intermarriage between Jews and Christians in Germany will soon be forthcoming.

Dr. Pfundtner, Secretary of State in the Reich Ministry of the Interior, announced only a few days ago that a new citizenship law on the racial principle is being contemplated. It seems clear that the purpose and effect of such a law would be to reduce the German Jews to the position of ignominy to which they were subjected during the Middle Ages. Nazi leaders have repeatedly boasted in the past that one of the first acts of a Nazi regime would be to set up ghettos in Germany.

It will thus be seen that the outward and official manifestations of anti-Semitism in present-day Germany fail to reveal the real brutality and truculence of the Nazis towards the Jews, and that they are determined to make life for Jews in Germany well-nigh insufferable. As yet there are no signs that the Nazis intend to let up on these discriminatory measures.

Respectfully yours,

GEORGE A. GORDON

611.6212/9

*Memorandum by the Secretary of State of a Conversation With
the German Chargé (Leitner)*

[WASHINGTON,] August 11, 1933.

The Chargé d'Affaires of the German Embassy called and presented a copy of an address by Samuel Untermyer published in the *New York Times* of August seventh, in which he was strongly urging a boycott against German commerce on account of the Jewish situation in Germany and the alleged mistreatment of Jews there with the knowledge, at least, and without objection, by German officials. He protested very earnestly against this sort of boycott against the German people and German commerce. I questioned him, in reply, to tell me how the matter ought to be treated. I then proceeded, personally and unofficially, to recite to him the alleged mistreatment of Jews in Germany and the terrific demand of Jews and other leaders in this country for some action, or utterance at least, by the American Government, properly characterizing such conduct. I stated that the best remedy would be for the German people or the German Government or both to conclude as quickly as possible whatever may be their activities relating to assaults upon or mistreatment of Jews in Germany; that this would enable us to make suitable appeals to discontinue the boycott.

C[ORDELL] H[ULL]

862.5151/1202

The Ambassador in Germany (Dodd) to the Secretary of State

No. 132

BERLIN, September 7, 1933.

[Received September 16.]

SIR: I have the honor to report that the press of August 31, 1933, announced that the German Ministry of Economics had issued a Circular Order to the Foreign Exchange Control Offices, calculated to provide funds to facilitate Jewish emigration without placing an undue demand on the Reichsbank's supply of foreign exchange.

In reply to an inquiry, the Embassy has been informed by the Ministry of Economics that the so-called "Palestine Foreign Exchange Agreement" was laid down in an exchange of letters between the Bank of Temple Society Ltd., a Jewish institution, and the Reich Ministry of Economics. The Ministry of Economics then instructed the Foreign Exchange Control Offices in the matter. It is understood that the Foreign Office and other Ministries involved participated in the preliminary negotiations. A translation of the announcement of the new arrangement, from the *Vossische Zeitung* of September 1, 1933, is enclosed.¹⁸

¹⁸ Not printed.

In addition to prescribing added facilities for Jews emigrating to Palestine to enable them to establish a livelihood along the lines understood to have been urged by Lord Melchett at the Prague Zionist Conference, the press announcement specifies a working arrangement whereby emigrants to other destinations may obtain the use of their income from German sources for limited periods, if they have been unable to establish a source of livelihood abroad. It also defines the status of their securities left behind in Germany by placing them in the same category as the blocked securities of foreigners.

Respectfully yours,

WILLIAM E. DODD

862.4016/1260

Memorandum by the Secretary of State

[WASHINGTON,] September 14, 1933.

During his call, the German Chargé referred to boycotting conditions in this country due to the agitation of Samuel Untermyer and others against Germany on account of the alleged Jewish persecutions there. I stated to him that something clearly was going on in Germany in relation to Jews and Jewish conditions; that it was not my purpose to go into detail as to just what it was, except to say that to my knowledge an immense amount of news or information has been coming out of Germany to the effect that serious mistreatment of the Jews has taken place and is still being continued. I said that I myself had been hearing enough of such reports from Germany to understand how private citizens in this country had been receiving like information to a greater or less extent, and, of course, become much wrought up. I added that if the German Government, whose politicians and officials more or less are quoted as being in favor of driving the Jews out of Germany and at the same time prohibiting them from taking their property along, would assemble official and other facts sufficient to convince the outside world that this sort of treatment of the Jews had been absolutely discontinued and abandoned, there would then be a chance for us to appeal to our fellow-Americans to desist from the boycott. I further added that as conditions were, we were being terrifically bombarded from week to week, over a period of many months back, in the way of demands for strong characterization of the acts of German officials in mistreating Jews in Germany.

C[ORDELL] H[ULL]

862.4016/1268

Memorandum by the Secretary of State

[Extracts]

[WASHINGTON,] September 21, 1933.

The German Ambassador called and offered three complaints.¹⁹

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The third complaint was the boycotting of German goods. I stated, unofficially, that officials of our Government had been subjected to personal criticisms, which were really offensive in their denunciatory and condemnatory nature, about the alleged treatment of Jews by the German population and government, while I and other officials had been endeavoring to avoid complications with the German Government by refusing to attack it on account of this alleged mistreatment of its Jewish nationals. I said that we had undergone the most bitter criticism in our efforts to refrain from criticising the German Government on account of its internal policies of alleged persecutions of the Jews; that more than once I had sent for congressmen and senators and urged them not to go beyond the proper bounds, in the hope that we might all the sooner secure readjustments of this delicate situation in Germany and also avoid the possible risk of causing increased mistreatment of the Jews rather than of lessening it. I stated that when Congress met next January, there would likely be a flood of denunciation of the German Government and nationals on account of their attitude towards the Jews in Germany, unless the facts were entirely different from those on which the impression in this country was based and unless his government saw to it that those facts were revealed to our country in a more convincing manner. I finally stated that the people in this country believed that something serious was taking place in Germany with respect to mistreatment of the Jews, and I added that if and when the German Government would bring about a cessation of whatever was taking place in Germany in the way of Jewish treatment by the German Government and nationals, it would then be possible to check boycotting and similar incidents and occurrences in the United States.

C[ORDELL] H[ULL]

¹⁹ The first two complaints by the German Ambassador related to the raising of a red flag over the German Consul General's building in Chicago, and an extradition matter pending in Boston.

862.4016; 1314

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1695

BERLIN, November 1, 1933.

[Received November 20.]

SIR: I have the honor to refer to previous despatches in which I have recited to the Department developments in the anti-Semitic movement in Germany, and to transmit the following data and observations to bring the picture to date. In the more recent of these despatches it has been shown that although the active physical persecution and maltreatment of the Jews in Germany has been modified gradually and has now practically disappeared, the real movement against the Jews has continued without abatement in every sphere of German life, and that in reality the action against the Jews is marked by the same implacability as during the first days of the revolution. The attitude of the Government and of the party is still to eliminate them from active and gainful participation in any phase of German life.

It is unquestionable that the moderation in the physical persecution of the Jews was brought about by the reaction of public opinion in the rest of the world rather than by the force of opinion in Germany. While the action against the Jews in the professions, in business and in other phases of German life has never been acceptable I believe to the mass of the German people, the force of this opinion within Germany has little weight as there is no expression of independent or opposite opinion within the country. The force of public opinion in the rest of the world has so far had little effect on the implacability and definiteness of the movement against the Jews in the professions and in business. The present leaders of Germany, while not so sure as they were eight months ago that they "can do as they will" in Germany, have by recent events been strengthened in their will to show independence of outside opinion. That the deepest fundamental reason for the action against the Jews in Germany is not so much racial as one of competition, is becoming daily more apparent.

Although the real movement for the elimination of the Jews from all places in the Government, professions and business continues daily, there are increasing evidences that certain voices within the party are being raised against it on account of the danger which is seen to the social and economic structure of Germany. Eight months have passed since the beginning of the revolution, and while the days of action are not yet over, at least certain of the leaders of the party are beginning to think a little more before they act and are beginning to perceive some of the effects of what they have already done. Within the past few months therefore, particularly since Schmitt became a member of the

Cabinet, the real importance of the action against the Jews has become apparent and some of the party leaders are looking at it no longer merely as a fundamental part of the party program, as a matter of prejudice and as a matter of competition, but have been forced to look upon it as a factor vital in the problem of Germany's future and her place among the other nations. Dr. Hilland, one of the more active and intelligent of the younger party leaders and who has been counted among the radical wing, informed me a few days ago that he had realized only shortly how important this problem really was as a question in the future position of Germany.

Although some of the leading business men and financiers of Germany, as well as some of her public men, realize the dangers of the complete elimination of the Jews to the social and economic structure, they are almost without exception afraid to raise their voice. They feel and have learned by experience that doing so is only to prepare the way for their own elimination. The advent of Dr. Schmitt therefore in the Cabinet was of primary importance, and when one reviews what has taken place in the Jewish question since that time it is possible to say that although concretely very little has been realized in action so far, a great deal has been done in preparing the way for a more moderate handling of the question. Dr. Schmitt is a fearless man as well as a clear thinker, and one who has the personality which carries with it persuasion and conviction. He has realized that open action and too rapid expression of his views would only endanger his position and the possibility of greater moderation being arrived at. It is known that he had a conversation with the Chancellor some time ago, which lasted from 11 o'clock in the evening until 5 o'clock in the morning, in which he endeavored to convince him that for Germany the Jewish question could not be one of race prejudice and competition, but that it must be viewed in cold blood and in the light of what the elimination of all these people so rapidly would mean for German culture, business and finance, and her consequent position in the world. It is understood that in this conversation with the Chancellor Dr. Schmitt pointed out that in the field of research, for example, the greatest contributions to German progress in recent years had been made by Jews. He pointed out that the possibility for the German people to hold out during the last two years of the war was almost entirely due to the scientific research and practical application of discoveries by two or three Jews. He pointed out that in various of the major industries of Germany the organization as well as the industrial efficiency were due to Jewish direction or initiative, or both. The net result of the conversation, however, was that the Chancellor did not give his Minister of Commerce any indication of support in a more moderate program. Dr. Schmitt informed me himself, how-

ever, that he was not discouraged and that he was convinced that the attitude of some of the major leaders in the entourage of the Chancellor was already much better and understanding.

While I do not believe that one can be optimistic that any change of importance will take place in the near future, I am convinced that even though the political machinations against Dr. Schmitt should be successful and he be eliminated from the Cabinet, he has laid the groundwork for a more reasonable handling of the Jewish question. He has been indefatigable in his campaign of education of the younger men in the party and in the Government. He has gained their respect by the objectivity of his views and by the clarity of his presentation. It is on the other hand true that the work which he has been doing has gained for him the definite enmity of powerful men like Dr. Goebbels and radical members of the party, who are still acting on prejudice and in passion, and whose perverted notion of patriotism consists in seeing a Germany completely of their own fashioning.

One of the most unfortunate features of the situation is that, as I have already pointed out in previous despatches and again in this one, Mr. Hitler himself is implacable and unconvinced and is the real head of the anti-Jewish movement. He can be reasonable on a number of subjects, but on this he can only be passionate and prejudiced. He goes into a passion whenever the question comes up, as he holds the Jews in and out of the country responsible for the bad press which his regime and he personally have in the rest of the world. He fails to see that it is the acts of the party rather than the acts of persons outside of Germany which have brought about this unfavorable public opinion. While in some respects he is a very modest man, there is increasing reason to definitely understand that he is a man governed by his passions rather than by reason, and there is therefore no indication that the appeasement in the Jewish question will come either through initiative or direct tolerance from him. A further unfortunate aspect of the problem is that a man like Dr. Keppler who has his private ear and who is his economic adviser, although appreciating the situation in the same manner as Dr. Schmitt, does not have the courage to discuss the matter with the Chancellor. He is interested more in holding his position than he is in really giving faithful advice to his chief. Dr. Schacht who could exert such a great influence in this matter, has also long since ceased discussing it with the Chancellor as he believes, and perhaps rightly, that he must do nothing which will interfere with his remaining as head of the Reichsbank. A feature of every revolution is that certain leaders are kept more busy holding their place and combatting others who are trying to get their place, than with the actual duties which should occupy them, and this is true in Germany to-day.

The only encouraging thing, therefore, which one can see about the anti-Jewish movement is that Dr. Schmitt has had an influence in laying a groundwork towards more moderate action and that, if he is able to remain in the Cabinet, he will be able to go a long way in bringing about a solution. This, however, is still undecided, but if he is able to hold his place until the end of November, he is likely to be able to hold on for a considerable time longer, and that may be interpreted as a favorable indication not only in the Jewish question, but on other economic and social problems.

I have given the Department the foregoing background, for after all this Government is a very personal one and so much depends on individuals. It would be useless to recite the many concrete incidents which come to our attention daily to show that in practice the movement against the Jews continues with undiminished implacability. As of interest, however, as a concrete incident I may say that a few weeks ago the governing board of one of the leading industrial concerns in Germany had its meeting. The chairman of the board was obliged at the opening of the session to place before the board two letters which he had received from two Ministries in Berlin, informing him that the Jews who still remained in the organization would have to be eliminated. All the members of the board including the non-Jews, who were already much in the majority, expressed the opinion that this might be fatal to the business as the men to be eliminated were those who had made the business possible and kept it going in difficult times. There was no recourse, however, and the men had to be eliminated.

On the first of October a committee of the Berlin Stock Exchange which had been studying the matter, issued a list of 150 members who were to be dismissed as from that day on. Of these 150 brokers eliminated 85% were Jews. In order to make it appear that it was not purely action against the Jews, three of the brokers on the list belonged to the National-Socialist party, but it was indicative of the mentality which prevails that these three had long been marked for elimination on account of improper practices. Of the 150 who were eliminated on the 1st of October, eight have since died, two according to the press as suicides, and six from natural causes. There is, however, much reason to believe that of these six the majority may also have been suicides. I recite this incident as showing the wholesale measures which are still taken and indicating at the same time the mental distress and its effects which these measures have. One has to live in Germany and to be really a part of its life in order to realize the mental cruelties which are being daily inflicted here, which are in many respects much more severe than the physical barbarities which marked the first days of the revolution.

Men like Dr. Schlieper of the Deutsche Bank, Dr. Jeidels of the Handelsgesellschaft, Dr. Solmsson of the Deutsche Bank and a few others have held their place, but these men are among the few outstanding bankers of the world. There is no one to replace them, but at least one of them has already had to spend large sums in the form of bribes to hold himself in his position. If he has done this, I believe I know him well enough to say that it is not so much out of a desire to hold his position for his own sake, but because he remains a good German and wants to remain in his position to do what he can for his country. It is interesting that many outstanding Jews in spite of the fact that they are practically denied all equality and that the Government is planning to take away from them their citizenship, remain devoted to their country and to its interests.

The dismissal of minor employees and of heads of departments in the various banks and in important business concerns goes on so that in this field the "cleaning up" process will soon be as complete as it already is in Government circles, in the professions and in the universities. The professional, industrial, economic and financial structures of the country have been given a blow which may be vital. Whether it is vital depends upon what will happen in the Jewish question. If there is a more moderate policy the dangers to the Germany of to-morrow are not so great. If the policy is not moderated, the blow which Germany has delivered to herself, will be one which will weaken her for at least two generations.

As one of the definite, concrete achievements in the direction of moderation which Dr. Schmitt has attained, I think should be mentioned here the declarations which have appeared in the press in the last weeks to the effect that the distinctions which have been made between Aryan and non-Aryan firms in business cannot continue, as they have had a distinctly unfavorable effect on the business structure and have increased unemployment in certain lines. In one of his statements Dr. Schmitt says: "I am convinced, as is the Minister of Propaganda, that there is no ground for action against a firm as long as the firm has not broken the law or the basic principles of business honor." This declaration had a very good effect.* Further, it is unquestionable that Dr. Schmitt has been able to stop the action directed against the department stores, at least for the time being, as he has convinced the party leaders

* This declaration, however, that there is to be no distinction between Aryan and non-Aryan firms has had effect only so far as the important firms are concerned, especially large employers of labor. In smaller manufacturing establishments and in retail establishments discriminatory practices against those owned, operated or controlled by Jews are in constant effect, and the party is directly fostering them, and many smaller businesses are being ruined and will continue to be ruined by these discriminatory practices. [Footnote in the original.]

that action taken at this time would greatly disturb not only these retail establishments, but also the manufacturing establishments which serve them, and that unemployment and distress would be consequently increased. On the other hand, it is significant to note that at the same time that Dr. Schmitt made this declaration, from purely party sources came the declaration that although the action against the department stores and the cooperatives for the time being could not be carried through, it must not be considered that the original program has been abandoned.

On the other hand, the radicals on the Jewish question have succeeded in the social field in carrying through even more definitely and implacably the provisions of the Aryan paragraph in the "Beamtenlaw", and additional persons who have not been able to show a clear Aryan background from 1800 have been separated from important positions. The *Berliner Tageblatt* of October 28, 1933, carried an article to the effect that the use of the Old Testament in the schools has been further regulated and therefore the greater parts of the Old Testament are excluded from use. This is merely indicative of further action which is taking place along this line, following that taken a short time ago, substituting German terms in religious services for "Jehovah" and "Amen".

It is these contrasting trends which it is necessary to bear in mind before forming any definite conclusions with respect to the status of the anti-Semitic movement.

It is still too early to make any definite forecast as to what the future developments of the anti-Semitic movement will be. Much depends on the political developments within the next few weeks and certainly within the next few months. If I may express a personal opinion, it is that no fundamental change towards moderation in the Jewish policy can come about until there is some radical change in the Government which will enable it to turn about-face on this question as it already has on others, on which, however, no such popular prejudice had been aroused and on which the change of attitude would not so seriously affect party prestige.

Respectfully yours,

GEORGE S. MESSERSMITH

AMERICAN PARTICIPATION IN THE ESTABLISHMENT OF THE HIGH COMMISSION FOR REFUGEES (JEWISH AND OTHER) COMING FROM GERMANY

548.D1/2 : Telegram

The Minister in Switzerland (Wilson) to the Secretary of State

GENEVA, September 28, 1933—10 p.m.

[Received September 28—7:30 p.m.]

208. De Graaf, Dutch Minister for Foreign Affairs, asked me to call and informed me that he will bring before the Assembly tomorrow a resolution proposing that the Council study the problem of German refugees in foreign countries. He informed me that his country has some 7,000 refugees, many Jewish, some of education and standing; France about 30,000; Switzerland 4,000; Czechoslovakia and Poland unknown numbers. The problem presents to them a serious one, economically and socially, which can only be settled by international cooperation.

De Graaf spoke to Neurath²⁰ about his intentions and found the latter bitterly opposed since he claimed these refugees had not been expelled from the country but had left of their own free will and could return at any time. De Graaf pointed out that this might be the theory but was certainly not the practice. Subsequently Neurath said that he would not oppose the resolution but would remain indifferent to it. Belgium, France, Switzerland, Czechoslovakia have promised their adherence.

DeGraaf hoped that I would put this information before you so that the action he was taking might have, if possible, a sympathetic reception in the United States.

WILSON

548.D1/16 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 9, 1933—7 p.m.

[Received October 9—3:25 p.m.]

229. In the private negotiations conducted in the sub-committee of the second committee the German delegate (Ritter) formally confirmed the German position as outlined in the Consulate's No. 223, October 7, 7 p.m.,²¹ to the general effect that Germany is "ready to make possible" the appointment of a high commissioner by the Council if after his appointment all League connection with him or with his functions shall cease.

²⁰ Constantine von Neurath, German Secretary of State for Foreign Affairs.

²¹ Not printed; for details concerning the German position, see letter from the Secretary of State to President Roosevelt, *infra*.

While at this stage the details of his position and functions are naturally not being formally discussed it is in general envisaged that under this arrangement the high commissioner would be responsible to some kind of a governing body of government representatives which would perhaps include also representatives of private organizations.

The Germans have declared that they have made their last concession. Although they could not serve on such a commission, they have intimated that it would receive the informal cooperation of the German Government. On the other hand, the German Government will have nothing whatsoever to do with any kind of a "League" commission.

The German position appears to be receiving the support of the British and the Dutch and it is believed that the Italians and the Czechoslovaks would agree to such an arrangement. Reasonable leaders in Geneva also favor acceding to the German position for practical reasons feeling that German cooperation in any such project is entirely to its success.

The French only seem to be in opposition to the non-League commission, stating that any project to take care of the refugee situation must have "some kind of an official connection with the League of Nations." The French do not give any reason for their position other than the technical one that the matter so clearly falls under article 24 of the League Covenant²² that to create an extra League body would be highly inconsistent and would definitely reflect on the prestige of the League. Otherwise the French position is obscure. It is seen that should the project for a League commission come before a League body and should Germany vote against it, as most certainly would be the case, a definite "break" would be precipitated. It is further seen that France might desire to isolate Germany by bringing about just such a situation. The French, however, seem at the same time to be endeavoring to avoid such a "break".

Speculation in Geneva circles is naturally rife as to the attitude of the United States toward this whole matter, in particular its possible position vis-à-vis a League commission or an autonomous commission and also as to the possibility of an American national serving as high commissioner, the names of ex-President Hoover, Theodore Roosevelt and Nicholas Roosevelt being mentioned.

GILBERT

²² *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1910-1923* (Washington, Government Printing Office, 1923), vol. III, p. 3336.

548.D1/39

The Secretary of State to President Roosevelt

MEMORANDUM

MR. PRESIDENT: I have been informed by the American Consul at Geneva that an invitation of which the following is a translation from the French made in the Geneva Consulate, is being sent forward by the Secretary General of the League of Nations to this Government.

"I have the honor to send you herewith the text of a resolution adopted by the Assembly on October 11th, 1933, having in view the organization on an international basis of assistance to refugees (Jewish and others) coming from Germany (Document A53.1933.II).²³

"At its meeting of October 12th, 1933, the Council designated the governments which should compose the Governing Body charged with assisting the High Commissioner, who will be appointed to direct all the work of relief envisaged (Document C 586, 1933, enclosed herewith).²⁴

"These Governments are:

"The Netherlands, France, Poland, Czechoslovakia, Belgium, Switzerland, Denmark, Italy, Great Britain, Sweden, Spain, United States of America, Argentina, Brazil, Uruguay.

"In accordance with the decision of the Council, I beg you to be so good as to advise me as to whether your Government accepts this invitation in order that I may so inform the High Commissioner immediately following his appointment.—Secretary General."

The Assembly resolution to which the invitation refers is as follows:

"1. Having regard to the situation created by the fact that a large number of persons, Jews and others, coming from Germany have in recent months taken refuge in several countries.

"2. Considering that their presence in those countries constitutes an economic, financial and social problem which can be solved only by international collaboration.

"3. Suggests that the Council should nominate the High Commissioner to negotiate and direct such collaboration and particularly to provide as far as possible work for the refugees in all countries which are able to offer it.

"4. Requests the Council of the League of Nations to invite the states and, if they find it useful, private organizations, best able to assist these refugees to be represented on a governing body, the duty of which will be to aid the High Commissioner in his work, the High Commissioner having to submit periodical reports on the development and fulfillment of his task to the said governing body, which would forward them to the states likely to be able to assist in the action contemplated.

"5. Suggests further that the expenses of this collaboration and of the High Commissioner's office should be defrayed by funds contributed voluntarily from private or other sources.

²³ League of Nations, *Official Journal*, Special Supplement No. 117 (Geneva, 1933), p. 47.

²⁴ League of Nations, *Official Journal*, December, 1933, p. 1616.

"6. Recommends to the Council that in accordance with Article 33, paragraph 2, of the regulations for the financial administration of the League, it should approve that a sum not exceeding 25,000 francs should be advanced to the High Commissioner from the working capital funds, it being understood that this advance will be refunded to the League out of the funds placed at the disposal of the High Commissioner.

"7. Is convinced that all Governments will assist the High Commissioner to the best of their abilities in the tasks defined above. With this object, the present resolution will be communicated to States members and to non-members of the League.

"8. Finally, the Assembly expresses the firm hope that private organizations will collaborate in every way with the High Commissioner for the success of this relief action."

In recommending that an acceptance, a draft of which is attached in the form of a telegram to the Legation at Berne,²⁵ be transmitted to the League, I am reviewing some of the surrounding circumstances.

On September 29 the Netherlands representative to the League Assembly presented a resolution to that body for its approval. The resolution pointed out that German refugees were presenting in several countries "an economic, financial and social problem which can be solved only by international collaboration", and called upon the League Council to take measures for the solution of the difficulty.

According to the practice of the Assembly the resolution was referred to one of its Committees for examination, in this case the Second Committee which ordinarily concerns itself with technical and economic questions.

This Committee adopted a report supporting the views of the Netherlands representative and recommending to the Assembly that, in order to secure speedy results a High Commissioner be appointed "who should be allowed the fullest freedom of action". The Committee also stated that "it is likewise essential that the High Commissioner should be able to keep in touch both with the Governments directly concerned with the problem and with those of any other countries, members and non-members of the League of Nations, which might be able to contribute in any way to its solution".

In order to effect this contact between the High Commissioner and interested Government, the Committee recommended that the High Commissioner "be assisted by a Governing Body to which he would be responsible". The Governing Body was to be made up of representatives of the Governments and, with the High Commissioner, would constitute an autonomous organization. The Committee also recommended that the High Commissioner submit "periodical reports on the fulfillment of his task including financial administration to the Governing

²⁵ Draft not attached to file copy of this document; for text of acceptance, see telegram No. 53, November 21, to the Minister in Switzerland, p. 373.

Body alone which would forward them to States likely to be able to assist in the action contemplated".

It may be said in passing that the complete disassociation of the High Commissioner and the Governing Body from the League, following their creation, by providing that they should form an "autonomous organization" was the result of the objections of the German Committee member who made known that his Government would not object to the proposed solution of the refugee problem if after the appointment of the High Commissioner all League connection with him or with his functions would cease.

The Assembly, with the German delegate abstaining, adopted the Committee's report, together with the Committee's recommended resolution, the text of which, as set forth above, will appear as an enclosure in the League's invitation to this Government to name a representative on the Governing Body.

The functions of the High Commissioner and inferentially of the Governing Body are regarded as expressed in paragraph three of the resolution. The Consul at Geneva reports that that paragraph "was very carefully worded for the express purpose of avoiding the aspect of placing any obligation or pressure on governments for the reception of refugees or for affording them work". Technically all governments are left entirely free in their decisions in this case and according to information received by the Consul at Geneva from League officials "it is tacitly understood that the acceptance by a State of membership on the Governing Body carries with it no obligations to receive refugees within its own territory" and that "such obligations as may exist are construed as limited to 'advice' and to facilitate the raising of funds".

Judging from the terms of the invitation the members of the Governing Body will be regarded as having the status of government representatives acting under such general or special instructions as they may receive from their respective governments. The "autonomous organization", made up by the High Commissioner and the Governing Body, is left free to determine its own course of action, both in general and detail, subject, of course, to the control and direction of the governments to which it is responsible.

It is anticipated that private organizations, to be named by the Governing Body itself, will also be represented, in a consultative capacity, on that Body. The administrative expenses of the High Commissioner and of the Governing Body will be derived from general funds which it is hoped will come from private subscriptions, probably through the interested private organizations. It is also hoped that there will be some government contributions. However, the League will make a repayable advance of 25,000 Swiss francs to the High Commissioner for use until the other funds are available.

The Assembly called upon the Council to carry out its will as expressed in the resolution and the Council, the German delegate abstaining, has accordingly extended invitations to the following Governments to serve on the Governing Body:

The United States,	Czechoslovakia,	Italy,
The Netherlands,	Belgium,	The United Kingdom,
France,	Switzerland,	Sweden,
Poland,	Denmark,	Spain,
Argentina,	Brazil,	Uruguay.

The Consul at Geneva reports that officials, at present in that city, of all the States bordering on Germany and of Great Britain and of Italy have already intimated that their Governments would accept the invitation to membership on the Governing Body.

The Council also instructed its President to appoint the High Commissioner, in consultation with the representatives of the Governments of Spain, France, Italy, Czechoslovakia, the Netherlands and the United States. As the American Government up to the present, has not been approached to consult with the President of the Council and as there appears to be no compelling reason why a representative of this Government should participate in the selection of the High Commissioner, I suggest that the American Consul at Geneva be instructed, along the lines of the attached telegram to indicate informally to the Secretary General of the League that this Government does not desire to take part in the choice of the High Commissioner.

There also seems to be some likelihood that an effort will be made to obtain the services of an American national as High Commissioner. Here again there appears to be no compelling reason for this Government to suggest or approve any given person for that position. Accordingly I suggest that the Consul at Geneva likewise be instructed informally to make this attitude known to the Secretary General so that if an American is named, he will be chosen entirely on the League's own initiative and responsibility.

In the event that you agree that this Government should accept the League's invitation to name a representative on the Governing Body, you may have someone in mind to fill that position. As of possible assistance to you I am suggesting the following three names:

Admiral Mark Bristol
Ex-ambassador Houghton
Ex-ambassador Sackett.

Of the persons named, Admiral Bristol would perhaps most readily qualify in view of the fact that the League of Nations is desirous that the members of the Governing Body be persons who have had previous experience in refugee and aid work, though it is feared that his lack of private means might prevent his acceptance.

It is understood that the full Governing Body will not meet more than once or twice a year and that the continuous work will be entrusted to some kind of executive commission of the Governing Body. In order to keep expenses down, it is anticipated that the members of the Governing Body will give their services without compensation, though perhaps in some circumstances the members will be compensated by the governments which they represent.

C[ORDELL] H[ULL]

WASHINGTON, October 19, 1933.

548.D1/36 : Telegram

The Secretary of State to the Minister in Switzerland (Wilson)

WASHINGTON, October 24, 1933—4 p.m.

49. Upon receipt of the League's invitation to serve on the Governing Body for aid to German Refugees, assuming that its text coincides with that submitted to the Dep't in Geneva's 259 October 14,²⁶ you are instructed to deliver to Avenol²⁷ the following note of acceptance:

"The Secretary of State of the United States of America has the honor to acknowledge the communication, dated October (?), 1933, from the Secretary General of the League of Nations, in which the Secretary General requests to be informed whether the American Government desires, in accordance with the Assembly's resolution of October 11, 1933 and the Council's designation of October 12, 1933, to be represented on the Governing Body charged with assisting the High Commissioner who will direct the work of assistance to refugees coming from Germany.

In view of the fact that the people of the United States have, in times past, invariably regarded with a sympathetic interest all efforts to alleviate the plight of unfortunate peoples who find themselves in destitute circumstances beyond their control, the Secretary of State takes pleasure in informing the Secretary General that the American Government will be happy to name, at an early date, a representative to serve on the Governing Body."

HULL

548.D1/40 : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, October 24, 1933—4 p.m.

112. Your 263, October 17, paragraph 3, and your 246, paragraph 1 (c),²⁸ please indicate informally to Avenol that this Government does not desire to participate in the choice of a High Commissioner.

²⁶ Not printed. See text of the invitation quoted in the letter of October 19 to President Roosevelt, *supra*.

²⁷ Joseph Avenol, Secretary General of the League of Nations.

²⁸ Neither printed.

Your 263, October 17, paragraph 4, you should informally suggest to Avenol, in the event that an endeavor is made to obtain an American as High Commissioner, that this Government would prefer that the matter be handled under alternative C.²⁹

For your information, an acceptance of the League's invitation as set forth in your 259, October 14,³⁰ will be cabled to Bern for delivery.

HULL

548.D1/41 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 26, 1933—11 a.m.

[Received October 26—7:38 a.m.]

270. 1. Conveyed information to Avenol as instructed in the Department's telegram 112, October 24, 4 p.m., immediately upon receipt yesterday.

2. At private meeting of designated officials (Consulate's 246, October 12, 6 p.m.,³⁰ paragraph 1-C) held this morning it was decided to offer McDonald³¹ (Consulate's 263, October 17, 5 p.m.,³⁰ final paragraph) the appointment as High Commissioner for German refugees.

The Secretary General will communicate with him direct.

3. Learn that Avenol presented telegram from Raymond Fosdick,³² the French representative, a telegram from French Embassy at Washington and other messages in support of McDonald and that his choice was unanimous.

4. Department's telegram to American Legation at Bern No. 49, October 24, 4 p.m. The League is making American note public today.

GILBERT

548.D1/62 : Telegram

The Acting Secretary of State to the Minister in Switzerland (Wilson)

WASHINGTON, November 21, 1933—7 p.m.

53. Department's No. 49, October 24. Please transmit the following to the Secretary General:

"The Acting Secretary of State of the United States of America has the honor to refer to the American Government's note of October 25,

²⁹ The three alternatives suggested for obtaining an American High Commissioner were:

"(A) To ask the American Government if it desires to 'nominate' or to 'suggest' an individual;

"(B) To present the name of an American national to the Government and inquire whether the United States 'is agreeable to' or 'has any objection to' his appointment;

"(C) To offer the appointment direct to an American national, leaving to him entirely the matter of his taking it up with Washington if he so desires." (548.D1/29)

³⁰ Not printed.

³¹ James G. McDonald, of the Foreign Policy Association.

³² New York lawyer.

1933,³⁴ communicating to the Secretary General of the League of Nations the acceptance by the American Government of the invitation of the League of Nations to name a representative on the Governing Body for assistance to refugees coming from Germany. The Acting Secretary of State takes pleasure in informing the Secretary General that Professor Joseph P. Chamberlain³⁵ has been designated as the American representative on the Governing Body."

Professor Chamberlain will sail on the *Washington* November 22, to attend the first meeting of the Governing Body at Lausanne on December 5. Please request the Consulate at Geneva to extend all possible assistance to Professor Chamberlain.

PHILLIPS

548.D1/86

Report by the American Representative to the High Commission for Refugees (Jewish and Other) Coming From Germany (Chamberlain) to the Department of State

[NEW YORK,] December 28, 1933.

I. *Name of Conference, Opening Date, Closing Date.*

Opening date: 5th of December. Closing date: 8th of December.

II. *Agenda.*

Election of a Chairman and Vice Chairman and the Permanent Committee of the Governing Board. Appointment of organizations to be represented on the Advisory Council and of the organizations on the Advisory Council selected for the Bureau of that Council.

Adoption of statutes, rules and procedure of the Governing Body.

Discussion of the work of the High Commission and especially of the High Commissioner.

III. *Representation.*

Messrs. Borberg (Denmark).
 Joseph P. Chamberlain (United States).
 Henri Bérenger (France).
 Scoppa, (subsequently Majoni) (Italy).
 Doude van Troostwijk (Netherlands).
 Chodzko (Poland).
 Viscount Cecil of Chelwood (United Kingdom).
 Westman (Sweden).
 Rothmund (Switzerland).
 Lobkowitz (Czechoslovakia).
 Guani (Uruguay).

There were also present: Mr. James G. McDonald, High Com-

³⁴ For text of note, see telegram No. 49, October 24, to the Minister in Switzerland, p. 372.

³⁵ Professor of public law at Columbia University.

missioner, Mr. Wurf bain, Secretary-General to the High Commissioner, and Mr. May, General Counsellor to the High Commissioner.

The United States of Brazil and the Argentine were not represented. There was no answer from Argentine, but the Brazilian Legation at Berne stated that they were too much occupied to allow them to spare a member of their Legation to attend the meeting.

IV. *Organization of the Conference.*

Viscount Cecil of Chelwood was elected temporary Chairman and continued in this position till the end of the Conference when he accepted the nomination as Chairman. Guani was elected Vice Chairman and Rothmund, Doude van Troostwijk and Bérenger were elected members of the Permanent Committee. The Governing Body is to meet three times a year. The Permanent Committee of the Governing Body is expected to meet frequently at the call of the Chairman.

V. *Results of the Conference.*

The Statutes, interior regulations and financial regulations were adopted with modifications. Copies are included among the papers forwarded to the Department. An estimate of expenses for the year 1934 and for the months of November and December 1933 was adopted. The representative of each government announced that his government was not under any obligation to pay any part of these expenses, but it was clearly expressed in the minutes and in the statement of the estimate of expenses that they were to be paid by money raised by voluntary subscriptions.

The High Commissioner explained that he had received assurances that at least three-quarters of the expenses would be met by three important Jewish organizations, the Joint Distribution Committee of America, the Jewish Colonization Association, and the Jewish Agency for Palestine. He expected to have no difficulty in raising the balance from other sources. I personally discussed the expenses with the representatives of the three agencies and was encouraged to believe that the expectations of the High Commissioner would be realized.

The statutes as originally drafted seemed to imply the responsibility of the High Commissioner to the Governing Body and that communications with governments represented, at least, might be made through members of that body. The statutes were modified to make it clear that the High Commissioner will act on his own responsibility in making plans and carrying them out and that there is no responsibility on the part of the Governing Body or the governments represented thereon for whatever he does. His relations with governments are solely on his own responsibility without implicating the responsibility of any of the governments represented on the Governing Body. He will report regularly to the Governing Body which will discuss his reports. The

members of the Governing Body will aid him in any way they can and will take up with their own governments the work of the High Commissariat. The procès-verbal shows clearly that there is no governmental responsibility involved in the financing or the activities of the High Commission.

Senator Bérenger suggested that the reports of the High Commissioner be sent to the League of Nations. This would have implied the possibility of the reports being presented to the Council or the Assembly and thereby cause a debate in either body on the question of German refugees. It was pointed out that Germany had agreed to abstain from voting on the resolution creating the High Commissariat on the understanding that the High Commissariat would be independent of the League and would not report to the Council or Assembly. Both the High Commissioner and the Chairman, Lord Cecil, pointed out to Senator Bérenger that it would be regarded by Germany as a breach of this understanding if reports were submitted to the League and he did not press his suggestion.

One of the most difficult questions was the selection of the private organizations to be represented on the Advisory Council and its Bureau. There exists a strong feeling between the Jewish organizations which have raised money and directed relief and the more popular organizations which do not raise a great deal of money but which are deeply interested in the problem affecting Jewish political and social equality in European countries and in the advancement of the Zionist movement in Palestine. The Jewish agency, the principal Zionist organization, is concerned in both relief and the legal position of Jews, but the American Joint Distribution Committee and the Jewish Colonization Association are strictly non-political and are interested only in raising funds and making plans for the care of refugees. In the United States the American Jewish Congress probably represents the mass of the Jewish people who are interested in securing better treatment for Jews in European countries. The great relief organizations feared that their work in Eastern European countries would be seriously hampered if they were put in close relationship with the more political organizations, and furthermore feared the control of the Advisory Committee by those organizations owing to their vastly greater numbers and vigorous propaganda. The High Commissioner has the confidence of the relief organizations and by skilful negotiation was able to gain their approval and that of the other Jewish groups to the list of associations contained in the Advisory Committee. He also was able to persuade the more popular agencies to consent to the formation of the Bureau of the Advisory Committee which should contain only the relief agencies. This satisfied the relief agencies and gave the Commissioner a small committee to

which he can turn for highly skilled help in preparing his plans. The securing of the agreement of these groups was an evidence of the skilful diplomacy of the High Commissioner. The need of cooperation between the different Jewish agencies was stressed throughout the meeting and strongly impressed itself on my mind; the fact that he was able to persuade them to accept the organization of the Advisory Committee is evidence that he will be able to secure a coordination of their efforts.

The discussions at the private sessions of the Governing Body turned principally on the difficulties of the states bordering on Germany in caring for the refugees which have flocked to them. The speech of the High Commissioner at the opening session contains the best figures available to show the distribution of refugees, but Senator Bérenger claims that the French total is too small and should be at least 35,000. Senator Majoni for Italy said that the Italian figure should be about 5,000. France, Czechoslovakia, Switzerland, and Holland all said that they would have great difficulty in maintaining any more refugees and that they would not be able to permanently provide even for the number already within their territory. All voiced accord with Senator Bérenger when he said that France was ready to be a place of assembling refugees for training for work in other countries, but that France could not take care of the number of people already in her territory. He said that at the outset French Consuls in Germany had been instructed to be liberal in issuing passports to Jews wanting to come to France, but that this order had been modified and that France did not wish to accept any more refugees until a plan was prepared which would assure her that they would remain in her territory only long enough to be made ready for further emigration. He also said that France could not raise money enough to take care of the refugees in need of charity but should have financial support from other countries for this purpose. He thanked the High Commissioner for having secured support from Jewish sources in England and America.

Throughout the European delegates took the position that they could not take care of many refugees on their territory but that countries beyond the seas should come to their aid. Lord Cecil even remarked at the closing session that Europe was overpopulated and could not stand any increase in its population, quite overlooking the fact that the people involved are Europeans being transferred from one part of Europe to another.

Palestine was suggested as an outlet but Lord Cecil said that Palestine was limited in the number of people it could take as it was a small country without great resources, thereby apparently foreshadowing a limitation of even the present immigration which is said to be considerable but on which I could not get any reliable figures.

I observed that America was also affected by the crisis and that this must be taken into consideration, that I did not know what could be done in bringing people into the country, but that I was sure that there would be a liberal contribution from American sources. I called the attention of the Conference, however, to the fact that people in America would not be able to provide the sums which they had formerly contributed and that furthermore the Governing Body must not forget that people in the United States who had relatives in Germany were sending large amounts of money to that country and that American organizations were likewise contributing to Jewish charities in Germany, an element which should be considered in estimating the sacrifices which the United States was making in the general crisis. Guani of Uruguay said very little except that South America, like North America, was also affected by the depression. I was careful to say that I had no authority to bind the Government in any way and that a plan for the distribution of refugees must be prepared and worked out before anything could be done.

The anxiety of the bordering countries to get rid of their refugees came out again in the discussion of papers of identity on which travel of these people would be permitted. Several suggestions were made to authorize the High Commissioner to issue identity papers or for the governments to stamp visas on expired German passports held by refugees, but the only action taken was to recommend the High Commission to take the matter up with governments and try to find a solution at the meeting of the Permanent Committee in the middle of January. It is intended to take the matter up at the next meeting of the Governing Body which may be set for April. The important point in respect to the papers of identity for travelling was raised by the Swiss delegate who said that states to which refugees desired to go were unwilling to accept such papers unless the state from which the refugees came would be willing to receive him back if he were returned from the state of destination. What the other countries obviously wanted was a travelling paper which would simply enable the individual to enter another country whence he could not return. I pointed out that there was no advantage in simply allowing the refugees to travel from one country to another and that the problem could not be settled until permanent homes could be found for them.

Cecil and some of the other members urged that the travelling papers issued under the treaty [*recommendations?*] of 1927³⁶ should be used for refugees but the suggestion was considered premature.

³⁶ For text of the recommendations concerning passports for stateless persons, see League of Nations, *Extracts from the Acts of the Third General Conference on Communications and Transit, held at Geneva, August 23rd-September 2nd, 1927* (1927. VIII. 9), pp. 38 ff.

A difficulty is that of the stateless refugees who have no German passports.³⁷ Some of them have Nansen passports or other certificates of identity, some do not. These people and the German citizens whose passports have expired and cannot be renewed but who yet retain German nationality present different problems. The smaller countries neighbors to Germany evidently did not want to act precipitately for fear of making trouble in their relations with Germany.

Behind the problems of the present flood of refugees which, judging from the High Commissioner's figures, appears not to present any great difficulties, is the fear that new measures taken in Germany or the result of existing measures will lead to another flood of emigration from that country. If there should be a heavy emigration from that country because of stricter measures or the stricter enforcement of existing measures, the problem would present very serious proportions. It is therefore of the first importance that the High Commissioner establish informal relations with the German Government or German organizations which would enable him to form some estimate of what the emigration from Germany is likely to be. Akin to this question is that of German export of the capital owned by the refugees or the permission by Germany to others wishing to leave the country to take part or all of their capital with them. Germany has permitted Jewish colonists going to Palestine to take with them the thousand pounds required to allow an immigrant to enter the country freely. The number of persons taking money into Palestine in this way is not great. I have been told that some 1500 have been authorized by the Jewish agency in Berlin. I was also told that Germany will permit Jewish colonists to Palestine to take out of the country German goods of a value of two thousand pounds and to pay for these goods from property in the country. Thus, I am told, a few colonists have started businesses or have equipped themselves for life in Palestine. The importance of the export of capital was stressed but no opinions expressed as to what would be done or as to what might be done. That was all left to the High Commissioner who is expected to try to put himself in touch with the German Government. After the meeting the High Commissioner personally communicated with Dr. Schacht of the Reichsbank whom he knows asking whether it will be possible for him to see the Chancellor, but he received an evasive answer.

The Swiss representative said that he was informed by leaders of the Swiss Jewish community that many of the refugees in Switzerland would like to return to Germany and some are already returning. He

³⁷ See High Commission for Refugees (Jewish and Other) Coming From Germany (Lausanne): *Report of the Second Meeting of the Governing Body, Held in London, May 2nd, 3rd, and 4th, 1934*, pp. 9-10.

said that the Swiss Jewish associations are facilitating return where possible. Information from other persons in Geneva and Paris confirmed this opinion. Although but few people have already returned, many would do so if they could be assured that conditions were stabilized, even though the life at home would be much harder than previously.

The representatives of the private organizations brought out another point which was stressed to me in private conversation by many of them. It was that Jews in both Germany and Poland believe that their people have devoted themselves too exclusively to professions and commerce. There is now a movement going on in both countries for the training of younger people in mechanic arts and agriculture with the hope that the Jewish race will be distributed among the different classes of workers in each country in better proportion to their actual numbers in the country than at present. Schools of agriculture have been established for the training of young people for farming either in Germany or in foreign countries to which they may emigrate. The German refugee problem is complicated by the Jewish problem in Poland where I am told that a hundred thousand young Jews want to emigrate to Palestine, twenty thousand of whom are now in training in agricultural colonies. Consequently German refugees cannot be permitted to monopolize the quota which may be admitted to Palestine.

The relations of the delegates at the meeting were pleasant and all showed an interest in the subject. Lord Cecil, Senator Bérenger and Dr. Lobkowitz of Czechoslovakia understood different phases of the question. Dr. Chodzko of Poland was also interested and knows the Polish situation. He does not expect a large immigration into Poland. The other European delegates were diplomats who were listening in and did not have much knowledge of what was going on. Senator Majoni told me that he had been appointed on Monday previous to the Tuesday on which the meeting was held. Mr. Guani did not take an active part in the discussion, but he was evidently quite aware of the position taken by the European delegates and of the importance of having other South American countries represented when the discussion of the plans of the High Commissioner comes up.

JOSEPH P. CHAMBERLAIN

STATUS OF WILLIAM E. DODD AS APPOINTED AMBASSADOR TO
GERMANY PENDING HIS RECEPTION BY PRESIDENT HINDENBURG

123 Dodd, William Edward/10 : Telegram

The Acting Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, June 21, 1933—5 p.m.

73. Ambassador Dodd plans to sail July 5.

PHILLIPS

123 Dodd, William Edward/13 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, June 26, 1933—4 p.m.

[Received June 26—2:15 p.m.]

110. My 108, June 24, 1 p.m.³⁸ Further information today from a confidential and authoritative source makes it seem more unlikely than ever that President Hindenburg will return to Berlin before well in September.

I have reason to believe that the new British Ambassador will shape his plans accordingly and is likely not to come here until September whereas he originally intended to arrive in the beginning of August.

I shall cable again on Friday on which date I hope to have further private and reliable information.

Under the existing circumstances here it seems to me that it would be most unfortunate if the Ambassador were kept waiting 2 months before he could present his letter of credence.

I urgently request that the Department advise me of its views in the premises.

GORDON

123 Dodd, William Edward/16 : Telegram

The Acting Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, June 27, 1933—3 p.m.

77. Your 110, June 26, 4 p.m. The President is keenly desirous of having the Ambassador enter upon his duties as quickly as possible. Naturally, we would not desire to have the Ambassador placed in the somewhat anomalous position of waiting 2 months in Berlin before presenting his letter of credence.

In the United States in similar circumstances in the past we have avoided the difficulty by one of the following two expedients:

1. Arranging for a Chief of Mission to present his letter of credence at a place other than Washington;

³⁸ Not printed.

2. Recognizing the Chief of Mission as "appointed Ambassador or Minister" and permitting him to transact business with the Government pending the formal presentation of his letter.

In the circumstances and in view of the expressed interest of the German Government that we accredit an Ambassador as soon as possible, we assume that an effort will be made to work out an arrangement along one of the above-mentioned lines. Please telegraph urgently.

PHILLIPS

123 Dodd, William Edward/17 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, June 28, 1933—2 p.m.

[Received June 28—11:25 a.m.]

111. Department's 77, June 27, 3 p.m. Foreign Office insists that new envoys cannot be received at Neudeck as all facilities for their proper official reception are lacking there. I pointed out that the retiring British Ambassador is being received there tomorrow but the Foreign Office categorically takes the position that this is an informal farewell luncheon; that his letter of recall will not be presented; and that the occasion is in no way an official one.

Besides the two envoys mentioned in my telegram 108 of June 24, 1 p.m.,³⁹ several others are expected to arrive in the near future so Foreign Office wishes to give further consideration as to just how to work out the second suggestion contained in your telegram under reference. The Foreign Office, however, is not clear as to exactly what you have in mind under the phrase "to transact business". I must admit that I also am not certain as to the proper interpretation of this phrase especially after studying the Department's unnumbered instruction of January 9, 1930 to Mr. Sackett which in the antepenultimate paragraph appears to set forth contradictory modes of procedure.⁴⁰ If the Department could give me a fuller expression of its views it would be helpful as the Foreign Office informs me that it will communicate further with me tomorrow.

GORDON

³⁹ Not printed. The envoys are not identified in the telegram.

⁴⁰ This paragraph reads as follows: "Under existing practice an Ambassador or Minister is considered not to have assumed charge of his mission until the date upon which his credentials are actually presented, and in the interim any official communications should be signed by the Chargé d'Affaires ad interim, such communications, of course, having the approval of the newly appointed envoy. It may happen, however, that the formal audience of reception is delayed, in which case the Minister for Foreign Affairs may arrange for the transaction of diplomatic business with the new representative pending such reception. In that event the official duties of the representative begin immediately." (123 Sackett, Frederic M/11)

123 Dodd, William Edward/18 : Telegram

The Acting Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, June 28, 1933—6 p.m.

78. Your 111, June 28, 2 p.m. When circumstances necessitate a delay in the formal audience of reception, this Government has pursued the following procedure:

The Secretary of State has addressed a note in the following terms to the appointed Ambassador or Minister:

"I have the honor to acknowledge the receipt of your note of (date), informing the Department that you have taken charge of the Embassy of (country) as Appointed Ambassador Extraordinary and Plenipotentiary.

"In view of the President's inability to receive you at this time, I will be glad to accord you provisional recognition as Ambassador Extraordinary and Plenipotentiary of (country), as of the date of presentation of the office copy of your credentials on (date); formal recognition to be accorded you when the President receives you in audience.

"I will be glad to make arrangements later for your presentation to the President and the delivery of your letters of credence."

Thereafter the new Envoy is permitted to transact any business.

PHILLIPS

123 Dodd, William Edward/20 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, June 30, 1933—3 p.m.

[Received June 30—noon.]

114. My 112, June 29, 1 p.m.⁴¹ Foreign Office thinks general idea of the procedure suggested by you is acceptable. Foreign Office states that the Ambassador would have access to the Foreign Minister and anyone else in the Foreign Office and thus could as a practical matter transact business, though official communications should be signed by me and in any official representation of the Embassy I should act as Chargé as aside from his informal relationship with the Foreign Office the Ambassador will have no official status until presenting his letters especially vis-à-vis the diplomatic corps.

My latest confidential information from the source mentioned in my 110, June 26, 4 p.m., is that the President may return to Berlin at the end of August but of course this is still only a possibility.

When a definite decision is reached please telegraph me as to exact date of the Ambassador's arrival here, who will accompany him, and what accommodations it is desired that I secure for him. Also if the Department desires that the Ambassador be met prior to his arrival in Berlin. Please cable travel authorization.

GORDON

⁴¹ Not printed.

123 Dodd, William Edward/23 : Telegram

The Acting Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, June 30, 1933—4 p.m

80. Your 114, June 30, 3 p.m. The Foreign Office seems to have missed the purpose of the procedure that we proposed day before yesterday and that we have ourselves followed in analogous cases. Official correspondence takes place between the incumbent of the Embassy and the Foreign Office, the only difference being that it is addressed to and signed as "appointed Ambassador" rather than as Ambassador. In view of the technical and clearly unhelpful attitude which you report, I am asking the German Chargé d'Affaires to come to see me and impressing upon him the inconsistency between the desire expressed that we hasten the appointment of an Ambassador and the present position taken at the Foreign Office. You will appreciate the importance of settling this problem before the arrival of Ambassador Dodd who will sail on July 5 in order to prevent embarrassment and inevitable unpleasant publicity.

PHILLIPS

123 Dodd, William Edward/24 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, July 1, 1933—1 p.m.
[Received July 1—11:05 a.m.]

116. Department's 80, June 30, 4 p.m. Foreign Office has shown me a telegram just sent to its Embassy in Washington which I hope will provide a solution of this question satisfactory to you. In it the Foreign Minister states that he will receive any and all communications signed by the Ambassador as "appointed Ambassador". This marks a distinct step in advance upon the Foreign Office's position as given to me yesterday and I understand that it was only decided upon this morning, consequently your action vis-à-vis the German Chargé d'Affaires appears to have been most helpful, however, I must say frankly that my impression has not been that the Foreign Office wished to be unhelpful but merely that the problem presented was completely new to it and that it was trying to feel its way as witness this latest decision.

In the Foreign Office's instruction to its Embassy in Washington it is also stated as a "probability" that the President will come to Berlin towards the end of July which, as the Department will note from my telegrams, provides a more satisfactory prospective than had at any time previously been held out to me.

As regards the protocolary side of the question the Foreign Office's statement reported in my telegram No. 114 as to the Chargé d'Affaires

acting in such official representation of the Embassy as might arise, was only intended to refer to the existing state of fact in the Berlin Diplomatic Corps. This has just recently received fresh application in the case of one of the envoys here waiting to present his letter of credence by the Dean of the Diplomatic Corps specifically requesting him to send no cards and to make no official calls upon his colleagues and refraining even from returning this envoy's call until he shall have presented his letter of credence. However, it does not seem to me that this constitutes any such obstacle as to prevent the Ambassador from sailing on schedule and I imagine the Department will concur in this view.

I do indeed appreciate the importance of settling this problem in order to prevent embarrassment and it was with this in mind that I have sent my various telegrams beginning with my 108 of June 24, 1 p.m.,⁴² and had frequent interviews at the Foreign Office, inasmuch as it was apparent that it had not envisaged the program in the light that you had. I very much hope that this latest exchange of views provides a satisfactory solution and should appreciate it if you could so inform me.

GORDON

123 Dodd, William Edward/29 : Telegram

The Acting Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, July 5, 1933—10 a.m.

83. The procedure outlined in your No. 116 of July 1, 1 p.m. appears satisfactory.

PHILLIPS

[Ambassador Dodd assumed charge of the Embassy on July 14, 1933. He was received by President von Hindenburg on August 30. (123 Dodd, William E./36, 45.)]

ATTACKS UPON AMERICAN CITIZENS IN GERMANY ⁴³

362.1113/1 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, August 18, 1933—1 p.m.

98. Department is most concerned over the continued attacks on American citizens in Germany and requests you, after consultation with

⁴² Not printed.

⁴³ For additional correspondence, see telegram No. 31, March 8, 3 p.m., from the Ambassador in Germany, p. 321, and despatch No. 1196, March 21, from the Consul General at Berlin, p. 323.

Mr. Messersmith,⁴⁴ to telegraph your views and recommendations as to the advisability at this time of submitting a formal and vigorous protest to the German Government or of pursuing some other method to bring about improvement in the situation.

PHILLIPS

362.1113/44

The Under Secretary of State (Phillips) to President Roosevelt

WASHINGTON, August 23, 1933.

DEAR MR. PRESIDENT: At the last meeting of the Cabinet you asked me a question with regard to the number of American citizens in Germany who have been subjected to assault or mistreatment and I promised you a report thereon.

I enclose a brief memorandum showing that there are twelve cases on record of mistreatment by Germans wearing the uniform of the National Socialist party. Of course, this does not mean that there may not have been other cases which have not, as yet, been brought to our attention officially.

Faithfully yours,

WILLIAM PHILLIPS

[Enclosure—Memorandum]

AUGUST 21, 1933.

INSTANCES OF MISTREATMENT OF AMERICAN CITIZENS IN GERMANY
IN RECENT MONTHS

Since last March there have been a dozen instances where American citizens in Germany have complained of being subjected to physical assault or mistreatment by persons in Germany wearing the uniform of the National Socialist party.

The cases in question and the dates on which they occurred are as follows:

1. Jaffe, Leon	March	4.
2. Sattler, Henry H.	March	4.
3. Dakin, Edwin F.	March	6.
4. Wolf, Nathaniel S.	March	6.
5. Friedmann, Salomann	March	7.
6. Berman, Louis	March	8.
7. Roseman, Hermann	March	10.
8. Fuhs, Julian	March	11.
9. Dahlberg, Edward	March	11.
10. Schachno, Joseph	June	21.
11. Zuckerman, Philip	July	16.
12. Mulvihil, Dr. Daniel	Aug.	15.

⁴⁴ George S. Messersmith, Consul General at Berlin.

Of these cases nine occurred during the period of disorders immediately following the Reichstag elections of March 5 and three have occurred more recently.

In six of the cases the information provided was sufficiently definite to justify the expectation that the assailants might be identified and punished, namely, in the Roseman, Fuhs, Dahlberg, Schachno, Zuckerman and Mulvihil cases.

In the Dahlberg, Fuhs and Mulvihil cases, the German authorities may be said to have taken more or less satisfactory action.

In the case of Mr. Dahlberg his assailant was arrested, but the proceedings against him were allowed to drop on publication of the Amnesty Decree of March 21, 1933.

The five attackers of Mr. Fuhs were taken into custody. The particular National Socialist who threatened him with a revolver, appears later to have been released under the Amnesty Decree. Two other National Socialists who were involved were "sharply reprovved". Another was expelled from the National Socialist party.

The assailant of Dr. Mulvihil has been identified and there appears to be every likelihood that this case will be settled to our entire satisfaction.

The assailants of Zuckerman have not been apprehended. He was attacked by National Socialist Storm Troops in Leipzig in broad daylight but the Leipzig police state that there were over 100,000 Storm Troops from all parts of Germany in Leipzig that day and it has not been practicable to identify the persons responsible for the attack.

The Schachno case is in a special category. While a native-born American citizen Dr. Schachno was educated in Germany, established himself as a practicing physician there and, according to documents presented by the German authorities, held himself out to be a Bavarian. The Consul General in Berlin is accordingly not pursuing his case further, pending instructions from the Department.

In the remaining cases where actual physical assault is alleged to have occurred, the statements made by the various Americans involved were not sufficiently definite to justify the expectation that the assailants would be identified.

There have likewise been a number of instances of intimidation of Americans by persons in the uniform of the National Socialist party, notably:

1. Max Schussler, who was visited on March 7 by a number of National Socialists and forced to sign a document stating he would not insist on eviction or collection of rent from a tenant to whom he had given notice.
2. Isaac Kahn, who left Germany in April as a result of threats of violence from a Mr. Reinecke.

There have furthermore been instances where Americans who have been arrested, claim that they were not allowed to communicate freely with their consular representatives, notably:

1. Herbert Baer, arrested at Karlsruhe on April 19, 1933, and kept in custody three weeks.
2. Samuel Pliskin, arrested in Heidelberg in May, 1931, on a charge of spreading atrocity propaganda.
3. Fanny Gassman, arrested in Stettin for suspected violation of foreign exchange regulations in July, 1933.

362.1113 Bossard, Samuel B/1 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, September 4, 1933—5 p.m.
[Received September 4—1:15 p.m.]

139. Nazi adherents have recently maltreated Americans Samuel Brennan Bossard and H. V. Kaltenborn on streets. These attacks quite as unprovoked as Mulvihill incident and in addition to unsatisfactory handling other such cases are causing an embarrassing situation. Please instruct me as to your attitude as I shall have opportunity very soon in unofficial manner to press our views.

DODD

362.1113/4a : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, September 4, 1933—6 p.m.

110. Your 139, September 4. German Embassy officials absent from Washington today. Tomorrow I shall make oral representations to the German Chargé d'Affaires as follows:

"I have just received a report from the American Embassy in Berlin that two more Americans have been subjected to unprovoked attack by Nazi adherents. There have been so many attacks upon Americans in Germany, that these two additional unprovoked attacks cause me great concern, and brought me down to the Department yesterday to consider what we wish to do about it. The American Consul General in Berlin has already made representations and the American Embassy may take it up formally by note. After carefully weighing the matter I decided to bring you down today to speak to you frankly and unofficially with the hope that you can induce your Government to note the effects on public and Government opinion in this country of continued and unprovoked assaults on our citizens who are your guests. I need not today be specific, but tell you frankly that my best information is that there have been attacks where police were present, witnesses, and were indisposed to take action against the guilty. My reports show that culprits

who are known or could easily be identified have not been punished, prosecuted, or even apprehended with any sort of diligence. I hope you can induce your Government immediately to take strong action in the premises. I think you will agree that the continuance of these assaults on American citizens will very soon compel this Government to make formal, vigorous and open protest to the German Government."

I suggest the advisability of your handling the substance of the foregoing orally at such time and under such circumstances as your judgment may suggest.

HULL

362.1113/5 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, September 8, 1933—3 p.m.
[Received September 8—1:30 p.m.]

141. My 139, September 4, 5 p.m.; and Department's 110, September 4, 6 p.m. The Foreign Office yesterday presented orally the deep regrets of the German Government at the attacks reported in the first paragraph of my telegram under reference and informed me that the cases had been turned over to the police with instructions to take the most energetic action possible.

The above communication was made by Dieckhoff to Gordon who pointed out that in the Bossard case the time and place of the attack were so definitely established that there should be no difficulty in apprehending two policemen who were then and there on duty and refused to take any action against the assailants.

In the further discussion that ensued Dieckhoff made the remarkable statement that, of course, these incidents did not indicate any anti-American or even anti-foreign sentiment here, an assertion which Gordon, of course, vigorously contested.

I feel I should report this, all the more so as coming from Dieckhoff who is perhaps the most conciliatory high official with whom the Embassy has to deal. Such an extraordinary statement makes me fear that the representations to the German Chargé d'Affaires set forth in your telegram under reference may not have been transmitted here with the weight and solemnity which should attach to them.

Accordingly I purpose at the earliest opportunity to have a frank talk with the Foreign Minister in the sense of the last sentence of your said telegraphic instructions.

Full report by mail.

DODD

362.1113/8 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, September 15, 1933—2 p.m.
[Received September 15—12:25 p.m.]

144. My 141, September 8, 3 p.m. I, yesterday, had long talk with the Foreign Minister who realized that if assaults on Americans continued our Government might have to publish a statement warning American citizens not to visit Germany and that nothing could be more damaging to Germany. He said that he had spoken to Goering and Hitler about this in the last few days. The former had vowed that he would use all his influence to prevent the recurrence of such incidents; the Chancellor while agreeing that such incidents must cease did not, I gathered, express himself as forcefully as Goering.

The Minister for Foreign Affairs asserted that he would do his best to prevent further incidents but he neither gave any promises as to punishment being meted out in connection with past attacks on Americans nor even assurances that a real effort would be made to apprehend the culprits.

I further took up the questions of disturbance of economic relations by unwise German acts (citing by way of example the recently attempted discrimination in favor of German shipping interests)⁴⁵ and of the German anti-Jewish policy. The Foreign Minister agreed with me as to the unwisdom of German action in both respects. He asserted that the influence of the Foreign Office was being exerted to attenuate the ruthlessness of the anti-Jewish policy. However, here again no definite assurance other than as to his own attitude was given.

Upon leaving I observed that Germany could never recover except through a long period of international peace. The Foreign Minister in expressing his agreement declared that in the forthcoming Geneva discussions the German representatives would make no move that could furnish any pretext for foreign intervention.

Will you please show this telegram to the President if you perceive no objection.

DODD

362.1113 Velz, Roland/1 : Telegram

The Consul General at Berlin (Messersmith) to the Secretary of State

BERLIN, October 10, 1933—4 p.m.
[Received October 10—2:20 p.m.]

Roland Velz, native born American, residing Germany for business, executed affidavit Consulate General October 9 that on 8th was subjected

⁴⁵ See pp. 470 ff.

to entirely unprovoked attack Dusseldorf. Was walking sidewalk with wife when parade S.A. men passing along street. Spectators at least five deep on edge sidewalk watching parade but people moving both directions on wide sidewalk paying no attention just as Velz. Without provocation S.A. man twice hit Velz' face causing mouth and nose to bleed. Reported incident nearest police officer and pointed out assailant but officer refused take action other than point out police lieutenant in immediate vicinity to whom Velz, with blood streaming from face, made a complaint. Police lieutenant refused take action but informed Velz assault must have been his own fault. Case being reported by Consulate General political police and to Reich and Prussian Ministries Interior and Embassy of the United States. Judging from failure German authorities to take appropriate action in numerous previous cases not likely that any action will be taken against assailant or against police who failed to do their duty. In spite of assurances action we have no information yet that policemen who witnessed attack on Bossard have been identified or punished although most vigorous representations have been made by the Embassy and Consulate General. Written report follows. Through best informed high official contacts know that police still powerless to act against S.A. men but recent incidents show that authorities take no action against police derelict in their duty. Although this is first serious incident of physical assault on American for some weeks, clear that Americans coming to Germany are not safe from unprovoked physical attacks.

MESSERSMITH

362.1113 Velz, Roland/2 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, October 11, 1933—4 p.m.

125. I assume, of course, that you will give full support to the protests already made by Messersmith in the case of Velz and call at the Foreign Office to ask what they intend to do in this newest case of an unprovoked attack on an American citizen. Publicity here is widespread.

I have told the press for background that in other cases we have received apologies and expressions of regret but little or no information as to what punishment has been meted out to assailants or to police when they are derelict in their duty.

I am awaiting assurances on this point in the present case, as well as in numerous earlier cases.

HULL

362.1113 Velz, Roland/3 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, October 12, 1933—10 a.m.

[Received October 12—7:37 a.m.]

162. Department's 125, October 11, 4 p.m.; and 110, September 4, 6 p.m.; and my 144, September 15, 2 p.m. I was to have had my initial interview with Hitler earlier this week and intended to take up the Velz case vigorously with him then. The Chancellor having postponed this meeting I am taking the matter up tomorrow with Neurath, though I must confess I do not expect satisfactory results except in the contingency set forth in the last paragraph of this telegram.

There is no evidence to show that the representations which I made to the Foreign Minister on September 14th have stimulated the German authorities to apprehending or punishing individuals guilty of past assaults on Americans or to taking really salutary deterrent measures of any kind. In fact the Foreign Office has not even answered provisionally a week old note which I sent asking for information as to the progress of the investigation of the cases referred to in my 139, September 4, 5 p.m.

Could the Department summon Luther ⁴⁶ today and inform him that if some definite punitive measures are not taken in the very near future in the three cases above referred to the Department is considering the issuance of a statement to the effect that American citizens having no specific business in Germany would for the time being be advised to refrain from traveling or sojourning in that country. If the Department thinks well of this suggestion and would cable me tonight a brief summary of what was done I could be more specific and therefore more forceful in my representations tomorrow to Neurath who doubtless will also have heard from Luther in the meantime.

Dodd

362.1113/12 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, October 12, 1933—8 p.m.

126. Your 162, October 12, 10 a.m. I did not feel it wise to follow out in full your suggestion of a warning statement; nor can I authorize you to be too specific as to our future course of action. I did, however, have a long and earnest talk with Luther this morning on the questions arising from the recent assaults on American citizens in Germany. I pointed out the difficulty of understanding the inaction and seeming indifference of

⁴⁶ Hans Luther, the German Ambassador.

the German Government in a matter of this seriousness. There have now been twelve or more instances of assault in which so far as we have been informed there have been no convictions either of the assailants or of the police who had been derelict in their duties. I explained that whereas I had every desire to avoid the necessity of issuing a public statement to the effect that in going to Germany American citizens undertook certain risks, nevertheless if this attitude of passive acquiescence toward such assaults on the part of German officials continued, it would be difficult to avoid taking some affirmative measure.

In your representations to Neurath tomorrow, I feel that you should emphasize particularly: (a) the necessity of adequate disciplinary measures, and (b) wide publicity of the action taken with a view both to being a deterrent and to bringing home to the German public the complications that these incidents are producing in Germany's relations with a friendly country.

HULL

362.1113/16

Memorandum by the Secretary of State

[WASHINGTON,] October 12, 1933.

After talking with me on another matter during his call, the German Ambassador complained about an item appearing in a New York Communist paper which seemed to charge that Nazi propagandists were being stealthily brought into this country for purposes of disseminating their beliefs among the American people. I stated to the Ambassador that I had dismissed the matter summarily when it was brought to my attention at the press conference and had declined to give it any attention or comment. He then stated that the *New York Times* and other papers were charging that German shipping authorities were smuggling German immigrants into this country. I replied that this seemed unreasonable but that I would look into the matter and call it to the attention of Mr. McDermott, our press contact man in the Department.

The Ambassador then brought up the incident about another American being assaulted for failure to salute the Nazi colors at Dusseldorf on yesterday or the day before, and expressed his regret and that of his government. I stated that the matter giving me and my government the most serious concern was the seeming indifference of the German Government and the German authorities to this succession of assaults being made on Americans during recent weeks or months and the reported unwillingness of the police and other peace officers to take the slightest step towards doing their duty by making arrests and enforcing the law against such unprovoked assaults. The Ambassador replied that he was not aware these conditions existed, at least to anything like that extent. I

stated that our government simply could not go along indefinitely with a steady succession of unprovoked assaults on Americans occurring in Germany, accompanied generally by reports, supported by affidavit, to the effect that police stood by and deliberately refused to make arrests, and that in the limited instances where prosecutions had been promised by governmental authorities nothing suggested by the facts had really been done in the way of securing convictions and imposing penalties. The Ambassador intimated that Americans in a foreign country like Germany should observe the local customs, which included that of giving the Nazi salute. I repeated to him what I had said to the Counsellor of the German Embassy some weeks ago, to the effect that I was striving to keep a thousand miles away from the necessity of notifying Americans that they must not enter Germany except at their own risk of physical injury. I then inquired of the Ambassador what he thought about the idea of an announcement by my government that unless Americans visiting Germany do give the Nazi salute on appropriate occasions, they must not expect the protection of the American Government if they are assaulted. The Ambassador said he thought that that was too drastic. I came back a number of times to the point that the German Government was not exhibiting sufficient interest in the prevention of these unjustifiable assaults; that the German peace officers and judicial authorities were not prosecuting as the facts warranted; and that my government must insist on some improvement in the attitude and policies of the German Government and its law officers. I made this as strong as I well could.

C[ORDELL] H[ULL]

362.1113/14 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, October 14, 1933—noon.

[Received October 14—9:15 a.m.]

167. My 165, October 13, 5 p.m.⁴⁷ I had a half an hour's interview last night with Neurath. Not only the profuseness of his apologies but also the subject matter of his conversation make me feel that the question of a possible affront may be dismissed.

I recalled to him our conversation of September 14 and pointed out that in spite of all that had been said then and the recognition of the seriousness of the situation on the part of some of the German leaders absolutely nothing had been done since that time as far as we knew that

⁴⁷ Not printed; it reported that on the morning of October 13 Ambassador Dodd called at the Foreign Office by appointment to see Herr von Neurath, but was told that the Foreign Minister was unable to see him because of other important engagements. The Ambassador was unable to obtain an interview until that night. (362.1113/13)

could be construed as an effective deterrent to a recurrence of such incidents. I called his attention to the fact that both the Department and the Embassy had exercised great forbearance and patience in trying to maintain an atmosphere that would enable the authorities more readily to take the necessary measures, but that this patience could not be strained indefinitely. I pointed out that quite independently of any incitation on our part the American press was very much wrought up over this matter. I further observed that in view of the innate orderliness of the German people if an effort were made to stop these assaults by proper punitive measures and adequate publicity in the German press the public would support the effort.

Neurath replied that he had been engaged the whole day in arguing (impliedly with Hitler, Goering and Goebbels) along the lines above indicated. He expressed deep appreciation of your and the Embassy's consistent attitude in the premises.

He then specifically stated that he had been laboring with Goering that day on the question of adequate deterrent measures in connection with the assaults upon foreigners. Goering had promised him a list of names and places of men who were in concentration camps because they had attacked Americans; the list though promised was not forthcoming yesterday but Goering finally undertook to deliver it today. (I am skeptical both as to the existence of such a list and as to its production).

To my specific question "Does the Chancellor realize the great danger of this situation?" Neurath replied that he thought he did. But he then added the ominous statement that the Chancellor had told him (Neurath) that the S. A. had recently refused to obey an order which the Chancellor had issued to them. Further specific information in this connection was not vouchsafed.

In conclusion I left with Neurath the Velz affidavit and stated that we definitely expected speedy and adequate action in the premises.

DODD

362.1113/15 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, October 15, 1933—noon.
[Received October 15—9:40 a.m.]

168. My 167, October 14, noon. I have received a brief note from Neurath stating that the two assailants of Velz have been arrested and are being brought to Berlin for investigation of the charges against them.

The name of the troop leader who attacked Mulvihill is for the first time given and a statement made that he was imprisoned on August 24 and is now in a concentration camp.

The Foreign Minister closes his note with the statement that he is taking up the pending cases with the competent authorities with a view to expediting their investigation.

My appointment with the Chancellor (see my 162, October 12, 10 a.m.) has now been fixed for Tuesday at noon. Does the Department wish to instruct me as to any specific statement it desires me to make to him?

DODD

362.1113 Velz, Roland/6 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, October 17, 1933—4 p.m.
[Received October 17—11:35 a.m.]

171. My 168, October 15, noon. Neurath informed me this morning that the two assailants of Velz came before a summary court yesterday and were this morning sentenced to 6 months imprisonment each.

DODD

362.1113/19 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, October 17, 1933—6 p.m.
[Received October 17—4:19 p.m.]

172. My 168, October 15, noon, last paragraph. At my interview with the Chancellor this morning at which Neurath was the only other person present I first took up the subject of assaults on Americans and the failure to punish the assailants and, pointing out the increasing resentment that had been aroused in the United States, said that we must request absolute assurances that such attacks would cease. Neurath said that he thought we could be assured of this referring to the sentences in the Velz case (my 171, October 17). He added that henceforth should there unfortunately be any more such cases they will not only be dealt with drastically but will receive the publicity we have advocated. Hitler added with great emphasis that he would personally see to it that any offender of this kind would be punished to the limit of the law.

I then turned to the question of financial and commercial discrimination (see Department's 123, October 9th)⁴⁸ referring to the quota arrangements recently made and especially to the discrimination against American creditors as evidenced by the recent agreement with Swiss holders of scrip. Neurath admitted that these practices were not unexceptionable but contended that Germany could not pay her foreign debts if she could not ship goods and that she had to make arrangements of this nature in order to increase her exports.

⁴⁸ *Post*, p. 453.

We then talked for some 20 minutes about Germany's withdrawal from the League. The Chancellor showed much anxiety concerning the President's attitude and American public opinion. He became somewhat heated on the subject of Versailles and made various rather confused and, as far as I could follow him, contradictory statements concerning the disarmament of other powers and Germany's need of defensive armaments. I interrupted a fairly violent attack on the French attitude and on the neglect of the world to enforce the Treaty of Versailles to inquire if aside from the question whether Germany had suffered an injustice and of who was at fault, the danger of war was not the predominant consideration. To this the Chancellor agreed and he did then make the definite statement that he would not allow any incident along the Polish, Austrian or French frontiers to develop into a war and affirmed his recognition of the efficacy of convoking a further conference should matters take such a turn as to make armed activity seem imminent.

The total effect of the interview was more favorable from the point of view of the maintenance of world peace than I had expected.

DODD

362.1113/27

The Ambassador in Germany (Dodd) to the Secretary of State

No. 252

BERLIN, November 7, 1933.

[Received November 20.]

SIR: With reference to my despatch No. 219 of October 19,⁴⁹ and particularly to enclosure 3a, a translation of an article published by the *Deutsche Allgemeine Zeitung*, to the effect that Minister Göring had issued an order to the appropriate authorities to protect foreign citizens against attack, I have the honor to transmit a copy in translation of an order relating to this subject issued by Rudolf Hess, the Deputy Leader of the National Socialist Party.

The Department will observe that members of the National Socialist Party are warned against "the commission of transgressions and other actions intended to create discontent among the general public" or the exercise of pressure on non-party members in regard to the giving of the Nazi salute. This announcement would appear to be another step taken by the National Socialist officials to restrain their over-enthusiastic followers.

In this connection, therefore, it will probably be of interest to the Department to learn that during a recent conversation between an officer of this Embassy and Mr. Kirkpatrick, the First Secretary of the British Embassy, the latter expressed the opinion that this order may have been

⁴⁹ Not printed.

motivated by the protest made by that Embassy following upon an attack made several days ago in Berlin by a Nazi on an Englishman who failed to give the salute when a Nazi detachment with flags passed by.

Whether the Government in Berlin will succeed in stopping these incidents will depend of course on the control exercised by them over their subordinates throughout Germany. That there may possibly be reason to doubt this is evidenced by the case of Mr. Noel Panter, a British newspaper correspondent who was arrested and imprisoned by the Bavarian officials during the latter part of October (see my despatch No. 246 of November 4).⁵⁰ According to Mr. Kirkpatrick, the British Embassy, which has been active in obtaining the release of Mr. Panter, experienced the greatest difficulty during its efforts in his behalf, as the statements made by the central authorities in Berlin were frequently at variance with those of the Bavarian officials. In view of the fact that the chief officials of the state governments are *Statthalter* directly responsible to the Chancellor of the Reich, the difficulty experienced by the British Embassy is deserving of attention.

Respectfully yours,

WILLIAM E. DODD

GERMAN REPRESENTATIONS URGING THE RECALL OF EDGAR ANSEL MOWRER, AN AMERICAN NEWSPAPER CORRESPONDENT IN GERMANY

811.91262/112

The Consul General at Berlin (Messersmith) to the Secretary of State

[Extract]

No. 1303

BERLIN, May 12, 1933.

[Received June 3.]

SIR: I have the honor to inform the Department that the position of a number of the American correspondents in Berlin has not been easy since the accession to power of the National Socialist Government and since the establishment of the strict censorship of the German press and of public opinion-forming means. It is the intention of the present Government and of the Party not to allow anything to appear in the press or to reach the public, which is not in accord with its ideas or wishes. To this end there has been established the most effective control of public opinion-forming means of all kinds in Germany which has probably ever existed in any country. The press censorship may be considered as absolute. It was obviously the desire of the authorities to prevent what is from their point of view, undesirable news reaching the outside world through the foreign correspondents in the country. Here, however, was a

⁵⁰ *Ante*, p. 263.

problem which they found difficult to handle and it has not been handled altogether with much tact and success.

The American journalists in Berlin are for the most part men whose names are well-known in the journalistic world, and who have no desire to do anything but to report objectively what is passing in the country. They number among them some of the best known newspaper men we have in the field of foreign correspondents. They are not men who can be controlled or who can submit to improper censorship, as neither their self-respect nor what they feel their obligations to their newspapers and the public would permit them to submit to improper control. The American correspondents here are I believe almost without exception men who would under no circumstances serve as an instrument either for favorable or unfavorable propaganda.

The first of the American correspondents to have difficulty with the authorities was Mr. Deuss of the International News Service, who was accused by the authorities of having sent out unsubstantiated stories of physical cruelty since March 5. The authorities were finally willing to permit Mr. Deuss to remain if the International News Service would publish in the United States certain statements. These statements they did not feel they could consistently publish and they preferred to remove Mr. Deuss to London and to replace him here by Mr. Hawley. I venture the opinion that the removal of Mr. Deuss to London in no way prejudiced him or his reputation and I believe that the action of the International News Service in preferring to remove him to London rather than to publish certain statements, was very commendable.

The second of the American correspondents to have difficulty, was Mr. Edgar Mowrer who is also the President of the Association of Foreign Press Correspondents in Berlin this year. Mr. Mowrer had published a book which was not pleasing to the present Government. The real reason, however, that he became *persona non grata* to the present Government, was more likely the fact that some of his accounts of happenings in Germany after March 5 were not pleasing. The authorities let it be known that if Mr. Mowrer was permitted to remain as President of the Association of Foreign Press Correspondents in Berlin, they could have no official relations such as they had had in the past, with the Association. It was therefore a question as to whether Mr. Mowrer should resign as President of the Association or not, and he placed the matter before a general meeting of all the foreign correspondents in Berlin and there was almost a unanimous vote that he should continue as their President. As a result of this action Mr. Mowrer refused to resign. It is considered by many here that the attempt of the authorities to force him out of the Presidency of the Association was only the first move towards forcing him out of the country; but the refusal of the foreign correspondents as a

whole to disown Mr. Mowrer undoubtedly had an effect and he has since been undisturbed. The question of relationships between the Association of Foreign Press Correspondents and the authorities has not come up in the meantime as there has been no public occasion which required the recognition of the Association by the authorities; but as the matter now stands, the Government has not changed its attitude. An endeavor is now being made to bring together in an informal way, the Minister of Propaganda, Dr. Goebbels, and Mr. Mowrer, in order that through this personal contact the difficulties may be ironed out and any objection to Mr. Mowrer removed. It is believed that the authorities are now prepared to find some reason for continuing to recognize Mr. Mowrer as President of the Association and to continue with the Association the relations which formerly existed between the Government and the Association.

The most interesting and in some ways the most important development, however, has arisen within the last few days with regard to Mr. Knickerbocker who is the correspondent of the *New York Evening Post* and the *Philadelphia Public Ledger*. Mr. Knickerbocker is as well known in Germany as he is in the United States on account of his books and his newspaper articles. He is very highly considered in many circles in Germany. The series of seven articles which he wrote on the economic situation aroused the resentment of certain persons in the Government and in the National Socialist Party, as did some of his other articles which he has written since March 5 on the happenings in Germany.

When I had a conversation with Minister Goering some weeks ago, he brought up the name of Mr. Knickerbocker and seemed to particularly resent some of the stories which he had written. I took occasion at that time to point out to the Minister that Mr. Knickerbocker was one of the most careful correspondents I knew; that I had reason to know that he always took great care to document himself; and that he was in many respects one of the most conscientious newspaper men I had known. I called attention at the same time to the fact that the American newspaper men in Berlin were an unusually high class lot of men and that they compared very favorably with the foreign correspondents which other countries had in Germany and were on the whole an outstanding group. I informed the Minister that I did not think that the Government or the Party could under any circumstances hope to control what these American correspondents sent to their papers, or dictate what they were to say. I said that he would understand that as high class newspaper men they could not submit to control or dictation as to what they were to write to their principals and maintain their self-respect. I expressed the hope, therefore, that these correspondents would not be interfered with and that before any action was taken against any one of them it should be

carefully considered and all the possibilities involved in the expulsion of a correspondent should be taken into account. I said I could assure him that so far as I knew the American correspondents, and I thought I knew them well, none of them wished to be anything but objective. I said that it would be desirable if the Government or the Party objected to some of their activities, to take them into its confidence and to give them access to it freely as this would help to avoid misunderstandings. Minister Goering at the time seemed to be much interested in, and appreciated what I said with regard to the American correspondents.

It now appears that several days ago Mr. Luedecke, the immediate subordinate of Dr. Rosenberg who is the editor of the *Voelkischer Beobachter* and who acts as Foreign Minister of the National Socialist Party, during the absence of Dr. Rosenberg in London sent the following telegram to the *Philadelphia Public Ledger*:

[Here follows text of the telegram, not printed.]

To this telegram the *Public Ledger* informed Mr. Knickerbocker that it had replied as follows to Dr. Rosenberg:

"We have every confidence in mr knickerbocker stop we must respectfully decline to recall him stop editor newyork evening post".

Immediately on the receipt of the foregoing information from the *New York Evening Post* and *Public Ledger*, Mr. Knickerbocker came to see me. He informed me that he had immediately on the receipt of the above got in touch with Dr. Hanfstaengl who is the head of the Chancellor's Press Bureau. Dr. Hanfstaengl, who it is well known has a personal feud of long standing with Dr. Rosenberg, was very much upset and immediately in the presence of Mr. Knickerbocker telephoned to the Minister of Propaganda, Dr. Goebbels, who agreed with Dr. Hanfstaengl that the action of Dr. Rosenberg was improper and that Mr. Knickerbocker under no circumstances must be interfered with. Dr. Hanfstaengl then informed Mr. Knickerbocker that he and Dr. Goebbels, the Minister of Propaganda, would lunch with the Chancellor, Mr. Hitler, the next day and definitely arrange the matter. Mr. Knickerbocker informed me of all of the foregoing and asked my advice. I said that under the circumstances I felt sure he would not be disturbed and that it would be preferable to await developments before there was any action by the Embassy or the Consulate General. To this Mr. Knickerbocker agreed.

On the following morning I had a conference with Dr. Milch, the acting head of the Air Ministry for Mr. Goering, with whom I maintain personal contact. I had gone to see him about other matters and during the conversation Dr. Milch recalled what I had said to Minister Goering about Mr. Knickerbocker. He then went on to say that he wished to tell me very confidentially that a telegram had been sent by Mr. Luedecke, Dr. Rosenberg's immediate subordinate, while Dr. Rosenberg was in

England, to Mr. Knickerbocker's principals asking for Mr. Knickerbocker's recall. He quoted practically word for word from memory the telegram already quoted in this despatch, and then quoted the reply which had been made to the telegram. He said "As soon as it was learned what Mr. Luedecke had done he was put into jail, and if his boss (meaning Dr. Rosenberg) had been here, he would have gone to jail too".

It will be noted that this happened on the morning that Dr. Hanfstaengl and the Minister of Propaganda were to lunch with the Chancellor, Mr. Hitler, to settle this matter, and that the question of Mr. Knickerbocker's staying in Germany was therefore settled at once.

Dr. Milch told me that various people had come to Minister Goering to bring about Mr. Knickerbocker's expulsion but that the Minister had taken the point of view that although Mr. Knickerbocker had written "some very bad things", he was being much more fair now and that he was in no way to be interfered with. Although Dr. Milch did not say so, I gathered the very distinct impression that as soon as it was learned that Mr. Knickerbocker had been acted against in spite of the very definite statement which Minister Goering had made that he was not to be interfered with, Mr. Luedecke was arrested at once. For me, of course, the most significant part was the rest of the statement: "and if his chief had been in Germany he would have been arrested too".

The status of Mr. Knickerbocker therefore seems to be definitely settled for the present at least, and the various incidents recited in this despatch I believe go far to show that the American correspondents need not fear interference with their proper activities as self-respecting and objective newspaper correspondents, although it is quite evident that much that they write is very far from pleasing to the authorities. This changed attitude on the part of the authorities and of the leaders of the Party in this respect, is characteristic of their changed attitude on many questions since they came into power. They have definitely learned that although public opinion may be controlled in Germany, it cannot be controlled abroad. In my conversation with Minister Goering I had made it particularly clear to him that even though he might not like all that the American correspondents wrote, it was on the whole much better to have such a high class group of American correspondents here than to have no one here, or inferior people who could do nothing but harm.

Respectfully yours,

G. S. MESSERSMITH

811.91262/116

Memorandum by the Secretary of State

[WASHINGTON,] August 11, 1933.

During the call of the German Chargé d'Affaires ⁵¹ he brought to my attention extracts from the *Chicago Daily News* of August eighth regarding Mr. Edgar Ansel Mowrer, apparently relating to despatches of Mowrer from Berlin, as shown by the fact of the extracts. It was urged that our Government endeavor to facilitate or encourage the departure of Mowrer from Germany; his despatches were under fire and reflected unfairly or unduly on the German Government, and for this reason if he did not leave, the German Government would probably not fail to take action looking to that end.

I stated, in reply, that I knew nothing about the matter except what I had read in the press and that I did not know how much of that was fact. I added that I would examine the publication in the light of his request.

C[ORDELL] H[ULL]

811.91262/120

Memorandum by the Chief of the Division of Western European Affairs (Moffat) of a Conversation With the German Chargé (Leitner)

[WASHINGTON,] August 19, 1933.

Dr. Leitner came to see me in much agitation at 9:10 this morning. He said that he had received another telegram from the German Foreign Office with reference to his talk with Mr. Hull a week or so ago regarding Edgar Mowrer, the correspondent in Berlin of the *Chicago Daily News*. He had at the time asked Mr. Hull to persuade the paper to withdraw Mowrer immediately else the Germans would have to expel him, and left an article which had given particular offense. Mr. Hull said he would look into the matter and spoke to both Mr. Hackworth ⁵² and myself. We found out that the paper had transferred Mr. Mowrer from Berlin to Tokyo at just about the time of the interview and assumed that the matter had dropped.

Now Dr. Leitner read me a further telegram, roughly to the following effect: "No reply as yet to your representations about Mowrer. We cannot delay much longer and will have to expel him by the beginning of the week unless action is taken." I told Leitner that this was a very big thing that he was asking us to do as it brought into play the entire relationship between the Government and the press. I could give him no indication until I had spoken to Mr. Phillips ⁵³ but I recognized the

⁵¹ Rudolf Leitner.⁵² Green H. Hackworth, Legal Adviser of the Department of State.⁵³ William Phillips, Under Secretary of State.

urgency of the matter. Dr. Leitner intimated that he thought there were ways and means here whereby the Government could ask newspaper owners to remove objectionable correspondents. I told him that we recognized the shortness of the time and that I would get in touch with him again this morning.

PIERREPONT MOFFAT

811.91262/124

*Memorandum by the Chief of the Division of Western European Affairs
(Moffat)*

[WASHINGTON,] August 19, 1933.

I telephoned Dr. Leitner at 11:30 to say that I had given Mr. Phillips a full report of his conversation with me this morning about Mr. Edgar A. Mowrer. Mr. Phillips had now asked me to telephone informally to say that he had given his request careful consideration but had reached the conclusion that it would not be appropriate to approach the *Chicago Daily News* as asked.

Dr. Leitner was clearly disappointed and said it would undoubtedly make trouble and wished to know whether Mr. Phillips had reached his decision because of or in spite of the fact that the paper had already transferred Mowrer to Tokyo. I replied that Mr. Phillips had not outlined his reasons. Leitner reiterated that it was too bad as undoubtedly difficulties would now arise.

PIERREPONT MOFFAT

811.91262/124 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, August 19, 1933—1 p.m.

99. Leitner some days ago requested the Secretary to urge the *Chicago Daily News* privately to withdraw Mowrer from Berlin in order that the German Government might avoid the necessity of expelling him. We thought that with Mowrer's transfer to Tokyo, the matter would drop. Leitner, however, again came to the Department this morning saying that unless action were taken almost immediately the Germans would be forced to expel Mowrer by the beginning of next week. We have informally replied to Leitner that we did not consider it appropriate to approach the *Chicago Daily News* as requested, and have so informed the Washington representative of the paper.

PHILLIPS

811.91262/124 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, August 21, 1933—5 p.m.

102. Department's No. 99, August 19, 1 p.m. Representative *Chicago Daily News* informs me Mowrer is leaving Berlin tomorrow. *Daily News* expresses concern for Mowrer's personal safety through Germany and also for that of his wife and children remaining for the present in Berlin. Fears are also expressed in connection with his property.

Please exercise your own judgment and take whatever steps seem to be desirable.

PHILLIPS

811.91262/125 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, August 22, 1933—6 p.m.

[Received August 22—2:10 p.m.]

132. Department's 99, August 19, 1 p.m. and 102, August 21, 5 p.m. Foreign Office and police authorities assure no further pressure for Mowrer's immediate departure but we have urged him to leave as soon as he can in the interest of all concerned; it would be doubly unfortunate if he were to cover Nuremberg demonstration.

Inform *Daily News* that Mowrer's August 11 story about high officials is considered violation of mutual understanding and let Colonel Knox⁵⁴ know that we think further exploitation of Mowrer episode likely to do all news service men here harm.

DODD

811.91262/123

Memorandum by the Chief of the Division of Western European Affairs (Moffat) of a Conversation With the German Chargé (Leitner)

[WASHINGTON,] September 8, 1933.

With regard to the Mowrer case, Dr. Leitner told me that he wished to protest strongly against statements printed by Mowrer to the effect that the German Government had informed him that it could not be responsible for his safety and hence desired him to speed his departure. He recalled to me that as he had explained the case to the Secretary, Mowrer's departure was hastened by the fact that otherwise the German Government would have to proceed against him in the courts.

The Chargé d'Affaires then went on to designate Mowrer's recent articles as "outrageous" and added that it was probably not necessary to

⁵⁴ Frank Knox, publisher of the *Chicago Daily News*.

say more as we knew what a difficult individual he was and that he understood that our Ambassador in Berlin had, even in the short time he was at Berlin, had difficulties with Mowrer.

PIERREPONT MOFFAT

EFFORTS TO PROTECT RIGHTS OF THE WATCH TOWER BIBLE AND TRACT SOCIETY, AN AMERICAN RELIGIOUS ORGANIZATION OPERATING IN GERMANY

362.1163 Watch Tower/6 : Telegram

The Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, April 27, 1933—6 p.m.

46. The Watch Tower Bible and Tract Society, an American corporation, states that it has been informed that the German Government has forcibly taken possession of the Society's property at Magdeburg, consisting of a printing and bookbinding establishment and real estate valued at \$600,000, and that the German authorities have confiscated its books and other personal property.

Please investigate with a view to lending appropriate assistance, and submit a telegraphic report on the situation. The Society's representative in Germany is Paul Balzereit, Magdeburg.

HULL

362.1163 Watch Tower/8 : Telegram

The Consul General at Berlin (Messersmith) to the Secretary of State

BERLIN, May 2, 1933—4 p.m.

[Received May 2—11:45 a.m.]

Referring to the Department's telegram No. 46, April 27, 6 p.m., to the Embassy, I am able to report Watch Tower Society premises again free and Society functioning through the good offices of the Consulate General.

Full report by mail my despatch No. 1269.⁵⁵

MESSERSMITH

362.1163 Watch Tower/15 : Telegram

The Secretary of State to the Consul General at Berlin (Messersmith)

WASHINGTON, May 18, 1933—5 p.m.

Your May 2, 4 p.m. The Watch Tower Bible and Tract Society greatly appreciated your earlier and successful efforts but now reports that the Governments of Bavaria, Saxony, Thuringia, Lippe, Mecklenburg, Hesse

⁵⁵ Not printed.

and Wurttemberg, have officially interdicted its activities and confiscated its property valued at about 750,000 Reichsmarks.

Please investigate, extend appropriate assistance, and telegraph results.

HULL

362.1163 Watch Tower/16 : Telegram

The Consul at Berlin (Geist) to the Secretary of State

BERLIN, May 27, 1933—11 a.m.

[Received May 27—6:38 a.m.]

Referring to Department's telegram of May 15 [18], 5 p.m., I made representations last week Ministry Interior on behalf of the Watch Tower Bible Society. Matter being investigated through authorities German states where activities have been forbidden. No decision reached yet. See my despatch sent confidential May 22nd.⁵⁶

GEIST

362.1163 Watch Tower/23

The Consul General at Berlin (Messersmith) to the Acting Secretary of State

No. 1428

BERLIN, July 12, 1933.

[Received July 28.]

SIR: I have the honor to refer to my despatch No. 1324 of May 22, 1933,⁵⁶ making a report to the Department with regard to the seizure by the police throughout Germany of the property of the Watch Tower Bible and Tract Society. The Consulate General has been in close contact with Mr. Hans Dollinger, the Magdeburg representative of the Watch Tower Bible and Tract Society and also with Mr. Paul Balzereit, representative for central Europe, as well as with Judge J. F. Rutherford of Brooklyn, New York. As was reported in the previous despatch, the property at Magdeburg was seized soon after the National Socialist Government came into power and after ten days, through the intervention of the Consulate General, the property was again released. In the meantime a general action on the part of members of the National Socialist Party began against the activities of the Society throughout Germany, so that one decree after another was promulgated by the various states of Germany, excluding Prussia, which eventually was the last to forbid the activities of this Society.

Judge Rutherford, the President of the Society in Brooklyn, New York, has been in Europe for a number of months and took the opportunity to

⁵⁶ Not printed.

come to Germany a number of weeks ago and called at the Consulate General where he had a long interview with Consul Geist with regard to the status of the affairs of the Watch Tower Bible and Tract Society in Germany. It was then explained to Judge Rutherford that the German authorities throughout the country had taken the view that not only the pamphlets but the teachings and the activities of the bible instructors who are attached to their organization throughout the country are inimical to organized Government, the established church and society. Judge Rutherford was very much concerned as to the status of their affairs in Germany and appeared willing to trust somewhat to possible favorable developments which might come about with the march of affairs. His representatives in Germany had complained that the pamphlets prepared in New York for this country were not in accordance with the ideas that have come about with the so-called national resurgence. These men being Germans, understood thoroughly the disrepute into which the Watch Tower Bible and Tract Society had fallen in this country. It was pointed out to Judge Rutherford that the Consulate General would be unable to make any representations to the German Government regarding the ban that had been put upon their activities and that it could use its good offices only to protect the physical property of the organization excluding pamphlets, booklets and brochures which the police had condemned as being anti-revolutionary and communistic in tendency.

The work of the Society has been at an utter standstill in all the states of Germany except Prussia; but on June 24 a decree was issued by the Prussian Ministry of the Interior and signed by Dr. Grauert, the Under Secretary of State in that Ministry. A copy of this decree is enclosed herewith,⁵⁸ and it will be noted from the translation herewith enclosed that in the decree the property of the organization was ordered confiscated by the Government. As this is the first instance of this sort which has come to the attention of the Consulate General, the legal phases of it have presented certain complexities. The decree of February 28, 1933 of the Reich President, referred to, confers as the Department knows, very large powers upon the state in confiscating the property and providing for the arrest of persons without trial, whose activities are considered dangerous to the state. In the decree of June 24 forbidding the activities of the Society throughout Germany, it was also provided that the property be confiscated. This is identical to the action taken against the Communistic Party and against the Social Democratic Party, in which cases the property including real estate, moneys in the bank, and equipment of all sorts including automobiles and motorcycles, have been confiscated. In view of the seriousness of this situation, Consul Geist visited the Ministry of the Interior and had a conversation in the premises with

⁵⁸ Not printed.

Staatssekretær Grauert who is the Under Secretary in that Ministry. A copy of Mr. Geist's memorandum of this conversation is enclosed herewith.⁵⁹ It will be seen from the contents of this memorandum that Consul Geist was able to secure a reversal of the decision as to the confiscation of the property of this Society, which it is understood is valued at about 5,000,000 marks. The German authorities insist upon the Society liquidating its holdings in Germany, but it is believed that the Consulate General will be able to obtain sufficient delay with regard to the disposition of their property so that a minimum loss may be sustained.

There is, however, little doubt but that the Watch Tower Bible and Tract Society will be unable either to do any kind of printing in this country even for use abroad, or to continue any kind of activities, and that it is destined to lose considerable money in the liquidation of its affairs. The ban against the Society has been published in numerous newspapers throughout Germany and definite action has been taken by all of the states. At the present time the big plant at Magdeburg is closed and in the hands of National Socialist Storm Troops and a National Socialist flag is flying on the premises. It is expected, however, that the decision of the Ministry of the Interior will presently be made known to the local managers of the Society so that preparations can be commenced to liquidate their affairs. The Department undoubtedly will receive strong protests when it is definitely realized by the American organization that the Society must leave Germany; but it is believed that nothing further can be done in their behalf than to secure a delay so that the liquidation of the interests can be accomplished without too great a loss and so that they will have facilities for transferring abroad, presumably to Prague, the necessary equipment to fit up a new plant, as well as any funds which will accrue if the property can be disposed of. The Consulate General anticipates considerable difficulties in these transactions and will afford the Society in every case whatever aid is proper and feasible.

In this connection I should inform the Department that in the action which it has taken on behalf of this society, it has proceeded constantly only after close consultation with the Embassy. The Chargé d'Affaires, Mr. Gordon, and I, after very careful examination of all the circumstances, are of the opinion that in protecting the interests of the Society, such efforts could not go beyond saving the physical property which it has in Germany, this not to include the actual printed pamphlets which are in the country. I have gone into the activities of the Society and of its agents, and have read some of the pamphlets which have been distributed by the Society widely in Germany, and I can see that objection could reasonably be raised to them by the German Government. Although

⁵⁹ Not printed.

acting as a religious society, the pamphlets contain comment of not a purely religious character. In view of the present situation which exists in Germany, I believe that it would be entirely useless to endeavor to assist this Society to continue its operations and I doubt very much whether our Government, in view of the nature of the activities, would find it possible to assist it. I believe therefore that the only efforts which we can make on behalf of the Society are in connection with the protection of its physical property, the release of which, as the Department will note from this despatch, we have been able to secure.

Respectfully yours,

GEORGE S. MESSERSMITH

362.1163 Watch Tower/19 : Telegram

The Consul General at Berlin (Messersmith) to the Acting Secretary of State

BERLIN, July 15, 1933—noon.
[Received July 15—9:10 a.m.]

We have had several conversations recently with representatives Watch Tower Society. Lately government again seized property and interdicted all activities throughout Germany. We succeeded several days ago obtaining assurances Ministry Interior that physical property including plant Magdeburg will not be confiscated and eventually released. Ban on all activities continues and in view of nature pamphlets, activities and general situation in Germany Embassy and Consulate General have considered it impossible to object to ban on activities and I believe Department will take same attitude. Local representatives society understand our position. Full report forwarded despatch No. 1428, July 12. Suggest Department defer further consideration pending receipt foregoing in answer to Department's telegram.

MESSERSMITH

362.1163 Watch Tower/31

The Consul General at Berlin (Messersmith) to the Acting Secretary of State

[Extract]

No. 1461

BERLIN, July 27, 1933.
[Received August 11.]

SIR:

Consul Geist called again on Ministerialdirigent Fischer in the Prussian Ministry of the Interior and explained that the measures taken by

the German authorities are utterly defeating the demands which they have made on the Watch Tower Bible and Tract Society. A demand was made that the property be released under conditions which would make it possible for this society to afford a reasonable protection to its property and financial interests. Consul Geist pointed out that it appears reasonable that every facility should be granted an American firm to save its property from ruin, and it should be given facilities to avoid unusual and extensive losses; that the purpose of the German Government is wholly served, if their operations do not continue, as the Consulate General has not gone into any discussion of the reasons for which the activities of this society have been forbidden. Consul Geist protested against levying rent for the property belonging to an American firm and pointed out that this was an extraordinary procedure, and a violation of property rights. A protest was made against the position of the German Government in requiring that the property of the Watch Tower Bible and Tract Society remain in the Government's possession as a guarantee that no propaganda will be made by this society abroad against the German Government. This is tantamount to confiscation, and if such confiscation is made without due process of law in the courts, it certainly renders insecure the existence of all American property in Germany. Consul Geist demanded that the property be freely and wholly turned over to the owners to make such disposition as they saw fit, so long as they violated no injunction placed on them regarding their activities. Consul Geist also pointed out that the Consulate General believed that the German authorities were sincere in this action and desired nothing more than to assure themselves that the alleged subversive activities of this society be stopped, and that the German Government had no ulterior intention of obtaining this society's property. Dr. Fischer stated that this assumption was true, and that the purpose back of this action was not to seize the property.

It may be pointed out in this respect that the representatives of the society have the impression that there is no real basic evidence against the Magdeburg organization. There is no doubt that some of the tracts do not coincide with National Socialist ideas, but it is not believed that these are either genuinely subversive or revolutionary, as we understand the terms "subversive" or "revolutionary".

It would be easy enough for the police to see that no printing was done in the establishment, or other activities carried on, to which they could take objection. The Consulate General is of the opinion that the procedure in the confiscation of this property has been an extraordinary action wholly unjustified by the facts. The Consulate General has requested a statement from the Prussian Ministry of the Interior stating precisely the conditions upon which the property will be released, and as soon as

this letter is received, the Consulate General will communicate further with the Department. In the meantime it would be appreciated if the Department would study the facts in connection with this case as they have heretofore been reported, and advise the Consulate General whether or not, under the Treaty,⁶⁰ the property of an American firm, for certain alleged political reasons, can in this way be seized and confiscated.

Respectfully yours,

GEORGE S. MESSERSMITH

362.1163 Watch Tower/33 : Telegram

The Secretary of State to the Consul General at Berlin (Messersmith)

WASHINGTON, September 7, 1933—5 p.m.

Representative of the Watch Tower Bible Tract Society informs Department that an order has been issued by the German authorities requiring the vacating of the Home at Magdeburg owned by the Society and now occupied by Harbeck, an American citizen and the Society's resident manager, and that a portion of the Society's property including books is being burned today by soldiers or police acting as custodians of the Society's factory. You are requested to lend appropriate assistance and report by cable.

HULL

362.1163 Watch Tower/34 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, September 9, 1933—2 p.m.

111. The complaint of the Watch Tower Bible and Tract Society in regard to the seizure of its property and the suppression of its activities in Germany has been before the American Consulate General at Berlin and has been the subject of reports by the Consulate General to the Department. You may communicate the substance of this instruction to the Consulate General.

The Society was organized under the laws of Pennsylvania. It established a branch office at Barmen, Germany, in 1909. In 1921, the office was moved to Magdeburg, Germany, where headquarters in Germany were established. The Society owns valuable real estate and personal property at Magdeburg.

Since establishing the branch office in Germany, the Society has been engaged in the publication and distribution of books and tracts on religious subjects. The Society was not molested until on or about April 24,

⁶⁰ Treaty of Friendship, Commerce and Consular Rights, between the United States and Germany, signed at Washington, December 8, 1923; *Foreign Relations*, 1923, vol. II, p. 29.

1933, when German authorities, without explanation, (1) took possession of the real estate belonging to the Society and seized equipment and other personal property and (2) suppressed the Society's activities which were similar in 1933 to activities continuously conducted by the Society from time it established a branch in Germany.

In connection with (1) the Department is also informed that recently the German authorities burned some of the Society's publications and required the Society's resident manager, an American citizen, to vacate the home occupied by him and owned by the Society.

The Department understands that while general allegations have been made by German authorities about the Society's teachings and practices, the German authorities have not instituted proceedings in which they are required to specify and prove charges and in which representatives of the Society would be given opportunity to answer and defend.

It is unfortunate that purely administrative action entailing such drastic consequences without other than ex parte proceedings should be taken and maintained in Germany, and that apparently the obligation to administer justice by orderly processes of law has been disregarded. Under Article 12 of the Treaty of 1923, between the United States and Germany, the Society is entitled to an opportunity to defend its rights in the courts.

In view of the right of the Society declared by treaty to an opportunity to defend and inasmuch as the Society's property was seized and its activities suppressed by administrative action without judicial process, it is desired that you communicate with the German Foreign Office in the sense of the foregoing.

You should request that prompt steps be taken to restore the property to the possession and control of the Society. You are authorized in your discretion to subordinate as a matter of expediency the question of the resumption of the Society's activities, keeping in mind, however, that the principle upon which a complaint rests regarding this ban on the activities is the same as in the case of the confiscation or destruction of property, namely, the absence of a proper judicial hearing as provided for under Article 12 of the Treaty of 1923.

HULL

362.1163 Watch Tower/35 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, September 12, 1933—noon.
[Received September 12—8:55 a.m.]

142. Department's 111, September 9, 2 p.m. Consulate General states Society's real and personal property has been released although activities of Society still remain prohibited. Embassy making careful study of

actual present status of the facts in the case and until this is completed I do not consider it advisable to make representations to Foreign Office.

DODD

362.1163 Watch Tower/56

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 309

BERLIN, December 4, 1933.

[Received December 14.]

SIR: With reference to my despatch No. 158 [156] of September 20,⁶¹ on the subject of the Watch Tower Bible and Tract Society, I have the honor to enclose copies and translation of a *note verbale* dated November 13, from the Foreign Office, and of its enclosure, the decree of June 24⁶² issued by the Prussian Ministry of the Interior suppressing the activities of the Society in Prussia and confiscating its property. The Ministry's decree is based on the Presidential decree of February 28, suspending, on the ground of the existing danger of a communist uprising, certain articles (114, 115, 117, 118, 123, 124, and 154 [153?]) of the German Constitution relating to personal guarantees. This decree is still in force.

The Departments's attention is invited to the first sentence in paragraph 3 of the *note verbale*, wherein allusion is made to the legal remedies alleged to be available to the Society, although in the following sentence the Foreign Office appears to express the belief that the Treaty of 1923 gives the Prussian authorities the right to withdraw their approval of the Society, in accordance with the laws of Prussia and the Reich.

On December 1, however, the Embassy gave a copy of the pertinent excerpt from the *note verbale* to Mr. Harbeck, the Society's superintendent for Central Europe, who had just arrived from Switzerland. He expressed grave doubt whether the remedy suggested by the German Government would afford any relief but added that he would consult the Society's attorney. The Embassy has learned subsequently from the Consul in charge, Mr. Geist, who is thoroughly familiar with this matter, that he had been informed by Mr. Harbeck of the latter's intention to press the case in the courts.

During the conversation on December 1, Mr. Harbeck stated that the Society's property in Magdeburg had been restored to it, as set forth in paragraph 4 of the German Government's note, but that all religious activities are forbidden.

Respectfully yours,

For the Ambassador:
J. C. WHITE

⁶¹ Not printed.

⁶² Decree of June 24 not printed.

[Enclosure—Translation]

The German Foreign Office to the American Embassy

No. III A 3495

NOTE VERBALE

In reply to *note verbale* No. 61 submitted here on September 20, 1933, by Mr. O'Donoghue, Secretary of Embassy, relative to the branch of the American Watch Tower Bible and Tract Society in Magdeburg, which was forbidden by order of the Prussian Ministry of the Interior, the Foreign Office has the honor to inform the Embassy of the United States of America as follows:

The grounds on which the Prussian Government, within the scope of an action directed against the International Association of Bible Students together with all its subsidiary organizations, dissolved and prohibited the branch of the above-mentioned American society known in Germany as the Watch Tower Bible and Tract Society, are shown in the text of the Ministerial Decree of June 24, 1933, of which a copy is enclosed and to which reference is made. The procedure adopted in the action against the Society conforms with the pertinent legal provisions of the Reich, or States.

The claim to free admission to the courts provided for in Article XII of the German-American Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, has been complied with in that the legal recourses provided for in the Prussian Police Administrative Law include also suits in the administrative court. The principle contained in the second paragraph of the same Article might, however, be looked upon as decisive in the present case, namely, that the right of the forbidden society to carry out its activity in the Free State of Prussia was contingent upon the approval of the Prussian Government given in conformity with the Reich and State laws, but that it ceased automatically at the moment that the previously granted approval was revoked in accordance with the Reich and State laws.

As the Prussian Ministry of the Interior informs the Foreign Office, it was at the time suggested to the Watch Tower Bible and Tract Society to remove its organization to some other country, and it was expressly permitted to move its machines and other equipment from here to such place for that purpose. Besides, out of consideration for the representations made by the Consul General of the United States, the Regierungspräsident in Magdeburg was instructed on September 26, 1933, to rescind the confiscation of the property of the prohibited Society. Furthermore, the former personnel of the Society was permitted to live in its buildings again.

On the other hand the preparation of pamphlets and broadsheets carried on by the Watch Tower Bible and Tract Society in the past, as well as its activity with regard to teaching and holding meetings, must remain forbidden. Consequently the regulation will also remain in force, in accordance with which a guarantee must be insured, by means of supervision of the pertinent buildings of the forbidden Society, that neither printed matter of any kind is prepared there, nor political or religious meetings held, nor any teaching done.

BERLIN, November 13, 1933.

362.1163 Watch Tower/60

The Ambassador in Germany (Dodd) to the Secretary of State
 No. 497 BERLIN, February 1, 1934.
[Received February 17.]

SIR: I have the honor to refer the Department to my despatch No. 309 of December 4, 1933, forwarding a copy and translation of a *note verbale* on this subject from the German Foreign Office, in paragraph two of which is set forth the legal remedy available to the Society under Article XII of the German-American Treaty of 1923, should it desire to seek a judgment of the courts on the action of the Prussian Government forbidding the Society to continue its religious activities in Prussia. The Department was informed that Mr. Harbeck, the Society's superintendent for Central Europe, intended to follow the advice of the Reich authorities.

On January 9, however, the Embassy learned from the Consulate General that the Society in July 1933 had attempted to obtain relief in the manner described by the Foreign Office four months later. The court, however, curtly refused to consider the appeal of the Society, stating that orders issued by the executive on the basis of paragraph 1 of the Presidential Decree of February 28, 1933, cannot be legally contested.

There are transmitted herewith a copy of Mr. Geist's letter and copies and translations of a letter addressed to him by Mr. Balzereit, the German superintendent of the Watch Tower and Bible Society, and of its enclosures.⁶³ The first of these is a copy of the court's decision, and the second, a statement prepared by the Society setting forth the alleged monetary damages occasioned to it by the acts of the Prussian officials. A copy of the former, certified by the Consulate General, is in the possession of the Embassy.

The Presidential Decree mentioned by the court in the foregoing decision suspends various Articles of the German Constitution containing personal guarantees. The pertinent portion of this decree reads, in translation, as follows:

⁶³ None printed.

"Articles 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich will be suspended until further notice. Therefore restrictions are permissible of personal liberty, of the right of free expression of opinion, including freedom of the press, and the right of association and assembly; together with the invasion of postal and telegraphic and telephone secrecy and orders for house searchings, and confiscations as well as restrictions, of property beyond the legal limitations otherwise applicable in such cases."

It seems evident that, regardless of the contention of the judicial authorities that in virtue of the President's Decree of February 28, 1933, they were unable to consider the Society's plea, the situation indicated by the Department in its telegram of September 10, 1933, still exists, and that Article XII of the Treaty of 1923 has apparently proved of no avail. The Society has been unable to defend its rights in the courts.

The question arises therefore, whether since local remedies have apparently been exhausted, grounds exist for interposition by the Government of the United States. According to Hyde's text book on International Law, Volume I, page 491,

"A denial of justice, in a broad sense, occurs whenever a State, through any department or agency, fails to observe, with respect to an alien, any duty imposed by international law or by treaty with his country. Such delinquency may, for example, be manifest in arbitrary or capricious action on the part of the courts, or in legislative enactments destroying the exercise of a privilege conferred by treaty, or in the action of the executive department in ordering the seizure of property without due process of law."

In the case under consideration the foregoing quotation appears pertinent. It is true that the property at Magdeburg has been restored to the Society, but it seems equally true that the latter may be suffering monetary loss through inability to use its property, and that no legal relief is available. Not only has Article XII been nullified, but also, it would seem, paragraph 3 of Article I.

I desire also to call the Department's attention to the following excerpts from Hyde which relate to the same subject: Volume I, Section 282, page 494, Section 283, pages 496 and 497.

In making these suggestions I am not, of course, attempting to pass upon the merits of the views expounded by the Prussian authorities concerning the alleged objectionable teachings and doctrines of the Society. This aspect of the question, however, would seem in no wise to limit its right to defend its case. That right has been denied. Accordingly I venture to lay the matter before the Department for such additional instructions as may be appropriate.⁶⁴

Respectfully yours,

WILLIAM E. DODD

⁶⁴ Copies of the enclosures to this despatch were transmitted to Mr. Chandler P. Anderson for the Watch Tower Bible and Tract Society in a letter dated March 28, 1934 (362.1163 Watch Tower/65); apparently no further action was taken by the Department.

EFFORTS OF THE CONSUL GENERAL AT BERLIN TO PROTECT AMERICAN BUSINESS INTERESTS THREATENED BY NAZI DISCRIMINATORY MEASURES

362.1154/3

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1233

BERLIN, April 11, 1933.

[Received April 24.]

SIR: I have the honor to transmit herewith the copy of a letter dated April 7, 1933,^{64a} which I have addressed to the Ministry of Commerce with reference to several cases involving violation of the treaty rights of American firms in Germany. The main details in these cases are set forth in the letter and will therefore not be recited in this despatch.

Briefly, the Associated Press G.m.b.H. and the New York *Times* G.m.b.H., which are both American-owned companies organized under the German law, and the Keystone View Company, which is American-owned but not organized as a German company, have been refused permission to take pictures on a recent public occasion and were furnished a free copy of a picture with the statement that they could not sell it in Germany but only outside of the country. The German companies, however, engaged in the same business, that is the German-owned firms, were allowed to sell the picture in and out of the country. These American firms took up this matter with the Consulate General stating that in their opinion the refusal to permit them to sell the picture in Germany was a violation of the treaty rights of these firms.

A second case is that of the Nationale Radiator Gesellschaft m.b.H., which is a German company completely owned by the American Radiator Company, which has three plants in Germany, two of which manufacture for the German market almost exclusively and one of which manufactures for the European and South American markets. The representative of an organization closely affiliated with the National-Socialist party recently approached the German managing director of the Nationale Radiator Gesellschaft and informed him that his company would no longer be allowed to sell in Germany. The third case is that of the Gillette Safety Razor Company of Boston, Mass., which is the owner of the Roth-Buechner Company at Solingen. This German firm is completely owned by the parent American firm and exploits in Germany the patents of the Gillette Company. Recently suits have arisen in the German courts with respect to these patents. The Vice President of the Gillette Company of Boston has brought to my attention several articles which have appeared in the *Angriff* of Berlin which is the principal organ of the National-Socialist party, and

^{64a} Not found in Department files.

one which appeared in the *Solinger Beobachter*, a National-Socialist paper, in which the American company is attacked as an octopus and as a Jewish concern. The Vice President of the Gillette Company, Mr. Claisse, believes that these articles were published at this time to influence the referee and the courts hearing this case, and that the articles published in the organs of the National-Socialist party have a distinct prejudicial effect.

After discussing this matter with Mr. Gordon, the Chargé d'Affaires, it was deemed advisable that these matters should be taken up first with the Ministry of Commerce rather than with the Foreign Office, and I thereupon called upon Dr. Bang, the Staatssekretär at present at the head of this Ministry. I went into these cases in considerable detail and he expressed appreciation of our attitude and our concern. He agreed that the action against the three American picture companies was equivalent to violation of treaty rights, that the action against the Nationale Radiator Gesellschaft, if carried into effect, would be equivalent to a violation of such rights, and that the publication of such articles as the ones referred to in the case of the Gillette Company and its German branch was undesirable. In connection with all these cases I pointed out that if such action against American firms became known in the United States it would cause a great deal of concern and would undermine confidence in the general German situation and might unfavorably affect trade relations. I further pointed out that it was so commonly recognized everywhere that the courts must be independent of political and party influence that it would be extremely unfortunate if an impression should get abroad that party organs were endeavoring to influence the action of the courts. I said that if such an impression became current business men would necessarily have to use great caution in entering into contracts or agreements which might eventually come before the courts in Germany. Staatssekretär Dr. Bang expressed complete understanding of this aspect of the situation.

Dr. Bang expressed appreciation that we had brought these cases to his attention in this informal way rather than making representations to the Foreign Office. He said that he would give the matter his immediate attention and would do all in his power to bring about a satisfactory adjustment. I pointed out that it seemed advisable that action should be taken at once in order that this movement should not spread. He asked me to write him quite informally about the cases, which I did in my letter of April 7 herewith transmitted.

Staatssekretär Dr. Bang then said in a personal way whether it would not be possible for me to bring these cases also to the attention of the Reichskanzlei, that is the office of the Chancellor, and that if this could be done it would greatly facilitate the action he would take. I informed

him that I could see only two methods of approach to such a matter by us, i.e. either through his Ministry or through the Ministry of Foreign Affairs and that I saw no way in which we could take up this matter with the office of the Chancellor as this would be an admission by our part that party considerations were involved. This obviously we could not do as our action had to be based on the treaty rights of these firms and the approach made either through the Ministry of Commerce or through the Foreign Office. Dr. Bang stated that he appreciated this.

I have mentioned this latter personal exchange as it indicates further what has been brought out in my strictly confidential despatch No. 1231 of April 10⁶⁵ that a dual government exists in Germany and that it raises serious problems in connection with the protection of American interests. Dr. Bang as the responsible head of the Ministry of Commerce realized that if the proposed action reported in this despatch against these American firms was carried through it would involve a violation of treaty rights, but he realized at the same time that the action against these firms was taken through the extra-legal or party government which for the present is the stronger. The approach which he suggested to the office of the Chancellor was therefore to get for the representations which we had made to him, the support and agreement of the extra-legal government. The conversation indicates clearly the difficulties under which the responsible Ministers in certain cases labor.

The Remington Typewriter Company which is a German company owned completely by the Remington Company in the United States both manufactures in and imports into Germany, and it and the representative in Germany of the Weston Electrical Instrument Corporation of Newark, N. J., have received from the Dresdner Gas, Wasser und Elektrizitaets-Werke and from the Stadtrat der Landeshauptstadt Muenchen forms which they are to fill in, a copy of which is enclosed herewith,⁶⁶ to the effect first, that they are purely German firms, second, that the company is not exclusively or principally owned or under the responsible direction of foreigners, Jews or Jewish partners, and third, that the company is not founded on "marxistische" principles. The Remington and the Weston firms have been asked to sign these forms as if they are not acceptably filled in the municipalities or municipal works in question will not be able to buy any further supplies from them. It has been suggested to these firms that they refrain for the present from signing or sending in any such declarations.

The party organization of the National-Socialist party has made declarations sometime since to the effect that in the future the central Government, the states, the municipalities and all public works in which

⁶⁵ *Ante*, p. 222.

⁶⁶ Not printed.

there is a public interest will no longer be allowed to buy except from exclusively German firms. So far as this Consulate General knows this has been up to the present a purely party order, but there are now indications that an official order has gone to these administrations that they must confine their purchases to purely German firms. According to the wording of the declaration which the firms have been asked to sign the Remington Co. which also manufactures in Germany would be excluded not only from selling to municipalities, etc., the machines it imports from the United States, but also the machines it manufactures in Germany. This latter would seem to be a violation of the treaty rights of these American-owned, German firms.

I shall at the first opportunity discuss this problem with the Ministry of Commerce to learn what the exact status is and whether the orders in this respect have come from the constitutional and legal Government or are acts of the extra-legal party government. After complete information has been gathered, the matter will be discussed with the Embassy and such action here and with the Department will be taken as the circumstances make desirable. This matter is referred to in this brief way in this despatch merely to point out the new situation which is arising.

There seems to be much reason to believe that the extra-legal party government is distinctly hostile not only towards all big business, whether foreign or German, but also hostile towards foreign-owned plants in Germany. The circumstances recited in this despatch may only be a beginning of the problems which will arise in this connection, as the program for certain readjustments in business is apparently just beginning.

As there is no published program and as one can only determine what is in the minds of the National-Socialist leaders by action here and there in particular cases and coming for the most part from smaller people in the organization, it is possible here only to give a brief indication of the main tendencies.

Respectfully yours,

GEORGE S. MESSERSMITH

362.1154/6

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1243

BERLIN, April 18, 1933.

[Received May 8.]

SIR: I have the honor to refer to my strictly confidential despatch No. 1233 of April 11, 1933, with reference to the interference with the treaty rights of certain American firms in Germany and in which I out-

lined my conversation with Dr. Bang, the Staatssekretär at present at the head of the Ministry of Commerce, with regard to the cases of the Associated Press G.m.b.H., the New York *Times* G.m.b.H., the Keystone View Company, the Nationale Radiator Gesellschaft, G.m.b.H., the Roth-Buechner Company which is a subsidiary of the Gillette Company, the Remington Typewriter Company, and the Weston Electrical Instrument Corporation, all of which were briefly outlined in the despatch under reference. In this despatch I also pointed out that the general policy of the present Government, or at least of the National Socialist Party which is in complete control of the Government, is towards the dissolution of the big industries in favor of small factories.

Since the writing of this despatch, further information has developed in this connection. The Burroughs Adding Machine Company which has enjoyed a good business in Germany for a number of years, has brought to my attention that it has been asked by municipal authorities and city owned public utilities to sign the same form as that referred to in the first paragraph of my despatch No. 1233, on page 6.⁶⁷

The National Cash Register Company which owns and operates a German company with a factory employing at present about 1,000 men in Berlin, has been asked to submit the same form by various municipalities and public utilities. This American owned German company was founded in 1896 and is the oldest firm in Germany in the cash register business. Its German competitors, Krupp and Anker, were established much later. The German plant manufactures in Germany not only for the German market but also supplies a part of the export demand of the parent company in the United States. The products it manufactures in Germany are 100% German and the only machines which the company imports from the United States are some of the larger and special machines for which there is only a small demand and which it would not pay to manufacture in Germany.

It will be noted that the declaration which certain American firms in Germany have been asked to sign and to send in within a period of eight days, requires affirmative answers to the following: (1) That the firm is a purely German firm; (a) [(2)] that the company is not entirely or mainly owned or under the responsible direction of foreigners, Jews, and that it does not have Jewish partners; and (3) that the company is not based on "Marxistic" principles. The firms mentioned in this despatch cannot give an affirmative answer to the first of these three declarations as they are not a purely German firm in the sense of the declaration which is that the firm is organized under German law and entirely owned by German citizens. These firms are organized under the German law as German companies which under the Treaty of

⁶⁷ Paragraph beginning "The Remington Typewriter Company . . .", p. 420.

Commerce between the United States and Germany⁶⁸ gives them the same rights as an entirely German owned firm. They cannot answer the second query in the affirmative as the companies in question are wholly owned by parent companies in the United States. In some cases the managing director in Germany is an American or a person not a German citizen; but in most cases the managing directors are Germans. It is impossible for any of these firms which are stock companies, to declare that none of their stock is in the possession of Jews. It is of course possible for all of these firms to answer the third query affirmatively, as obviously none of them are based on "Marxistic" principles.

In order to clear up this matter further and to determine what action the Ministry of Commerce had taken after my interview with Staatssekretær Bang, I called by appointment at the Ministry on April 13 and saw Ministerial Director Dr. Posse in the absence of Staatssekretær Bang. Dr. Posse it may be said, is one of the ranking officials of the Ministry and has frequently represented it at economic conferences at Geneva, and he informed me during this interview that he had been named to go to Washington for the conversations which are to take place during the preliminary meeting to the World Economic Conference.

I first referred to my conversation with Dr. Bang on April 7 outlined in my despatch No. 1233, and he informed me that he was familiar with what had passed then. I asked him what the Ministry had done as a result of this conversation and Dr. Posse stated that Dr. Bang had taken up the question of these American firms and of interference with treaty rights with the office of the Chancellor, Mr. Hitler, and with the Ministry of the Interior, at the head of which is Mr. Goering. He stated that he had no information further than this and reiterated that his Ministry would do all in its power to bring about a correction of the situation.

I then outlined to him the further cases of the Deutsche Burroughs Adding Machine Company and of the National Cash Register Company, which had come to our attention, and emphasized particularly the case of the latter company which meets its German demand almost entirely out of its Berlin factory. I also emphasized the fact that the Nationale Radiator Gesellschaft since 1914 had sent to the parent company in the United States only 400,000 marks of its earnings, the rest having been invested in the three German plants in increasing their efficiency and production. I pointed out that in many respects the existence of these plants and their continued operation was of much more importance to Germany than to the United States as unfortunately for us a part of the export demand of the parent companies in the United States for Europe and South America was supplied from the German rather than from the parent factories in the United States. I stated that the American

⁶⁸ Signed at Washington, December 8, 1923, *Foreign Relations, 1923*, vol. II, p. 29.

companies were being very patient and understanding because they realized that radical changes had taken place in Germany which involved disturbance of ordinary conditions and that under existing circumstances it was difficult to get rapid action. I said further that we realized that the pressure for certain interference in business was coming from the bottom and from political sources, rather than from the top and from official sources, and that he could depend upon our understanding the difficulties under which the Ministry was laboring but that unless some satisfactory assurances could be given to the American firms concerned as to the attitude of the German Government, they would be under the necessity of informing the parent companies of the discriminatory action being taken which would undoubtedly result in the parent companies making representations to the State Department in Washington and that this would involve taking up the matter with the Foreign Office through the Embassy. I stated that if the parent companies in America took such action, publicity would be inevitable and it would have a further unfavorable effect on public opinion abroad if it became known that foreign firms in Germany were being discriminated against.

Dr. Posse stated that he appreciated the situation fully and expressed his thanks that the Embassy and the Consulate General were handling the matter so considerately. He assured me again that Dr. Bang had taken up the whole matter with the offices of the Chancellor, Mr. Hitler, and of Minister Goering, and that the Ministry would do everything in its power to get the matter settled as quickly as possible. He added that he could assure me officially, and that I was to consider it as official, that no such action as that which had been brought to his attention by me came from official sources and that it did not represent either the will or the act of the German Government. He was particularly interested in the information I brought him as to the declaration which American firms had been asked to sign, and asked me to leave copies with him, which I did. It was obvious from his manner that he recognized the extraordinary character of these declarations and made it clear that they had not been authorized by official sources.

During the course of the conversation it was necessary to make a distinction between the products of the American-owned German factories and those products imported by the German company from the parent company. Dr. Posse brought out the fact that certain municipalities and he believed certain states as well as Congress, had made it a condition that only American products could be used in certain public works or that public administrations could only use goods manufactured in the United States; and that it was undoubtedly the right of state and municipal authorities both in the United States and in Germany to decide to use only goods manufactured in their respective countries.

I stated that I could not give any definite information on this subject as to our practice at home, but that it was my impression that certain municipalities at least had specified in contracts for public works that only American materials could be used. I stated that the matter which I was bringing specifically to his attention was the situation of those German American-owned factories which by the action of states and municipalities were being excluded from selling their products manufactured in the German factories, to them. Dr. Posse stated that he appreciated that this was a clear violation of treaty rights and that as he had already stated, he would do everything in his power to get the proper information about, as the central Government had nothing whatever to do with the matter.

I informed Dr. Posse that I thought it was desirable to get action as rapidly as possible and to get this movement stopped before it gained further momentum. He assured me that he recognized all the implications involved and the importance of immediate action and that he would again see that the matter was taken up in the same quarters in which Dr. Bang had already discussed it.

The conversations with Staatssekretär Bang and Ministerial Director Posse have indicated clearly that the Ministry of Commerce recognizes as a violation of a treaty right the effort of certain municipal and state administrations to exclude from purchase by their services, the products of American-owned German plants. They have given their specific assurances officially that the Ministry will do all that it can to stop this movement. They have expressed appreciation of the considerate manner in which this matter has been taken up with them by us. They have, however, indicated the powerlessness of the Ministry and recognized by implication the existence of the dual Government described in my despatch No. 1231 of April 10, 1933.⁶⁹ This was frankly admitted to me by the statements of both Dr. Bang and Dr. Posse that they had taken up this matter with the offices of the Chancellor and of the Minister of the Interior.

The American firms which have taken up this matter with the Consulate General have been informed that they should not in the meantime sign any of the declarations which have been submitted to them or take any action with regard to them, as the Consulate General has taken up the matter officially with the Ministry of Commerce which has given the necessary assurances that the requirement of these declarations is not based on any official orders of the German Government.

It is obvious that the instructions to states, municipalities and certain public utilities not to buy any except German goods manufactured by purely German firms, have come from a central organization of the

⁶⁹ *Ante*, p. 222.

National Socialist Party. This policy is in line with the general policy of the Party which is distinctly unfavorable towards foreign capital and foreign investment in Germany and towards any firms which in the opinion of the Party are not "purely German" firms. It is interesting in this connection to note that at the same time that the Party Organization is instructing municipalities, etc., not to buy imported goods or goods not manufactured in Germany by purely German firms, the central offices of the Party organization in Berlin have recently purchased some expensive calculating machines from an American company in Berlin and imported from the parent factory in the United States.

Respectfully yours,

GEORGE S. MESSERSMITH

362.1154/8

The Consul General at Berlin (Messersmith) to the Secretary of State

[Extracts]

No. 1273

BERLIN, May 2, 1933.

[Received May 13.]

SIR: I have the honor to refer to my strictly confidential despatches Nos. 1233 of April 11, 1933 and 1243 of April 18, 1933, with reference to the interference with the treaty rights of American firms in Germany. . . .

In addition to the conversations which I had had with Staatssekretaer Bang and Ministerial Director Dr. Posse set forth in the despatches Nos. 1233 and 1243, I had had the opportunity to discuss this matter with Dr. Bang later at a luncheon given by Dr. Schacht in the Reichsbank, and Dr. Bang assured me that everything was being done; but he could give no definite assurances as to what actual action was being taken. As the patience of these firms was becoming exhausted and as it was obvious that the longer this situation was allowed to continue the worse it would become and the more difficult it would be for the Government to correct it, I felt it desirable that the matter should be brought to the attention of Minister Goering who, if he so wished, could see that the proper orders were issued by the Party.

I therefore called on Staatssekretaer Milch who is the head of the Aviation Ministry and who is one of the men really enjoying the confidence of Minister Goering and in whose opinion he really has confidence, on the afternoon of April 28. I placed the whole situation before him and Dr. Milch immediately realized the importance of it and the necessity for action by the Party. He dictated a memorandum to Minis-

ter Goering in my presence, in which he stated in very direct and plain language to the Minister that he felt sure he would wish to take the necessary measures at once to have the Party organization informed that interference with American firms must be stopped. Dr. Milch assured me that Minister Goering realized that the treaty obligations of Germany in every respect must be kept and that he wished them kept and would see that they were respected. He thanked me for the way in which this had been handled and expressed real appreciation of it and stated that enough mistakes had been made in connection with the Jewish question so that the Government and leaders of the Party were anxious to avoid further mistakes. He assured me that the necessary steps would be taken by the Party to have this interference with American firms stopped. A memorandum covering the conversation with Dr. Milch is transmitted herewith⁷⁰ and certain parts will probably be found of special interest.

The Consulate General is not able to state how rapidly the necessary action will be taken by the Party to stop this interference with American firms, or how far it will go; but we now have the official assurances of the German Government that certain action would be equivalent to treaty violation and that it has not come from the Government, and we have what I believe is a real declaration by a responsible member of the Party that such action would be treaty violation which they wish to avoid and that the necessary steps will be taken. The Consulate General will keep in close touch with the situation and if it is not evident that the necessary action is being taken by the Party and that the interference with American firms stops, I am of the opinion that we should not exercise further patience but should inform the Department that the time has arrived for it to make representations of the strongest character through the Embassy to the German Government. I believe that the course followed up to the present has been the best one in every way to achieve the protection of our interests and I still believe that direct representations can be avoided.

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There is much reason to believe that among the many matters discussed between Prime Minister Mussolini and his advisers and Minister Goering during the latter's visit to Rome, was this interference in private business of all kinds by the Party leadership and by individual Party members in Germany. This I am informed, had been brought strongly to the attention of the Italian Government by its representatives in Berlin who saw in it grave dangers not only to German business, but also to the future of the National Socialist Party. It is at least interesting in this connection that following the return of Minister Goering from

⁷⁰ Not printed.

Rome a decided change has been apparent in this matter. Up to that time Party leaders, groups of S.A. men, or in some cases a single S.A. man had placed Kommissars in businesses and this had been going on without direct interference from the central Party leadership and if not approved by it, was at least tolerated. If appearances can be judged since April 25, active and energetic steps are to be taken to see that no more Kommissars are placed in businesses except under the instructions of the liaison staff of the Party in Berlin, and all unauthorized Kommissars are to be removed.

The interference with American business firms in Germany has come, I believe it may be said in every single case, from German competitors who wish to use the opportunity of the accession of the Party to power to get business which they have not been able to secure in any other way. This is apparent in practically every single case which has come to the attention of the Consulate General and is particularly clear in the case of the German picture companies which are trying to exclude the American companies from this business. There is reason to believe that the highest leaders of the Party now realize that the Party cannot make the business difficulties and the competitive weakness of every firm in Germany which seeks to use the Party, its own business. There are indications, as set forth in this despatch and in the appended memorandum, that this question of interference with American firms is gradually reaching a satisfactory solution; but this cannot blind one to the fact that the spirit of Germany is now so highly nationalistic in every way that foreign firms or foreign owned German firms will have a harder road to travel in Germany than heretofore.

Respectfully yours,

GEORGE S. MESSERSMITH

362.1154/13

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1301

BERLIN, May 12, 1933.

[Received June 3.]

SIR: I have the honor to refer to my strictly confidential despatches No. 1233 of April 11, 1933, No. 1243 of April 18, No. 1273 of May 2 and No. 1296 of May 9⁷¹ with reference to the interference with the treaty rights of American firms in Germany. In this latter despatch I indicated to the Department that although we had received the official assurance of the German Government that this interference with the rights of American-owned German firms in Germany would cease, and also had the assurance of leaders of the National-Socialist party that they were inter-

⁷¹ Despatch No. 1296, May 9, not printed.

ested in every way in the maintenance of the treaty rights of foreign firms and capital and would see that they were respected, the interference with American firms was continuing in spite of these assurances and that it might be necessary for the Department to intervene.

I now have to inform the Department that I believe that this matter is in a fair way towards settlement and that direct intervention by the Department may not be necessary. As a result of my last visit to the Ministry of Commerce outlined in my despatch No. 1296 I am now in receipt of a letter from Staatssekretær Dr. Bang, dated May 10, 1933, who is the active head of the Ministry of Commerce, in which he informs me that his Ministry has been in touch with the "Kampfbund des gewerblichen Mittelstandes" which has assured the Ministry that the book listing so-called pure German firms which the Kampfbund intended to get out, will not be published until the Ministry of Commerce has been able to control the list of firms contained therein so that the rights of American firms guaranteed by the treaty will in no sense be infringed. There is transmitted herewith a copy of the letter of the Ministry of Commerce, together with a translation.⁷²

As the publication of this list of so-called approved firms by the Kampfbund des gewerblichen Mittelstandes would have been a most dangerous precedent and if published in the form intended would have worked infinite harm of a most serious nature to American interests in Germany, I thought it advisable to do everything in our power to have the publication of this list which was imminent, postponed, and at the same time endeavored by lodging the proper information to secure abandonment of the project. I therefore called upon Staatssekretær Dr. Milch in the Ministry of Aviation who is the most trusted adviser of Minister Goering in matters of this kind, on May 10 and had a long conversation on this subject with him. He gave me the distinct assurances that Minister Goering was definitely against any violation of the rights of foreign firms and capital, and he informed me that the arguments which I had advanced and the comments which I had made during a conversation which I had had with Minister Goering had made a very definite impression on him in this respect and that he realized very definitely that there must be no interference with American firms and American capital. He said that all these activities against foreign firms and capital came from so-called "Kampfbuende" which are fighting organizations of various groups in German industry and other forms of German life. He said that the Minister understood that in many instances these organizations were interested merely in advancing selfish aims of individuals and of particular firms, and in the majority of cases merely wished to rid themselves of annoying competition in a particular field. He said that the

⁷² Not printed.

Minister understood that the objects of these organizations were for the most part selfish and not dictated by really patriotic or national motives and that it was appreciated that they were trying to carry out their selfish aims under the cover of the party. I at some length indicated to Dr. Milch what the unfortunate effects of some of these Kampfbuende were, not only so far as foreign interests are concerned, but also how dangerous they were to the internal economy of Germany itself. Dr. Milch stated that this was appreciated and that the activities of these organizations had become so annoying to the chiefs of the party that it was quite likely that a good many of them would be compelled to dissolve.

I also called on May 10 on Dr. Hanke in the Ministry of Propaganda, who is one of the most trusted collaborators of Dr. Goebbels, the Minister of Propaganda, and we discussed at length the letter which I had written to the Minister,⁷³ a copy of which was transmitted with my despatch No. 1296 of May 9. As Dr. Hanke was obviously anxious to discuss this question at length we went into it in considerable detail and he repeated practically the same statements as those which had been made by Dr. Milch as above reported. I discussed with him particularly again the difficulties placed in the way of the Associated Press G.m.b.H. and of the *New York Times* G.m.b.H., and stated that the disloyal competition of the German firms and the defamatory remarks made by them were reaching such a point that the Ministry could hardly refrain longer from taking action. I pointed out in this connection particularly the activities of the "Verein Deutscher Presseillustrationsfirmen e.V." which on purely competitive grounds was making most of the trouble for these American firms. Dr. Hanke stated that he appreciated this and that it had to stop; that if the American firms could furnish a picture in two hours of a public ceremony which the German firms could only furnish in four or five hours, then the German firms would have to abide the consequences. He indicated that he would take up with the Minister, Dr. Goebbels, the advisability of dissolving this Verband as a purely trouble making organization and interested only in selfish ends.

I also brought to his attention a small newspaper published in Berlin which constantly printed defamatory articles with regard to American firms and which is carrying on this program under the cloak of the National-Socialist party and as a National-Socialist organ. Dr. Hanke at my request carefully examined this paper and he said that he would consider recommending to the Minister to-day the suppression of this newspaper.

I gathered from the conversation which I had recently in the Ministry of Commerce, in the Air Ministry and in the Propaganda Ministry that

⁷³ Not printed.

the activities of these so-called Kampfbuende or fighting organizations are causing the leaders of the party considerable concern. They are almost invariably acting on the basis of selfish interests or in favor of parts of an industry rather than of an industry as a whole. At a recent meeting in the Kaiserhof Hotel, Minister Goering announced that he was dissolving a recently formed Kampfbund which was active in theatrical circles, and he served a warning to others not to carry on their selfish activities under the cloak of party or patriotic action. The energetic action in the case of the newly formed Kampfbund in the theatre leads me to believe that the indications which I have received with regard to action against other fighting organizations may not be mere words.

It will interest the Department to know that in my conversations with both Dr. Milch and Dr. Hanke they indicated that the party now felt itself strong enough to take certain action against its adherents which before they had to be somewhat careful of. This action against foreign firms and the promise to relieve German manufacturers of all foreign competition in Germany was of course preached by the National-Socialist party to its adherents for years during the struggle for power. Now that the party is in power these various Kampfbuende have been organized to carry out the party promises, but the party leaders, as has been indicated in my previous despatch, realize that the contemplated action is not possible under the treaties in many instances, and in others would be directly contrary to the best interests of Germany and of the party. They are therefore now in the position of having to repress the very activities which they have started. They have had to be careful in repressing these activities which they themselves had started, in order not to too greatly disappoint their followers, and there has obviously been a great hesitation on the part of the leaders to carry through determined effort into effect, indicating their changed attitudes. In my conversations with them, however, I have not failed to bring out the fact that when these activities amount to treaty violation and hit definitely important foreign interests, action cannot be too long delayed. I have particularly called to their attention the fact that the longer these Kampfbuende are allowed to act undisturbed, the stronger they will become and the more difficult it will be for the Government and the party to repress them and to bring about their dissolution.

In view of the letter which is transmitted herewith from the Ministry of Commerce and in view of the further assurances which I got from Dr. Milch and from Dr. Hanke that the Ministry of the Interior and the Ministry of Propaganda are both considering the dissolution of some of these Kampfbuende, I feel that action by the Department may not be necessary at all, and is not for the present. The most urgent thing was to stop the publication by the Kampfbund des gewerblichen Mittelstandes

of its proposed White List, and I believe that this is definitely stopped through our efforts. I believe further that we have gone a long way towards bringing about the dissolution of a number of the most dangerous of these Kampfbuende, and with their going out of existence the discrimination against American firms should cease. The Consulate General, however, will not fail to continue to keep in close touch with this situation, and together with the Embassy will continue its efforts to protect in every way the interests of American firms in Germany. . . .

Respectfully yours,

GEORGE S. MESSERSMITH

362.1154/12 : Telegram

*The Acting Secretary of State to the Consul General at Berlin
(Messersmith)*

WASHINGTON, June 2, 1933—5 p.m.

Your despatch 1296, May 9,⁷⁴ and previous despatches on the same subject. There is doubt in our minds as to the basis for claiming that the German action in this case involves any treaty violation. Naturally we would like to have the matter settled to the satisfaction of American interests, but we feel you should proceed with care, avoiding a position on which the Department may not be able to support you. Let us know on what articles you base your claims to treaty violations and to what extent the German authorities have concurred in your position. Unless you feel the situation is urgent report by mail.

PHILLIPS

362.1154/19

*The Consul General at Berlin (Messersmith) to the Acting Secretary
of State*

No. 1368

BERLIN, June 15, 1933.

[Received June 30.]

SIR: I have the honor to acknowledge the receipt of the Department's confidential telegram of June 2, 1933, a paraphrase of which is as follows:

[Here follows paraphrase of the telegram printed *supra*.]

This telegram reached this Consulate General before my return to Berlin from Vienna where I had been attending the meetings of the International Chamber of Commerce, and I am taking my first opportunity to transmit the report desired, doing so by mail instead of telegraph as there appears to be no urgency in the report reaching the Department.

⁷⁴ Not printed.

The Department is in doubt on what sections of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, the Consulate General based its efforts to protect the threatened interests of American firms and American-owned German firms since March 5, and feels that the Consulate General should act with great care in order to avoid taking a position which the Department may not be able to support. At the outset I may say that no formal representations have been made to the German Government to the effect that the treaty has been violated, and the Department has not been committed to any attitude. The Department will note from page 10 of my despatch No. 1296 of May 9 ⁷⁵ that formal representations involving the taking of a specific attitude by our Government had not up to that time and have not since been made. The conversations with the Ministries were carried on by this Consulate General with the Ministry of Commerce and the Ministry of Propaganda and Public Enlightenment in an informal manner. On page 10 of the despatch referred to it is pointed out that the Chargé d'Affaires and I were in accord that if the informal conversations of the Consulate General with the above mentioned Ministries were not effective and did not bring about a cessation of the discriminatory action against American firms whose vital interests were being daily threatened, it would be necessary for the American firms concerned, through the parent companies in the United States, to take up the matter with the Department in Washington in order that the necessary instructions might be sent to the Embassy and formal representations made to the German Government through the Foreign Office, that treaty violation was involved in the discriminatory action taken against American firms. As it was happily possible through the efforts of the Consulate General, acting always in consultation with the Embassy, to bring about a cessation of this discriminatory action, the necessity for formal representations by the Department and the Embassy did not arise.

The Department is aware through the numerous despatches from this Consulate General since March 5, 1933, when the National-Socialist party came into power in Germany, that action of various sorts began which seriously threatened the personal safety of at least a part of the foreigners in Germany, including Americans, and that various steps were undertaken in the business field which threatened the future of many millions of dollars invested by American firms in manufacturing establishments in this country. The action against the persons of foreigners was principally against Jews, or those suspected of being Jews, and the Department is aware from the reports which have been transmitted that American Jews as well as some Americans not of that faith and race suffered in the general action. As the personal safety of Americans tempo-

⁷⁵ Not printed.

rarily or domiciled in Germany is undoubtedly guaranteed by the treaty and as the German Government owed these Americans all proper protection as to their personal safety and that of their property, the Consulate General and the Embassy immediately took the necessary steps in order to prevent further attacks upon Americans. The despatches which this Consulate General has transmitted to the Department have recited the effectiveness of the efforts made by the Consulate General, always in consultation with the Embassy. It is therefore not necessary to go into this aspect of the matter, except to state that it is the general impression here that the discreet, cooperative and at the same time forceful way in which these cases were taken up, effectively stopped the attacks on Americans, and did a great deal towards helping to moderate the movement against the Jews in general.

It is also necessary to bear in mind as background that when the National-Socialist party came into power it was the signal for the beginning of attacks against foreign interests and foreign firms in general, and this particularly affected American interests as our interests, particularly in the manufacturing and investment fields in Germany, are larger than those of any other country. There was, for instance, a movement to destroy completely the department stores on the ground that they were Jewish-owned and had a great deal of foreign capital in them, principally American, and that their continued existence threatened the prosperity of the smaller businesses in the country. It was one of the doctrines also of the National-Socialist party that large manufacturing establishments were not in the best interests of the country, and that therefore the small factories must be built up, even though this might be at the expense of the larger establishments, and cause their disappearance. There was a feeling that if an establishment employed over one hundred men it fell within the category of those dangerous to the national economy. While the action was supposed to be directed against all establishments employing over one hundred workers, it affected principally foreign-owned factories and as these owned by Americans were most numerous, it was our interests which were most endangered. As has been pointed out in despatches from this office, orders were issued by the National-Socialist party that no department of the national Government, or of a state government or of a municipality or of a public utility should buy any supplies from other than a "pure German firm". A pure German firm was construed by the party authorities and by the various organizations which grew up to carry this program into effect, to be one which was entirely owned by German citizens and in which there was no Jewish participation whatever.

While this action against American interests in Germany did not originate from the Government, but rather from the National-Socialist

party and from various organizations which grew up under its protection, the discriminatory action was as effective as if it came from the Government through actual laws and decrees. The National-Socialist party controls completely the Governmental machinery in Germany in every single aspect and for the public any action by the party has the same effect as action by the Government itself.

The Nationale Radiator Gesellschaft, the case of which is fully covered in the despatches which have already reached the Department, has three factories in Germany. The capital stock of the Company is entirely owned by the parent company in the United States, the American Radiator Company. The Germany company is incorporated under German law. The products of the company in Germany are manufactured by German workmen and out of German materials, and the management is almost entirely in the hands of Germans. It was, however, the intention of the "Kampfbund des gewerblichen Mittelstands", an organization acting under the National-Socialist party, to classify this firm as one from which no Government organization, state, national or municipal, or any public utility, could purchase supplies. Due to the general mentality which has been instilled into the German people this would have been equivalent also to intimidate any private purchaser or firm to buy from the Nationale Radiator Gesellschaft. Carrying through this program, therefore, would have meant the definite elimination of this firm from the German economic structure, and the destruction of millions of dollars of American capital which have been invested in it. I will not recite the other cases as some of them have already been covered in the despatches sent the Department.

A special situation therefore arose which required immediate action in the protection of our interests. There seemed to be no doubt that under Article I as well as under Article XIII of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, American firms or American-owned German firms were guaranteed the same rights in Germany as firms which might be entirely owned by Germans. In view, however, of the chaotic situation in the country and the fact that the National-Socialist party and its leaders were overwhelmed by the many problems which they had to face and by the various movements which were being set on foot by party followers, the Chargé d'Affaires, Mr. Gordon, and I were both of the opinion, as has been set forth in my despatch No. 1296, that it would be preferable not to make formal representations on behalf of these American interests either from the Department or from the Embassy at the outset, but that it would be better for the Consulate General to carry on informally conversations with the Ministry of Commerce. This was done and the Ministry of Commerce without any hesitation stated that the discriminatory

action which was brought to its attention, involved violation of the treaty. As the Ministry of Commerce at first was powerless to stop the party acts which were causing the trouble, it suggested to me that it would be advisable also to take up the matter with the Ministry of Propaganda and Public Enlightenment which, as the Department is aware, was done, which Ministry has also indicated that the discriminatory action taken against certain American firms involved treaty violation. I do not know on what sections of the treaty the German authorities may have based their recognition that these acts constituted violation of the treaty as at no time did this Consulate General go into the juridic aspects of the question with these Ministries or with any of the German authorities. As has already been stated, a special situation arose with the coming in of the new Government, which required immediate action. As one leader of the National-Socialist party put it, "every single member of the party is trying to make his own revolution to serve his own ends under the cover of the national revolution." All the authorities which were approached, expressed appreciation of the tactful and cooperative manner in which these cases were taken up with them, and expressed the hope that formal representations might be avoided. I do not believe it is necessary to recite in detail any more than has been done in the despatches already transmitted to the Department, the untiring steps which this Consulate General took to stop at the outset the movement which so seriously threatened American firms. It was extremely important that the movement be stopped at the outset and before it gained real momentum. As it was, before it could be stopped by the Government and by the higher leaders of the National-Socialist party, the interests of some American firms had already been prejudiced. It was a question for a time as to whether the leaders of the party would be willing to take the necessary steps to stop the movement of their adherents against American and foreign firms. They had taught their adherents that certain things could be done, and when they came into power their adherents wished to hold them to their promises. In the earlier weeks of the movement it was particularly difficult for the leaders of the party to enforce certain action directly contrary to what they had promised their followers.

It is, however, to the credit of the leaders of the party that they did begin to take action to stop discrimination against American and foreign firms, and as time went on carried into effect the promises which they had made. As the Department has already been informed, this was accomplished without any direct representations either by the Department or the Embassy, to the Foreign Office.

I believe that the foregoing is sufficient to indicate to the Department that the Consulate General has proceeded with all caution and has not taken any position which the Department may not be able to support.

As neither the Embassy nor the Consulate General have made any formal representations, no direct action by our Government has been taken with respect to treaty violation. As has already been pointed out, however, both the Ministries of Commerce and of Propaganda and Public Enlightenment have indicated to me that the contemplated action against American firms in the cases brought to their attention would involve violation of the treaty, but, as has also been stated, the juridic aspects of the question were never discussed as this recognition came from them spontaneously when the individual cases were discussed with them.

It may be said in this connection that the Consulate General has on various occasions both by officers in the Ministries and by leaders of the National-Socialist party been told how much is appreciated the manner in which these cases have been taken up and formal representations avoided and that patience was shown by the American firms and our officials until the Government and the party could take the steps which the circumstances imposed. I believe that it is not too much to say that it is because formal representations were avoided and the cases were taken up in the way which has been recited, in this and previous despatches, which made it possible for the Government and the party leaders to stop the action which would have been so prejudicial to American interests. Although it is the opinion of this Consulate General that representations by the Department and the Embassy would have been justified at the outset because of the nature of the discriminatory acts, the making of such formal representations would in the first days of the change of Government have greatly embarrassed the new Government and it might not have been possible to secure the results which have so far been achieved. The course of events so far has amply justified the attitude of the Embassy and of the Consulate General agreed upon when these cases first arose, and it is quite probable that any formal representations on the basis of treaty violation in the first weeks of the new Government might have led to endless discussions of a juridical nature while in the meantime the interests of the many American firms involved would because of conditions prevailing in the country, have been definitely prejudiced. The party had so definitely promised certain things to its adherents and was required to exercise so much restraint in various forms on its adherents after the accession to power, that if it had been faced by an open or a public discussion of treaty violation in this matter, it could hardly have receded immediately from its position. The temper even of the leaders of the party during the first weeks after March 5 was such that they were not much concerned about treaty obligations and undoubtedly felt that inconvenient treaty obligations could be easily discarded. It was therefore necessary to take up the matter in a considerate and understanding way so as to give the leaders time to understand the importance

to Germany of keeping her treaty obligations and observing international obligations in general and to recede from the original positions in various matters without losing further in authority with their adherents. Had the matter of treaty obligations been pressed in the beginning, it is not impossible that some rash declarations might have been made or a premature attitude assumed that Germany would seek a revision of these treaties and in the meantime did not feel bound by them. Once such an attitude taken it would have been even more difficult for the party and the Government to take the proper steps.

As I have indicated in this despatch and in previous despatches, the leaders of the National-Socialist party have become convinced of the necessity of carrying out all treaty and international obligations and of maintaining certain accepted international practices. With respect to foreign-owned German firms the leaders of the party have taken a very definite attitude and have to the knowledge of this Consulate General given very specific orders to party organizations and intermediary leaders. The various Kampfbuende or "fighting organizations" with the exception of the "Kampfbund des gewerblichen Mittelstandes" have been dissolved. At the time that this was done the leaders of the party informed me that they realized that this organization should also be dissolved, but it was quite obvious that they did not feel that they could go so far as to do this. This organization therefore is still flourishing and it is quite evident that the masses of the party and the intermediary leaders are in sympathy with its aims. There is increasing evidence that this Kampfbund is not at all satisfied with the restrictions which have been placed upon its field of action by the party and the Government, and in recent days it has shown new activity. It is not impossible that in various forms its activity, if continued, may injure the rights of American firms, in which case it may still be necessary for our Government to make representations on behalf of the firms affected. The Consulate General, however, intends to continue the same steps which it has undertaken up to this time in protecting the interests of American firms and to avoid the necessity for representations. We believe that this is still the best way of reaching the desired end, but in case the circumstances require, the necessary information will be transmitted to the Department in order that appropriate action may be taken.

Although the party hold on the machinery of the Government and in the country remains secure, it is evident that the moderate policy of the primary leaders of the Government is causing a good deal of dissatisfaction among the intermediary leaders and the masses of the party. The principal question in Germany to-day is whether the now more moderate leaders of the party will be able to force these views with the appropriate action on the intermediary leaders and the masses of the party, or whether

in order to hold their power and place they may not be under the necessity of taking certain radical action which will undoubtedly result in the necessity of representations, not only by our Government but by other Governments having interests in Germany which would be affected by such action.

Respectfully yours,

GEORGE S. MESSERSMITH

**REPRESENTATIONS REGARDING GERMAN DISCRIMINATION AGAINST
AMERICAN SCRIP AND BOND HOLDERS IN THE EXECUTION OF
THE GERMAN TRANSFER MORATORIUM**

862.51/3616 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, June 9, 1933—5 p.m.
[Received June 9—3:35 p.m.]

96. My 90, June 3, 1 p.m.⁷⁶ While it was clear that some kind of transfer moratorium measures would be taken before Schacht⁷⁷ went to London and while Schacht's declarations of intention during last week's conversations with the creditors' representatives had covered action of the nature which was taken yesterday, I had, in common with various citizens of the United States and other creditor countries in Berlin, hoped that Schacht when it came to translating words into action might confine himself to securing from the Cabinet a general transfer moratorium empowering act without giving it specific application.

In accordance with the terms of the law enacted yesterday specifically envisaging exceptions to its operation the general view here seems to be that the service of the Dawes loan⁷⁸ will certainly be excepted from this transfer moratorium, that the chances are more than even that the service of the Young loan⁷⁹ will also be and that exceptions as to the service of loans of corporations having substantial attachable assets abroad will be the subject of further bargaining and seriatim adjustment.

While I do not mean to cast doubt upon the realization of these expectations I feel that the form of yesterday's action has rendered the situation more inelastic in this respect than might have been hoped and has given Schacht a regrettable tactical advantage. I also think it unfortunate that a transfer moratorium should have been declared on the

⁷⁶ Not printed.

⁷⁷ Hjalmar Schacht, president of the Reichsbank.

⁷⁸ See Great Britain, Cmd. 2105 (1924): *Reports of the Expert Committees appointed by the Reparation Commission*; also *Foreign Relations*, 1925, vol. II, pp. 133 ff.

⁷⁹ See Great Britain, Cmd. 3343 (1929): *Report of the Committee of Experts on Reparations*; also telegram No. 117, December 28, 1929, to the Ambassador in Germany, *Foreign Relations*, 1929, vol. II, p. 1105.

service of the Dawes and Young loans even if it be intended eventually to rescind this action.

Both the letter of the Reichsbank to the Chancellor formally declaring the moratorium and the official communiqué issued in connection therewith exclude from technical operation of the moratorium obligations covered by Standstill agreements which must be taken to include those covered by the public debtors agreement as well as by the main German credit agreement of 1933.⁸⁰

I am informed that this thorough-going exception was only inserted at the last moment as a result of foreign creditor pressure exerted through German banks. It is anticipated, however, that Schacht will seek in London to modify such sweeping exception and in this he will doubtless be assisted by the long-term creditors' contention that some credits under the Standstill agreements are in the nature of disguised long-term obligations especially those short-term loans which are tied up with long-term bond issues and are thus not entitled to exception from the transfer moratorium on the plea of preserving to Germany an adequate flow of current working capital.

GORDON

862.51/3618 : Telegram

*The Secretary of State to the Acting Secretary of State*⁸¹

LONDON, June 11, 1933—3 p.m.

[Received June 11—10:30 a.m.]

18. On basis of information conveyed in Gordon's number 96 of June 9, 5 p.m., to the Department and material forwarded by Dulles⁸² designated by the American houses of issue the situation already created by Schacht in regard to American investors in Germany seems to me serious and the prospective developments may be even more adverse. The immediate intention seems to be [to continue?] the transfer on the standstill debts and inaugurate the transfer moratorium on the long-term warrants.

The American share of the standstill debt is decidedly less than the American share of the long-term. Furthermore, Schacht in his closing remarks at the Conference stated that he was giving consideration to discriminating in the treatment of debtors of different countries in accordance with the German balance of payments vis-à-vis each particular country illustrating the idea as follows:

⁸⁰ *The German Credit Agreement of 1933* (Druckerei der Reichsbank, Berlin).

⁸¹ The Secretary of State was in London as Chairman of the American Delegation to the World Economic Conference.

⁸² John Foster Dulles, representative of American investors.

“For instance all the European countries differ favorably in this regard from the United States of America and amongst the European countries there are some which give us a greater chance to export and therefore there is greater balance in our favor from commerce than with others.” The general impression I have is that the German Government intends to use its debt situation as a means of getting trade advantages and if it fails to do so will discriminate adversely against the United States.

I therefore believe that urgent consideration should be given to an immediate presentation to Schacht and to other German authorities of the American point of view. This protest would rest first on the indispensable role played by the American capital in the upbuilding of present day Germany and it would emphasize the general importance of the rule of non-discrimination among creditors.

Will the Department check these observations against its own information and then submit question to the President and ascertain whether he believes such a protest as is above sketched should be presented either to the authorities in Berlin or Schacht upon his arrival here. If action is to be taken it probably should be immediate if it is to be effective as there is reason to believe that the British banking authorities are working closely with the German authorities to develop further plans satisfactory to themselves.

HULL

882.51/3816 : Telegram

The Acting Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, June 13, 1933—noon.

70. Your 96, June 9, 5 p.m. Please call at the German Foreign Office and after appropriate oral discussion of the matter, leave an *aide-mémoire* on the following lines:

“You are instructed to call attention to reports that the President of the Reichsbank stated at his recent conference with foreign creditor interests that he was giving consideration to discriminating in the treatment of creditors of different countries in accordance with the German balance of payments vis-à-vis each particular country, being reported to have illustrated the idea by stating ‘for instance, all the European countries differ favorably in this regard from the United States of America and amongst the European countries there are some which give us a greater chance to export and therefore there is greater balance in our favor from commerce than with others’. The adoption of a principle whereby the payment of a debt of a German debtor to a non-German creditor should be made to depend on the ratio of imports and exports in the exchange of goods and services between Germany and the creditor’s country would be an unprecedented departure from the rule of

non-discrimination among creditors. The adoption of such a policy by Germany would have a most unfortunate repercussion on opinion in the United States in view of the confidence in German credit which has led American investors to purchase some \$1,200,000,000 of German bonds, thus furnishing an indispensable element in the economic and financial restoration of Germany after the war. The Government of the United States cannot believe that the reported expressions of the President of the Reichsbank represent a policy which could receive serious consideration by the Government of Germany."

You should keep in close touch in this matter with the American delegation at London which is being instructed to make such use as it deems appropriate of this action.

PHILLIPS

362.51/3618 : Telegram

The Acting Secretary of State to the Secretary of State

WASHINGTON, June 13, 1933—8 p.m.

31. Your 18, June 11, 3 p.m. Department has received no information or suggestions in this matter from Dulles or any other American interest. In the light of present information it would seem desirable to avoid implication in any conflict of American interests.

With the President's approval the Department is telegraphing the following instruction to the Embassy at Berlin to be delivered as an *Aide-Mémoire* and you are authorized to make such use as you deem appropriate of this action:

[Here follows text of paragraph 2 of the Department's No. 70, *supra*.]

PHILLIPS

462.00R290/5762

Memorandum by the Economic Adviser (Feis)

[LONDON,] June 13, 1933.

After discussion with the Secretary and the members of the Delegation,⁸³ I talked with Schacht this afternoon. I told him that I was talking not as a member of the Delegation, but as an official of the Department of State.

I told him that reports reaching the American Government of the German plans for the handling of their debts had been disturbing. First, American attention had been struck by the fact that full service was to be continued on the Standstill short term credits while being completely

⁸³ At the World Economic Conference; for correspondence concerning this Conference, see vol. I, pp. 452 ff.

suspended on the long term debt. The American investors were more interested in the long term debt and this policy would be likely to have an unpopular effect in the United States. I added that interpretation being put upon it in some quarters was that he was being governed inordinately by consideration of the Bank of England and British interests.

I continued that the American Government did not wish to interpose itself in his decisions as between different classes of creditors, especially as this might work to the injury of the American interests now being paid. But I ventured the suggestion that in the development of his policy if he gave full heed to the interests of the thousands of bondholders that would prove to be the most popular and desirable policy from the standpoint of American opinion.

He replied that he understood this; that in his decision he had been influenced by the fact that the Standstill Agreement was a definite contract only three months old and he did not like to be put in a position of breaking that contract. He added that within the very near future further discussion would take place with the standstill creditors, with a view to seeing whether distinction should be made between them. He promised the fullest possible consideration for the viewpoints I had put forward. In various indirect ways he implied that it was very likely he would shortly announce the maintenance of service on the Dawes and Young Plan loans, which probably had a certain preference (possibly even over the short term creditors).

In the second place, I told him that certain of his remarks as reported to us were construed as indicating a possible plan of discriminating between creditors of different nations in accordance with the trade balance as with Germany and each other country.

I rapidly reviewed the whole history of the American position as regards discriminatory trade and debt agreements and dwelt particularly on our opposition to clearing agreements which created discrimination in the discharge of debts. He stated that he wholly agreed with this position, and that it had been the Swiss who had been trying to force it upon him. He joined in the opinion that such agreements tended to bring trade down to an ever increasing minimum.

I stated that if the matter arose for discussion if it would help to be able to say that this Government was opposed to any such arrangement, he could do so.

In conclusion, he gave me definite assurance that he would not sanction any policy of discrimination as between creditors of different nations.

862.51/3625 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, June 15, 1933—1 p.m.
[Received June 15—10:35 a.m.]

102. Department's 70, June 13, noon. Bülow⁸⁴ refused to see me yesterday alleging great pressure of business both day and night chiefly in connection with the difficulties with Austria. I have now delivered your *aide-mémoire* and Bülow's answer is as follows:

While not denying that Schacht spoke the sentence quoted, Bülow contended that the report that Schacht was considering discrimination in the treatment of creditors in different countries was a fallacious conclusion from the quoted sentence which he believed was only meant to point the axiom that international debts can only be discharged by means of export of goods and services. If it were otherwise any statement concerning contemplated discrimination would be quite contrary to Schacht's well-known views that discrimination between creditors was an improper principle, views which coincide with the policy of the German Government. Bülow said he would secure the text of the speech from the Reichsbank to see if his views of it were not correct.

I replied that I had the text of speech given me by one who had it delivered and who informed me that the text was correct; that I had carefully studied this text and that I regretted that it seemed clearly guided by the interpretation of the reports referred to in the *aide-mémoire*. However, I was glad to hear him say that he did not believe that Schacht harbored such ideas. In any event in view of his (Bülow's) statement that the German Government did not approve of the principle of discrimination between creditors of different countries in accordance with the German balance of payments vis-à-vis each particular country, I took it that whatever that correct logical interpretation of Schacht's remarks might be this statement constituted a definite answer to our *aide-mémoire*. In this Bülow concurred.

Copy to London.

GORDON

862.51/3629 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, June 17, 1933—noon.
[Received June 17—9:20 a.m.]

105. My 102, June 15, 1 p.m. Referring to my conversation with Bülow, the Foreign Office telephoned me today that having discussed the

⁸⁴ Bernhard Wilhelm von Bülow, German Under Secretary of State for Foreign Affairs.

matter of the interpretation of Schacht's remarks with Reichsbank officials the latter pointed out that suggestions as to possible discrimination on the ground of different balances of payment had come from other creditors; that Schacht's remarks registered the fact that such suggestions had been made but that his closing statement in this connection "Of course I have not in any way made up my mind whether it should be done and certainly I do not quite know how it can be done", clearly indicated that Schacht himself was not considering discrimination.

The Foreign Office considers that this explanation is correct and reinforces Bülow's contention that Schacht continues to hold the view, which coincides with the policy of the German Government, that discrimination between creditors is an improper principle.

Repeated to London.

GORDON

862.51/3632

The Ambassador in Germany (Dodd) to the Secretary of State

No. 91

BERLIN, August 22, 1933.

[Received August 31.]

SIR: With reference to despatch No. 2521 of July 10, 1933,⁸⁵ I have the honor to enclose in copy and translation the statement⁸⁵ of the Konversionskasse for German Foreign Debts, as of June 30 and July 31, 1933, respectively.

The fact that the Konversionskasse had a balance on hand on June 30, 1933, prior to the effective date of the Law, is due to the receipt by it of amounts due and payable on July 1, 1933, the day the Partial Transfer Moratorium became effective.

It will be noted that by July 31, the sum of 61,490,043.96 Reichsmarks had accumulated in the Konversionskasse which are listed in the balance of that day as being in Reichsmarks and foreign exchange. The possession of this foreign exchange is accounted for by the conversion of an unstipulated amount of marks into foreign exchange in anticipation of the purchase abroad of certificates of indebtedness to be issued later by it in some form and representing non-transferable non-interest bearing amounts in marks to be placed at the disposition of the creditors in nominal satisfaction of interest claims.

I am informed by the Berlin representative of Messrs. Sullivan and Cromwell of New York, (representing the American bondholders), that as yet no method has been agreed upon between Dr. Schacht and the American creditors regarding the form of certificate of indebtedness

⁸⁵ Not printed.

which can be employed in the United States covering the non-transferable 50 per cent of interest in the Konversionskasse. It appears that the first idea of the issuance of scrip, although adopted for use in Holland, Switzerland and other creditor countries except the United States, encounters objection on the part of American banks which are unwilling to assume the obligations they would incur under the United States Securities Act, by having to issue the scrip to bondholders in lieu of the unpaid 50 per cent of interest.

As an alternative the American representative suggested the stamping and return to the holder of the half paid coupon with a notation that it represented a claim on the Konversionskasse for the remaining half of the interest in Reichsmarks, since these could be marketed with practically the same facility as scrip. Dr. Schacht considered after consultation with his experts that this procedure would tend to lead to a temporary hoarding of the coupons, pending an eventual change in the world situation and defeat the main purpose of the arrangement which was stated to be early recovery of the evidences of indebtedness by the Konversionskasse to enable the promotion of German trade through the discount at which the claims for non-transferable interest would be marketed abroad.

Although the suggestion was made that the Konversionskasse set up its own institution in the United States for the issuance of scrip, thus taking the responsibility, it was found that such an organization even functioning through the personnel of an American bank as Agent, would be far too expensive, and was rejected by Dr. Schacht on that ground.

It now appears that the solution of the matter may be accomplished through an arrangement for the stamping of the coupons and returning them to the holders more or less as described above. This has not yet been agreed to by Dr. Schacht, but there is some evidence that the growing impatience of the American creditors and the insistence of their representative that Dr. Schacht take early action to avert a serious situation, may cause him to accept this feasible plan. In connection with the negotiations here reported reference is made to my despatch No. 39 of July 29, 1933.⁸⁶

Although arrangements have been made to issue scrip in the other creditor countries, it is the belief of the American representative who has been consulting constantly with Dr. Schacht in Berlin, that these will not be issued prior to the completion of some workable arrangement for the creditors in the United States, who include many foreigners as well as American citizens. At the moment it is not thought that any satisfactory arrangement can be put into operation before September 1, at the earliest.

⁸⁶ Not printed.

I am authoritatively informed that the so-called "transfer marks" emanating from the Konversionskasse will in all probability be exclusively employed by Germany to promote her exports. The German Gold Discount Bank will probably establish agencies abroad for their purchase. Holland and Switzerland are stated to have already approved such a plan which they feel will create a stable market. In this event, the Konversionskasse would be responsible for the market rate abroad.

Respectfully yours,

WILLIAM E. DODD

862.51/3685

The Ambassador in Germany (Dodd) to the Secretary of State

No. 116

BERLIN, August 30, 1933.

[Received September 9.]

SIR: With reference to my despatch No. 91 of August 22, 1933, concerning the various plans for the issuance of Konversionskasse certificates of indebtedness under the German Partial Moratorium effective July 1, 1933, I have the honor to report that virtually no progress has been made with respect to the satisfactory handling of such certificates in the United States.

Several days ago I was informed by the Berlin representative of the American bond holders that Dr. Schacht had rejected the plan for the stamping of coupons as a substitute for scrip and that he insisted on the issuance of the scrip. He took the view that with the issuance and sending of the scrip to the United States, it would be placed at the disposition of the creditors there and that it would be their responsibility to arrange incidental internal matters which might interfere with the handling of the scrip in the United States.

I was today informed by the American representative mentioned above that the paying agents in the United States have cabled directly to Dr. Schacht telling him that it is the Reichsbank's duty to have the scrip registered under the United States Securities Act. My informant considers the situation to be very unclear and unsatisfactory from the standpoint of the American creditors and hopes to make some progress through his principals in New York in the near future.

The viewpoint of Dr. Schacht is not readily understandable if, as he has previously stated, he desires to promote German exports in every way possible. The difficulties of handling the evidences of indebtedness of the Konversionskasse would appear to minimize their availability for the promotion of German trade and thus defeat, so far as their availability in the United States is concerned, the evident primary purpose of the German Partial Moratorium. However, if the certificates of indebtedness when issued are not utilizable in the United States, the repurchasing agency of the German Government, which presumably will be the Gold

Discount Bank, would of course not be called upon to repurchase them even at half of their face value as has been estimated, and would therefore be able to retain the full 50 per cent of the non-transferable interest until some other arrangement can be worked out.

It is understood that holders in Germany of coupons within the scope of the Partial Transfer Moratorium will be treated in the same way as foreign holders and will be obliged to accept 50 per cent of their interest in Konversionskasse Certificates redeemable in Germany at the rate prevailing abroad.

There is also a well advanced plan to transfer all other blocked mark accounts, with the exception of Registered Mark accounts which fall within the Standstill Agreement, to the Konversionskasse, for the purpose of unification of their use in trade promotion.

Respectfully yours,

WILLIAM E. DODD

862.51/3891

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1562

BERLIN, September 1, 1933.

[Received September 18.]

SIR: I have the honor to transmit herewith a translation of a résumé⁸⁷ of the interview which Dr. Schacht, the President of the Reichsbank, recently gave to the Berlin correspondent of the *Algemeen Handelsblad* of Amsterdam.

The most significant part of the interview is the reply which Dr. Schacht gave to the correspondent's question as to whether the anti-Semitic attitude of the present Government would not create very severe difficulties for German foreign policy as well as for her financial policy. Dr. Schacht is quoted as having said:

"International arrangements will not be sought by us for the present. In previous years we undertook too much in this field. Germany does not reckon in any way further upon international financial assistance of the kind she received before."

He emphasized in the interview that the previous practice through which Germany was given loans at the enormous interest rate of 8% while in other countries a rate of 4% was current, showed that this international help was not on a sound basis.

"We do not even think of carrying on any longer such methods to which, as is well known, I was always opposed. Capital is hoarded labor. We have in Germany an enormous amount of labor. We need only to hoard it, and if it is said that the new Germany is poor in capital we can answer that she does not lack labor. Capital must be saved and earned

⁸⁷ Not printed.

through labor, but must not be borrowed. Loaned capital can only be used in small quantities."

With respect to the currency, Dr. Schacht is quoted as saying:

"It is generally known that I am an adherent of the gold standard. It is not necessary for Germany to give up the gold standard, and furthermore such a measure would for inner-political reasons not be desirable. The exchange dumping policy of the English and the Americans, into which the Scandinavians and the Japanese have also been drawn, has brought about a momentary increase in exports, but it cannot in the long run hinder the relation between wages and prices. The mistake that Germany made in the years 1924 to 1930 in taking on surplus capital will certainly not be repeated."

The Department may find the appended translation of a résumé of Dr. Schacht's interview of interest.

The interview as a whole seems to be in the general style which Dr. Schacht is known to possess. It is direct and blunt, critical of others and somewhat provocative. While he is sincere when he says that it would not be desirable for inner-political reasons to give up the gold standard, it is questionable as to whether he is as sincere in the first part of his statement that it will not be necessary for Germany to leave the present gold parity.

His statement also that Germany is not seeking for the present international connections and that she does not desire further foreign capital, is not quite in accord with information which has reached me that not long ago foreign capital was sought by the K.d.W. (Kaufhaus des Westens), one of the important department stores in Berlin which is owned by the Tietz family. This department store, which has been one of the most successful of the larger Berlin establishments of this kind, has recently suffered severely as a result of the anti-Semitic movement. It was necessary to secure new capital in order to keep the store going. The Department is aware that under the new policy of the Government the department stores are to be allowed to continue to exist as it has been learned that their disappearance, which was originally planned, would do great injury to a considerable number of industries. The Chase National Bank was approached for a loan of 14,500,000 marks, which was refused. I am informed that efforts were then made in several other directions to secure the money from foreign banks. All of the efforts met with a full refusal that the proposition could not even be considered. The Berlin banking firms which are already deeply involved in the department stores and which feel that a good part of their loans is already lost, were then called upon to make up this amount. The Tietz firm was reorganized and I am informed that Hardy & Co., Mendelssohn and the Dresdner Bank advanced the fourteen and a half million marks, but with the guarantee of the Reichsbank. In what form this Reichsbank guarantee

was given I have not been able to determine. It is quite clear, however, from the information which I have that the foreign capital sought to re-finance the K.d.W. establishment was sought with the full knowledge and approval of the Reichsbank and of Dr. Schacht. It was one of the definite recent experiences which showed that the foreign banks irrespective of nationality are for the present avoiding to increase in any way their commitments in Germany. That this loan should have been sought on the outside for a department store under existing circumstances, is rather difficult to fathom, as recently in the Free State of Hamburg the Senate has increased the taxes on department stores having a turnover of over 400,000 marks a year, by 20%. Similar increases in taxation on department stores have been decreed in other parts of Germany. This increased taxation combined with the restrictions placed upon the activities of the department stores, together with the anti-Semitic attitude, have already so seriously prejudiced the position of these establishments that it is not believed that foreign capital can in any way be interested towards further loans or advances, even on the plea that it may be necessary to save capital already invested.

Respectfully yours,

GEORGE S. MESSERSMITH

862.51/3693

The Ambassador in Germany (Dodd) to the Secretary of State

No. 146

BERLIN, September 14, 1933.

[Received September 25.]

SIR: With reference to despatch No. 1562 of September 1, 1933, from the Consulate General in Berlin, reporting an interview which Dr. Schacht, President of the Reichsbank had given to a Dutch correspondent, I have the honor to enclose a translation of a second interview,⁸⁸ the account of which was published in the *Deutsche Allgemeine Zeitung* of September 6, 1933, under an Amsterdam date line.

The interview deals with the use of Konversionskasse funds for the promotion of German exports, and with the German view of the foreign attitude toward such employment of funds due German creditors. The "take it or leave it" attitude of Dr. Schacht, who is the dictator of German financial policy, is perhaps more clearly brought out in his answers to the Dutch correspondent than in any particular one of the numerous despatches which the Embassy has written on this subject since the Partial Moratorium became effective on July 1, 1933.

In the interview Dr. Schacht says that money which is paid into the Konversionskasse does not belong to the German Reich, but that it

⁸⁸ Not printed.

belongs to those creditors who are not granted full transfers; he also remarks that no one is forced to sell his scrip, the market price of which will probably be 50 per cent of its face value. It would seem to the Embassy, however, that even if Schacht says the money does not belong to the Reich, it in effect does so belong, since it is the Reich which is really disposing of this money; because, according to Dr. Schacht, the creditor will be unable to get even this probable 50 per cent of the face value of his scrip unless he sells it. Dr. Schacht, however, sees no injury to Germany's credit arising from this ultimatum of "take a part only or eventually get nothing." He considers that the Partial Moratorium shows everyone that Germany does not idly accept the economic problems forced on her by a "senseless international economic policy", and will not admit the possible credit repercussions against Germany as a party to such a "senseless" policy. He lightly waives aside the threat of a Jewish boycott against Germany, as having no relation to economic policy and by inference no consequences in connection with Germany's economic policy. He stresses once more the connection between German foreign trade and German foreign debts, and in answer to a question as to whether the use of scrip would mean dumping, said that England, Japan and America had been competing in this field and to say that it was now feared that Germany would use scrip to promote her exports, "calls forth a bitter smile in Germany", and concluded that only if the foreign creditor will forego the payment of his interest, will Germany forego the use of scrip to promote her exports. Scrip, he said, would be used only for excess, or so called "additional" exports, with a portion of the transaction bringing in foreign exchange. This seems to indicate that scrip will not be employed up to 100 per cent of the amount of an export transaction.

In connection with the use of scrip, it may be mentioned that last week, the German Ministry of Economics issued a statement for the information of German exporters that dividend coupons of German securities could not be accepted in liquidation of export transactions. This statement would seem to have put an end to any idea which may have been entertained in the United States that the dividend coupons might be stamped with a statement of indebtedness for the non-transferred half of the interest payment in lieu of using Konversionskasse scrip for that purpose.

Respectfully yours,

WILLIAM E. DODD

862.51/3698 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, October 3, 1933—3 p.m.
[Received October 3—12:35 p.m.]

155. Department's 120, October 2, 5 p.m.⁹² Embassy and Commercial Attaché will, of course, continue their current reports on developments of the German policy to encourage exports by use of blocked marks. The latest development is an apparently blatant discrimination in favor of Swiss holders of scrip who are to be paid 100% of its face value. Schacht himself has admitted this and gives explanations which are not convincing. A mail report on this was prepared yesterday and goes forward by next pouch. Incidentally Sullivan and Cromwell are fully informed.

A decree that blocked security marks must have originated before April 15, 1932, to be utilizable for payment of debts due in Germany has in effect ended such Russian use thereof as Embassy has been informed that this class of blocked marks has now dried up. Registered credit balances may be used for payment of Russian bills (see page 22 of enclosure to my despatch 128 of September 7⁹²). More specific investigation of this subject is under way and further detailed reports will be rendered as soon as possible.

DODD

862.51/3701a : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, October 6, 1933—6 p.m.

121. Can you secure figures American capital now invested in Germany covering (a) long term bond investment, (b) other long term investment, (c) short term included in Standstill, (d) short term not included in Standstill, by any categories into which they may be divisible.

Also is estimate available of amounts of blocked accounts due to Americans divided according to their origin (that is, whether arising out of unpaid bond interest, blocked Standstill payments, et cetera), and according to the categories distinguished in your despatch No. 128 of September 7.⁹²

Estimates received in the past by the Department from different sources do not agree. We realize the difficulty of securing the exact

⁹² Not printed.

figures but would appreciate best possible estimates by telegram and more comprehensive report by mail.

HULL

862.51/3698 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, October 9, 1933—5 p.m.

123. Your 155, October 3, 3 p.m. The question of formal representations will be carefully gone into after the receipt of your mail despatch. Please telegraph any supplementary information which may be available as well as your recommendations.

For your information: This Government is deeply concerned by German discrimination in respect of both trade and finance. Both here and in London our position was made clear to Dr. Schacht who gave Dr. Feis categoric oral assurances on June 13 that he would not sanction any policy of discrimination as between creditors of different nations. In this connection you are also referred to the assurances contained in paragraph (e) of the Reichsbank statement transmitted with the Embassy's despatch 2521 of July 10.⁹³ It might be well for you to let the German Government know that a serious view of the situation is taken here as well as the fact that energetic formal steps are being contemplated.

HULL

862.51/3698 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, October 18, 1933—7 p.m.

132. My 123, October 9, 5 p.m. The Department wishes to determine whether formal protest based on Article VII of Treaty of Friendship, Commerce and Consular Rights⁹⁴ is warranted by preferential treatment granted Swiss bondholders. Please telegraph fully and give your recommendations.

HULL

⁹³ Not printed.

⁹⁴ Between the United States and Germany, signed at Washington, December 8, 1923, *Foreign Relations*, 1923, vol. II, p. 29.

862.51/3711 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, October 19, 1933—3 p.m.

[Received 3:30 p.m.]

173. Your 121, October 6, 6 p.m. Following information has just been furnished confidentially by Reichsbank.

Long-term bond investment \$1,090,000,000; other long-term investment \$179,000,000; short-term included in the Standstill \$318,000,000; short-term not included in Standstill \$201,000,000.

Long-term debts are those falling due in March 1934 or later. Short-term debts are those falling due through February 1934.

The above-mentioned figures are stated to have been calculated at the rate prevailing on February 28, 1933 which is the date of last official investigation except for short-term Standstill figure above, which is computed as of August 31, 1933, but at February rate.

The Reichsbank states it does not have complete material at hand regarding the desired subdivisions of available blocked mark accounts but has furnished the following figures in dollars as of February 28, 1933, at the rate of that day: old reichsmark credit balances 3,300,000; credit balance from security proceeds 1,200,000; other credit balance 4,800,000.

Registered credit balances of American creditors under the German credit Standstill Agreement of 1933 amounted to 72,000,000 marks on August 31 of which 68,000,000 have been used leaving an available balance of 4,000,000.

On September 30, 1933, payments into the conversion institute for the account of American creditors of non-transferable interest had amounted to 30,000,000 reichsmarks.

So far as the Embassy has been able to check the figures furnished with estimates thus far made by American bankers here they appear to be substantially accurate. Full report by mail.

DODD

862.51/3721 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, October 25, 1933—noon.

[Received October 25—11:50 a.m.]

178. Department's 132, October 18, 7 p.m. After repeated informal requests Embassy had hoped soon to receive text of German-Swiss agreement providing for full payment of scrip issued to Swiss bondholders. Am now informed by Foreign Office that text has been refused to other missions and it appears doubtful whether it will be given to us.

According to oral information furnished by the Foreign Office Switzerland must bear the full risk of providing sufficient foreign exchange to effect the full payment of scrip at the disposal of Swiss citizens. An unusually well informed source holds the view that the Swiss Government by a guarantee has assumed the risk of the Swiss consortium handling this scrip to provide the additional amount of foreign exchange required. It is understood that Switzerland will accept goods in excess of existing quotas and additional amounts of goods not limited by quota, notably coal for the Swiss railways. The level for determining whether goods not limited by quota have attained additional character was stated to have been drawn at 50% of the trade figures of 1931. It is understood that a balance will be struck at the end of December to determine whether enough extra exports have been made to Switzerland to cover the full payment of scrip. The Foreign Office orally reiterated Schacht's recent statement to the effect that the Swiss agreement accorded with the principle recognized at the London Conference that Germany could only pay her creditors through exports and it was intimated that if the United States desired to make a similar agreement with Germany this could probably be accomplished (see last paragraph of this telegram). No reply was made to this suggestion.

According to the British Embassy there is considerable dissatisfaction among British bondholders about the Swiss Government and the opinion was advanced that the bondholders would probably very soon ask the British Government to protest against the discrimination between creditors established by the Swiss agreement. It was stated that the present German favorable trade balance with England was about sufficient to cover full payment of scrip.

According to the Dutch Legation the German negotiations with Holland in Berlin have been suspended owing to their difficult and technical nature but they will probably be resumed at The Hague within a few days. It appears that the negotiations concern the granting of full payment to Dutch holders of scrip in compensation for non-reduction of existing Dutch import quotas for German goods together with the purchase of additional German goods not heretofore taken to Holland, comprising chiefly materials for municipalities. If an agreement is made on this mixed basis it would appear even more discriminatory than the Swiss agreement.

While the preferential treatment granted to Switzerland might in the current connotation of the term appear in effect to place a bounty on German exports a strict analysis of the mechanism of the agreement as the Embassy understands it indicates that no subsidy, grant or aid is furnished by any governmental agency to the German industrialists

manufacturing or producing the additional exports to be taken by Switzerland. As stated above in this telegram the Embassy's information is that the whole risk is borne by Switzerland and therefore no agency of the German Government is better nor worse off if sufficient foreign exchange to make these additional scrip payments is or is not forthcoming. Therefore, it would seem that the German Government is giving no reward or premium to encourage an industry which would constitute a bounty in the legal sense of article 8. In consequence objection to German discrimination between creditors appears to fall within the scope of Department's 70, June 13, and not within the scope of article 8 (see second paragraph Embassy's 172, October 17).⁹⁵

At all events I feel that concrete action upon our part, rather than representations, will alone be efficacious in the premises.

Recent press despatches from New York announcing an embargo on all foreign wines and liquors until further notice suggest the idea that the importation of such beverages from Germany might well be regarded as additional German exports not previously taken by the United States and their admission made contingent upon the payment in full of German scrip issued to American bondholders.

DODD

862.51/3725 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, November 1, 1933—4 p.m.

136. Your 178, October 25, noon, and 182, November 1, 11:00 a.m.⁹⁶ Please make an appointment with the Minister for Foreign Affairs and inform him that this Government does not consider the information which has been made available at all adequate. American bondholders are entitled to expect most favored nation treatment in every respect, and complete protection from discrimination in favor of third parties, particularly since the German Government is apparently proceeding to convert money owed American interests into what appears to be a direct subsidy of German exports. Please ask Herr Von Neurath for detailed information in regard to the Swiss agreement and the Dutch negotiations and leave an *aide-mémoire* with him. Explain orally that you are not presenting a protest but making a "formal inquiry".

For your confidential information only, I may add with reference to the last paragraph of your telegram referred to above⁹⁷ that while the policy of this Government has not yet been laid down, it seems probable

⁹⁵ *Ante*, p. 396.

⁹⁶ Latter not printed.

⁹⁷ Telegram No. 178, October 25.

that any agreements in respect of foreign imports of wines and spirits will seek primarily to stimulate exports chiefly of farm products. However, if the German Government is disinclined to end the discrimination which is being practiced against American interests this Government will be obliged to consider such steps as may be appropriate to redress the situation.

Please telegraph the text of your *aide-mémoire* as well as a report of your interview with the Minister of Foreign Affairs.

HULL

862.51/3729 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, November 3, 1933—4 p.m.
[Received November 3—2:20 p.m.]

185. Department's 136, November 1, 4 p.m. Following is the full text of the *aide-mémoire* which I left with the Foreign Minister this morning at the close of our interview:

“AIDE-MÉMOIRE

The American Ambassador called upon the Foreign Minister by appointment and informed him that the United States Government desired full information concerning the agreements concluded between Germany and Switzerland and between Germany and The Netherlands in connection with the full payment to citizens of those two countries of scrip held by them evidencing non-transferable interest deposited in the Konversionskasse under the operation of the transfer moratorium of the German Government effective July 1, 1933. The Government of the United States does not consider adequate the information which hitherto has been furnished in the premises.

The Ambassador stated that Dr. Ritter of the Foreign Office had promised the Embassy the text of the above mentioned agreements and asked that these be furnished as soon as possible together with additional detailed information concerning the Swiss and Dutch agreements and negotiations.

The Ambassador added that his Government considered that American bondholders were entitled to full protection against discrimination in favor of third parties and to most favored nation treatment in every way, all the more so since money owed to American interests is apparently being converted into what would appear to be a direct subsidy of German exports.

The Ambassador concluded his formal inquiry by requesting that the information above referred to be furnished him at the Foreign Minister's early convenience.

Berlin, November 3, 1933.”

As I expected the Foreign Minister asserted that he was not informed on these problems but would refer the matter at once to the proper authorities and procure the required detailed information.

I then emphasized the view expressed in the Department's telegram above referred to as to discrimination and requested full details about the arrangements concluded with Switzerland and Holland stressing that my Government did not consider as adequate the information which had thus far been furnished. I told the Foreign Minister that I was not presenting a protest but was making a formal inquiry. In concluding the interview the Foreign Minister reasserted that he would furnish the information as soon as possible.

DODD

862.51/3755

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 268

BERLIN, November 16, 1933.

[Received November 25.]

SIR: With reference to my despatch No. 266 of November 16, 1933,⁹⁸ transmitting the texts of the scrip agreements between the German Government and the Governments of Switzerland and Holland, I have the honor to enclose the text with translation of the Foreign Minister's reply of November 15, 1933, to my *Aide-Mémoire* of November 3, 1933, left with the Minister as reported in my telegram No. 185 of that day.

As explained in my despatch under reference, the texts of the Agreements appear to have been despatched prior to my formal inquiry, but did not reach the Embassy until after the presentation of my *Aide-Mémoire*.

It will be seen from the Minister's reply that should further information be desired, Dr. Ritter will gladly be at my disposal to that end. I therefore think it advisable to await the Department's specific instructions as to the points concerning which further detailed information may be required before requesting additional details from the Foreign Office.

Respectfully yours,

For the Ambassador:
JOHN CAMPBELL WHITE

[Enclosure—Translation]

The German Minister for Foreign Affairs (Von Neurath) to the American Ambassador (Dodd)

BERLIN, November 15, 1933.

MY DEAR MR. AMBASSADOR: In reply to the *Aide-Mémoire* of November 3, 1933, left here on the occasion of your recent call, I have

⁹⁸ Not printed.

the honor to inform you that Herr Ministerialdirektor Ritter already had transmitted to Mr. Flack, Secretary of Embassy, on November 2, 1933, a copy each of the German-Swiss and the German-Dutch Agreement concerning the Execution of the German Transfer Moratorium. I presume that you have been informed thereof in the meantime and that you were thereby put in a position to give the Government of the United States the complete information requested.

Should Your Excellency desire to be given further information on this subject, Herr Ministerialdirektor Ritter will gladly be at your disposal to that end.

With the expression [etc.]

NEURATH

862.51/3789 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, December 29, 1933—3 p.m.

153. The British Government informs us that its Ambassador in Berlin has been instructed to make a communication to the German Government in the following sense:

"His Majesty's Government have learned with surprise and regret of the unilateral decision taken by the Reichsbank on December 18 to reduce during the next six months transfers in respect of the service of German loans other than the Dawes loan and the Young loan. His Majesty's Government regard it as an essential principle that if any temporary modifications in loan contracts to the detriment of the creditor are required under present circumstances they should be discussed and agreed upon between debtors and creditors. Failure to observe this principle must tend further to undermine the credit of Germany as a whole and will make it increasingly difficult to maintain international credit operations on which the financing of commerce largely depends. In particular the recent decision ignores (1) the protest of the representatives of the creditors against the principle that payment in Reichsmarks satisfies a debt in foreign currency and (2) their considered view that no sufficient case had been made out for making any change in existing arrangements to the detriment of creditors during the next six months."

British Ambassador in communicating the foregoing to us adds:

"I am desired to express the hope of His Majesty's Government that the United States Government will instruct their representative in Berlin to make similar representations to the German Government.

"I am to add that His Majesty's Government have taken this opportunity of reiterating to the German Government a protest they had already made regarding differentiation to which British creditors have been subjected in the administration of the present system by reason of special arrangements concluded by the German Government with the Netherlands and Swiss Governments."

Please present a written statement to the German Government identical *mutatis mutandis* with that of the British.

You may add orally in your discretion that the successive curtailments of service on the German debts held here have created a distinctly unfavorable impression, and that American investors are unconvinced that the necessities of the German situation compel the increasingly drastic losses to which they are imposed. American opinion is all the more keenly alive to these losses because of its sense that its capital contribution played so vital a part in rebuilding Germany in the post-War period.

In addition when presenting this communication please ask the German Government if it could furnish you adequate and detailed information as to the amount of funds made available during the past 2 years for the repurchase of German securities issued in the United States. The American press of December 26 carries the announcement, for example, that the Housing and Realty Improvement Company of Berlin will, through an American investment house, invite tenders for the repurchase of their 7 per cent bonds at a price of \$450 per \$1,000 bond, subject to the condition that at least \$500,000 principal amount of the bonds be tendered for sale on or before January 20, 1934. The use of German funds for the repurchase of securities, above the legal amortization schedule or before the regular call date, at prices depreciated mainly because of the action of the German Government in halting or reducing service, seems to the Department a diversion of funds properly due the American bondholder.

PHILLIPS

**DISCRIMINATION AGAINST AMERICAN PRODUCTS UNDER THE
GERMAN LAW PROVIDING TAX EXEMPTION FOR REPLACEMENT
ACQUISITION**

862.504/332 : Telegram

The Chargé in Germany (Gordon) to the Acting Secretary of State

BERLIN, June 17, 1933—1 p.m.

[Received June 17—9:30 a.m.]

106. The law of June 1 for the decrease of unemployment contains in its second section a provision that when ascertaining taxable profits "expenditures for the purchase or production of machines, implements and similar articles of industrial or agricultural invested capital may be deducted" if the new article replaces a similar article in use up to that time and if the new article is of domestic production.

It is my view and that of the Consulate General that this constitutes a violation of article 8 of our Treaty of Commerce with Germany.⁹⁹ There would seem to be a clear violation of the provision of this article concerning bounties and a single contention might be sustained with respect to the provision concerning internal taxes.

Representatives of American firms affected held a meeting yesterday at the American Chamber of Commerce and instanced specific cases where orders for American products had been withheld in view of the operation of this German law.

I shall be glad to take such action as the Department may desire to direct.

GORDON

862.504/332 : Telegram

The Acting Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, June 22, 1933—3 p.m.

75. Your 106, June 17, 1 p.m. It seems probable that application of law would run counter to Article 8 of the treaty. However, Department does not desire to assert treaty violation until it has had opportunity to examine complete text of law. Please forward copy of law and report fully by mail any specific instances in which law has had effect of discriminating against American products. Meanwhile, you may orally communicate with German Foreign Office stating that your Government feels some apprehension that law may have the effect of contravening the treaty and expressing hope that in connection with the issuance of administrative regulations or otherwise steps may be taken to avoid such consequences.

PHILLIPS

862.504/337

The Chargé in Germany (Gordon) to the Acting Secretary of State

No. 2512

BERLIN, July 1, 1933.

[Received July 11.]

SIR: With reference to my telegram No. 106 of June 17, and the Department's answering telegraphic instruction No. 75 of June 22, I have the honor to report that I have made the oral representations directed at the Foreign Office and impressed upon it the necessity for prompt action before any adverse administrative procedure should tend to become crystallized. Dr. Dieckhoff quite appreciated the point and

⁹⁹ Signed at Washington, December 8, 1923, *Foreign Relations*, 1923, vol. II, p. 29

certainly showed no inclination to contest our view that the law may have the effect of contravening our Treaty of Friendship, Commerce and Consular Rights with Germany; he promised that he would do his best to expedite an answer, but, as the Department is aware from various despatches from this Embassy of the impotence into which the Foreign Office has fallen, a prompt answer can not be too confidently expected.

As for the law in question, it is an omnibus law and the only pertinent part is Chapter 2 thereof, the text and translation of which are herewith transmitted.

I am also forwarding, as instructed, a memorandum in the premises prepared by the Consulate General.¹ This memorandum may be regarded as merely preliminary, and as further specific instances of discrimination effected by the law come to hand—which they undoubtedly will in considerable number—they will be transmitted to the Department.

Respectfully yours,

GEORGE A. GORDON

[Enclosure—Translation]

Chapter II. of the Law of June 1, 1933; for Decreasing Unemployment in Germany

(*Reichsgesetzblatt* No. 60 of June 2, 1933, page 323.)

TAX EXEMPTION FOR REPLACEMENT ACQUISITION

In calculating profit for the purposes of paying income tax, corporation tax and trade tax, the following is valid for the tax periods ending after June 30, 1933 and before January 1, 1935, the provisions of paragraph 16 of the Income Tax Law notwithstanding:

Expenditures for the acquisition or the manufacture of machines, tools, and similar objects which constitute trade or agricultural investments, can, in the tax period in which the acquisition or manufacture takes place, be entirely deducted, provided that the following four conditions are met:

- (1) The new article must be of inland [*domestic*] production.
- (2) The taxpayer must have acquired or manufactured the new article after June 30, 1933 and before January 1, 1935.
- (3) The new article must replace a similar one which was previously used in the establishment.
- (4) It must be proven that the use of the new article does not lead to a decrease in the number of workmen employed in the establishment of the taxpayer.

¹ Not printed.

862.504/342

The Ambassador in Germany (Dodd) to the Acting Secretary of State

No. 20

BERLIN, July 24, 1933.

[Received August 8.]

Subject: Apparent Contravention of our Treaty of Friendship, Commerce and Consular Rights with Germany by German Law of June 1, 1933, for the Decrease of Unemployment.

SIR: With reference to the Embassy's despatch No. 2512 of July 1, concerning the above subject, I have the honor to transmit herewith a despatch dated July 20,² together with its enclosures, received from the Consulate General in Berlin. The material contained therein constitutes ample and striking evidence of discrimination against American products affected by the law in question.

As pointed out in the despatch from the Consulate General, the German firms who are in competition with our manufacturers recognize themselves that the operation of this law is discriminatory, and it is clear that they are determined to make the most of this opportunity.

While further instances of discrimination against American products will unfortunately surely continue to be forthcoming, I feel that the information submitted by the Consulate General shows clearly the very serious losses which are being, and will be, caused to the American manufacturers of such products, and bears out most convincingly the contention that the German law in question constitutes a violation of Article 8 of our treaty with Germany.

I may add that in spite of again calling to the attention of the Foreign Office the large losses which are being currently suffered by American firms in the premises, and the consequent desirability of receiving as prompt a reply as possible to the oral representations made at the end of June, there has—as predicted in the Embassy's despatch under reference—as yet been no sign of an answer being forthcoming.

Respectfully yours,

WILLIAM E. DODD

862.504/348 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, August 29, 1933—4 p.m.

[Received August 29—1:24 p.m.]

137. Department's 75, June 22, 3 p.m. Although I have several times urged Foreign Office to make reply to the oral representations none has been forthcoming and as already indicated I am inclined to think that reply will be delayed as long as possible and doubt if it will be satis-

² Not printed.

factory when it comes. In the meantime American firms continue to lose orders and even if the Germans should contend that provisions of the law in question only concern the application of depreciation to income tax deductions it still would seem clearly to constitute discrimination against replacements of foreign manufacture and hence a violation of article 8 of our treaty.

I am of the opinion that only vigorous formal representations will bring about an entire abandonment discrimination.

DODD

862.504/853

The Ambassador in Germany (Dodd) to the Secretary of State

No. 130

BERLIN, September 7, 1933.

[Received September 16.]

Subject: Apparent Contravention of our Treaty of Friendship, Commerce and Consular Rights with Germany, by German Law of June 1, 1933, for the Decrease of Unemployment.

SIR: With reference to my telegram No. 137 of August 29, and prior communications concerning the above-named subject, I have the honor to report that an answer dated August 30, 1933, has now been received from the Foreign Office in the premises, copy and translation of which are herewith enclosed.

As predicted in my said telegram, the answer, to my mind in any event, is entirely unsatisfactory. Likewise, as foreshadowed in that telegram, the main contention of the German reply is to the effect that the provisions of the law in question only allow the cost of replacement equipment to be deducted from taxable profits in its entirety during the tax period in which the acquisition of such equipment occurred, instead of being spread over the life of such replacement material by way of annual depreciation deductions. In other words, the German Government takes the position that the taxes and duties mentioned in Article 8 of our treaty are not affected by the provisions of the German law in question.

It is to be noted, however, that the German answer fails to meet our contention that the effect of the provisions of the German law in question is to constitute a bounty for the benefit of German merchandise. The sense in which the word "bounty" is used in our treaty would seem to be a reward or premium given to encourage an industry, and the purpose of the present tax exemption is clearly to encourage certain branches of German industry, so that a bounty is created in this sense of the word. Accordingly, under Article 8 of the treaty, similar branches of American

industry are entitled to the same bounty, which, however, they are not getting under the new law.

This point was elaborated by Mr. Gordon in his conversation with Dr. Dieckhoff on June 29, held pursuant to the Department's telegraphic instruction No. 75 of June 22, but, as already stated, the present German answer avoids this issue.

The penultimate sentence of the German note is of interest and may be of importance later on if it should be sought to extend the underlying spirit and purpose of the present legislation in the sense of enacting further tax provisions which would discriminate against the products of American-owned factories in Germany. However, in the present instance we have recognized that there is no question of discrimination against the products of such American-owned factories; our contention is that the discrimination lies against an important branch of American exports, consisting principally of office equipment, machinery, and agricultural appliances which, to a large extent, are imported into Germany in a finished state for sale therein.

As American firms are continuously suffering material loss of business through the operation of the German law in question, I shall be glad if the Department concurs in the Embassy's views and decides to send a vigorous note for me to transmit to the Foreign Office asserting treaty violation.

Respectfully yours,

WILLIAM E. DODD

P.S. Since writing the foregoing I have just received from the Swiss Legation a copy of a note which the Swiss Government had addressed to the German Government protesting against the provisions of the German law of June 1, which form the subject matter of this despatch, together with a copy of the answer of the Foreign Office. These notes are now being translated, but this can not be finished before the pouch closes two hours hence; they will be forwarded as soon as the translation is completed.³

[Enclosure—Translation]

The German Foreign Office to the American Embassy

No. 111 A 2622

NOTE VERBALE

In reply to the inquiry addressed to Ministerial-Director Dieckhoff by the Chargé d'Affaires on June 29, relative to the "tax exemption for replacement acquisition" provided for in the "Law of June 1, 1933, for the Reduction of Unemployment", the Foreign Office has the honor to inform the Embassy of the United States of America as follows:

³ Not printed.

The Law governing Tax Exemption for Replacement Acquisition (i.e. Section II of the Law for the Reduction of Unemployment of June 1, 1933) is in the field of direct taxes. According to its provisions, the income tax, the corporation tax, and the trade tax for the tax periods ending after June 30, 1933, and before January 1, 1935, are reduced in that, when calculating taxable profits, certain expenditures may be deducted in full, contrary to the general principle.

Strictly speaking, this is not tax exemption but merely taking in consideration beforehand deductions for future depreciation. Normally, the expenditures for new equipment would have to be distributed over the years during which the new equipment in question is used. In order, however, to encourage entrepreneurs to renew extensively and immediately their equipment of machines and implements, they are allowed to write off in full the amount of the expenditures the same year in which such equipment is procured. In this way, the taxable profit for the year in which the equipment is acquired is reduced not only by the amount of the usual deductions for depreciation but by the full amount of the expenditures for the acquisition of such equipment. The profit of the concerns will be correspondingly higher or the loss correspondingly lower in the subsequent years during which the objects in question are used. In consequence, the measure of "tax exemption for replacement acquisition" means practically that the Reich, the States, and the associations of communes grant to entrepreneurs today a sort of loan subsidy for the acquisition of replacement equipment, which flows back to the Reich, States, and associations of communes, more or less, in that during the time in which the objects are utilized no more writing-off of any kind can be done.

Article VIII of the German-American Commercial Treaty of December 8, 1923, to which Mr. Gordon referred in his conversation with Herr Dieckhoff, does not apply to the above-mentioned taxes. By internal taxes, in the meaning of this treaty provision, obviously taxes on commodities are meant, i.e., taxes on the production, preparation, turnover, consumption of a commodity (consumption taxes, turnover tax). This would seem to be apparent from the whole content of Article VIII, which, in addition to internal taxes, deals with transit duties, charges for storage and the use of other facilities; moreover, in support of this interpretation is also the position of Article VIII in the treaty which follows immediately the article (Article VII) regulating commodity traffic in general, while the preceding provisions regulate the legal status of the citizens of either country.

However, even if one were to take internal taxes, mentioned above, as meaning also personal taxes—regardless of the fact that Article 1, paragraph 2, of the treaty contains an agreement concerning the taxation

of persons—there would nevertheless exist no violation of our obligations under the commercial treaty, neither in accordance with the one nor with the other of the agreements reached on the basis of treatment accorded residents, because the law governing tax exemption for replacement acquisition does not distinguish between German and foreign citizenship in persons liable to taxation. The tax reduction provided for in the law can also be claimed by American citizens, if the conditions obtain.

In the law governing Tax Exemption for Replacement Acquisition there are no politico-commercial intentions whatever; it merely represents one of the measures of the Reich Government in the struggle against unemployment. From the intention directed towards a reduction in the number of unemployed there arose the urgent necessity of linking the tax concession with the condition of procuring finished products manufactured in Germany. In conformity with the purpose of the law it is immaterial whether or not the concern which manufactures the products is entirely or partly foreign-owned, or whether or not raw materials and auxiliary materials are imported from foreign countries. Through an increase of work an improvement in revenues of public budgets, a reduction of financial requirements for unemployment relief, and thereby an offset against the tax alleviation is achieved. At the same time, moreover, the additional employment of workmen in Germany, which is expected as a result of the execution of the law, will result in an increase of the purchasing power, which in turn will benefit the countries interested in exporting to Germany.

BERLIN, August 30, 1933.

862.504/350 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, September 21, 1933—6 p.m.

114. Embassy's despatches No. 20, July 24, No. 120, September 1,⁴ and No. 130, September 7, 1933. Article 8, Treaty of 1923, provides in effect that merchandise of each contracting party within the territory of the other shall receive same treatment as native merchandise in respect to bounties.

By Section 2 of Law promulgated June 2, reduction in taxes is allowed purchasers in Germany on basis of their purchasing equipment of German manufacture. This amounts to a bounty in respect to merchandise of German manufacture. Reduction in taxes is not granted to purchasers in Germany on basis of their purchasing equipment manufactured in the

⁴ Despatch No. 120 not printed.

United States. A bounty in respect to merchandise manufactured in the United States is withheld.

In granting bounty in respect to native merchandise and in withholding bounty in respect to merchandise manufactured in United States, German Government is discriminating against merchandise of American manufacture in respect to a bounty contrary to the terms of Article 8.

It is declared in the first sentence of Article 7 of the Treaty that there shall be freedom of commerce and navigation between the two countries.

Freedom of commerce can not exist and purpose of Treaty can not be accomplished in the face of legislation having the design and effect of the law promulgated June 2.

Communicate foregoing to German Foreign Office and urge immediate and effective removal of discrimination against American trade.

HULL

862.504/363

The Ambassador in Germany (Dodd) to the Acting Secretary of State

[Extract]

No. 317

BERLIN, December 5, 1933.

[Received December 14.]

Subject: Apparent Contravention of our Treaty of Friendship, Commerce and Consular Rights with Germany, by German Law of June 1, 1933, for the Decrease of Unemployment.

SIR: Referring to previous correspondence on the above subject, I have the honor to transmit herewith a copy of the Embassy's note No. 66 of September 23, 1933,⁵ sent to the Ministry of Foreign Affairs in compliance with the Department's telegraphic instruction No. 114 of September 21, 6 p.m., and, in copy and translation, *Note Verbale* No. III A 3508, dated November 23, 1933, from the Ministry of Foreign Affairs, written in response to the Embassy's note above referred to. . . .

As it appeared desirable to secure a consensus of opinion of the officers of the Embassy and Consulate General most in touch with this situation, before the departure of Consul General Messersmith on leave for the United States, a conversation was held at the Embassy on December 1, at which Messrs. Messersmith and Beitz of the Consulate General, the Acting Commercial Attaché, and various members of the Embassy staff were present. Mr. Messersmith states that it was his opinion that the law of June 1, 1933, introduced undoubted discrimination against the sale of American goods in Germany and that American trade is still

⁵ Not printed.

suffering from this discrimination. While urging that every possible effort should be made to further press this question of discrimination at the Foreign Office, Mr. Messersmith stated that he did not believe that any form of commercial retaliation should be resorted to at the present time. Apart from the usual risks with which such action would be fraught, Mr. Messersmith expressed the opinion that an obscure struggle for predominance is proceeding between the moderates and the extremists in the present German Government. The former realize the dangers and objections of tolerating discriminatory practices such as those introduced by the law of June 1, 1933, but that their hour has not yet come. The extremists, on the other hand, would be capable of resorting to combative measures with reckless alacrity. It was his opinion that the coming months would show which element was the stronger. Meantime, while keeping the question open by representations, our Government should avoid resorting to commercial retaliation. For the time being this point of view seems safe and conservative.

Respectfully yours,

For the Ambassador:
J. C. WHITE
Counselor of Embassy

[Enclosure—Translation]

The German Foreign Office to the American Embassy

No. III A 3508

NOTE VERBALE

Supplementing its *note verbale* No. III A 3113 of September 30, 1933, and in reply to *note verbale* No. 66 of September 23, 1933, from the Embassy, relative to the Law for the Reduction of Unemployment of June 1, 1933, the Foreign Office, on the strength of a re-examination of the matter in question, has the honor to inform the Embassy of the United States of America as follows:

The German Government cannot concur with the interpretation of the American Government that, under the provisions of Section 2 of the Law of June 1, 1933, a bounty is in effect allowed on certain German products. From the explanations, already given in the *note verbale* of August 30, 1933—III A 2622—appearing in sub-paragraph II, 1 of the "Explanatory Notes to the Law governing Tax Exemption for Replacement Acquisition", a copy of which is enclosed herewith,⁶ it is quite obvious that the reduction of the income tax, the corporation tax and the trade tax, which takes place in accordance with the above-mentioned law, cannot be interpreted as a bounty to firms on their expenditures for the acquisition or manufacture of machines, implements, etc.

⁶ Not printed.

Even if the tax reduction in question might essentially be interpreted in some way as tantamount to a bounty on merchandise of German production, objections thereto based on Article VIII of the German-American Commercial Treaty could nevertheless not be deduced. For the bounties and drawbacks in the meaning of this agreement refer exclusively to internal taxes (consumption taxes, turnover tax), to transmit duties and to certain charges which have been paid on merchandise of American origin or on non-American merchandise imported by American citizens. Hence, there is no connection between Article VIII, above referred to, and the Law governing Tax Exemption for Replacement Acquisition (*Ersatzbeschaffungen*).

Neither can the German Government regard as valid the citation of the general principle concerning freedom of commerce stipulated in the beginning of Article VII of the German-American Commercial Treaty. The term freedom of commerce derives its concrete significance from the various treaty provisions governing traffic in commodities and those governing the legal status of the citizens of both countries. But Section 2 of the Law of June 1, 1933, violates none of the agreements in the German-American Commercial Treaty. It must be pointed out, furthermore, that the law affects only a limited field and that even there it does not hinder American trade from entering into competition with German industry on the German market. The question whether American machines, implements, etc., can hold their own against the German supply is, after all, a question of prices and before declaring that it is impossible that they should do so all factors must be taken into account that have to be considered in connection with price formation. At any rate, the principle of freedom of commerce does not mean a guarantee of profitable sales in interstate commerce, in so far as this depends upon government measures on the part of the importing country—and that is what its application in the foregoing connection would amount to.

To its regret, the German Government is therefore not in a position to give consideration to the representations made in the *note verbale* of September 23 against the Law governing Tax Exemption for Replacement Acquisition.

BERLIN, November 23, 1933.

GERMAN DISCRIMINATION AGAINST AMERICAN AND OTHER
FOREIGN SHIPPING COMPANIES

800.8810/1117

The German Embassy to the Department of State

According to information received by this Embassy from representatives of the Hamburg-American Line and the North German Lloyd, and

according to instructions received by wire from the Foreign Office in Berlin, a meeting, to be held at 10:30 AM, May 22, 1933, in Washington, has been called by the United States Shipping Board concerning a controversy which has arisen between that board and the German lines above mentioned.

It is understood that the same controversy will come up for discussion at a meeting of representatives of the Transatlantic Passenger Conference scheduled to convene in Brussels, Wednesday, May 24th.

The controversy has arisen from a plan effected by the Standstill Committee on Germany's private debts to foreign bankers. The plan has the consent of German debtors as well as of American creditors of these debtors. The German Steamship Lines have merely been called upon to give effect to this plan which was meant to provide means to serve both the German debtors and their American creditors.

It is believed that this subject is one which should be discussed at the proposed Brussels meeting of the conference. It is, therefore, suggested that the meeting called by the Shipping Board to-day should be postponed or, if that should prove to be impossible, that no action should be taken at this meeting, as the same subject will be thoroughly discussed at the forthcoming Brussels meeting of the conference.

WASHINGTON, May 22, 1933.

800.8810/1117

Memorandum by the Assistant Chief of the Division of Western European Affairs (Hickerson)

[WASHINGTON,] May 22, 1933.

The attached memorandum ⁷ was received from the German Embassy at noon today. At 10:20 this morning Dr. Leitner, Counselor of the Embassy, telephoned Mr. Moffat ⁸ and communicated to him the substance of this memorandum, with the request that it be brought immediately to the attention of the Shipping Board, since a meeting was to be held in the Shipping Board at 10:30 this morning to consider the matter.

At Mr. Moffat's request I got in touch with the Shipping Board immediately by telephone and talked first to Mr. Thomas in the Regulatory Division and later with Admiral Cone, Chairman of the Shipping Board, communicating to them the German Embassy's suggestion that the meeting called for today be postponed or, if that was impossible, that no definite action should be taken at this meeting since the subject will

⁷ *Supra.*

⁸ Pierrepont Moffat, Chief, Division of Western European Affairs.

be thoroughly discussed at the Brussels meeting of the Trans-Atlantic Passenger Conference. Admiral Cone informed me that it would be impossible to postpone the meeting scheduled for this morning, particularly since the persons to take part in the meeting were already in his room. He stated that the purpose of the meeting this morning in the Shipping Board was strictly fact-finding, and that they did not plan to take definite action today. He added that the German lines would be given ample opportunity to present their side of the case prior to any definite action in this matter by the Shipping Board.

At 10:30 this morning Mr. Moffat communicated to Dr. Leitner over the telephone the substance of Admiral Cone's remarks.

800.8810/1118 : Telegram

The Secretary of State to the Chargé in Germany (Gordon)

WASHINGTON, May 26, 1933—6 p.m.

58. The British Ambassador in Washington in pursuance of instructions from his Government has presented a note, dated May 25,⁹ which in substance states: A special meeting of the North Atlantic Conference of shipping lines was held on May 24 at Brussels to consider the situation arising from the regulation made by the Reichsbank late in February last whereby registered Reichsmarks are allowed to be used to pay for accommodations on German ships. Since it is understood that registered Reichsmarks can be purchased at a discount of about 20%, this results in German lines in fact selling tickets below agreed uniform rates. This would not appear to be due to any action on the part of the German lines who cannot of course know whether Marks paid to them are registered Marks or otherwise but is the result of the above mentioned regulation which the Reichsbank made and is itself free to repeal. The Atlantic Conference telegraphed to the Reichsbank requesting that the above mentioned regulation be at once repealed.

The British Ambassador in Berlin has been instructed to draw the attention of the German Government to the matter and to express the hope that the Reichsbank will take immediate steps for the repeal of the regulation in question.

The British Government hopes that the United States Government will feel able to take similar action at Berlin.

In the circumstances you are authorized, unless you perceive objection thereto, to take action along the same lines. The Shipping Board concurs in proposed representations. Please telegraph results.

HULL

⁹ Not printed.

800.8510/1119 : Telegram

The Chargé in Germany (Gordon) to the Secretary of State

BERLIN, May 27, 1933—1 p.m.

[Received May 27—10:40 a.m.]

87. Your 58, May 26, 6 p.m. It would seem that Reichsbank could not take desired action unilaterally even if it were disposed to do so as a result of representations through the Foreign Office. Regulations issued by the Reichsbank pursuant to paragraph 7a, clause 10 (page 40) of Standstill Agreement¹⁰ provide that "travellers may also use Reichsmarks, which may be provided in excess of the monthly limit of Reichsmarks 3,000 mentioned above, for payments in respect of steamship accommodations on German vessels to or from Germany, as well as for charges incidental thereto, which payments shall be effective by the transfer of registered marks from the bank or designated travel bureau's account to be free mark account of the steamship company in Germany."

Consequently it would seem that the Standstill creditors have during the life of the Standstill Agreement the absolute right to liquidate their frozen registered marks in this fashion.

I am informed that at Brussels Conference North German Lloyd, in order to create a good atmosphere, brought the matter up itself and suggested such action on the part of the Reichsbank. (I do not of course know how really spontaneous North German Lloyd's move may or may not have been). The Reichsbank, however, desirous of not taking action directly contrary to the interests of their respective national shipping companies have, I am further informed, shown themselves sympathetically disposed to a curtailment *pro tanto* of their right to liquidate their frozen registered marks. Finally I am informed that it was felt that rather than discuss the matter separately until a definite decision was reached the matter should be brought up at the bankers' conference beginning here next Monday when it will be possible through the assent of the Standstill creditors' representatives to secure the desired action.

Adverting to the last paragraph of the Department's telegram under reference, I therefore venture to suggest that it would be preferable to let the matter work itself out in this way and for the Embassy to take no action unless snags are encountered.

I shall, however, in any event communicate with Mr. Wiggin¹¹ as soon as possible after his arrival to see if the above information as to the Standstill creditors' attitude is correct.

GORDON

¹⁰ *The German Credit Agreement of 1933* (Druckerei der Reichsbank, Berlin).

¹¹ Albert Henry Wiggin, chairman of the Foreign Creditors Standstill Committee; chairman of the governing board of the Chase National Bank, New York.

800.8810/1133½

Memorandum by Mr. R. E. Schoenfeld, of the Division of Western European Affairs

[WASHINGTON,] June 23, 1933.

I telephoned Admiral Cone this afternoon to tell him that a recent telegram from the Embassy in Berlin¹² indicated that the problem of the use of registered reichsmarks for the purchase of transatlantic steamship accommodations on German lines appeared to have been satisfactorily settled. I explained that the Embassy did not have official confirmation of this but concluded that it was so from the fact that the Paris edition of the *Chicago Tribune* reported a telephone order from Berlin to the representatives of German lines in Paris directing that they cease accepting registered marks for transatlantic passage and from the further fact that the London office of the United States Lines had ceased their daily communication with the Embassy on this question.

I explained that I wanted to check up with him regarding his information on this matter so that if the question were not definitely settled we could work out a plan for further action.

Admiral Cone told me that the Shipping Board had had reports from its agents that the matter was settled and that the Conference had even assessed some damages against the German lines.

R. E. SCHOENFELD

800.8810/1142 : Telegram

The Consul General at Berlin (Messersmith) to the Secretary of State

BERLIN, August 11, 1933—5 p.m.
[Received August 11—1:45 p.m.]

Decree Ministry Commerce effective August 7 makes necessary that any person buying steamship passage from foreign steamship line in Germany cost of which exceeds 200 marks must first secure from exchange control authorities special permit. This does not affect German steamship lines which can continue sell passage freely costing any amount. No matter how liberally decree enforced and necessary permit on individual applications granted travelling public inevitably diverted to German lines which can freely sell passage costing any amount avoiding delays and annoying formalities. Am not able to state whether treaty violation specifically exists but effect decree directly discriminatory in practice and undoubtedly not in accord spirit articles 1, 8 and 9 our treaty. United States Lines and Baltimore Mail operating nine ves-

¹² Not printed.

sels passenger traffic to German ports have protested on the ground their interests seriously affected and existence passenger offices Berlin, Hamburg and Munich threatened.

While right to maintain passenger offices not prohibited by decree effect is to make them merely information offices and for booking accommodations on return passages bought in the United States. I am of the opinion our Government should protest vigorously and immediately through the Embassy for if treaty violation not involved discriminatory action resulting from decree contrary fundamental international practice respecting equal treatment vessels. Our trade interests suffering so much from various discriminatory action from unofficial and party sources in Germany that I believe this very favorably [*favorable?*] instance our Government to make strong representations. Such discriminatory treatment American Lines would eventually result retaliatory measures our part affecting German Lines and German steamship offices in the United States. Believe such representations on our part with full publicity at home will have very useful effect in Germany not only in accomplishing rescinding this decree but also with respect to discrimination generally. Have conferred with Ambassador who is in accord.¹³

MESSERSMITH

800.8810/1153

The Consul General at Berlin (Messersmith) to the Secretary of State

No. 1550

BERLIN, August 29, 1933.

[Received September 11.]

SIR: I have the honor to refer to my confidential despatch No. 1521 of August 21¹⁴ in which I reported on the discriminatory measures which had been taken against the American and foreign steamship lines in Germany through a decree of the Ministry of Commerce dated August 7, 1933. In this despatch I informed the Department that at a meeting in the Ministry of Commerce the representatives of the foreign steamship lines were informed that the discriminatory measures would be immediately removed through a new decree.

This decree has appeared, and after carefully studying it I came to the conclusion that it was entirely satisfactory from the point of view of the American steamship lines. I am now informed by Mr. Atterholt of the

¹³ In a letter of August 21, 1933, the Chief of the Division of Western European Affairs wrote to the Consul General at Berlin: "As . . . reports reached us indicating that the shipping lines were having an opportunity to present their case with every prospect of success the decision was reached that a protest, not having been made, should be reserved for the event that direct negotiations failed to produce a satisfactory solution."

¹⁴ Not printed.

United States Lines, that he is convinced that under the new decree the American lines will experience no difficulty and that there is no discrimination under the procedure now established, against them in favor of the German lines or vis-à-vis other foreign lines. The new decree requires the foreign steamship lines and agencies in Germany to make a monthly report to the authorities on the number of passages they have sold and the total income from passage money collected. They will also have to show every month the sums which they have expended in Germany for operation and upkeep of their passenger offices in Germany. The decree permits them to sell passage to any person who may apply therefor irrespective of the cost of the passage, without the companies or the passengers securing previous authorization from the fiscal authorities. The decree permits the American companies to pay out of their passage money collected in Germany, their costs of operation in Germany and then transmit without further authorization 50% of the balance. If the company wishes to transfer more than 50% of the balance, it may make special application for such transfer. As the American lines spend a good deal of the money which they receive from passenger income in Germany for the operation of their vessels from Hamburg and Bremen as well as for the maintenance of their passenger offices and operating offices in Germany, the prescriptions with regard to the transfer of funds do not offer any inconvenience to the American lines. The American lines have not up to now had any difficulty in transferring any of their funds which they wished to transfer, and Mr. Atterholt believes that they will not have any difficulty in the future under the new decree in this respect.

I am glad to be able to report the satisfactory settlement of this matter. The wide publicity which the planned discriminatory action had in the English and so far as I know, in the American press, undoubtedly had a very excellent effect in bringing about this rapid adjustment. There is transmitted herewith a clipping from the *Berliner Tageblatt* of August 24,¹⁵ giving the contents of the new decree. As the matter is satisfactorily adjusted, I have not deemed it necessary to make a translation of this article or to submit a translation of the new decree.

Respectfully yours,

GEORGE S. MESSERSMITH

800.8810/1159 : Telegram

The Secretary of State to the Consul General at Berlin (Messersmith)

WASHINGTON, October 21, 1933—1 p.m.

The Roosevelt Steamship Company alleges that pressure is being and has been brought to bear upon German importers and exporters to con-

¹⁵ Not reprinted.

fine their shipments to German ships. It is not known whether this pressure, which it is claimed has reached a stage of intimidation, comes from official or party sources. I wish you would discreetly investigate this matter and, if you are able to obtain the necessary concrete information, take it up directly and informally with the appropriate authorities.

HULL

800.8810/1166

The Acting Secretary of State to the Representative of the Roosevelt Steamship Company (Morrison)

WASHINGTON, November 29, 1933.

SIR: Referring to your personal call on October 19, 1933, at which time you stated that German importers and exporters were understood to be under pressure and even intimidation to use German ships exclusively in the shipment of goods, I am now in receipt of a report¹⁶ from Mr. Messersmith, the American Consul General at Berlin with regard to this matter.

Mr. Messersmith states that he has carefully gone into this question and that he has discussed it at length with Mr. Monroe, the general freight traffic manager for Europe of the United States Lines and the Baltimore Mail Line. He states that it was the conclusion both of himself and of Mr. Monroe that German importers and exporters were favoring German ships whenever possible, but that no direct action of a discriminatory character had been taken and that there was no adequate basis at this time on which action could be taken by the Consulate General or by the United States Government.

He went on to explain that various German import associations were understood to have tacit agreements among themselves that their products should be shipped wherever possible in German ships. He added, however, that there appeared to be no formal agreements among the importers about carriers.

With respect to the policy of the German Government, Mr. Messersmith reported that it is entirely conscious that discriminatory practices in favor of German lines with government approval and authority could not be carried through. He pointed out that the plan some time ago to favor German ships by the exclusive use of registered marks by passengers traveling on German ships foundered on the rocks of united maritime opinion in other countries, and that it was not likely that the German Government would in the freight traffic business issue any orders or instructions which would be of a discriminatory character and to which other governments could raise objection.

¹⁶ Not printed.

He stated that he would continue to follow the matter carefully and if there should be any developments of interest, he would not fail to concern himself with the situation.

Very truly yours,

For the Acting Secretary of State:
PIERREPONT MOFFAT, *Chief*,
Division of Western European Affairs

REPRESENTATIONS AGAINST GERMAN IMPOSITION OF DISCRIMINATORY QUOTAS ON IMPORTATION OF AMERICAN PRODUCTS

662.116/158 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, September 18, 1933—5 p.m.
[Received September 18—2:55 p.m.]

145. From the commercial attaché for commerce. 13. Yugoslavia granted import quota 8,000 tons prunes in sacks at 10 marks per hundred kilos besides duty free contingent prunes for prune pulp equal 65% German manufacturers requirements. United States officially assured of equal quota.

Consulate informed by Reich Ministries of Finance and Agriculture that no details of allocation have yet been worked out which would seem to imply "first come first served." These Ministries indicate that dealers who have imported but not yet disposed of prunes entered at the rate of 30 marks per hundred kilos might submit through local customs offices petitions for remission of duty above 10 marks; quantities on which duty by [*is?*] thus being remitted would, of course, be charged against American contingent.

Reich Finance Ministry further states that for the United States to obtain benefit of this new rate the Embassy must address to that Ministry through the Foreign Office a letter requesting the application of the new duty rate and designating a port of entry at which American prune shipments shall be entered. The same Ministry suggests that only one port of entry be named and that Hamburg should be that port.

DODD

662.116/159 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, September 20, 1933—1 p.m.

113. Your 145, September 18, 5 p.m. Upon what basis is quota allotted and for what period? Eight thousand tons is over twice usual Yugoslav annual imports and about a third of the average imports from

the United States for the past 5 years. If we are to be given a quota equal to the Yugoslav quota and one not based on our proportionate share of the trade over some given period of time as in the case of the recent bacon quota the discrimination against our trade is obvious. Furthermore, in view of our treaty rights, I do not understand why it is necessary for the Embassy specifically to request that this rate apply to American products.

HULL

662.116/160 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, September 22, 1933—5 p.m.

[Received September 22—3 p.m.]

148. Your 113, September 20, 1 p.m. Foreign Office today informed the Embassy orally as follows:

The Yugoslav quota ¹⁷ is not based on imports over any past period but merely resulted arbitrarily from the negotiations.

An 8,000 ton quota is available to Yugoslavia for the period from September 24, 1933, to July 31, 1934, and beginning with August 1, 1934, the same quota is available annually.

The United States will receive an equal quota but it cannot be granted a quota based on the proportionate share of past trade. In this connection the opinion was bluntly and forcibly expressed by the Foreign Office that if the United States claim for a proportionate quota should come before an international tribunal it would be decided adversely to the United States and it was evident that the Foreign Office felt sure of Germany's right to fix quotas on an equal rather than on a proportionate basis.

To obtain customs clearance for the United States prune quota the Embassy was asked to conform with the action required from Yugoslavia by also sending note to Foreign Office designating two customs offices through which it is desired that prunes be cleared. Our appropriate consulates have suggested designating customs offices in Hamburg and Bremen.

Please instruct Embassy as to sending such a note.

DODD

¹⁷ Prune import quota.

662.116/160 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, September 28, 1933—5 p.m.

119. Your 148, September 22, 5 p.m. and 150 of September 26, noon.^{17a} The principles involved in this case extend far beyond the mere question of American prune exports to Germany. Our whole trade relations with Germany would probably be seriously jeopardized if Germany were to embark upon a general policy of customs quotas. I am very much concerned over this matter, and I wish to impress on you the necessity of bringing our position in a forceful manner to the attention of responsible German authorities. For the present I prefer to keep our representations on an oral basis.

This Government has always opposed the adoption of quota systems. If adopted, however, we have insisted that the relative position of our trade should not be altered and that American exports should be given a share of any quota equal to our proportionate share of average unrestricted imports. The trade of all countries is thus restricted in a like degree. However, under this prune quota, Yugoslavia will be in a position to more than double her usual exports to Germany and this increase will be at the expense of usual American exports, since American prunes subject to the higher rate of duty cannot possibly compete with those prunes permitted entry at the lower rate of duty. The German action thus curtails American trade and makes possible an expansion of Yugoslav trade. The advantage to Yugoslavia is obvious and such an advantage would seem certainly to fall within the meaning of paragraph 4 of Article 7 of the commercial treaty.¹⁸ Furthermore it seems inescapable that with the exhaustion of the American quota there would result a higher rate of duty for further imports of American prunes than for Yugoslav prunes, and a clear violation of paragraph 2 of Article 7 would then arise.

I want you to take up this matter orally with some person in authority and endeavor to work out some reasonable solution of the problem.

You should make it perfectly clear in your discussion that this Government considers that a customs quota which is not allocated on a proportionate basis is discriminatory and contravenes the treaty rights of the United States.

Furthermore, as paragraph 4, Article 7 of the treaty specifically provides that we do not have to ask for the extension to us of advantages given other countries, please bring this consideration to the attention of

^{17a} Letter not printed.

¹⁸ Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, signed at Washington, December 8, 1923, *Foreign Relations*, 1923, vol. II, p. 29.

the German Government to the end that it take the necessary steps to assure American exporters of the right to avail themselves of the quota already allotted them.

HULL

662.116/1163 : Telegram

The Ambassador in Germany (Dodd) to the Secretary of State

BERLIN, September 30, 1933—noon.
[Received September 30—10:40 a.m.]

153. Department's 119, September 28, 5 p.m. I fully realize the far reaching principles involved in this case and that is why the Embassy has taken it over and urgently asked for instructions.

In the absence of Neurath¹⁹ I last night took up the question with Bülow²⁰ to whom I feel sure the question would have been referred in any event.

Bülow flatly rejected our contention that a failure to give us a proportional prune quota would constitute a contravention of paragraphs 2 and 4 of article 7 of our commercial treaty. In fact he showed no disposition to attempt to work out some reasonable solution of the problem but said categorically that his Government could not consider modifying its position on this prune quota.

On the broader aspects of the question, unfortunately, Bülow was in effect equally impervious. While he did say that the institution of this prune quota did not necessarily mean that Germany intended to adopt a series of absolute, as distinguished from proportional, quotas he asserted that there was nothing in the terms of our commercial treaty obliging Germany if she should adopt a quota to make it proportional rather than absolute; his Government took the view that its obligations under the treaty were fulfilled by granting a nation with most-favored-nation treaty rights the same absolute quota as might be granted to a third party.

Bülow further stated that this was the first time that any government having a treaty with Germany similar to ours had contested the right of Germany to adopt an absolute rather than a proportional quota. This assertion can I believe be specifically challenged.

Bülow added that like other countries Germany now was obliged to adopt a hand to mouth economic policy which she would have to maintain at least until the dollar and pound should be stabilized and in the meantime she could give no commitments as to her quota policy.

¹⁹ Constantine von Neurath, German Secretary of State for Foreign Affairs.

²⁰ Bernhard Wilhelm von Bülow, German Under Secretary of State for Foreign Affairs.

Altogether I regret to report that Bülow gave every appearance of having a completely closed mind on this subject and his attitude would indicate that we likewise can scarcely expect favorable action with respect to our representations as to the violation of article 8 of our commercial treaty (see Department's 114, September 21, 6 p.m.).²¹

I must record my belief that desired results from the German Government will only be attained through fear of retaliatory measures rather than by argument no matter how seasoned and forceful.

The note which the Embassy has been requested to send to the Foreign Office (see my 148, September 2 [22], 5 p.m.) is merely a formal administrative designation of the customs offices in Hamburg and Bremen through which the 8,000-ton quota automatically available to us should be cleared. Would it not be advisable for the Embassy now to send this note as a mere matter of immediate practical assistance to American prune exporters; if Department desires note could be amplified to recite the reservations of our rights and our claim in principle to a higher proportional quota.

Further report by mail.

DODD

662.116/163 : Telegram

The Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, October 9, 1933—4 p.m.

122. Your 153, September 30, noon. Please present the following note to the Foreign Office:

"I am instructed by my Government to lay before you a formal protest against the disproportionate allocation by the German Government of quotas adversely affecting the importation into Germany of American prunes. My Government has, in principle, found serious objection to the restriction and arbitrary curtailment of trade through the adoption of quota systems. It considers that such restrictions are open to objection as being inherently discriminatory and hence as being inconsistent with the spirit of the most-favored-nation principle. It is recognized, however, that in view of the maladjustment of economic conditions throughout the world the adoption of such a system may, in the interest of national economy and as a temporary measure, in some circumstances be found to have reasonable justification. Nevertheless, my Government is strongly of the view that it is incumbent upon any country which finds it necessary for reasons of domestic economy to adopt such a system scrupulously to avoid the allocation of quotas in such a manner as to restrict the trade of one country in a degree greater than the restriction imposed upon the trade of another country. Failure to allot quotas on a proportionate basis results in the giving to one country of an advantage not equally enjoyed by another.

²¹ *Ante*, p. 467.

The quota regime now regulating the importation of prunes into Germany is considered by my Government as a deliberate method of extending to the trade of a third country advantages which that country has not heretofore enjoyed under open competitive conditions, or would in the circumstances enjoy under a system of proportionate quota restriction. By reason of the action of the German Government it is now possible for a third country to double its imports of prunes into Germany. If average imports for the past 4 years are considered, it is now possible, upon a basis of such imports, for that country to quadruple its prune trade with Germany. This opportunity for the expansion of the prune trade of another country cannot be possible except at the expense of American trade. The advantages thus extended to the trade of another country, but denied American trade, cannot be interpreted as other than a contravention and violation of paragraphs 2 and 4 of Article VII of the German-American Treaty of Commerce.

I am further instructed to state that my Government has difficulty in understanding the attitude which the German Government has adopted in this matter. It is an attitude which appears to have left no door open for friendly discussions between the two Governments of a problem which involves principles of such vital importance to the continuance of their cordial and friendly commercial relations."

Submit at the same time, but as a separate note, the following:

"I refer to my note of today's date with regard to the German quota on American prunes. While my Government cannot accept as satisfactory the prune quota at present allocated to American exporters, I am authorized to inform you that the American prune imports covered by this quota will be cleared through the ports of Hamburg and Bremen."

HULL

STATUS WITH REGARD TO TAXATION OF GERMAN CORPORATIONS,
SUBSIDIARIES OF AMERICAN CORPORATIONS

862.512/407

The Ambassador in Germany (Sackett) to the Secretary of State

No. 2112

BERLIN, January 5, 1933.

[Received January 13.]

SIR: I have the honor to enclose herewith a copy of a self-explanatory letter, dated December 29, 1932, from the Commercial Attaché of the Embassy,²² with reference to the refusal of the German Ministry of Finance to recognize subsidiaries of American firms, resident and incorporated in Germany, as corporations entitled to tax certificates on the ground that "the parent companies abroad are ultimately responsible for the taxes payable by their subsidiaries in Germany and, since the parent company is not obviously domiciled in Germany, neither the parent company nor the subsidiary is entitled to the tax certificates."

²² Not printed.

As the Department will recall (see despatch No. 1913 of September 12, 1932)²³ these tax certificates may either be discounted by the recipients thereof as negotiable paper, or may be held for future tax payments at their face value, plus a premium of 4 per cent per annum, in the fiscal years 1934 to 1938 inclusive.

Inasmuch as the Embassy is of the opinion that this attitude of the Ministry of Finance is in violation of Article VIII of the Treaty of Friendship, Commerce and Consular Rights of 1925 [1923], between Germany and the United States,²⁴ I have the honor to refer the matter to the Department for its information and instructions in the premises.

Respectfully yours,

FREDERIC M. SACKETT

862.512/407

The Secretary of State to the Ambassador in Germany (Sackett)

No. 835

WASHINGTON, February 11, 1933.

SIR: Reference is made to your despatch, No. 2112, of January 5, 1933, with an enclosure, regarding the taxation of German corporations which are subsidiaries of American corporations. The question is raised whether these German subsidiaries are entitled to receive tax certificates (*Steuergutscheine*), which refund to the taxpayers certain definite percentages of German taxes due and paid between October 1, 1932 and September 30, 1933.

It might be somewhat difficult to make out a violation of Article VIII of the Treaty of Friendship, Commerce and Consular Rights of 1923, between the United States and Germany, because of the refusal of these tax refund certificates to German subsidiary corporations of American corporations. Article VIII applies to American nationals and merchandise in Germany. It is doubtful if it could be said to apply to German subsidiaries of American corporations, except possibly to urge that the spirit of Article VIII should preclude discrimination against an American-owned German corporation. Of course, if the Finance Minister insists on a disregard of the German corporate entity of the subsidiary, there is the possibility of assimilating the foreign subsidiary to the status of an American national.

The rights of American citizens to organize and participate in corporations in Germany are specifically set forth in Article XIII of the Treaty of 1923 between the United States and Germany. Most-favored-nation treatment is accorded and such corporations are subject to local laws and regulations. The German Finance Ministry's ruling apparently applies to German subsidiary corporations of all foreign corporations, irrespec-

²³ Not printed.

²⁴ Signed at Washington, December 8, 1923, *Foreign Relations*, 1923, vol. II, p. 29.

tive of nationality. The most-favored-nation clause, therefore, would appear to be ineffective as a ground of protest.

Inasmuch as corporations in Germany are subject to the local law, the rights of German subsidiaries of American corporations would appear to be determinable by resort to German courts. The contention of the Finance Ministry that German subsidiary corporations are not domiciled in Germany would appear to be unsound, inasmuch as the domicile of a corporation is uniformly fixed in the state of its organization.

If, after further consultation with the representatives of German subsidiaries of American corporations, you are requested to make representations to the German Foreign Office in their behalf with regard to the securing of tax refund certificates, it is suggested that you point out the fact that the German subsidiaries of American corporations should, for all questions relative to taxation, be considered as domiciled in Germany. Inasmuch as the taxes presumably were imposed on such corporations as German corporations, it would appear only just that they should likewise receive refunds of such taxes in the same capacity.

Very truly yours,

For the Secretary of State:
W. R. CASTLE, JR.

862.512/410

The Ambassador in Germany (Sackett) to the Secretary of State

No. 2254

BERLIN, March 17, 1933.

[Received March 30.]

SIR: With reference to my despatch No. 2112 of January 5, and the Department's instruction No. 835 of February 11, 1933, with regard to the refusal of the German Ministry of Finance to recognize subsidiaries of American firms as corporations entitled to tax certificates, I have the honor to report that the German Ministry of Finance has now issued an ordinance, dated March 11, 1933, which gives subsidiary companies in Germany the full benefit of the tax bonus certificates. A copy of a letter, dated March 15, 1933, from the Commercial Attaché of this Embassy, together with the *Reichssteuerblatt* of March 11 in which the ordinance is published, is enclosed herewith for the Department's information.²⁵

Respectfully yours,

FREDERIC M. SACKETT

²⁵ Enclosures not printed.

ACTION BY THE UNITED STATES SIMILAR TO THAT TAKEN BY
OTHER POWERS TO PREVENT THE SALE OF MILITARY AIRPLANES
TO GERMANY

862.248/24

Memorandum by the Under Secretary of State (Phillips)

[WASHINGTON,] August 4, 1933.

Mr. F. D. G. Osborne, British Chargé d'Affaires, read to me the substance of a telegraphic instruction which he had just received from his Government, in which it was stated that the German Air Minister had requested the British Air Attaché in Berlin to arrange for the purchase in England of 25 airplanes "for police purposes." The British Government has telegraphed to its representatives in Paris, Rome, Brussels and Prague to ascertain whether the four governments concerned will agree with the British Government to request their respective manufacturers of airplanes and airplane engines not to fulfill any orders emanating from the German Government.

Mr. Osborne referred to the treaty or agreement of 1926²⁶ which denied Germany the right to use planes for police purposes. The United States was not a party to this agreement. However, Mr. Osborne pointed out that the German intention, if carried out, would have a very unfortunate effect on the Disarmament Conference; his Government was well aware that, if the British manufacturers refused to sell to Germany that the German Government would place its orders elsewhere and that it was for this purpose that the British Government was endeavoring to solicit favorable action on the part of the four European countries—France, Italy, Belgium and Czechoslovakia.

The Chargé d'Affaires then asked me whether the United States Government would be able to respond favorably if such a request from London was received by us; he wished that it should be clearly understood that his call this afternoon was entirely informal and did not carry with it any official request on the part of his Government; he realized the possible difficulties and did not know whether the Department of State had any authority in the matter; he ventured the opinion, however, that possibly a request of American airplane manufacturers to abstain from delivery to Germany would be all that was needed.

I said that the subject which he had presented was a highly interesting one and that I would give it immediate and careful consideration.

WILLIAM PHILLIPS

²⁶ Agreement on Aerial Navigation between Germany, Belgium, British Empire, France, Italy, and Japan, dated Paris, May 22, 1926, League of Nations Treaty Series, vol. LVIII, p. 331.

802.248/25

Memorandum by the Under Secretary of State (Phillips)

[WASHINGTON,] August 10, 1933.

I sent for the British Chargé d'Affaires this morning and said that I was prepared to give him an answer to the inquiry which he made on August 4th regarding the possibility of the sale of airplanes to Germany for police duty.

I said that it would be just as well if the British Government did not address us a formal communication on the subject; there was no law forbidding American manufacturers from exporting arms and ammunition and supplies to Germany. On the other hand, it has been the policy of this Government for a number of years, if the occasion arose, to dissuade manufacturers from such exportations; this policy continued and would, in my opinion, be effective because the manufacturers of airplanes were looking to the United States Government as their best customer and that it would be very unlikely, in the circumstances, that they would do anything to incur the displeasure of this Government.

Mr. Osborne said that this was a perfectly satisfactory answer to his question and he would communicate it to his Government.

WILLIAM PHILLIPS

802.248/30

Memorandum by the Chief of the Division of Western European Affairs (Moffat)

[WASHINGTON,] September 8, 1933.

The Italian Ambassador ^{26a} called this morning to read me, under instructions from Rome, the correspondence recently exchanged with the British Government regarding the desire of Germany to purchase military airplanes for police purposes. On two separate occasions, the British asked the Italians to give an assurance that they would not sell Germany such planes, setting forth the reasons which Mr. Osborne had explained to Mr. Phillips when he informally broached the same subject with us. The Italian Government finally replied agreeing in principle to join with the other countries in preventing such sales, but added that in its opinion this move on the part of Germany was closely related to its demand for equality of rights which had been admitted in principle at Geneva. The Italians accordingly informed the British that the Germans would probably raise the question at Geneva on a broader basis and felt that the British should be prepared to discuss it when and if raised. I asked Mr. Rosso if that meant that the Italians might take the initiative

^{26a} Augusto Rosso.

in bringing the question up at Geneva. He said definitely that this was not the case, but that he was convinced that the subject would be raised by Germany.

I then told him, in strict confidence, of the position of this Government in the matter, from the point of view of law and of policy. In particular, I told him of the assurance that we had confidentially given Mr. Osborne to the effect that although we could not legally prevent the export of such military planes, yet we could, as a matter of practice, probably accomplish the purpose we desired by stating that the Government viewed such export with extreme disfavor.

PIERREPONT MOFFAT

862.248/39

The British Embassy to the Department of State

AIDE-MÉMOIRE

His Majesty's Government have in the past experienced some difficulty in advising aviation firms seeking advice and anxious to avoid participation in an illicit traffic as to how to proceed, particularly in the case of civil aeronautical material which can be applied to police service without any alteration whatever; but there has hitherto been no suspicious trade in such articles and it has not been found necessary to take any special measures for controlling it. Recent developments however in regard to the aeronautical industry have made it necessary to reconsider the position.

2. In July last the British Air Attaché in Berlin was requested by the German Air Ministry to transmit to His Majesty's Government in the United Kingdom a request for permission to buy 25 to 50 British aircraft for police purposes. The request was accompanied by an intimation that if British aircraft were not forthcoming the German requirements would be met from elsewhere.

3. In August His Majesty's Principal Secretary of State for Foreign Affairs telegraphed to His Majesty's Chargé d'Affaires in Washington informing him of the above and adding that His Majesty's Government had had under consideration the most effective means of preventing the sale of aircraft and engines, and of manufacturing rights in such aircraft and engines, for the purposes forbidden by the Paris Air Agreement of May 7th, 1926,²⁷ to which the Governments of France, Great Britain, Italy, Belgium, Japan and Germany were parties. Sir John Simon stated that if the other governments concerned were ready to take corresponding action His Majesty's Government would be prepared to request British

²⁷ May 7, 1926, is the date of the signing of the protocol; the agreement was dated May 22. See League of Nations Treaty Series, vol. LVIII, p. 331.

aircraft and engine manufacturers not to conclude any agreement for the sale of such material, or of the manufacturing rights thereunder, to the German Government direct, or to any German Ministry or public authority, or to the German police, unless they should have received a categorical written assurance from the German Government that the material or the rights in question would not be used for any purpose forbidden by the Paris Air Agreement.

4. In view of the unfortunate effect which any German re-armament might be expected to have on the Disarmament Conference, Mr. Osborne was instructed to enquire whether the United States Government would be prepared to take similar action. His Majesty's representatives in Paris, Rome, Brussels and Prague received similar instructions. Mr. Osborne spoke to the United States Under Secretary of State in the above sense on August 4th last; and on August 10th Mr. Phillips informed Mr. Osborne that he had discussed the matter with the President, that the United States Government had in fact no powers to prevent sales of the nature in question, but that in practice the policy initiated by the last Administration and continued by the present one was to express disapproval of any aircraft sales to Germany, and that in practice, before making contracts with Germany, United States firms would ask the State Department if they had any objection and would be told that the Department would not approve.

5. Mr. Osborne duly informed His Majesty's Principal Secretary of State for Foreign Affairs of what Mr. Phillips had told him. Sir John Simon has now pointed out that His Majesty's Government for their part also would not rely in this matter on legal powers but on methods similar to those which Mr. Phillips had said were applied in the United States. The procedure, however, which Mr. Phillips had outlined, namely, to inform American firms in reply to their enquiries that they were not to sell any aircraft to Germany, went considerably further than the scheme propounded by His Majesty's Government and might perhaps even be difficult to justify if the German Government were to complain of the discrimination involved. The system proposed by His Majesty's Government on the other hand provided for no more than a written assurance from the German Government in the event of sales of aircraft or aeronautical material to the German Government themselves, or Government departments, including the police, and would leave completely free the ordinary trade between private firms. His Majesty's Government did not envisage so drastic a measure as the total prohibition of the sale of aircraft to Germany.

6. The proposals submitted by His Majesty's Government have now been agreed generally by the French, Belgian, Italian, Polish and Czechoslovak Governments; and Sir Ronald Lindsay has consequently been

instructed to enquire whether the United States Government would not reconsider their position, and to urge the desirability of their adopting the same procedure as that of the above mentioned governments in order that the German Government may find that the policy of the principal manufacturing countries is identical.

WASHINGTON, October 19, 1933.

862.248/39

The Secretary of State to the British Ambassador (Lindsay)

The Secretary of State presents his compliments to His Excellency the Ambassador of Great Britain and has the honor to refer to the Embassy's *aide-mémoire* of October 19, 1933, in regard to the purchase of airplanes by Germany. In order to make clear the position of this Government in respect to such sales, the Secretary of State is pleased to furnish the Ambassador with the following information.

(1) In all questions arising in regard to the export of airplanes from the United States, this Government makes a distinction between civil and military aircraft. The latter category is restricted to types of aircraft fitted with armor, guns, machine guns, gun mounts, bomb dropping or other military devices, and aircraft not so equipped when there is definite reason to believe that it is intended for military purposes.

(2) This Government has never expressed disapproval of the export of civil airplanes to Germany nor would it be inclined to do so unless there were reason to believe that such airplanes were intended for use by the armed forces of Germany, including the police.

(3) As the importation into Germany of war material of every kind is prohibited by Article 170 of the Treaty of Versailles,²⁸ as the maintenance of airplanes by the armed forces of Germany is prohibited by Article 198 of the Treaty of Versailles, and as Article I of the Treaty between the United States and Germany Restoring Friendly Relations²⁹ provides that the United States shall have and enjoy all rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles, this Government would consider the importation of military airplanes into Germany or the possession of airplanes of any type by the armed forces of Germany as a violation of its treaty rights.

(4) This Government is not aware that any airplanes have been exported recently from the United States to Germany. Thirty airplane engines have, however, been exported from the United States to Germany

²⁸ *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1910-1923* (Washington, Government Printing Office, 1923), vol. III, pp. 3329, 3402; also *Foreign Relations, The Paris Peace Conference, 1919*, vol. XIII, p. 328.

²⁹ *Foreign Relations, 1921*, vol. II, p. 29; also printed in *Treaties, Conventions, etc., 1910-1923*, vol. III, p. 2596.

in the course of the present year. As these engines have no distinctly military characteristics, and as no evidence has been adduced that they are for the use of the armed forces of Germany, this Government has not expressed disapproval of their exportation to Germany.

(5) On August 31, 1933, this Government was informed that the European representative of an American manufacturer of airplanes had received an inquiry from the German Government in regard to the possibility of purchasing in this country a fighting plane for police use. The Secretary of State thereupon informed the manufacturer in question that this Government would view the export of such an airplane from this country to Germany with grave disapproval. At the same time, discreet steps were taken with a view to a closer supervision of the exportation of airplanes from this country to Germany.

The Secretary of State regrets that this Government is not in a position to give favorable consideration to the proposal that the German Government be requested to furnish such written assurances of its fulfillment of its treaty obligations as are proposed by the British Government. He believes, however, that the procedure which has been followed and which is being followed by this Government in respect to the exportation of airplanes from this country to Germany conforms in all essentials to the procedure proposed by the British Government and described in Paragraph five of the *aide-mémoire* under acknowledgment, and that it will serve to accomplish the purpose which the British Government has in view.

WASHINGTON, October 27, 1933.

862.248/43

*Memorandum by the Chief of the Division of Western European Affairs
(Moffat)*

[WASHINGTON,] November 21, 1933.

Signor Rosso³⁰ called this morning to ascertain whether the British Government had recently made any further proposals to this Government concerning the restriction of exportation of military airplanes to Germany. He stated that he had been informed by his Foreign Office that the British Ambassador in Rome had proposed to the Italian Government that it join with other governments—he specifically mentioned the British, French and Czechoslovak Governments—in entering into a treaty whereby they would bind themselves not to permit the exportation of airplanes to Germany, unless in each case the German

³⁰ Italian Ambassador.

Government had presented satisfactory evidence to the effect that the airplane in question was not to be put to military or police use.

I replied that the British Government had made no such proposal to this Government and that our most recent communication to the British Ambassador on this subject was an *aide-mémoire* replying to the British *aide-mémoire*, of which I had spoken to him some weeks ago. I sent for Mr. Green and asked him to bring in a copy of the *aide-mémoire* of October 27, 1933, and I allowed the Italian Ambassador to read this copy.

Signor Rosso expressed his satisfaction at being so fully informed and he stated that he believed that the position of the Italian Government would be identical with ours.

The conversation then turned to recent events in connection with the Disarmament Conference and I read the Ambassador copies of several recent factual telegrams from Geneva. He expressed the opinion that the newspaper reports prophesying Italy's withdrawal from the League did not accurately represent Mussolini's attitude in the matter.

PIERREPONT MOFFAT

PETITIONS FOR REHEARINGS IN THE SO-CALLED SABOTAGE CASES:
BLACK TOM AND KINGSLAND ³¹

462.11 L 5232/377

The German Embassy to the Department of State

MEMORANDUM

Under the Agreements concluded between the United States and Germany on August 10, 1922,³² and December 31, 1928,³³ the United States presented to the Mixed Claims Commission on behalf of its nationals approximately 20,400 claims against Germany. Among these claims there were two cases involving claims for damages on account of alleged destructions of property in the United States during the period of American neutrality by alleged agents of the German Government, the so-called Black Tom and Kingsland cases.

The facts and the theory of these claims.

One of these cases involved the fire which resulted in the destruction of, and damage to, property at and around the Black Tom Terminal in New York harbor on July 30, 1916. The second involved the fire at the Assembling Plant of the Agency of Canadian Car and Foundry Company, Ltd., at Kingsland, N. J., on January 11, 1917. These two cases and a large number of claims arising out of these disasters and amount-

³¹ Continued from *Foreign Relations*, 1931, vol. II, pp. 322-329.

³² Signed at Berlin, August 10, 1922, *ibid.*, 1922, vol. II, p. 262.

³³ Agreement by exchange of notes; for texts, see *ibid.*, 1928, vol. II, pp. 895-898.

ing to between 25 and 40 million dollars, were presented to the Commission under the terms of the Treaty of Berlin. It was contended that these fires were set by German agents acting under the authority of the German Government, for the purpose of destroying the munitions and explosives assembled at these places.

The proceedings before the Commission.

The cases were most laboriously prepared by the claimants and the Agent of the United States and his staff. More than 1300 exhibits were filed by the American Agent alone, a large number of which again comprised numerous documents, affidavits, reports and other pieces of evidence. All of the records of the United States Departments, chiefly the files of the Department of Justice and the War Department, concerning the activities of German agents in the United States, Mexico and Canada during the period of the World War, their surveillance by the United States authorities and agents, the investigations conducted and the proceedings instituted against them were made available to the American Agent for use before the Commission. The records of the various official and private investigations made with regard to the disasters in question were brought before the Commission. Extensive investigations were made in this country and in European countries during the course of the proceedings before the Commission by the claimants, the United States Agency and the German Government. Innumerable witnesses were examined by both parties and their testimony presented to the Commission. In fact, all evidence and information having any bearing upon the questions raised and the broad contentions advanced in support of the claims, were presented to and accepted by the Commission without regard to any rules of evidence and without any restriction as to the nature of the evidence offered. Extensive hearings were held before the Commission and not until the Agents for the two Governments—after more than four years' continuous proceedings—voluntarily submitted these cases to the Commission for final determination of the question of Germany's liability, did the Commission hand down a decision in the Black Tom and Kingsland cases.

Decision of the Commission.

In this decision, announced by the Commission on November 13, 1930,³⁴ after oral arguments had been heard by the Commission at The Hague lasting almost two weeks, the three members of the Commission, two of whom were American jurists, unanimously found that Germany was not responsible for the disasters in question.

³⁴ Mixed Claims Commission, United States and Germany, *Administrative Decisions and Opinions of a General Nature and Opinions and Decisions in Certain Individual Claims, From October 1, 1926, to December 31, 1932, With Orders of March 25 and May 7, 1925, and Appendices* (Washington, 1933), p. 994.

First petitions for a rehearing.

Thereafter, to-wit, in January, 1931, petitions for a rehearing in these cases were filed by the American Agent which, after renewed careful consideration of the voluminous evidence before the Commission were dismissed by a unanimous decision of the three members of the Commission, on March 31 [30], 1931.³⁵

Second petition for a rehearing.

Thereafter, to-wit, on July 1, 1931, supplemental petitions for a rehearing were filed by the American Agent,³⁶ based upon what was claimed to be "newly discovered evidence". Extended investigations were carried on and numerous witnesses were again examined by both sides in regard to the voluminous new evidence during the one-and-a-half years these supplemental petitions were pending. No restrictions were imposed upon the two Agents as to the nature of the evidence they desired to offer. Two oral arguments were held before the Commission in connection with these supplemental petitions for rehearing.

During these proceedings, viz. in March 1932, the Honorable Owen J. Roberts, Associate Justice of the Supreme Court of the United States, was appointed Umpire by the two Governments succeeding the late Roland W. Boyden.

Last decision of the Umpire.

The last oral argument was held before the Commission in November 1932, with Justice Owen J. Roberts presiding. The cases were again submitted to the Commission for final decision. The supplemental petitions for rehearing were dismissed by a decision of Justice Roberts of December 3, 1932,³⁷ after the two national Commissioners had been unable to reach an agreement. In this decision most important documents upon which the American Agent relied in support of his supplemental petitions, were found to have been fraudulently prepared.

Thus the Commission was called upon three times to decide whether the German Government was responsible for the fires at Black Tom and Kingsland, that is, whether these disasters were brought about by German agents, and three times held that Germany was not responsible in these cases, the last decision, that of December 3, 1932, being rendered by a Justice of the Supreme Court of the United States.

Finality of Submission.

The rules of the Commission provide that, when a case is submitted, the proceedings before the Commission in that case shall be deemed

³⁵ Mixed Claims Commission, United States and Germany, *Administrative Decisions, etc.*, pp. 995-997.

³⁶ *Foreign Relations*, 1931, vol. II, p. 328.

³⁷ Mixed Claims Commission, United States and Germany, *Administrative Decisions, etc.*, pp. 1004-1029.

closed. The submission of a case by the Agents of the two Governments therefore is a submission for final determination of the claim or claims involved.

When the supplemental petitions for a rehearing of the Black Tom and Kingsland cases were submitted at the close of the oral argument on November 25, 1932, it was clearly understood by the Commission and the Agents of the two Governments and so stated by the two Agents that the submission was final and that the decision would be accepted as final and binding upon the two Governments.

Finality of the decisions of the Commission.

In the Agreement of August 10, 1922, by which the Governments of the United States and Germany established the Mixed Claims Commission, it is expressly provided that

“The decisions of the commission and those of the umpire . . . shall be accepted as final and binding upon the two Governments.”

Both Governments have thus mutually pledged themselves to accept the decisions of the Commission and those of the Umpire as final and binding upon them. Both the Black Tom and Kingsland cases were voluntarily submitted by the Agents of the two Governments to the Commission for final determination of the question of Germany's liability and consequently the decision of the Commission must be accepted by the two Governments as final and binding upon them.

*The Act of Congress of July 3, 1930.*³⁸

The request made by the American Agent in the new—the third—petition for a rehearing of the Black Tom and Kingsland cases that the Act of the Congress of the United States of July 3, 1930, be made applicable to the proceedings before the Commission and that subpoenas be issued by the Commission for the purpose of taking the oral testimony of certain witnesses has also been finally decided by the Commission.

The identical request was made by the American Agent in his first petitions for a rehearing filed in January, 1931 and was submitted by him for a decision by the Commission.

The three members of the Commission unanimously denied that request and in their decision of March 30, 1931, held: ³⁹

“A new jurisdictional question is raised in these petitions by the requests that subpoenas be issued by the Commission for the purpose of taking the oral testimony of certain witnesses. This suggestion is contrary to the unbroken practice of the Commission. The Agreement of August 10, 1922, between Germany and the United States, which established this Commission and is the foundation of its jurisdiction, does

³⁸ 46 Stat. 1005.

³⁹ Mixed Claims Commission, United States and Germany, *Administrative Decisions, etc.*, pp. 995-997.

not authorize it to issue subpoenas for witnesses or to administer oaths and take the oral testimony of witnesses. The requests that subpoenas be now issued by the Commission for the purpose of taking oral testimony are based upon an Act of Congress approved July 3, 1930, having general application to international commissions, which the American Agent contends applies to this Commission and authorizes it to take this procedure. The Commission is of the opinion that the jurisdiction conferred upon it by the two Governments in their Agreement of August 10, 1922, cannot be extended by this later statute of the United States. Even if it had authority, the Commission would not change its practice at this stage of these cases, when the evidence has been formally closed, the arguments made, and the decisions rendered.

Accordingly, the requests in these petitions that the Commission issue subpoenas for the oral examination of witnesses are also denied."

Under the Agreement of August 10, 1922, this decision of the Commission is final and binding upon the two Governments.

WASHINGTON, May 4, 1933.

462.11 L 5232/397

The German Chargé (Leitner) to the Acting Secretary of State

[Translation]

WASHINGTON, July 6, 1933.

MR. UNDER SECRETARY OF STATE: By instruction from my Government I have the honor to advise Your Excellency of the following:

The Government of the Reich has thoroughly studied the American proposal to obtain a decision from the Umpire on the question of the admissibility of resuming the sabotage cases. It can not convince itself, however, either of the legal possibility or of the expediency of this procedure.

The Government of the Reich has contested the claims which were brought before the German-American Mixed Commission on account of the destruction of the so-called Black Tom ammunition magazine and the Kingsland plant, because it has been convinced, after the most thorough and careful investigation of the facts, that both occurrences were not caused by the work of German agents and that the claims made are therefore groundless. After examination of the extraordinarily extensive material submitted by both the Germans and the Americans, the Commission rejected the complaints on October 16, 1930⁴⁰ in a decision reached unanimously, the reasons for which were given in detail.

After certain objections which the American Agent had raised against this decision were rejected by a decision of the Commission of March 30, 1931, the American Agent submitted, on July 1, 1931, a proposal

⁴⁰ Mixed Claims Commission, United States and Germany, *Administrative Decisions, etc.*, pp. 967-994.

for resuming the case, which was based on allegedly just discovered evidence. The German Agent contested this proposal from the beginning as legally inadmissible but at the same time he conducted protracted time wasting, and expensive investigations as to the value of the American material as proof. In that way it was possible for the Commission, by laying aside the question of the admissibility of the proposals for resumption, to make another decision, based on the merits of the case, on the justification for the claims presented. In the decision of December 3, 1932, the Umpire decided that the documents on which the proposal for resuming the case chiefly rested are forgeries and not proper evidence, and that the newly submitted material also did not justify any other decision than that handed down in the fall of 1930. The Umpire stated explicitly that the German member of the Commission decidedly held a resumption to be inadmissible, but that a statement of opinion on that point was needless, in view of his decision.

To the very great surprise of the Government of the Reich, the American Agent has recently submitted a new resumption proposal, which aims at having the Commission enter upon a new investigation of the controversy, on the ground of new testimony of witnesses which the Agent claims to have just secured.

As against this, it is to be noted that both Governments have pledged themselves, in Article VI, Paragraph 3, of the Agreement of August 10, 1922, on the establishment of the Mixed Commission, to accept the decisions of the Commission and the Umpire as final and binding. Resumption proposals cannot be reconciled with this provision. This clear legal situation has been recognized by the Commission also in the basic decision in the matter of the Philadelphia Girard National Bank of April 21, 1930,⁴¹ in which it was stated that the collection of new evidence does not give either party the right to demand resumption. The question which is to be submitted to the Umpire has therefore already been decided by the Commission.

Experience shows that persons complaining of sabotage are not disposed, in case of adverse decisions of the Commission or the Umpire to acquiesce therein. It is therefore not to be expected that this will be the case, if the Umpire now again expressly sets forth the inadmissibility of the resumption proposal. The German Government would, if it agreed to a reference of the question of admissibility of a resumption of the question to the Umpire, call in question the basic preliminary decision in the above mentioned complaint of the Philadelphia Girard National Bank.

⁴¹ Mixed Claims Commission, United States and Germany, *Administrative Decisions, etc.*, pp. 939-948.

More than two years ago, the Commission practically concluded its task of judging the cases referred to it. Since that time, the formal conclusion of its work has been delayed only by the resumption proposals of the sabotage complainants. Moreover, other American complainants have made use of the interval, in order to make such proposals also. Since resumption of the sabotage cases was declined on December 3, 1932, the Government of the Reich, in the spirit of friendly accommodation, with which it has, from the beginning promoted the labors of the Commission, initiated a compromise procedure for settling all cases that were at that time still pending before the Commission. In doing so, it laid aside its objections to the material justification of the American claims in question, as well as the intrinsic fundamental objections against resumption, in order to take also into consideration, in particular, the repeatedly expressed desires of the American Government in the Sprunt cases.⁴² All the cases pending before the Commission were thereby again settled, as they already had been, at the close of 1930.

Now the same development as that subsequent to 1930, seems to be beginning once more: a proposal for resumption in the sabotage case and a similar one in another case are again pending before the Commission. The course of things up to the present plainly justifies the assumption that the Commission can not conclude its work with the means at its disposition. As a matter of fact the obligation expressed in the agreement, to recognize the decisions of the Commission as definitive and binding, is also an obligation resting on the Governments, and with regard to which the Commission is not competent to decide.

Taking this provision of the agreement as a basis, the Government of the Reich therefore, earnestly requests the American Government to take steps for the withdrawal of the proposals for resumption filed with the Commission. The Government of the Reich is not in position to allow its agencies with the Commission to participate in further steps relating to resumption. It has therefore instructed its agent in particular, not to express himself with regard to the pending resumption proposals, and not to participate in any hearings before American courts.

The Government of the Reich again demonstrated by the compromise procedure initiated in February, its willingness, to conclude the labors of the Commission in a friendly and conciliatory spirit. At the desire of the American Government it has also renounced the setting of a time limit for compromise offers. It is even now still prepared to put the compromises into effect, but, can not waive the condition that the Commission be dissolved at the same time. The Government of the Reich hopes that the American Government, in examining this situation

⁴² Claims brought before the Commission by Alexander Sprunt & Son. See Mixed Claims Commission, United States and Germany, *Administrative Decisions, etc.*, pp. 925-927.

will be convinced that the work of the Commission can be concluded only in the manner proposed by Germany and that the public unrest constantly renewed by the proceedings before the Commission may thereby be prevented.

Please accept [etc.]

LEITNER

462.11 L 5232/400

The Acting Secretary of State to the German Chargé (Leitner)

WASHINGTON, July 20, 1933.

SIR: Referring to previous exchanges of communications between your Embassy and the Department of State, regarding the work of the Mixed Claims Commission, particularly to your note of July 6, 1933, I am pleased to inform you, as I have done on previous occasions, that this Government, equally with the Government of Germany, is desirous of closing the work at the earliest practicable moment. It is felt, however, that the petition for rehearing in the sabotage cases, now before the Commission, should be disposed of by the Commission in a judicial manner.

With a view to expediting action as much as possible, I have instructed the American Agent to take steps looking to the closing of the work, including the entering of awards in the pending cases on which tentative agreements have been reached, on or about the first of October.

This, of course, will be possible only by the co-operation of your Government, and in the absence of unforeseen events retarding or preventing the taking of testimony now in process of being taken.

I shall be pleased to learn in due course that this will be satisfactory to your Government, it being understood that a separate arrangement will be reached as regards the so-called late claims, which were the subject of a recent communication from this Department to your Embassy.⁴³

Accept [etc.]

WILLIAM PHILLIPS

462.11 W 892/2321½

Memorandum by the Assistant Secretary of State (Carr)

[Extract]

[WASHINGTON,] August 24, 1933.

The German Ambassador called by appointment this morning to express the views of his Government upon the subject of the German Mixed

⁴³ Not printed.

Claims Commission. The Legal Adviser was with me during the interview. The Ambassador said he was instructed by his Government to say:

(1) The German Government can not participate in any manner in the taking of testimony or in the rehearing by the Commission of the so-called sabotage cases. It takes the position that those cases were disposed of by the decision of the Commission in December, 1932 and that to reopen them would be contrary to the agreement under which the Commission is set up, and a proceeding in which the German Government will not participate. He went into some detail to point out that for the German Government to yield upon this point would be to pave the way for the reopening and rehearing of other decisions and that instead of the work of the Commission being brought to an end, as the German Government greatly desired, it would be continued indefinitely.

(2) The German Government requests that the Agent of the United States should withdraw his application for a rehearing of the sabotage cases and bring to an end the proceedings in regard to them.

(3) If the petition for a rehearing of the sabotage cases should be withdrawn and the work of the Commission brought to a close by October, the German Government will agree to the entering of awards in the nine or twelve cases covered by the tentative settlements made between the two agents. These cases comprise the group amounting to approximately \$1,000,000. The Ambassador made it clear, however, that he was authorized by his Government to make this proposal only on the condition that it is taken advantage of by October.

We inquired of the Ambassador what the attitude of the German Government is upon the question of the so-called late claims and he said his Government regards these claims as part of the whole claims problem and that, pending the winding up of the affairs of the Claims Commission, his Government would not be prepared to make any arrangement for the disposition of the so-called late claims. He gave us to understand, however, that it was his personal opinion that if the work of the Commission were brought to a close, his Government would not be wholly averse to making some arrangement for the disposition of the late claims. He was very particular to emphasize that this would not be done until the work of the Commission had been wound up.

W[ILBUR] J. C[ARR]

462.11 L 5232/434

The German Ambassador (Luther) to the Secretary of State

WASHINGTON, October 11, 1933.

MR. SECRETARY: Pursuant to yesterday's conference between a member of my staff and officials of your Department I have the honor to communicate to Your Excellency the following:

The German Government (as stated in the Embassy's note of July 6, 1933, and in my conversation on August 24, 1933, with the Acting Secretary of State, Mr. Wilbur J. Carr) considers petitions for rehearing in conflict with existing treaty provisions, as contained in paragraph 3, Art. VI of the agreement of August 10, 1922, between the United States and Germany. The German Government regards the commission as being without authority to pass upon a difference of opinion which may exist between the two governments in this connection.

Incidentally I understand this same opinion is held by the German Commissioner, Dr. Kiesselbach.

In February of this year Dr. Meyer, First Secretary of the Embassy, was named Acting German Commissioner for the sole purpose of expediting such formalities as would be found necessary for the conclusion of the commission's work. He has no authority to act with respect to the petitions offered by the American Agent in April and May of this year, but he is still authorized to participate in the formal conclusion of the compromises tentatively agreed upon in February, provided that the work of the Commission would be definitely closed.

Accept [etc.]

LUTHER

462.11 W 892/2387

*The Under Secretary of State (Phillips) to the Legal Adviser
(Hackworth)*

[WASHINGTON,] December 28, 1933.

MR. HACKWORTH: The German Ambassador called to present a proposal, under instructions from his Government, with respect to the Mixed Claims Commission. He pointed out that the Umpire had now rendered a decision⁴⁴ which was to the effect that all the matters presented in the evidence were irrelevant to the issue except those relating to fraud; in the 6,000 pages of evidence which had been presented to the Umpire it was claimed that there might be fraudulent evidence and a new opportunity was given to present evidence on such points;

⁴⁴ Decision rendered on December 15, 1933. See Mixed Claims Commission, United States and Germany, *Decisions and Opinions From January 1, 1933, to October 30, 1939 (Excepting Decisions in the Sabotage Claims of June 15 and October 30, 1939) and Appendix*, pp. 1115-1128.

the Ambassador said that Mr. Loumann had recently received a letter from Mr. Bonyngé saying that he, Mr. Bonyngé, was in search of new evidence in accordance with the Umpire's ruling; the German Government was now confronted, added the Ambassador, with the possibility of an indefinite continuation of the proceedings and this was strongly objected to; the German Government, therefore, proposed that the State Department take over the evidence which had been presented to the Umpire and make up its own mind whether there was any evidence of fraud contained therein; the Ambassador was certain there was no such evidence and that when this point was determined the Department should withdraw the case from the Umpire; legally, he said, he had no doubt the State Department was able to take this action.

I explained to the Ambassador the very serious complications which would be involved in any action by the State Department which would give the appearance of interfering with a court procedure—and that this international commission set up for the judication of claims was, in fact, a court. I said, however, we would be glad to study his suggestion and see whether we could do anything in the circumstances which would hasten a winding up of the commission because, as he knew, the State Department was very anxious to terminate the proceedings as quickly as possible.

WILLIAM PHILLIPS

REPRESENTATIONS BY THE GERMAN EMBASSY AGAINST COLLECTION OF CUSTOMS DUTIES ON GERMAN COAL IN VIOLATION OF TREATY PROVISIONS FOR MOST-FAVORED-NATION TREATMENT

611.623 Coal/1

The German Chargé (Leitner) to the Secretary of State

[Translation]

III A 2352

WASHINGTON, September 28, 1932.

MR. SECRETARY OF STATE: By instruction of my Government I have the honor to invite the attention of Your Excellency to the following matter, with the request for examination and further action, and would be especially grateful for promptness in the premises:

Section 601, Paragraph (a) of the "Revenue Act of 1932"⁴⁵ contains the following provision:

"In addition to any other tax or duty imposed by law, there shall be imposed a tax as provided in subsection (c) on every article imported into the United States unless treaty provisions of the United States otherwise provide."

⁴⁵ 47 Stat. 169.

In Section 601, Paragraph (c) (5) it is further stated:

"Coal of all sizes, grades and classifications (except culm and duff), coke manufactured therefrom; and coal or coke briquettes, 10 cents per 100 pounds. The tax on the articles described in this paragraph shall apply only with respect to the importation of such articles, and shall not be imposed upon any such article if during the preceding calendar year the exports of the articles described in this paragraph from the United States to the country from which such article has been [is] imported have been greater in quantity than the imports into the United States from such country of the articles described in this paragraph."

On the basis of this provision the following executive order was issued:

"T.D.45751 of June 20, 1932:

As the total exports of coal, coke and briquettes described in Section 601 (c) (5) from the United States to Canada exceeded the total imports of the same commodities from that country to the United States during the calendar year 1931, and the total exports of such commodities from the United States to Mexico exceeded the total imports from that country during the same period, no tax shall be collected during the calendar year 1932 on such articles imported into the United States from Canada or Mexico."

I have the honor, upon the basis of Article VII, Paragraphs 2 and 4 of the Treaty of Friendship, Commerce and Consular Rights between Germany and the United States of August 20, 1925,⁴⁶ to request that the exemption set forth in the foregoing passages, enjoyed by the Canadian and Mexican coal imports according to the above, be extended also to German coal imports. In Article VII, Paragraphs 2 and 4 of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, it is set forth:

"Each of the High Contracting Parties binds itself unconditionally to impose no higher or other duties or conditions and no prohibition on the importation of any article, the growth, produce of [or] manufacture, of the territories of the other than are or shall be imposed on the importation of any like article, the growth, produce or manufacture of any other foreign country.

"Any advantage of whatsoever kind which either High Contracting Party may extend to any article, the growth, produce or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article, growth, produce or manufacture of the other High Contracting Party."

A discrimination against the importation of German coal in the face of the importation of coal from Canada and Mexico appears according thereto inadmissible under the Treaty.

⁴⁶ August 20, 1925, was the date of ratification by Germany of the treaty signed December 8, 1923, *Foreign Relations*, 1923, vol. II, p. 29.

According to the view of the German Government the same applies also under Article VIII of the said Treaty, wherein it is set forth:

"The nationals and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment as nationals and merchandise of the country with regard to internal taxes, transit duties, charges in respect to warehousing and other facilities and the amount of drawbacks and bounties."

According thereto, also, the duty which would be imposed upon German coal would be unjustified.

In addition to the placing of German coal, coke and briquettes upon the free list, I would also be thankful for your kind intervention in procuring, on the basis of this statement, the refunding of whatever duties have been collected already.

As the German coal importation, which of itself is comparatively insignificant in volume, has been affected most keenly by the measures taken, I have the honor again to beg Your Excellency to cause the requested action to be taken by the proper domestic authorities with special haste.

Accept [etc.]

LEITNER

611.623 Coal/12

Memorandum by the Assistant Secretary of State (Rogers)

[WASHINGTON,] January 6, 1933.

The German Ambassador ⁴⁷ brought in the attached memorandum regarding the coal import excise.

He said orally that if the position they expressed was not accepted by this Government, they would feel free to proceed with their own domestic legislation in a way now forbidden by the treaty in view of the fact that they considered the levying of the coal tariff against them a breach of Article 7. He said their shipments of coal were very small, that one shipment had recently landed and another was on the way, and that he assumed that the question of law would be promptly taken up by the American importers and tried in the courts.

I told the Ambassador we had not informed him of the Attorney General's ruling ⁴⁸ as we knew they had learned of it from the newspapers and we had not planned to write until the action of the Treasury had been announced pursuant to the Attorney General's ruling. We did not yet know what the action of the Treasury was but assumed it would in some form reinstate the prior ruling admitting German coal free of the tax. I explained that the Attorney General's ruling did not reach the

⁴⁷ Friedrich Wilhelm von Prittwitz und Gaffron.

⁴⁸ Ruling of December 27, 1932; 37 Opinions of the Attorneys General 34.

merits of the case but was merely procedural. I said that we and the Treasury had both taken the position that on the merits German coal was to be admitted but this now was taken out of our hands entirely and must be left to the courts. He asked again if we would respond to his memorandum and I promised to do so as soon as we knew the Treasury ruling but not necessarily before.

The Ambassador talked generally about conditions in Germany saying they were politically quieter for the time being, that the next issue would be when the Reichstag assembled, and that the continuance of the Government depended on the Nazi vote. If they abstained, a vote of non-confidence could not be passed. He said economically there was some improvement in Germany and he understood in Great Britain. In Germany it was chiefly in heavy industries. The von Schleicher Government was talking very little, busying itself with meeting the domestic unemployment problem, and confidence was rising as the previous constant machine gun fire of political discussion was superseded by a calmer governmental movement. He said the equality claims in the Disarmament Conference remained a critical element in German domestic politics.

J[AMES] G[RAFTON] R[OGERS]

[Annex ⁴⁹]

The German Embassy to the Department of State

MEMORANDUM

The German Government has noted with concern that the Government of the United States, contrary to the decision contained in the note of December 1, 1932—611.003 coal & coke/9⁵⁰—does not permit shipments of coal from Germany to be imported into the United States without the tax provided in the act of 1932,⁵¹ or without bond, notwithstanding the fact that coal shipments from Canada and Mexico are admitted free.

It has been noted from newspaper accounts that the action of the Treasury Department in reversing a prior ruling, was contrary to certain legal provisions of the Act of January [June] 17, 1930,⁵² and that the question should now be judicially determined by protest and litigation of the importers.

The German Government refers to the note of the Embassy dated September 18 [28], 1932, and submits that it is justified under the pro-

⁴⁹ Filed separately under 611.623 Coal/18.

⁵⁰ Not printed.

⁵¹ 47 Stat. 169.

⁵² 46 Stat. 590.

visions of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany in expecting that German coal imports receive the same favorable treatment as accorded to any other important country. As provided in article 7 of the said treaty

“Any advantage of whatsoever kind which either high contracting party may extend to any article, the growth, produce or manufacture of any other foreign country shall simultaneously and unconditionally without request and without compensation be extended to the like article, the growth, produce or manufacture of the other high contracting party.”

This right is not subject to a ruling by a court and cannot be impaired by administrative actions or decisions.

The German Government would therefore appreciate it if the necessary steps were taken by the Government of the United States to allow German coal and coke to be imported into this country free of tax or bond, in the same manner as coal from Canada and Mexico is imported, and, furthermore, to repay any tax or bond already paid for imported German coal.

WASHINGTON, January 6, 1933.

611.623 Coal/16

The Secretary of State to the German Ambassador (Von Prittwitz)

[WASHINGTON,] January 17, 1933.

EXCELLENCY: I have the honor to refer to previous correspondence with you in regard to certain provisions of the Revenue Act of 1932, affecting the importation of coal into the United States.

I now have to inform you that the Decision of the Treasury Department⁵³ permitting duty free entry of German coal has, by reason of a ruling of the Attorney General, been reversed. Two copies each of the Attorney General's letter of December 27, 1932, to the President,⁵⁴ and of a Decision dated January 9, 1933,⁵⁵ by the Secretary of the Treasury, are enclosed herewith for your information.

You will note that the Attorney General has set aside the Decision of the Treasury Department in order that the question of the right of German coal to exemption from the tax imposed by the Revenue Act may be decided by the appropriate court on appeal thereto by the parties interested.

Accept [etc.]

H. L. STIMSON

⁵³ Decision No. 45991-6, November 14, 1932; for text, see *Treasury Decisions*, vol. 62, p. 521.

⁵⁴ 37 Op. Atty. Gen. 34.

⁵⁵ No. 46102; *Treasury Decisions*, vol. 63, pp. 67-68.

611.623 Coal/18

The German Ambassador (Von Prittwitz) to the Secretary of State

WASHINGTON, January 20, 1933.

MR. SECRETARY OF STATE: I have the honor most respectfully to acknowledge the receipt of the communication of the 17th instant—611.623 Coal [/16]. I have taken note of the contents thereof and communicated to my Government the fact that, according to the view of the Attorney General, the right of exemption of German coal from the tariff tax should be tested in an American domestic court, and that the Secretary of the Treasury has notified the Customs Collectors to that effect, according to which the tariff is to be collected until further notice.

As I already stated on the 6th instant, in a memorandum submitted, a carbon copy of which I take the liberty to enclose herewith,⁵⁶ and which I had the honor to enlarge upon in oral explanations, my Government cannot accept that the interpretation of the most-favored-nation clause, which in its opinion can have but one meaning, in the Treaty of Friendship, Commerce and Consular Rights, shall be made dependent upon a decision of American domestic judicial authorities.

Accept [etc.]

F. W. v. PRITTWITZ

611.623 Coal/22

*Memorandum by the Economic Adviser (Feis) of a Conversation
With the First Secretary of the German Embassy (Meyer)*

[WASHINGTON,] January 31, 1933.

Dr. Meyer, who has very recently returned from Europe, called to discuss alleged violations of the most-favored-nation clause in our treaty with Germany by the taxes on coal and on yachts imposed by the Revenue Act of 1932.

Dr. Meyer's purpose was to emphasize the seriousness with which Germany regarded the coal matter. Germany could not understand why it could receive no statement of the opinion of the United States Government as to whether or not the treaty was violated in respect of the excise tax on coal. The only answer it had received to its complaint was that the Government of the United States could express no opinion on the matter until it had been tried in the courts. Germany could not have confidence in assurances of prompt court action as the case might be decided in April but might be postponed until October, the Court of Appeals meeting only twice a year, and might then go to the Supreme Court and take years and years to decide. Germany attached the greatest

⁵⁶ *Ante*, p. 505.

importance to the question as a matter of principle as, in case the American tax were not held to be in violation of the treaty, Germany might wish to impose taxes which it could not do until the American tax was held not to be a treaty violation.

I told Dr. Meyer that the question he raised was a legal one, in the competence of the Legal Adviser rather than of the Economic Adviser's Office. Dr. Meyer said he would try to see Mr. Hackworth⁵⁷ tomorrow or would be glad to see Mr. Bundy or Mr. Rogers⁵⁸ if advised by telephone that they cared to see him. His purpose was to emphasize the nervousness which he had found in Berlin regarding this situation and the importance which Berlin attached to it. He requested that I bring this to the attention of Mr. Bundy and Mr. Rogers.

Dr. Meyer also mentioned the Revenue Act of 1932 double excise on foreign boats.⁵⁹ The Embassy had brought this to the Department's attention and had heard nothing about it for four months, except that it had been referred to the competent authorities. This and the coal matter had aroused much concern in Berlin as to the effectiveness of the commercial treaty with the United States. I told Dr. Meyer I recollected nothing about the matter of the boats.

Dr. Meyer's presentation of these matters was very competent.

011.623 Coal/26

Memorandum by the Assistant Secretary of State (Rogers)

[WASHINGTON,] February 4, 1933.

COAL EXCISE CASE

The German Ambassador went over this asking the situation and citing the decision of the Supreme Court⁶⁰ on the British rumboat treaty⁶¹ as a precedent for the German position. I told him the State and Treasury Departments had both felt that independent of any question of the priority between an act of Congress and treaty obligations, the Revenue Act of 1932 had expressly preserved our treaty obligations and both Departments had felt that German coal should come in free of the new tax. However, the Attorney General, without reaching the merits, had prevented this by a ruling regarding the pro-

⁵⁷ Green H. Hackworth, Legal Adviser of the Department of State.

⁵⁸ Harvey H. Bundy and James Grafton Rogers, Assistant Secretaries of State.

⁵⁹ For previous correspondence on this subject, see *Foreign Relations*, 1928, vol. II, pp. 936 ff.

⁶⁰ *Ford et al. v. United States*, 273 U.S. 593.

⁶¹ Treaty between the United States and Great Britain, signed at Washington, January 23, 1924, *Foreign Relations*, 1924, vol. I, p. 158.

cedure, that the matter was now in the courts and that under our system of government there was nothing to be said or done until the courts acted.

The Ambassador said he appreciated the situation but wanted to know the attitude of our Government because the German importers were pressing him for news and his Government wanted to define the issue. I told him the issue at the moment was one for the courts, that the Supreme Court decision in the British rum treaty threw no light on our present case except to accentuate the constitutional conclusion that the last legislative act, whether treaty or statute, controlled. I said this point was not involved in the coal situation at any rate at this stage.

J[AMES] G[RAFTON] R[OGERS]

611.413 Coal/37

*Brief by Direction of the Secretary of State Submitted to the
United States Customs Court, Third Division*⁶²

George E. Warren Corporation	}	Protest 628415-G/18227
and		British Coal
Domestic Fuel Corporation,	}	Protest 629225-G/353
Plaintiffs,		German Coal
vs.		
The United States,	}	Revenue Act of 1932.
Defendant.		

BRIEF BY DIRECTION OF THE SECRETARY OF STATE OF THE UNITED STATES

It is understood that coal from Canada and Mexico is being admitted into the United States free of duty and that in 1932 the Collector of Customs at New York, acting under Section 601 of the Revenue Act of 1932 (Public No. 154—72d Congress), imposed a duty of ten cents per hundred pounds on anthracite cobbles and anthracite nuts produced in Wales and imported into the United States from Great Britain by the George E. Warren Corporation and on "Westph. anthracite nut coal" produced in Germany and imported into the United States from Germany by the Domestic Fuel Corporation.

The pertinent portion of Section 601 of the Revenue Act of 1932 reads:

"(a) In addition to any other tax or duty imposed by law, there shall be imposed a tax as provided in subsection (c) on every article imported into the United States unless treaty provisions of the United States otherwise provide.

"(c) There is hereby imposed upon the following articles sold in the United States by the manufacturer or producer, or imported into the

⁶² The Secretary of State sent this document to the Attorney General on April 6, 1933, with the request that it be delivered to the court.

United States a tax at the rates hereinafter set forth, to be paid by the manufacturer, producer, or importer:

“(5) Coal of all sizes, grades, and classifications (except culm and duff), coke manufactured therefrom; and coal or coke briquettes, 10 cents per 100 pounds. The tax on the articles described in this paragraph shall apply only with respect to the importation of such articles, and shall not be imposed upon any such article if during the preceding calendar year the exports of the articles described in this paragraph from the United States to the country from which such article is imported have been greater in quantity than the imports into the United States from such country of the articles described in this paragraph.”

It is understood that for the calendar year 1931, the balance of trade in coal between the United States and Canada and between the United States and Mexico was in favor of the United States; and that the balance of trade in coal between the United States and Great Britain and the United States and Germany was against the United States.

The admission free of duty of coal from Canada and Mexico, and the imposing of a duty of ten cents per hundred pounds of coal from Great Britain and Germany obviously places British coal and German coal at a disadvantage on importation into the United States as compared with Canadian coal and Mexican coal, in that higher or other duty is imposed on British and German coal than is imposed on Canadian and Mexican coal.

The action brought by George E. Warren Corporation and Domestic Fuel Corporation against the United States in the United States Customs Court, raises the question whether the plaintiff companies are entitled to import coal from England and Germany, the former by reason of Article 2 of the Treaty of 1815 between the United States and Great Britain (8 Stat. 228),⁶³ and the latter by reason of Article 7 of the Treaty of 1923 between the United States and Germany (44 Stat. Pt. III, p. 2137), free from duty, on the ground that coal is admitted into the United States free of duty from Canada and Mexico under the Revenue Act of 1932.

The pertinent treaty provisions are:

ARTICLE II

(Treaty of 1815 with Great Britain)

“No higher or other duties shall be imposed on the importation into the United States of any articles the growth, produce or manufacture of His Britannick Majesty’s [territories] in Europe, and no higher or other duties shall be imposed on the importation into the territories of His Britannick Majesty in Europe of any articles the growth, produce or

⁶³ Also printed in Hunter Miller (ed.), *Treaties and Other International Acts of the United States of America*, vol. 2, p. 595.

manufacture of the United States, than are or shall be payable on the like articles being the growth, produce or manufacture of any other foreign country;" . . .

ARTICLE VII
(Treaty of 1923 with Germany)

.

"Each of the High Contracting Parties binds itself unconditionally to impose no higher or other duties or conditions and no prohibition on the importation of any article, the growth, produce or manufacture, of the territories of the other than are or shall be imposed on the importation of any like article, the growth, produce or manufacture of any other foreign country. (Paragraph 2)

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"Any advantage of whatsoever kind which either High Contracting Party may extend to any article, the growth, produce, or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article the growth, produce or manufacture of the other High Contracting Party. (Paragraph 4)

.

"With respect to the amount and collection of duties on imports and exports of every kind, each of the two High Contracting Parties binds itself to give to the nationals, vessels and goods of the other the advantage of every favor, privilege or immunity which it shall have accorded to the nationals, vessels and goods of a third State, and regardless of whether such favored State shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment. Every such favor, privilege or immunity which shall hereafter be granted the nationals, vessels or goods of a third State shall simultaneously and unconditionally, without request and without compensation, be extended to the other High Contracting Party, for the benefit of itself, its nationals and vessels." (Paragraph 6)

The demand of importers of British and German coal that they be accorded the same exemptions with respect to customs duties as are allowed to the importers of Canadian and Mexican coal presents the following questions:

1. Have Article 2 of the Treaty of 1815 with Great Britain and Article 7 of the Treaty of 1923 with Germany ever had the force of law in the United States, no legislation of [*sic*] having been enacted by the Congress to effectuate them?

2. If the first question is answered in the affirmative,

(a) have the articles been abrogated or otherwise rendered ineffective and,

(b) what meaning is to be attributed to the articles?

These questions will be discussed in the order in which they are stated.

1. *Have Article 2 of the Treaty of 1815 with Great Britain and Article 7 of the Treaty of 1923 with Germany ever had the force of law in the United States, no legislation having been enacted by the Congress to effectuate them?*

Article 5 of the Treaty of 1815 with Great Britain provided that upon the exchange of ratifications the treaty should be binding and obligatory on the United States and His Majesty for four years from the date of signature. Ratifications were exchanged December 22, 1815. The treaty became effective on the date last mentioned.

Article 31 of the Treaty of 1923 with Germany provided that the treaty should take effect in all its provisions on the exchange of ratifications. Ratifications were exchanged on October 14, 1925. The treaty became effective on that date.

Consideration of the first question set out above leads at once to Article 6, Clause 2, of the Constitution of the United States. Clause 2 reads as follows:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding."

It is noteworthy that the constitutional provision quoted declares all treaties to be the supreme law of the land. The Constitution makes no distinction between different classes of treaties. When the President concludes a treaty by and with the advice and consent of the Senate in the exercise of authority conferred upon him by Article 2, Clause 2, of the Constitution of the United States, and the treaty so made is ratified and the ratifications are exchanged with the foreign government concerned, the treaty is the law of the land and the President is amply warranted in proclaiming it as such. This is true whether the treaty be a commercial treaty, containing most-favored-nation clauses or other provisions which are usually incorporated in commercial treaties or whether the treaty be a treaty of navigation, of amity, or one pertaining to any other subject within the competence of the treaty making power.

It is deemed useful here to set forth the views of President Washington on the scope of the treaty making power and the requisites for carrying treaties into effect as stated in a message sent by him to the House of Representatives on March 30, 1796, in response to a resolution adopted by the House on March 24 of that year, requesting the President to lay before the House a copy of the instructions given to the Minister of the

United States who negotiated the Jay Treaty with Great Britain (8 stat. 117 [116])⁶⁴ and copies of other correspondence.

The following quotation from that Message clearly indicates President Washington's views:

"The course which the debate has taken on the resolution of the House leads to some observations on the mode of making treaties under the Constitution of the United States.

"Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject; and from the first establishment of the Government to this moment my conduct has exemplified that opinion—that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated thenceforward became the law of the land. It is thus that the treaty-making power has been understood by foreign nations, and in all the treaties made with them *we* have declared and *they* have believed that, when ratified by the President, with the advice and consent of the Senate, they became obligatory. In this construction of the Constitution every House of Representatives has heretofore acquiesced, and until the present time not a doubt or suspicion has appeared, to my knowledge, that this construction was not the true one. Nay, they have more than acquiesced; for till now, without controverting the obligation of such treaties, they have made all the requisite provisions for carrying them into effect.

"There is also reason to believe that this construction agrees with the opinions entertained by the State conventions when they were deliberating on the Constitution, especially by those who objected to it because there was not required in *commercial treaties* the consent of two-thirds of the whole number of the members of the Senate instead of two-thirds of the Senators present, and because in treaties respecting territorial and certain other rights and claims the concurrence of three-fourths of the whole number of the members of both Houses, respectively, was not made necessary.

"It is a fact declared by the General Convention and universally understood that the Constitution of the United States was the result of a spirit of amity and mutual concession; and it is well known that under this influence the smaller States were admitted to an equal representation in the Senate with the larger States, and that this branch of the Government was invested with great powers, for on the equal participation of those powers the sovereignty and political safety of the smaller States were deemed essentially to depend.

"If other proofs than these and the plain letter of the Constitution itself be necessary to ascertain the point under consideration, they may be found in the journals of the General Convention, which I have deposited in the office of the Department of State. In those journals it will appear that a proposition was made 'that no treaty should be binding on the United States which was not ratified by a law,' and that the proposition was explicitly rejected.

"As, therefore, it is perfectly clear to my understanding that the assent

⁶⁴ Also printed in Miller, *Treaties*, vol. 2, p. 245.

of the House of Representatives is not necessary to the validity of a treaty; as the treaty with Great Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for can throw no light, and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request." (*Messages and Papers of the Presidents*, Richardson, Vol. I, pp. 195-196.)

It is significant that the Treaty which was before the Congress at the time the President's Message was sent to the House of Representatives contained what is known as a most-favored-nation clause. It is quite clear from President Washington's Message that he regarded every treaty to be the law of the land. There is nothing to indicate that he considered legislation by Congress necessary to carry the most-favored-nation clauses of that treaty into effect.

It will be noted that President Washington referred in his Message to the proceedings which took place in the General Convention leading to the adoption of the provisions pertaining to the concluding of treaties and the status of treaties. The proceedings which took place in the General Convention in regard to the treaty making power are reviewed in *The Making of the Constitution*, by Charles Warren, beginning at page 651. Mr. Warren's review reveals that proposals were made that provisions be included in the Constitution prescribing varying methods of concluding different classes of treaties and requiring confirmation of treaties by legislation enacted by the Congress to give them effect. These proposals were not adopted. On the contrary the uniform method of concluding treaties prescribed in Article 2, Clause 2, of the Constitution, was adopted and all treaties regardless of their character were declared to be the supreme law of the land.

Inquiry into the practice which has been followed by the Government in dealing with commercial treaties containing most-favored-nation clauses seems pertinent to this discussion. On November 19, 1794, there was concluded between the United States and Great Britain what was known as the Jay Treaty (8 Stat. 117 [116]), to which reference has already been made. On March 1, 1796, President Washington submitted to the Congress a copy of the Treaty for the information of the Congress and stated that ratifications of the Treaty had been exchanged at London on the 28th day of October, 1795, (*Messages and Papers of the Presidents*, Richardson, Vol. I, page 192). That Treaty contained what is known as a most-favored-nation clause (Article 15). The Jay Treaty contained also articles which provided for the establishment of commissions for designated purposes. Congress passed an Act which was approved May 6, 1796, and which read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that towards defraying the expenses which may arise in carrying into effect the Treaty of Amity, Commerce and Navigation, made between the United States and the Kingdom of Great Britain, there be appropriated a sum not exceeding Eighty Thousand, Eight Hundred and Eight dollars to be paid out of the duties on impost and tonnage, to the end of the present year, not already appropriated; provided that the compensation to be allowed to any of the commissioners appointed or to be appointed in pursuance of any article of the said Treaty, shall not exceed, to those who will serve in Great Britain, the rate of Six Thousand, Six Hundred and Sixty Seven Dollars and Fifty Cents per annum; and to those who shall serve in the United States, the rate of Four Thousand, Four Hundred and Forty Five Dollars." (1 stat. L. 459). By an act approved June 30, 1797 (1 stat. L. 523).

A further appropriation was made for the purpose of the treaty. Money was appropriated again by an Act of November 16, 1803 (2 stat. L. 248) to carry out the treaty. Further appropriations were made by the Act approved November 24, 1804; the Act of March 3, 1805 (2 Stat. L. 307, 336). Reference is also made to Article III of that treaty and to the Act of Congress of March 2, 1799, (1 Stat. 701).

It is apparent that the Acts of Congress just quoted and cited were adopted to carry out the provisions of the Treaty requiring the expenditure of money. It is obvious that the Acts had no relation to the most-favored-nation clause of the same Treaty and could not have been intended, or have served, to carry out the most-favored-nation clause of the Treaty. No legislation for that purpose was recommended by the President and none was adopted. The practice of enacting legislation to enable the Government to meet financial obligations undertaken by Treaty is well illustrated by this instance. That legislation was not necessary to effectuate most-favored-nation clauses commercial in character such as the one contained in the Jay Treaty and the ones contained in the Treaty with Germany is, it is believed, indicated by this instance.

The action taken with respect to the Treaty of July 3, 1815, which has been invoked in the litigation now before the United States Customs Court, is informative. On December 23, 1815, President Madison submitted to the Congress copies of the proclamation of that Treaty and recommended such legislative provisions as the treaty called for on the part of the United States. (*Messages and Papers of the Presidents*, Richardson, Vol. 1, page 570) Congress passed an Act approved March 1, 1816, reading as follows:

"Be it enacted and declared by the Senate and the House of Representatives of the United States of America, in Congress assembled [that] so much of any act as imposes higher duty of tonnage or of impost on

vessels and articles imported in vessels of Great Britain than on vessels and articles imported in vessels of the United States contrary to the provisions of the Convention between the United States and His Britannic Majesty, the ratifications whereof were mutually exchanged the 22nd day of December, One Thousand Eight Hundred and Fifteen be from and after the date of the ratification of the said Convention and during the continuance thereof deemed and taken to be of no force or effect." (3 Stat. L. 255)

Article 2 of the Treaty of 1815 contained in addition to the usual most-favored-nation clause a provision against charging any higher dues on British vessels entering the ports of the United States than was to be charged on vessels of the United States. The Article also contained a provision that the same duties should be paid on articles, the growth, produce or manufacture of British Territories in Europe imported into the United States whether such importations were on vessels of the United States or in British vessels. The two provisions of Article 2 of the Treaty last described established what is known as national treatment as distinguished from most-favored-nation treatment. The Act of March 1, 1816, quoted above gave effect to the provisions of the Treaty entitling British goods and vessels to national treatment. The Act, however, had no effect as to the most-favored-nation clause of the Treaty. It will be observed that in submitting the Treaty to the Congress, President Madison recommended such legislation as was necessary on the part of the United States. He did not mention any particular item or items of the Treaty which he deemed to require legislation. The Congress enacted legislation in regard to the clauses of the Treaty entitling British vessels and goods to national treatment but enacted no legislation pertaining to the most-favored-nation clause of the Treaty. The Congress apparently deemed it unnecessary to enact legislation to give effect to the most-favored-nation clause of the treaty.

There has been a uniform custom to obtain appropriations from Congress to satisfy money commitments made in treaty provisions and no attempt has been made to appropriate money by treaties. The treaties with Great Britain, to which reference has been made exemplify this custom. There can be no doubt that there has been from the beginning of the Government to the present time a practice with respect to most-favored-nation clauses of commercial treaties distinct from that followed with respect to provisions of treaties requiring the payment of money. The action taken pursuant to the Treaties of 1794 and 1815 with Great Britain exemplify this practice no less emphatically than it reveals the practice to obtain appropriations by legislation.

It should be emphasized that most-favored-nation clauses of commercial treaties are here under consideration, and that it is into the practice which has been followed with respect to such treaties that we are

inquiring. We are not concerned with the practice which has been followed in executing treaties requiring the payment of money or adopting a schedule of customs duties or granting exemption from customs duties. Most-favored-nation clauses of treaties do not require payment of money; they do not prescribe schedules of duties; they are not revenue measures at all; they are not adopted to raise revenue; they are adopted for the purpose of obtaining in foreign countries for products of the United States, customs treatment no less favorable than that accorded similar merchandise produced in other countries. It is the purpose of these most-favored-nation articles to permit merchandise produced in the United States to enter the trade of foreign countries on the basis of equality so far as import duties are concerned, with merchandise entering the same trade from other countries. These most-favored-nation articles in treaties are designed to relieve products of the United States of the disadvantage in the markets of foreign countries which flows from the imposition of discriminatory duties on American products. In consideration of the advantages obtained for products of the United States in the markets of foreign countries under most-favored-nation clauses of treaties, the United States in those treaties undertakes to impose no higher or other duties on the products of the countries with which treaties containing most-favored-nation clauses are in force, than are imposed on the products of the country most favored in that regard.

The purpose of the treaty of 1815 with Great Britain is stated in the preamble of the treaty to be "to regulate the commerce and navigation between their respective countries, territories, and people, in such a manner as to render the same reciprocally beneficial and satisfactory". The purpose of the Treaty of 1923 with Germany is stated in the preamble of that treaty to be "to promote friendly intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic and commercial aspirations of the peoples". These treaties were not in any sense revenue measures.

The carrying out of the most-favored-nation clauses of treaties does not raise revenue. They forbid the imposition of discriminatory duties. The most-favored-nation clauses of treaties do not forbid the raising or lowering of import duties. If the obligations of these articles are performed on the part of the United States, the Government of the United States is in a position to insist on compliance with them by the foreign countries concerned. If the obligations of these clauses are disregarded on the part of the United States, the Government of the United States is no longer able to insist on equality of treatment of American products in the countries concerned. Most-favored-nation clauses of treaties are not bills for raising revenue and have been given effect without confirmatory legislation.

Article 1, section 7, clause 1 of the Constitution, which provides that all bills for raising revenue should originate in the House of Representatives, has not, in practice, been deemed to require the enactment of legislation to carry out most-favored-nation clauses of treaties. Treaties containing some form of most-favored-nation clauses have been concluded under the Constitution as far back as 1794. The Jay Treaty with Great Britain was concluded that year. A treaty with Norway containing a most-favored-nation clause was proclaimed by the President September 15, 1932 (Treaty Series No. 852).⁶⁵

Although there have been more than fifty treaties concluded which contain most-favored-nation commercial articles, diligent search fails to reveal a single instance in which legislation was enacted to carry out most-favored-nation clauses.

The position of most-favored-nation clauses of treaties in the legal system of the United States, and their enforceability in the courts of the United States is indicated by *American Express Company, et al, against the United States*, and *E. Bertuch and Company, et al, against the United States*, 1912, 4 Court Customs Appeals 146; VII American Journal of International Law 891.

The opinion of the Court of Customs Appeals in this case is valuable for the discussions of other pertinent court decisions which it contains, as well as for the reasoning employed and the conclusion reached.

The Court discussed the decision in *Taylor v. Morton*, 1855, 23 Fed. Cases 784, which is sometimes cited on the proposition that most-favored-nation clauses of treaties are not enforceable in the courts. It is emphasized in the opinion in *American Express Company against the United States* that what the Court really decided in *Taylor against Morton* was that an act of Congress had laid a duty on Russian hemp at \$40 per ton, and that as the act was later in date than the treaty the Court was bound by the later act. Examination of the opinion in *Taylor against Morton* does not sustain the view that it was decided in that case that favored-nation clauses of treaties are not enforceable in the courts of the United States.

The United States Customs Court in the *American Express Company v. U.S.*, discussed also *Bartram v. Robertson*, 1887 [1886], 122 U.S. 116, and *Whitney v. Robertson*, 1887, 124 U.S. 190. It was pointed out that in *Bartram v. Robertson*, the Court construed the treaty and ruled that the treaty did not grant the rights for which plaintiffs contended. The Court did not rule in *Bartram v. Robertson* that most-favored-nation clauses of treaties are not the law of the land and are not enforceable in the courts as is sometimes contended. The case of *Whitney v. Robertson*

⁶⁵ Treaty of Friendship, Commerce, and Consular Rights between the United States and Norway, and additional article, signed at Washington, June 5, 1928, and February 25, 1929, *Foreign Relations*, 1928, vol. III, p. 646.

was described as deciding that if the treaty provisions have been repealed by an Act of Congress they are no longer in force. The Court of Customs Appeals referred with approval to the holding in *Whitney v. Robertson* on this point. *Whitney v. Robertson* is not properly cited on the proposition that most-favored-nation clauses of treaties are not enforceable in the courts. The following is quoted from the opinion in that case.

“If the treaty contains stipulations which are self-executing, that is, require no legislation to make them operative, to that extent they have the force and effect of a legislative enactment. Congress may modify such provisions, so far as they bind the United States, or supersede them altogether. By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared in that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either; but if the two are inconsistent the one last in date will control the other, provided always the stipulation of the treaty on the subject is self-executing.”

The rulings in *Taylor v. Morton* and *Whitney v. Robertson*, that a later Act of Congress prevailed over an earlier treaty, and the ruling in *Bartram v. Robertson* that the treaty invoked in that case did not grant the rights for which plaintiffs contended, recognized that the treaty provisions involved in those cases had been in force and had been the law of the land. The decision in *American Express Company v. U.S.*, declared that the most-favored-nation clauses invoked in that case were the law of the land and were enforceable in the courts.

The concluding paragraph in the opinion of the Court of Customs Appeals is deemed worthy to reproduce here:

“It follows that a nonprohibited exportation from any nation having the favored-nation clause of an untaxed material of the same kind and character answers all the requirements and should stand upon the same footing as the goods so imported from Canada. It will not do to say that wood pulp and wood are more accessible from Canada than from other countries. The treaties speak in no such language of distinction. They recognize no difference between nations in different quarters of the globe. If any exception or reservation from the language of the treaty is to be made, it must be made by an authority which has power to abrogate the treaty in whole or in part. It does not lie with the courts or with an administrative department to annex or affix conditions to a treaty which is, unless abrogated by a legislative enactment, the supreme law of the land.

“The decision of the Board of General Appraisers is reversed and the importation admitted free.” (7 *American Journal of International Law*, pp. 891, 909).

Kelly v. Hedden, 1887, 124 U.S. 196, and *Whitney v. Robertson* were decided on the same day. The two cases had been argued together. In

both cases the plaintiffs sought to recover duty which they alleged had been unlawfully collected.

Kelly v. Hedden was distinguishable from *Whitney v. Robertson* in that the Act of Congress under which the duties were imposed declared that nothing in the Act "shall in any way change or impair the force and effect of any treaty between the United States and any other government, or any laws passed in pursuance of or for the execution of any such treaty, so long as such treaty shall remain in force in respect of the subjects embraced in this Act."

The Supreme Court of the United States ruled that in view of the saving clause quoted the Act under which the duty was collected did not supersede the earlier treaty, but ruled further, in effect, that the treaty provisions—most-favored-nation articles—did not grant the right for which plaintiff contended.

This ruling clearly meant that the treaty articles invoked in this case—Article 9 of the Treaty of 1867 with the Dominican Republic, (15 Stat. 478) had become effective; that the article continued in effect; and that the article, although in effect did not grant the exemption for which plaintiff contended.

In discussing the treaty question in *Head Money Cases*, 1884, 112 U.S. 580, 597, the Supreme Court of the United States, Mr. Justice Miller rendering the opinion, stated:

"The precise question involved here, namely, a supposed conflict between an Act of Congress imposing a customs duty, and a treaty with Russia on that subject, in force when the Act was passed, came before the Circuit Court for the District of Massachusetts in 1855. It received the consideration of that eminent jurist, Mr. Justice Curtis of this court, who in a very learned opinion exhausted the sources of argument on the subject, holding that if there were such conflict the Act of Congress must prevail in a judicial forum. *Taylor v. Morton*, 2 Curtis, 454."

It is clear from this quotation that the treaty question before the court was whether a later statute prevailed in the courts over an earlier treaty. That was the treaty question decided in *Head Money Cases*.

The rulings of the Supreme Court that later acts of Congress supersede earlier treaties clearly means that the treaties to which these rulings relate had been in effect. If they had not been in effect they could not have been superseded.

The rulings interpreting most-favored-nation articles of treaties clearly means that those articles were in effect. If the articles had not been in effect, why would courts have interpreted them?

It may be stated with confidence that, beginning with the Jay Treaty of 1794 and continuing to 1932, Presidents have concluded commercial treaties containing most-favored-nation articles; that in no instance did

a President recommend the enactment of legislation to carry out such articles; that the Congress did not at any time enact any legislation to carry out most-favored-nation articles of commercial treaties and that the courts of the United States have recognized the efficacy of such treaty provisions, have declared them to be the law of the land, and have interpreted them and given them effect.

The conclusion is believed to be inescapable that Article 2 of the Treaty of 1815 with Great Britain, and Article 7 of the Treaty of 1923 with Germany, are equally, with any Act of Congress, the supreme law of the land; that those articles have not been abrogated or superseded, and that they have the force of law and should be enforced.

2. *If the first question is answered in the affirmative,*
 - (a) *Have the articles been abrogated or otherwise rendered ineffective and,*
 - (b) *What meaning is to be attributed to the articles?*

It has been shown above that the Treaty of 1815 with Great Britain and the Treaty of 1923 with Germany became effective upon the exchange of ratifications. By a Convention concluded August 6, 1827 between the United States and Great Britain (8 Stat. 360) ⁶⁶ the duration of the Treaty of 1815 was indefinitely extended subject, however, to abrogation by notice by either party upon the expiration of ten years. No notice of termination has been given and the Treaty of 1815 therefore remains in force.

The Treaty of 1923 with Germany was likewise to become effective upon the exchange of ratifications. Ratifications were exchanged on October 14, 1925. According to Article 31 the Treaty was to endure for a period of ten years. The ten year period has not yet expired. The Treaty therefore remains in effect.

The question then arises have Article 2 of the Treaty of 1815 with Great Britain and Article 7 of the Treaty of 1923 with Germany been superseded by a later statute. The Revenue Act of 1932 is, of course, later in date than either treaty. It is necessary to inquire whether Section 601 of the Revenue Act of 1932, under which a duty of ten cents per hundred pounds has been assessed on British and German coal, supersedes the treaties.

Apparently the Customs authorities consider that Section 601 of the Revenue Act of 1932 is irreconcilable with the treaty articles and that the Revenue Act of 1932 being later in date than the treaties, Section 601 of the Act must be applied and the articles of the treaties must be disregarded so far as coal from Great Britain and Germany is concerned.

It is not believed, however, that Section 601 of the Revenue Act of 1932 is irreconcilable with the treaty articles which have been invoked

⁶⁶ Also printed in Miller, *Treaties*, vol. 3, p. 309.

in this litigation. It is believed that if the actual language of Section 601 of the Revenue Act of 1932 is considered and the Section is construed as laws relating to treaties should be construed, it will not be found necessary or permissible to destroy the efficacy of the articles of the treaties with Great Britain and Germany with respect to coal imported into the United States from those countries.

Section 601 of the Revenue Act of 1932 opens in subsection (a) by declaring that there shall be imposed a tax as provided in subsection (c) "on every article imported into the United States unless treaty provisions of the United States otherwise provide".

Subsection (a) ought, it is believed, to be regarded as a clause to save treaty provisions which might be violated by the imposition of the tax in accordance with Section 601. The language of subsection (a) ought to be regarded as directing that if the imposition and collection of the tax prescribed in Section 601 on any merchandise imported from any country would entail a violation of a treaty between the United States and the country from which the merchandise came, the tax should not be levied. It is clear that Article 2 of the Treaty with Great Britain and Article 7 of the Treaty with Germany make provision against the burden of a higher or other duty on British and German coal imported into the United States than is imposed in the United States on coal coming from any other country. The treaties "otherwise provide" and should be saved and given effect.

As to the contention that the reference to treaty provisions in subsection (a) relate only to the Treaty with Cuba, it may be said that it is most unusual to employ a general expression such as that used in subsection (a) for the purpose of reaching a treaty with one country. If subsection (a) was to save only the Treaty with Cuba specific reference would have been made to that treaty and the broad, general statement in all probability would not have been used. The English language is amply elastic to admit of the use of specific terms to save a single treaty. It has been customary to make in tariff acts of the United States specific reference to the Cuban Treaty when it was desired to save that treaty. The Tariff Act of 1930 (46 Stat. 672 [590], 695) contains in Section 316 thereof, the following:

"Nothing in this Act shall be construed to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902,⁶⁷ or the provisions of the Act of December 17, 1903, Chapter 1."⁶⁸

The Tariff Acts of 1909 (36 Stat. 83); 1913 (38 Stat. 192); and 1922

⁶⁷ *Foreign Relations*, 1903, p. 375.

⁶⁸ An act to carry into effect a convention between the United States and the Republic of Cuba, 33 Stat. 3.

(42 Stat. 947) contained a similar section. It is apparent that the Congress has adopted a specific and definite formula when referring to the Treaty with Cuba. Inasmuch as subsection (a) does not contain the usual specific reference to the Treaty with Cuba and does contain a broader expression which is susceptible of comprehending all treaties which would be violated by the collection of one or more of the items of duty defined in Section 601, subsection (a) should be given broader application and should be administered to include in the saving clause all treaties which would be violated by the imposition of a discriminatory tax.

It is deemed proper to mention several established rules of construction.

1. Repeal by implication is not favored and where a statute and a treaty relate to the same subject the Courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either.

In *Chew Hong v. United States*, 1884, 112 U.S. 536, the Supreme Court of the United States ruled that an Act of Congress and a treaty should stand together. The following is quoted from the opinion in that case, p. 549:

“But, even in the case of statutes, whose repeal or modification involves no question of good faith with the government or people of other countries, the rule is well settled that repeals by implication are not favored and are never admitted where the former can stand with the new act.”

The following quotation from *State v. Stoll*, 17 Wall[ace], 425, 430 [431] was used in the opinion in *Chew Hong v. United States*:

“It must appear that the latter provision is certainly and clearly in hostility to the former. If by any reasonable construction, the two statutes can stand together, they must so stand. If harmony is impossible and only in that event, the former law is repealed in part, or wholly, as the case may be.”

The following is quoted from the opinion in *Whitney v. Robertson*, 124 U.S. 190, 194:

“By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either.”

In *United States v. Lee Yen Tai*, 1902 [1901], 185 U.S. 213, the Supreme Court of the United States ruled that a statute could stand with a sub-

sequent treaty and that both should be enforced. The following is quoted from the opinion, p. 221:

"Nevertheless, the purpose by statute to abrogate a treaty or any designated part of a treaty, or the purpose by treaty to supersede the whole or a part of an Act of Congress, must not be lightly assumed, but must appear clearly and distinctly from the words used in the statute or in the treaty."

Citations and quotations on the rule might be multiplied.

2. Treaties should be construed so as to uphold the sanctity of the public faith.

On this point a statement in the opinion of the Supreme Court of the United States in *Chew Hong v. United States*, 1884, 112 U.S. 536, is pertinent. The following is quoted from the opinion, p. 540:

"Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the Court cannot be unmindful of the fact, that the honor of the Government and people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected. [And] it would be wanting in proper respect for the intelligence and patriotism of a coordinate department of the Government were it to doubt, for a moment, that these considerations were present in the minds of its members when the legislation in question was enacted."

In the opinion of the Supreme Court of the United States in *Ward v. Race Horse*, 1896 [1895], 163 U.S. 504, 516, the following statement is found:

"Doubtless the rule that treaties should be so construed as to uphold the sanctity of the public faith ought not to be departed from. But that salutary rule should not be made an instrument for violating the public faith by distorting the words of a treaty in order to imply that it conveyed rights wholly inconsistent with its language and in conflict with an Act of Congress and also destructive of the rights of one of the states."

These rules and these quotations are peculiarly pertinent in the present discussion. These rules should be applied in considering the relation to Section 601 of the Revenue Act of 1932 to the Articles of the treaties with Great Britain and Germany and in considering whether Section 601 repealed these articles.

Paragraph (b) of the second question, which is stated at page 20 of the brief⁶⁹ does not require extended consideration. If it can be found and decided that the treaty articles are in effect; that they have the force of law and are enforceable, the meaning which should be attributed to the articles would yield to ready determination. Furthermore, this brief has been prepared without opportunity to study the court record in the

⁶⁹ *Ante*, p. 521.

litigation which precipitated the discussion. It is deemed preferable in the circumstances to refrain from discussing herein the meaning of the treaty articles.

Respectfully submitted,

J. A. METZGER
Assistant Legal Adviser

April 13, 1933.⁷⁰

611.623 Coal/45

The German Ambassador (Von Prittwitz) to the Secretary of State

[Translation]

The German Ambassador has the honor to make the following statement to His Excellency the Secretary of State of the United States, by direction of his Government, and with reference to the note of January 20 of the current year:

The German Government has taken note with increasing surprise of the note of the Secretary of State of January 17 in which the proposal of the German Government for the exemption of German coal from the duty provided in the Revenue Act of 1932 is merely answered with the statement that in the opinion of the Attorney General this claim must be decided by a suit brought by the interested parties before an American domestic court and that the Secretary of the Treasury has therefore directed the collectors of customs to again collect the duty on imports of coal from Germany until further notice.

The German Government has the honor to make the following remarks supplementary to the statements in the note of the German Embassy of September 18 [28], 1932 and the memorandum transmitted by the Embassy on January 6:

In Article 7 of the German-American Commercial Treaty of December 8, 1923, Paragraph 2, the importation of German goods into the territory of the United States of America is granted unconditional most favored treatment. In Paragraph 4 of that article, which was formulated at the time by the American Government itself, it was agreed in the most positive way, admitting of no doubt, that every advantage of any nature whatever which the United States grants to any goods produced or manufactured in any other country shall be extended, at the same time and unconditionally, without request being made and without *quid pro quo*, to the same goods if they are produced or manufactured in Germany. Consequently it does not devolve upon the interested parties to enforce this right in an individual case by a suit before the courts, nor can the

⁷⁰ This date appears on file copy of the brief, which is not a carbon copy of the original and may have been retyped after the transmittal of the brief to the Attorney General; the letter of transmittal, dated April 6, 1933, is not printed.

fulfillment of this right in an individual case be made dependent upon the interpretation or application of a provision of the American customs tariff law by the American Government or the American domestic courts. As soon as Canadian coal could be imported into the United States without being subject to the coal duty, the exemption from the duty was to be extended to German coal, without application and without *quid pro quo*, and this right exists as long as Canadian coal or coal produced in any third country is imported into the United States duty free.

In contrast thereof, the opinion of the Attorney General followed by the American Government in its decision of January 9, T.D. 46102, states the following:

The additional provision "unless treaty provisions of the United States otherwise provide" in Section 601a of the Revenue Act of 1932 refers, according to the wish of the legislator, exclusively to the special rights granted Cuba by treaty; the application of this stipulation to all most favored nation treaties concluded by the United States would not correspond to the will of Congress and in practice would make the intended effect of the coal duty provision illusory.

The Attorney General is of the opinion that international obligations might indeed possibly be violated by the collection of the duty on German coal, that the violation of international obligations is to be avoided if possible, but in the last analysis it is a matter of determining the intention of the Congress ("If one view is adopted and payment of the import tax is insisted upon, we may be in the position of committing a breach of international obligations. . . . Having in mind that the ultimate objective is to ascertain the intention of the Congress, and that on the other hand violation of international obligations is to be avoided if possible, the questions present serious difficulties".)

The German Government can not declare itself in agreement with this view of a merely conditional validity of international obligations.

The Attorney General then believes that he can state that the decision of the Secretary of the Treasury of November 14, 1932, would be inoperative, as it had changed in a way disadvantageous to the United States a previous decision made by the Secretary of the Treasury, without the assent of the Attorney General provided for in the Tariff Act of 1930,⁷¹ Section 502b or without a previous decision of the Customs court having been made. The Attorney General draws the conclusion from this that in the situation which has thus arisen the matter would have to be passed on by the courts at all events, in one case on the initiative of the importers and in the other case on the initiative of the American producers of coal. The Attorney General considers it simpler and quicker to leave it to the importers to obtain a court decision. He states further that in case the court should decide in favor of the

⁷¹ 46 Stat. 590.

collection of the duty, the United States Government would be in a more favorable position with respect to the collection of the duty if the Secretary of the Treasury had previously directed the collectors of customs to collect the duty.

The German Government ventures to observe in this connection that in this case questions of simplicity of procedure and of a more or less favorable position of the American Government are not involved and that the right to the exemption of the importation of German coal from the duty, based on the clear provision of Article 7, Paragraph 4, of the commercial treaty could not be infringed by any decision of the Customs Court, no matter what the decision might be. The rights of a state arising out of a treaty can not be restricted by the provisions of a domestic law or by the decision of a domestic court.

The statements made by the Attorney General in his opinion are consequently irrelevant to the decision of the essential question.

The German Government ventures to hope that after renewed consideration of the matter, the American Government will adopt the view of the German Government and will order within a very short time the exemption of German coal from the duty, without awaiting the decision of the Customs Court.

The German Government considers it advisable to make the following general remarks, on this occasion, in supplementing the statements made verbally by the German Ambassador on the commercial relations existing between the United States and Germany.

Under the commercial treaty which took effect in October, 1925, German-American trade has assumed a development unsatisfactory to Germany and shows year after year an unfavorable balance that is in the long run unbearable for Germany. The average level of duties in the United States has repeatedly been raised in general and in particular on goods in which Germany is interested, since the treaty went into effect, and is considerably above the level of German tariffs. In the meantime, American trade has, by virtue of the treaty, automatically obtained enjoyment of all tariff favors granted by Germany to third countries without German trade having received the benefit of an equivalent therefor (in consequence of the American tariff system). The unfavorable development brought about by these circumstances has, however, been made considerably worse by the fact that the Tariff Act of the United States offers a means for investigations and preparatory measures of the most varied nature, which not only produce a chronic disturbance and constant uncertainty in normal trade relations, but in part also involve direct financial burdens upon German exports, even if the final outcome of these tedious investigations does not result in an increase in the existing tariff rates or the application of special additional tariffs to

German goods. These investigations which as such damage German export trade very seriously, amount under certain circumstances, to a temporary embargo on German goods.

In the first place there are the so-called dumping investigations. The German Government is still of the opinion, as before, that the exact wording of the unconditional most favored nation clause in Article 7, Paragraphs 2 and 4, of the German-American Commercial Treaty forms a basis for a right to the lowest rate on any article imported from the territory of one party to the treaty that the same article has to pay upon importation from any other country, and that the collection of additional duties of any kind whatsoever in trade between the two countries is inadmissible, no matter what the stipulations regarding production, sale and competition may be otherwise. The German Government hitherto refrained from making an issue of the differences of opinion existing between the German and the American Governments on the interpretation and the scope of the concept of the unconditional most favored nation clause, particularly concerning the justification for additional tariffs of any kind, and has preferred to clear up differences that have arisen in single cases by negotiations between the two governments, as far as they could not be adjusted by the regular procedure in disputes on matters of administration, without entering into the fundamental question of the unconditional most favored nation clause. Among other things, the decisive factor for this stand was the consideration that hope existed, in accordance with the recommendations of the World Economic Conference of 1927,⁷² of determining uniform principles, by international agreements, as to the interpretation and scope of the most favored nation clause in existing commercial treaties. This hope has not been fulfilled. The Economic Committee of the League of Nations did complete a report on commercial policy on June 18, 1929;⁷³ however, the recommendations contained therein have not been generally heeded and have not eliminated all doubtful questions in the field of most favored treatments. In the meantime the difficulties resulting from a differing interpretation of the idea of most favored treatment have increased considerably. We may, therefore, venture to recall that, for example, the order of the Treasury Department of May 20 [13], 1926,⁷⁴ concerning the so-called "Avi bounties" was not revoked until January 31, 1927,⁷⁵ after negotiations covering months, and that the order of January 29, 1927,⁷⁶ following immediately, by which investigations concerning a

⁷² See *Foreign Relations*, 1927, vol. 1, pp. 238 ff.

⁷³ League of Nations Economic Committee, *Observations on the Present Prospects of Commercial Policy* (Geneva, 1939).

⁷⁴ Decision No. 41561, May 13, 1926; for text, see *Treasury Decisions*, vol. 49, p. 806.

⁷⁵ Decision No. 41964, January 31, 1927; *ibid.*, vol. 51, p. 80.

⁷⁶ Decision No. 41965; *ibid.*, pp. 80-81.

reported dumping of pig iron were begun, was not revoked until late in November, 1928,⁷⁷ by another order. At present, investigations are again being carried on because of a suspected dumping of German iron and steel; they have now for more than three-quarters of a year made importation of certain types of iron and steel from Germany into the United States extremely difficult and in part effectively cut off such importation.

The application of the so-called flexible provisions of the customs tariff is also leading to an increasing degree to interference with German exports to the United States; a constantly increasing number of just those goods of interest to German exporters has recently been subjected to the tedious investigations of the Tariff Commission on the basis of these provisions. Since the Tariff Act of 1930 went into effect, investigations of this kind have been conducted up to February 1, 1933, on the basis of Section 336 of the Tariff Act (with Germany as the chief competing country) as to the following articles:

- (Tariff No. 397) Wire fencing and wire netting.
- (Tariff No. 318) Metal cloth.
- (Tariff No. 364) Bells for bicycles and the like.
- (Tariff No. 41) Inedible gelatine and glue.
- (Tariff No. 396) Folding rulers of aluminum.
- (Tariff No. 412) Folding rulers of wood.
- (Tariff No. 228a) Prism field glasses over \$12.00.
- (Tariff No. 331) Upholsterer's nails, chair glides, thumb tacks.

In all these cases the investigations have led to increases in the tariff, with the sole exception of glue made from hides (under Tariff No. 41) for which the tariff rate was lowered.

Moreover, in cases in which investigations have been merely ordered, this very fact acts as a hindrance to German exportation and in certain cases affects exportation more disadvantageously than an actual increase in the tariff rates.

If there should now be added to this disadvantage to German trade resulting from an unrestricted application of the administrative provisions of the Tariff Act, further injuries to the exportation of German goods, due to the non-observance by the American Government of clear provisions of the German-American commercial treaty, allowing of no doubt, according to the German view, the German Government, confronted with such a state of affairs, must reserve its full freedom of action.

WASHINGTON, April 10, 1933.

⁷⁷ Decision No. 43047, November 28, 1928; *Treasury Decisions*, vol. 54, p. 397.

611.623 Coal/46

The Department of State to the German Embassy

Reference is made to the *Aide-Mémoire* handed to the Under Secretary of State by Doctor Leitner, Counselor of the German Embassy, on April 10, 1933. The *Aide-Mémoire* sets forth the views of the German Government regarding the tax imposed on German coal under Section 601 of the Revenue Act of 1932, and refers to certain other matters in respect of which the treatment accorded German commerce is regarded as affording cause for complaint.

In regard to the tax on coal, a decision on this question is now pending before the courts and it is the intention of all parties concerned that a final disposition of the matter will be effected at the earliest possible moment. Under the system of government of the United States, a final decision of questions involving the interpretation of laws and treaties, from the standpoint of municipal law, rests with the courts. Nevertheless, the Executive Branch of the United States Government, recognizing the importance of effecting a prompt solution of a question involving treaty obligations of the United States, has recently taken steps to expedite a decision in this matter. The Department of State will take such further steps as may be feasible to expedite the disposition of this case.

The other matters referred to in the *Aide-Mémoire* of the German Embassy are receiving the careful consideration of the Government.

WASHINGTON, May 3, 1933.

611.623 Coal/49

The Secretary of State to President Roosevelt

WASHINGTON, May 10, 1933.

MY DEAR MR. PRESIDENT: There exists a situation involving the obligations of this Government under treaties with Germany and Great Britain which I consider of sufficient importance to bring to your attention.

Section 601 of the Revenue Act of 1932 specifies in effect that "unless treaty provisions of the United States otherwise provide", coal imported from any foreign country from which we import more coal than we export to it shall be subject to a duty of ten cents per hundred pounds. Under this provision, Canadian coal has been exempt from the duty. Notwithstanding our treaty obligations to accord most-favored-nation treatment to Germany and Great Britain, and notwithstanding the above quoted provision in the law safeguarding treaty obligations, coal from Germany

and Great Britain has not been accorded the exemption, for the reason that exports of American coal to those countries do not exceed the imports of coal from them. With a view to obtaining the exemption of German and British coal under the treaties, importers have taken the case to the Customs Court where it is now pending.

Both the German and the British Governments have heretofore protested against the collection of the duty as a violation of their treaty rights. This Department considers their protests to be well founded. A note dated April 10 from the German Embassy again raises the question and intimates that if a satisfactory adjustment of this matter is not soon forthcoming the German Government will consider itself free likewise to disregard the provisions of the treaty. By virtue of the treaty of 1923 American commerce is assured the benefit of reductions made by Germany on numerous products under commercial treaties with other countries. If these guaranties should be withdrawn, American trade might be subject to discrimination on a most extended scale. In view of the importance of the German market and the pressing need in these times to maintain all existing market outlets for American products, the possible withdrawal of these benefits is a matter of serious concern.

The Department of Justice and the Treasury Department represent the interests of this Government in the case brought against it by the importers. It is recommended that the Attorney General and the Secretary of the Treasury be requested to take such steps as may be feasible to expedite an adjustment of this matter in a manner consistent with the treaty rights of Germany and Great Britain. I am informed that if the decision of the Customs Court should be favorable to the importers and the collectors of customs were notified that the Government will not appeal, German and British coal might at once be exempt from the tax. It is recommended that the heads of the two departments mentioned be requested to take this action if the decision of the Customs Court is favorable to the importers; or, whatever the decision of the Customs Court may be, to take such action as their familiarity with the circumstances and the legal procedure involved may indicate to be best suited to effecting an early termination of the treaty violations by the United States.⁷⁸

Faithfully yours,

CORDELL HULL

⁷⁸ In a memorandum of May 17, 1933, the President considered the position taken up by the Secretary of State in this matter as "wholly justified" and said that he had referred the letter to the Attorney General "with the request that he also take it up with the Secretary of the Treasury." (611.623 Coal/50)

611.623 Coal/59

The Acting Secretary of State to the Attorney General (Cummings)

WASHINGTON, June 9, 1933.

MY DEAR MR. ATTORNEY GENERAL: I am informed that the United States Customs Court has rendered a decision in the suits of George E. Warren Corporation and Domestic Fuel Corporation v. the United States,⁷⁹ holding that coal imported from Great Britain or Germany is not subject to the tax of ten cents per one hundred pounds imposed by the Revenue Act of 1932.

This litigation has been the subject of several exchanges of correspondence between the Department of State and your Department. I refer particularly to Mr. Hull's letter to you of May 29, 1933.⁸⁰ In the letter mentioned, the suggestion was made that, should the United States Customs Court decide in favor of the importers, the best solution of the matter would be to refrain from taking an appeal and to notify collectors of customs accordingly.

In view of the bearing of this litigation on the foreign relations of the United States, I venture to suggest anew that the decision of the United States Customs Court be accepted by the Government and that an appeal be not taken. I shall be glad to be apprized of the decision of your Department in the premises.

Very truly yours,

WILLIAM PHILLIPS

611.623 Coal/68

The Assistant Secretary of State (Carr) to the Legal Adviser (Hackworth)

[WASHINGTON,] August 24, 1933.

MR. HACKWORTH: The German Ambassador called upon me to say that he was instructed by his Government to bring the following to the attention of the Department.

There had been some discussion with the Department by the Embassy on the subject of the taxability of coal imports. The Customs Court in July [*June*] rendered a decision which was satisfactory to the German Government and the Department is alleged to have written a note to the German Government to the effect that there would be no appeal from that decision. The Ambassador understood that the matter was settled, but upon his return finds that the Treasury Department has now appealed the case to the higher court. The Ambassador considers this an extraordinary course, in view of the very definite statement which he claims to

⁷⁹ Decision No. 46455, June 3, 1933; for text, see *Treasury Decisions*, vol. 63, pp. 1033-1055.

⁸⁰ Not printed.

have received from the Department that such an appeal would not be taken. He stated with great emphasis that he was instructed to ask that the appeal be withdrawn.

I told him that I was not familiar with the case, but I would have the matter examined and see what, if anything, could be done about it.

W[ILBUR] J. C[ARR]

611.623 Coal/71

*The Chief of the Division of Western European Affairs (Moffat)
to the Secretary of State*

[WASHINGTON,] September 8, 1933.

MR. SECRETARY: I reminded Dr. Leitner, during a call this afternoon that on August 30 [24?] the German Ambassador had spoken to Mr. Carr about the appeal being entered by the Department of Justice against the decision of the Customs Court in the coal case. Mr. Carr had looked into the matter and before starting on leave two days ago had asked me to give Dr. Leitner a message to the following effect:

We feel there must be some mistake in the assertion of the Ambassador that we had sent him a note saying that there would be no appeal from the decision. It is true that we expressed to the Departments of Justice and Treasury the hope that there would be no appeal from the court's decision but we gave no assurance to that effect and of course could not have done so for the reason that the decision in the matter did not rest with the Department of State. The Department of Justice, which was the competent office, had decided, after examining both sides of the question, that an appeal should be taken.

Dr. Leitner said that this was a very serious bit of news and that he must tell me in all frankness that it would be viewed in the same light in Berlin. He said that without wishing to raise two unrelated subjects, we were complaining about a certain set of derelictions on the part of the German Government but were at the same time violating our treaties in a way which he had difficulty in understanding. He said that the coal case was to him a case of violation of treaty without mitigating circumstances, and that pending a final solution of the matter by the court it was in effect holding up all trade in coal. Similarly, we were delaying beyond measure a decision on the dumping of German steel; we were scarcely observing the terms of the treaty in the case of the taxation of motor boats; ⁸¹ the Normano case he urged as another instance, ⁸² as well

⁸¹ For previous correspondence on this subject, see *Foreign Relations*, 1928, vol. II, pp. 936 ff.

⁸² This case refers to the extradition from the United States to Germany of Isaak Lewin, alias J. F. Normano, on charges of forgery and fraud. (211.62 Lewin, Isaak)

as our attitude on the general subject of the mixed claims.⁸³ The aggregate of so many instances he felt could only be viewed with extreme seriousness by his Government.

At the end he asked me to bear in mind that he was not listing these as a *démarche* from his Government, but calling them to my attention personally to show the difficulties with which they were faced in their relations with this Government.

PIERREPONT MOFFAT

[The United States Court of Customs and Patent Appeals rendered a decision on April 2, 1934, published as T. D. 47276, upholding the opinion of the lower court. As no further appeal was filed within the statutory time limit, the judgment of April 2, 1934, became final. (611.623 Coal/96)]

REPRESENTATIONS BY THE GERMAN EMBASSY AGAINST THE
BEVERAGE CONTROL LAW OF THE STATE OF NEW YORK AS BEING
IN VIOLATION OF TREATY RIGHTS

711.622/160

The German Embassy to the Department of State

[Translation]

N. Y. 471

The German Embassy has the honor to inform the Department of State of the following, with a request for examination and further action:

The State of New York has adopted a law, "Alcoholic Beverage Control Law"⁸⁴ (An Act relating to the manufacture, sale, control, distribution and regulation of certain alcoholic beverages, constituting chapter 3-b of the consolidated laws). Paragraph 84 of the law conflicts, according to the view of the Embassy, with the German-American Commercial Treaty.⁸⁵ For according to Paragraph 84 the granting of licenses for the beer business to non-citizens of the United States or to companies which are not under the control of American citizens is prohibited. Paragraph 84 reads:

"Persons Forbidden To Traffic in Beer.

No person hereafter described in this section shall receive a license to traffic in beer.

(1) A person who has been convicted of a felony.

⁸³ See pp. 492 ff.

⁸⁴ Printed in *Laws of the State of New York, 1933*, ch. 180, p. 595.

⁸⁵ Signed at Washington, December 8, 1923, *Foreign Relations, 1923*, vol. II, p. 29.

- (2) A person under the age of twenty-one.
- (3) A person who is not a citizen of the United States.
- (4) A copartnership, unless one or more of the members of such copartnership owning at least one-half interest in the business thereof shall be a citizen of the United States.
- (5) A person who shall have had his license issued under this chapter revoked for cause, or who has been convicted of a violation of this chapter until the expiration of two years from the date of such revocation or conviction.
- (6) A corporation or copartnership, if an officer or member thereof has been convicted of a violation of this chapter or has had a license issued under this chapter revoked for cause, until two years from the date of such conviction or revocation".

According to the above wording, the act would contravene, in particular, Article I of the German-American Commercial Treaty, in which it is stated:

"The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by the local law; to own, erect or lease and occupy appropriate buildings and to lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice, and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the state of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established.

The nationals of either High Contracting Party within the territories of the other shall not be subjected to the payment of any internal charges or taxes other or higher than those that are exacted of and paid by its nationals.

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

(Nothing herein contained shall be construed to affect existing statutes of either country in relation to the immigration of aliens or the right of either country to enact such statutes.⁸⁶)"

⁸⁶ Senate reservation contained in resolution of February 10, 1925, giving advice and consent to ratification of the treaty.

The German Embassy has the honor to thank the Department of State in advance for the appropriate steps.

WASHINGTON, June 21, 1933.

711.622/161

The German Embassy to the Department of State

[Translation]

N. Y. 471

By a *note verbale* of June 21st of this year (Nr. [N. Y.] 471) the Embassy had called the attention of the State Department to a law of the State of New York, entitled the "Alcoholic Beverage Control Law."

Paragraph 84 of this law clearly violates Article 1, paragraph 1 of the German-American Commercial Treaty, in the opinion of the German Government, which confirms the view taken by the Embassy in the note mentioned above.

The German Government would be very much obliged to the Department of State if it would be good enough to inform us of its view and the steps taken by it, since the German Government has already been obliged (as the Department of State is aware) to consider other portions of the German-American Commercial Treaty as not observed recently.

WASHINGTON, August 11, 1933.

711.622/162

The German Embassy to the Department of State

[Translation]

With reference to the notes of June 21st and August 11th of this year (N. Y. 471) and to the provisional reply of the Department of State of August 22nd of this year (611.6231/290 [711.622/160])⁸⁷ the German Embassy has the honor again to ask the American Government to be good enough to make a decision.

According to the provisions of the German-American Commercial Treaty, Article 1, there could be hardly any doubt that the pertinent law, "Alcoholic Beverage Control Law", of New York State, is not in agreement, in paragraph 84, with the Treaty, and therefore should be amended.

WASHINGTON, October 19, 1933.

⁸⁷ Not printed.

711.622/163

*The Counsel to the Governor of New York (Poletti) to the
Secretary of State*

ALBANY, N. Y., November 4, 1933.

[Received November 6.]

SIR: Upon receipt of your letter of August 22nd⁸⁸ informing the Governor that the Department of State had received a communication from the German Embassy in Washington appertaining to the possible conflict between the provisions of Section 84 of the Alcoholic Beverage Control Law of the State of New York and Article I of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany of December 8, 1923, the Governor transmitted your letter to the Attorney General of the State for his views.

The Attorney General has recently informed the Governor that he has considerable doubt as to the validity of the provisions of Section 84 of the Alcoholic Beverage Control Law. Two photostatic copies of his opinion are enclosed. However, unless altered or repealed by the Legislature that convenes in January, 1934, those provisions, as you know, stand until declared invalid by a court of proper jurisdiction. But in view of the opinion of the Attorney General, it is most likely that the provisions of Section 84 of the Alcoholic Beverage Control Law will be altered during the coming session of the Legislature.

It is impossible for the Governor to inform you whether the Legislature in enacting those provisions of law considered their possible conflict with the rights granted under various commercial treaties between the United States and foreign countries.

Respectfully yours,

CHARLES POLETTI

[Enclosure]

*The Attorney General of the State of New York (Bennett) to the
Governor of New York (Lehman)*

[ALBANY, N. Y.] October 9, 1933.

MY DEAR GOVERNOR: Receipt is acknowledged of your communication under date of August 24, 1933, with the accompanying letter from the Department of State at Washington under date of August 22, 1933, in which you inquire concerning the validity of that provision of §84 of the Alcoholic Beverage Control Law which denies a license to a person who is not a citizen of the United States. The same question is

⁸⁸ Not printed.

raised in a communication received from the Chairman of the Alcoholic Beverage Control Board under date of August 2nd on a complaint raised by the Consulate General of Japan. A further communication from your office under date of September 14th presents a communication from the Secretary of State at Washington, D. C. in which there is questioned the validity of Chapters 38 and 296 of the Laws of 1933 which place a similar restriction upon the licensing of chauffeurs who are not American citizens.

The answer to one of these questions will answer all of them since they all revolve upon a consideration of an identical conflict between State law and Federal treaty. Subdivision 3 of §84 of the Alcoholic Beverage Control Law which it is claimed violates the express provisions of certain treaties, reads as follows:

"Persons forbidden to traffic in beer. No person hereafter described in this section shall receive a license to traffic in beer.

.

(3) A person who is not a citizen of the United States."

The parallel provision in the amendments to the Vehicle and Traffic Law reads as follows:

"1-a. Citizenship required. On and after the first day of June, nineteen hundred thirty-three, and until the first day of June, nineteen hundred thirty-nine, no chauffeur's license shall be issued to any applicant twenty-one years of age or over, nor, if issued, shall be valid, unless the applicant therefor shall be an American citizen, or shall have within six years preceding the date of the issue of such license, filed an official declaration of his intention to become a citizen of the United States. On and after the first day of June, nineteen hundred thirty-nine, no chauffeur's license shall be issued to any applicant twenty-one years of age, or over, nor, if issued, shall be valid, unless the applicant therefor shall be an American citizen. The provisions of this subdivision shall not apply to a person who because of his nationality is precluded from becoming a citizen of the United States, provided he shall have resided in the United States continuously for five years prior to the first day of June, nineteen hundred thirty-three and shall have been licensed in this state as a chauffeur during three full years prior to said first day of June, nineteen hundred thirty-three, nor to a chauffeur employed by an alien while such alien is sojourning or traveling in this country for a period not exceeding six months." (To the same effect, Ch. 38, Laws 1933).⁸⁹

The Treaty between the United States and Germany, entered into December 8, 1923, contains in Article I thereof the following provision:

"The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in pro-

⁸⁹ The preceding quotation is taken from ch. 296, which amends ch. 38, Laws 1933.

fessional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by the local law; to own, erect or lease and occupy appropriate buildings and to lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice, and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the state of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established."

The parallel applicable provision of the Treaty between the United States and Japan, entered into February 21, 1911,⁹⁰ reads as follows:

"The subjects or citizens of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other, to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native subjects or citizens, submitting themselves to the laws and regulations there established. . . . The subjects or citizens of each of the High Contracting Parties shall receive, in the 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 may be granted to native subjects or citizens, on their submitting themselves to the conditions imposed upon the native subjects or citizens."

The conflict between these treaty provisions and the requirements of the statutes of the State of New York which have been above cited is apparent. Under the Constitution of the United States aliens are entitled to equal protection of the laws and also from deprivation of life, liberty and property without due process of law.

Yick Wo. v. Hopkins, 118 U.S. 369 [356]

People v. Crane, 214 N. Y. 154;

affirmed 239 U.S. 195

Terrace v. Thompson, 263 U.S. 197

The question which is raised is the reasonableness of the exercise of the police power of the State to place such restrictions upon the licensing of an occupation or of the sale of beer in safeguarding the health and welfare of the State itself. In the face of treaty provisions such as those cited may there be a classification of aliens based on alienage and is such classification permissible? Investigation of the authorities indicates that they are uniformly against the validity of such provisions.

The police power of the State is not restricted in its regulations for the peace, health, safety and good order of its people by the constitutional

⁹⁰Treaty of Commerce and Navigation between the United States and Japan, signed at Washington, February 21, 1911, *Foreign Relations*, 1911, p. 315.

protection of aliens. Certain cases would indicate that a denial of the privilege of engaging in a business which the State may create or regulate by license does not contravene such constitutional protection.

Commonwealth v. Hana, 195 Mass. 263 [262];

(Peddling)

Bloomfield v. State, 86 Ohio St., 253;

(Intoxicating liquors)

Trageser v. Gray, 73 Md. 250;

(Intoxicating liquors)

Miller v. Niagara Falls, 207 A.D. 798;

(Soft drinks)

The above cases, however, do state that such classification when made must have a reasonable relationship to the welfare of the community to justify the discrimination. In the *Miller* case the fact that such a business afforded opportunity for violations of law rendered it necessary for the protection of the welfare of the community to exclude those not attached to the institutions and laws of the country and of the State through citizenship. The effect of treaty provisions, however, adjusting the rights of aliens of friendly countries was not brought into question in those cases in the State courts.

When trade obligations and treaty rights secured to aliens have been brought into question the holding of the courts has been uniform that the guaranties of the treaty are paramount to inconsistent State or municipal provisions of law. No longer does it become apparent that disqualification on the grounds of non-citizenship is a valid exercise of the police power where there is a specific treaty obligation guaranteeing to such aliens the right to engage in business activities on the same basis as the citizens of this country.

It is not necessary to enter into any extensive study or research into the treaty-making powers of the President under the Constitution to establish this fact. Treaties are declared to be the supreme law of the land, binding in every State (Fed. Constitution, Art. VI).

In *Ware v. Hylton*, 3 Dallas (U.S.) 199 at 236, Mr. Justice Chase in 1796 declared what is still the law:

“If doubts could exist before the establishment of the present national government, they must be entirely removed by the 6th article of the Constitution, which provides ‘That all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution, or laws, of any State to the contrary notwithstanding.’ There can be no limitation on the power of the people of the United States. . . . A treaty cannot be the supreme law of the land, that is of all the United States, if any act of a State Legislature can stand in its way.”

The right to make these treaties and their force and effect have never been denied.

Hamilton v. Erie R. R. Co., 219 N. Y. 443 [343]
 Writ of Error dismissed; 248 U.S. 369
Techt v. Hughes, 229 N. Y. 222
 Certiorari denied, 254 U.S. 643
Santovincenzo v. Egan, 284 U.S. 30
Nielson v. Johnson, 279 U.S. 47

What would appear to be a case directly in point on the issue before us is *Asakura v. Seattle*, 265 U.S. 332. The provisions of the same treaty now invoked by the Japanese Consulate General was there raised. The court held that the business of a pawnbroker was a "trade" within the meaning of the treaty and that a local ordinance which forbade the issuance of a license to an alien violated the treaty provisions and was therefore void. This with due consideration of the fact that the business of a pawnbroker is one for proper regulation and licensing by the State under the same power by which it regulates and licenses the sale of alcoholic beverages or the licensing of chauffeurs.

The court in the *Asakura* case said at page 341:

"The rule of equality established by it cannot be rendered nugatory in any part of the United States by municipal ordinances or state laws. It stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States."

The cases involving the leasing of agricultural lands do not establish any contrary principle.

Terrace v. Thompson, 263 U.S. 197
Porterfield v. Webb, 263 U.S. 225
Todok v. Union State Bank, 281 U.S. 449

Discrimination in the administration of inheritance taxes against non-resident aliens was held to be a violation of a treaty with Denmark in *Nielson v. Johnson*, 279 U.S. 47. See also *In re Ah Chong*, 2 Fed. 733; *In re Ah Fong*, 1 Fed. Cases No. 102. . . .

The principle in *People v. Crane*, 214 N.Y. 154; affirmed 239 U.S. 195, and *Heim v. McCall*, 239 U.S. 175, does not run contra to the conclusions reached in the preceding cases involving treaty obligations.

The conclusion, therefore, must necessarily follow that the provisions of the Vehicle and Traffic Law and of the Alcoholic Beverage Control Law against which complaint is made on behalf of the citizens of friendly nations living in this State run contra to the treaty obligations entered into by the United States with these nations and therefore may not be enforced. They have been held to interfere with the personal right of an alien, which by treaty is insured to him, to engage in commerce, trade.

business or labor on the same terms as citizens and to pursue a vocation even though it may require the exercise of a licensing provision.

Very truly yours,

JOHN J. BENNETT, JR.

711.622/163

The Acting Secretary of State to the Governor of New York (Lehman)

WASHINGTON, November 24, 1933.

SIR: I have the honor to refer to a letter from your counsel of November 4, 1933, in response to a letter from the Secretary of State dated August 22, 1933, concerning a communication from the German Embassy in Washington appertaining to the possible conflict between the provisions of Section 84 of the Alcoholic Beverage Control Law of the State of New York and Article 1 of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, signed December 8, 1923. I am also pleased to receive copies of the opinion of the Attorney General of New York, regarding this matter.

Permit me to express my appreciation for your co-operation in securing the opinion of the Attorney General of New York regarding the validity of the New York law referred to above in the light of the treaty obligations of this country. I am gratified to note that in view of the opinion of the Attorney General it is most likely that the provisions of Section 84 of the Alcoholic Beverage Control Law will be altered during the January 1934 session of the Legislature of the State of New York.

While it is appreciated that these provisions of law remain in effect until declared invalid by a court of competent jurisdiction or until they are amended or repealed by the Legislature, I trust that you will endeavor to secure appropriate action by the Legislature so that the treaty rights of aliens in this country may be safeguarded without requirement that individual aliens resort to expensive and protracted litigation to secure their treaty rights.

An early disposition of the conflict between the laws of New York under reference and the treaty rights of aliens will doubtless contribute toward the removal of obstacles to the efforts of this Government to protect American citizens in their treaty rights abroad.

I have [etc.]

WILLIAM PHILLIPS

711.622/163

The Acting Secretary of State to the German Ambassador (Luther)

The Acting Secretary of State presents his compliments to His Excellency, the German Ambassador, and has the honor to refer to communications dated June 21, August 11 and October 19, 1933, received from

the Embassy in regard to Section 84 of the Alcoholic Beverage Control Law of the State of New York.

The Acting Secretary of State has been advised by the authorities to whom the matter was referred that it is likely that the provisions of Section 84 of the Alcoholic Beverage Control Law of the State of New York will be altered during the coming session of the Legislature which meets in January 1934; but that unless those provisions are altered or repealed by the New York Legislature they will stand until declared invalid by a court of competent jurisdiction.

Should the provision of the New York law not be altered or repealed by the New York Legislature or in the event that in the meantime any German national feels himself aggrieved by the operation of the law, the attention of the German Ambassador is called to the paragraph in Article 1 of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany signed December 8, 1923, which provides:

"The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law."

WASHINGTON, November 24, 1933.

GREECE

INSISTENCE BY THE UNITED STATES UPON GREEK RESPONSIBILITY FOR THE SERVICE OF AMERICAN LOANS TO GREECE UNDER THE AGREEMENTS OF MAY 10, 1929, AND MAY 24, 1932 ¹

868.51/1345

*The Acting Secretary of State to the Ambassador in Great Britain
(Bingham)* ²

No. 32

WASHINGTON, July 1, 1933.

SIR: At the request of the Greek Government, the Financial Committee of the League of Nations recently sent certain experts to Greece to undertake an investigation of the financial and economic situation of that country with a view to determining the capacity of the Greek Government to meet its foreign obligations. It is understood that the delegation of experts was composed of Mr. Royall Tyler ³ (American), Mr. Mylanarski ⁴ (Polish), and Mr. Tumedei. ⁵

According to the Department's information the delegation completed its investigation and planned to leave Athens on June 3, 1933 for London to submit its report to the Financial Committee of the League. ⁶ It was understood just prior to their departure that they would be accompanied by Mr. Maximos, the Greek Minister for Foreign Affairs, and Mr. Loverdos, the Greek Minister of Finance, and that these officials of the Greek Government, after having been joined by the Prime Minister, Mr. Tsaldaris, ^{6a} would endeavor to come to an arrangement with the holders of the Greek foreign debt. It is expected that they will utilize in their negotiations the report of the League financial experts mentioned above.

The Department is desirous of obtaining a copy of the report of the experts if this is available to you. You are requested also to transmit to the Department any other information pertaining to the negotiations in

¹ For previous correspondence regarding American loans to Greece, see *Foreign Relations*, 1932, vol. I, pp. 626 ff. and *ibid.*, vol. II, pp. 384 ff. and 396 ff.

² The same, *mutatis mutandis*, July 1, to the Consul at Geneva.

³ The Financial Committee's representative in Hungary.

⁴ Feliks Mylanarski, member of the League's Financial Committee.

⁵ Cesare Tumedei, member of the League's Financial Committee.

⁶ No formal report by the delegation of experts to the Financial Committee was published by the League; but see League of Nations, Financial Committee, *Report to the Council on Greece*, July 8, 1933 (C.387.M.194.1933.II.A.).

^{6a} Panyoti Tsaldaris.

London between the delegates of the Greek Government and the holders of Greek foreign obligations, which you may be in a position to obtain.

As you will doubtless recall the debt funding agreement of May 10, 1929⁷ between the United States and Greece provided that the new loan arranged for in that agreement should rank with and should share the same securities and all other advantages as the Greek Stabilization and Refugee Loan of 1928 provided for in the International Loan Agreement executed January 30, 1928.⁸ The agreement of May 10, 1929 included also the following provision with specific reference to the possibility of default:

“In the event of there occurring in any year a default in the payment of the service of this new loan by the United States, the ratio in which it is to share the same securities as the Greek Stabilization and Refugee Loan of 1928 provided for in the International Loan Agreements dated January 30, 1928, shall be the same as that which the amount of the annual service charge due the United States bears to the amount of the annual service charge due the holders of the bonds issued in accordance with the above mentioned International Loan Agreements of January 30, 1928.”

You are requested to transmit also to the Legation at Athens a copy of the report mentioned in paragraph three of this instruction, if obtainable, as well as copies of any despatches which you may prepare pursuant to this instruction, with an appropriate indication of the confidential character of such material if the circumstances so require.

Very truly yours,

WILLIAM PHILLIPS

868.51 War Credits/632

The Greek Legation to the Department of State

[Translation]

AIDE-MÉMOIRE

Although the sum of \$21,456.00 asked by the American Government does not constitute a large sum, the real incapacity of Greece, from an economic and budgetary point of view, is so great that against her will she finds herself in the unavoidable and hard necessity of being unable to meet even this obligation which, in appearance, is small.

As regards Greece, this difficulty is increased by the fact that the non-payment of reparations not only leaves uncovered the entire amount of

⁷ U. S. Treasury Department, *Annual Report of the Secretary of the Treasury for the Fiscal Year Ended June 30, 1929* (Washington, Government Printing Office, 1930), p. 308.

⁸ See *Foreign Relations, 1927*, vol. III, pp. 1 ff., and telegram No. 7, January 30, 1928, to the Minister in Greece, *ibid.*, 1928, vol. III, p. 7.

her war debts, including the first and second debts to the United States, but furthermore constitutes a real charge on her budget.

As is known, Greece, in spite of her situation which has grown constantly worse and reached its culmination as a consequence of the world crisis, has shown herself until now absolutely faithful to her obligations.

Finding herself today in the impossibility of meeting her obligations, Greece in no way means to withdraw unilaterally from her contractual obligations, but has the honor to renew her preceding request to enter into pourparlers with a view to revision of the debt to the United States which constitutes a direct or indirect consequence of the war.

WASHINGTON, July 17, 1933.

868.51 War Credits/640

The Secretary of State to the Greek Minister (Simopoulos)

[Extract]

WASHINGTON, October 31, 1933.

SIR: I am requested by the Acting Secretary of the Treasury to notify you that \$1,336,351.93 is due and payable on November 10, 1933, on account of the indebtedness of your Government to the United States pursuant to the agreements of May 10, 1929,⁹ and May 24, 1932,¹⁰ and to request payment thereof either at the Treasury in Washington or at the Federal Reserve Bank of New York.

Following is the Treasury's statement of the amount due and payable November 10, 1933:¹¹

Accept [etc.]

CORDELL HULL

868.51 War Credits/641

The Greek Minister (Simopoulos) to the Acting Secretary of State

No. 2145

WASHINGTON, November 11, 1933.

EXCELLENCY: In reply to your letter dated October 31, 1933, by which you kindly transmitted the communication of the Acting Secretary of Treasury relative to my country's debt to the United States, I have the honor to inform you that, while the Greek Government considers the second loan under the Agreement of May 10, 1929, as a war loan, taking,

⁹ *Annual Report of the Secretary of the Treasury, 1929*, p. 308.

¹⁰ *Ibid.*, 1932, p. 291.

¹¹ Statement omitted; see *ibid.*

however, into consideration the objections of the United States Government on this matter and desiring to avoid any discussions, it would be disposed to grant to this debt the same treatment accorded last year,¹² expressly maintaining, as in the past, its point of view on the character of this debt.¹³

Consequently, the Greek Government will recognize against the interest of this loan due May 10, 1933 and November 10, 1933, the same percentage which will be applied for the stabilization loan.

Accept [etc.]

C. SIMOPOULOS

REPRESENTATIONS TO THE GREEK GOVERNMENT AGAINST PROPOSALS TO EXTEND THROUGHOUT GREECE THE GOVERNMENT MONOPOLY IN THE SALE OF REFINED OIL

868.6363/47 : Telegram

The Secretary of State to the Chargé in Greece (Gade)

WASHINGTON, January 12, 1933—6 p.m.

3. Your despatch 2326, December 13.¹⁴ The Socony-Vacuum Corporation has advised the Department that the Greek Government has drafted two laws the first of which extends the present refined oil monopoly throughout Greece and the second of which provides for the distribution of benzine through existing organizations under strict Government control of overhead and selling price. The corporation has received information to the effect that the opposition party has withdrawn its objection to this proposed legislation the enactment of which is now imminent. The corporation represents that the practical effect of this legislation will be to force it out of business in Greece with the resulting loss of an extensive investment.

Please confer with the appropriate authorities and state that under instructions from your Government you have been directed to request detailed and precise information with regard to the intentions of the Greek Government with respect to this legislation. Also consult with the British and Belgian Legations with a view to ascertaining what, if any, action they contemplate taking in this matter on behalf of the Shell Company and the Société Commerciale Belge, respectively. Advise the Department by telegraph of the results of your investigations and submit any comments or suggestions which you believe might be helpful to the Department in protecting American interests involved.

STIMSON

¹² See telegram No. 158, December 31, 1932, from the Chargé in Greece, *Foreign Relations*, 1932, vol. II, p. 429.

¹³ See memorandum from the Greek Prime Minister to the American Chargé in Greece, October 8, 1932, *ibid.*, p. 402.

¹⁴ Not printed.

868.6363/48 : Telegram

The Chargé in Greece (Gade) to the Secretary of State

ATHENS, January 16, 1933—3 p.m.
[Received January 16—11:30 a.m.]

8. Department's 3, January 12, 6 p.m. British Minister states that he had privately requested information regarding benzine monopoly bill from former Foreign Minister and will take no further action unless he receives instructions. He expressed doubt that instructions would be given at the present time since it would be difficult for his Government to object to revenue raising measures while demanding payment on service of loans. Belgian Minister has received no instructions but is suggesting to Socombel¹⁵ that it take matter up with Belgian Foreign Office. He believes any representations should be identical and made simultaneously by American, British, and Belgian Legations and that first step should be request for information in accordance with Department's instructions to me. Owing to fall in Government I have been unable to make inquiry of competent Greek authorities but will do so at earliest opportunity.

Athens managers of the oil companies in a meeting Saturday agreed to oppose monopoly bills, to request assistance of respective Legations, and to make no direct representation to Greek Government without previously conferring with one another. I am mailing translation of bills.¹⁶

GADE

868.6363/60 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

ATHENS, August 17, 1933—5 p.m.
[Received August 17—1:30 p.m.]

75. Your No. 3, January 12, 6 p.m. I learn from the Minister of Finance that the Greek Government intends to present to Parliament in about 10 days legislation to extend the refined oil monopoly throughout Greece. I have, therefore, requested precise data from the Foreign Office regarding the intentions of the Greek Government pointing out that my Government expects that the Greek Government will foresee the necessity of compensating the American interests involved for any losses which may result from the enactment of this legislation. The British Chargé d'Affaires and I have requested our respective interests to furnish us with detailed information as to the expected amount of loss

¹⁵ Société Commerciale Belge.

¹⁶ Not printed.

with a view to presenting the figures formally to the Greek Government before the question reaches Parliament. Telegraph your approval and authorize me to make a formal protest if the development of this question should warrant it.

MORRIS

868.6363/60 : Telegram

The Acting Secretary of State to the Chargé in Greece (Morris)

WASHINGTON, August 19, 1933—2 p.m.

34. Your 75, August 17, 5 p.m. The Department approves of the action which you have taken. If the situation so develops that you consider immediate action necessary, you may again approach the appropriate Greek authorities and inform them that you have consulted your Government which has authorized you to reaffirm its position that it will expect adequate compensation to the American interests concerned.

The Department is of the opinion that specific figures such as estimates of the expected losses should be presented directly to the Greek authorities by the interests concerned. It considers that official representations in a case of this nature should relate to the principles of compensation rather than to the specific amounts involved, unless a dispute as to the amounts raises an issue of principle.

PHILLIPS

868.6363/64

The Chargé in Greece (Morris) to the Secretary of State

[Extract]

No. 2503

ATHENS, August 30, 1933.

[Received September 20.]

SIR: I have the honor to refer to my telegram No. 75 of August 17, 5 p.m. and to the Department's telegram No. 34 of August 19, 2 p.m. in reply. It would seem that the representation made by the American, British and Belgian Legations, together with opposition to this measure on the part of the petroleum distributors who were working in connection with the foreign importing companies, have had the effect of postponing governmental action and perhaps forcing the abandonment of this scheme. The Minister of Finance informed the Parliament that the government had decided not to propose the enactment of this legislation for the present as it was still under consideration. Premier Tsaldaris, who is Acting Foreign Minister, told the British and American Chargés d'Affaires that the proposed legislation was being put aside for attention

later on. The Under Minister of Finance made the more positive statement to the refined oil distributors that the contemplated law had been given up. It would be rash to say that this matter will not be brought forward again, but at least a respite has been gained which may develop into a permanent abandonment.

I enclose a copy of my note dated August 17th to the Foreign Office, to which I have received no answer, and to which I do not expect to receive an answer under the present circumstances. The Belgian Minister sent a note couched in practically the same terms as mine. The instructions received by the British Chargé d'Affaires were of a very positive nature. The British Chargé d'Affaires informed the Greek Government by note that the British Government considered the proposed extension of the refined oil monopoly as definitely detrimental to British interests and expressed the earnest hope that the Greek Government would withdraw the proposed measure. The British Chargé added orally, in a conversation with the Minister of Finance, that if the Greek Government persisted in the enactment of this legislation it must be prepared to pay heavy losses to the Shell Company and that this claim would be strongly supported by the British Government. There is no doubt that the attitude of the British Government had a very marked effect in halting the Greek Government's action.

Respectfully yours,

LELAND B. MORRIS

[Enclosure]

The American Chargé (Morris) to the Greek Acting Minister for Foreign Affairs (Tsaldaris)

No. 204/33

ATHENS, August 17, 1933.

EXCELLENCY: Under instructions from my Government, I have the honor to request detailed information in respect to the reported intention of the Government to extend the Refined Oil Monopoly throughout Greece and to provide for the distribution of benzene through existing organizations under government control.

Your Excellency is of course aware that an American company, the Socony-Vacuum Corporation, with headquarters at 26 Broadway, New York City, has been engaged in the importation of petroleum products into Greece for many years. This company has an extensive property investment in Greece amounting to millions of dollars. My Government is confident that Your Excellency's Government will foresee the necessity of adequately compensating the Socony-Vacuum Corporation for any

losses which might be caused to it by the enactment of legislation such as it is understood is at present contemplated.

As I understand that it is proposed to present the legislation in question to the Parliament very soon, I would be greatly obliged if Your Excellency could cause me to be furnished with the information desired as promptly as possible, and prior to the presentation of the legislation to the Parliament, in order that I may be in a position to acquaint my Government with the precise data which it desires.

Accept [etc.]

LELAND B. MORRIS

563.6383/65

The Minister in Greece (MacVeagh) to the Secretary of State

No. 4

ATHENS, September 25, 1933.

[Received October 16.]

SIR: I have the honor to refer to despatch No. 2503 dated August 30, 1933, from this Legation, on the proposed extension of the refined oil monopoly to all of Greece.

I now enclose in translation the note from the Foreign Office in answer to the note forwarded by the Chargé d'Affaires relative to this question. While at the first reading, it might appear that activity in this matter had not died down, I am of the opinion that in reality this note is intended to serve no other purpose than a general reservation of its position by the Greek Government. It seems quite definite that the proposed law has been abandoned, at least for the present. Subsequent to the despatch from this office, to which reference is made above, the Prime Minister told the British Chargé d'Affaires that the proposed law had been abandoned on account of the opposition of the governments whose national interests were involved. I have not disclosed to the local manager of the Socony-Vacuum Company the contents of the Foreign Office's reply, believing that the Department should have the opportunity to inform the head office of the company if it desires to do so.

Respectfully yours,

LINCOLN MACVEAGH

[Enclosure—Translation]

The Greek Minister for Foreign Affairs (Maximos) to the American Chargé (Morris)

No. 34133

ATHENS, September 16, 1933.

MR. CHARGÉ D'AFFAIRES: In answer to letter No. 204/33 which you were good enough to address to me on last August the 17th, I have the

honor to bring to your knowledge that the competent Ministry communicates the following on the subject of the plan to institute a petroleum monopoly in the New Provinces.

The competent services have indeed studied and prepared for a long time a proposed law instituting the petroleum monopoly in the New Provinces, but no decision has yet been taken on the subject of submitting it to the Chamber.

Relative to the prejudice which is foreseen for the Socony-Vacuum Corporation, the competent Ministry is of the opinion that, being free of any contractual obligation towards this company and not a party to any engagement taken by the latter towards third parties, of which the Ministry does not even possess any knowledge, it reserves entire liberty to act towards the institution of this monopoly such as it exists in Old Greece, if the interests of the Hellenic Treasury should require such action.

Beyond these considerations, the competent Ministry is further of the opinion that none of the damage foreseen will result by this action for the Socony-Vacuum Corporation. Nothing indeed would prevent the above mentioned company from continuing to furnish in the future, by adjudication, the petroleum necessary to the monopoly and there is no reason why its installations at Saloniki, which serve not only for the storage of petroleum but also and especially for the storing of benzene, mazut, mineral oil, etc., should be rendered useless. Furthermore, this company possesses similar installations at the Piraeus where the monopoly of petroleum has always been in effect.

In any case, even if the institution of the monopoly had been definitely decided upon, which it has been made clear is not at all the case, the competent Ministry would not see any objection to undertake in a spirit of free initiative the necessary measures, in order that justified complaint of the interested companies should be avoided as much as possible.

I seize this occasion [etc.]

D. MAXIMOS

UNSUCCESSFUL ATTEMPTS TO OBTAIN EXTRADITION OF SAMUEL INSULL FROM GREECE; DENUNCIATION BY THE UNITED STATES OF EXTRADITION TREATY OF MAY 6, 1931

251.11 Insull, Samuel/6 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

ATHENS, October 10, 1932—11 a.m.

[Received October 10—6:42 a.m.]

107. Samuel Insull¹⁷ just arrested by the police on their own responsibility and is being detained on technical inquiry into his identity and

¹⁷ Former Chairman of the Board of Directors of the Middle West Utilities Co. and the Mississippi Valley Utility Investment Co.

purpose at Athens. Failing arrival of request for extradition he will be released in 24 hours.

MORRIS

251.11 Insull, Samuel/14 : Telegram

The Acting Secretary of State to the Chargé in Greece (Morris)

WASHINGTON, October 10, 1932—11 a.m.

49. Your 107, October 10, 11 a.m. In view of fact that only remaining formality necessary to bring extradition treaty in force between United States and Greece is exchange of ratifications,¹⁸ Department directs you to request provisional arrest and detention of Samuel Insull Senior with a view to his extradition on the charges of embezzlement and larceny upon which warrants of arrest have been issued in Cook County, Illinois.

Amount involved in embezzlement is over \$200 and in larceny over \$25.

CASTLE

251.11 Insull, Samuel/17 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

ATHENS, October 11, 1932—9 p.m.

[Received October 11—3:20 p.m.]

110. Foreign Office has just informed me orally and will confirm by formal note that extradition of Insull cannot be agreed to because treaty of extradition is not in force. Insull will be released from custody this evening but police will not allow him to leave Greece for a day or two. I am advised unofficially by competent officials of the Foreign Office that Venizelos¹⁹ as a friendly act could order his deportation to Italy from whence he came as undesirable foreigner. Do you want me to seek such action from Venizelos by personal interview?

MORRIS

251.11 Insull, Samuel/28 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

ATHENS, October 13, 1932—11 p.m.

[Received October 13—6:41 p.m.]

112. Your 52, October 11, 5 p.m.²⁰ I was received by Venizelos yesterday evening at Loutraki, 3 hours from Athens, where he is taking a rest

¹⁸ Treaty signed at Athens, May 6, 1931, *Foreign Relations*, 1931, vol. II, p. 378.

¹⁹ Eleutherios Venizelos, Greek Premier.

²⁰ Not printed; it approved the Chargé's suggestion to seek deportation of Insull to Italy by personal interview with the Greek Premier.

cure. He rejected deportation to Italy as Greek law allows deportee choice of destination. But as a friendly act he has agreed to prevent Insull from leaving Greece until exchange of ratifications can be effected and extradition proceedings can be renewed on the basis of a treaty in force. Insull will remain undisturbed as long as he does not attempt to leave Greece but under constant secret surveillance. Venizelos requests his decision to prevent Insull from leaving Greece should be kept secret.

MORRIS

251.11 Insull, Samuel/36 : Telegram

The Secretary of State to the Chargé in Greece (Morris)

WASHINGTON, November 1, 1932—noon.

58. Ratifications of extradition treaty United States and Greece were exchanged with Greek Minister today. You will promptly so inform appropriate authorities and renew request you were directed to make in Department's 49, October 10, 11 a.m. for provisional arrest and detention of Samuel Insull, Sr. with a view to his extradition on the charges of embezzlement and larceny upon which warrants of arrest have been issued in Cook County, Illinois.

STIMSON

251.11 Insull, Samuel/42 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

ATHENS, November 3, 1932—9 p.m.

[Received November 3—4:52 p.m.]

120. Your 58, November 1, noon. I have just learned orally from the Foreign Office that Insull will be arrested tomorrow morning and provisionally detained. Delay in arrest has been caused by difficulties of administrative procedure and by uncertainty of authority of present Cabinet ministers owing to the fact that new government is in process of formation.

Legation and Foreign Office have endeavored to keep secrecy but this evening's papers carry substantially correct story of exchange of ratifications and Legation's request for arrest.

Police claim to be maintaining strictest surveillance over Insull.

MORRIS

251.11 Insull, Samuel/45 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

ATHENS, November 4, 1932—3 p.m.

[Received November 4—11:15 a.m.]

121. My 120, November 3, 9 p.m. Insull was arrested at 1:30 p.m. today and will be held provisionally according to oral information from Foreign Office. Telegraph when extradition warrant may be expected to reach here.

MORRIS

251.11 Insull, Samuel/66

The Secretary of State to the Chargé in Greece (Morris)

No. 1099

WASHINGTON, November 17, 1932.

SIR: The Department has received the requisition of the Governor of Illinois, dated November 15, 1932, and papers in support thereof, in the matter of the extradition from Greece of Samuel Insull, otherwise known as Samuel Insull, Senior, a fugitive from the justice of the United States said to have taken refuge in Greece and charged in the State of Illinois with embezzlement by a person hired, salaried or employed to the detriment of his employer or principal. (Also known in the Statutes of the State of Illinois as larceny and larceny by bailee) (several offenses).

A certified set of papers in the case is enclosed.²¹ You are instructed to authenticate under the seal of the Legation the certificates of the Department of State attached to the papers. You are also instructed to make formal application for the surrender of the fugitive pursuant to existing treaty stipulations between the United States and Greece.

The President's warrant authorizing Messrs. Charles A. Bellows and Andrew J. Vlachos²² to take the fugitive into custody, is also enclosed.²¹

Very truly yours,

For the Secretary of State:

W. R. CASTLE, JR.

²¹ Not printed.

²² Assistant State's Attorneys of Illinois.

251.11 Insull, Samuel/83 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

ATHENS, December 28, 1932—4 p.m.

[Received December 28—2:20 p.m.]

155. Yesterday evening Greek court rejected request for extradition of Insull and set him at liberty. I have requested and expect, in about a week, an official statement from Foreign Office with complete record of hearing. In the meantime unofficial evidence indicates court violated both spirit and letter of treaty in passing upon actual substance of the indictments and in pronouncing that the proofs submitted do not constitute a crime under American law.

Affidavits made by Floyd Thompson,²⁴ Oliver McCormick²⁵ and E. Davis,²⁶ expressing their personal opinion that Insull did not intend to commit a crime but carried out the money transfers as a normal business transaction in the interest of his companies, were introduced by the defense attorneys without opportunity of examination or challenge by prosecutor or states attorneys and accepted as weighty evidence. Illinois state's attorneys Bellows and Vlachos were present but were not allowed to speak or even to present rebuttal to defense through Greek prosecutor. Inform state's attorney Chicago that Bellows is leaving Athens for Chicago today and that Vlachos is remaining a short time to assist Legation in preparing a report on the extradition proceedings.

MORRIS

251.11 Insull, Samuel/97 : Telegram

The Secretary of State to the Chargé in Greece (Morris)

WASHINGTON, January 5, 1933—6 p.m.

2. Your 155, December 28, 4 p.m. The Department desires the Consulate General to address a letter in the following sense to Samuel Insull:

"By direction of the Secretary of State I am instructed to inform you that the period of validity of the passport issued to you on February 11, 1930, and renewed on February 29, 1932, expires as of this date (supply date of letter). I am instructed to request you to deliver the passport to me in order that proper notation of the cancellation may be made thereon. I am to add, however, that regardless of whether such notation is actually made the passport has expired and is no longer valid".

The appropriate local authorities should be informed that Insull's passport has been cancelled and this telegram should be repeated by

²⁴ Floyd E. Thompson, lawyer and authority on criminal procedure.

²⁵ Oliver E. McCormick, former vice-president and treasurer of the Middle West Utilities Co. and treasurer of the Mississippi Valley Investment Co.

²⁶ Edwin A. Davis, former assistant general manager and inspector of the Middle West Utilities Co.

mail to all consular officers in Western Europe, including North Africa, and in nearby territory of the Near East, with instructions to take up the passport should opportunity present. If and when Insull completes arrangements for direct return to the United States a limited passport valid solely for return may be issued and delivered to him aboard ship. In this event the Department should be notified of the name of the vessel and the port and date of arrival in the United States.

STIMSON

251.11 Insull, Samuel/111

The Chargé in Greece (Morris) to the Secretary of State

No. 2386

ATHENS, March 18, 1933.

[Received April 5.]

SIR: I have the honor to refer to the Department's telegram No. 74, of December 29, 5 p.m.,²⁷ in which the Department requests that I obtain specific information as to whether an appeal may lie from the decision of the Greek Court in the extradition proceedings instituted against Samuel Insull, and desires to be informed whether further extradition proceedings could go forward upon the presentation of important additional evidence.

I immediately made verbal inquiry based upon this telegram. After discussion amongst themselves, the Greek officials competent in the matter arrived at the conclusion that little if anything could be done. However, those who discussed the matter amongst themselves were the permanent bureau heads in the Ministry of Foreign Affairs and the Ministry of Justice. After my return from leave of absence about the middle of January, I was informed that the Ministry could not give me a written reply unless I wrote a note, which I did,—a copy of which is attached herewith.²⁸ In the meanwhile, during this lapse of several weeks, during which the verbal discussion of the matter was taking place, the minority Tsaldaris Government fell and Veniselos assumed charge of the government. After I presented my note of January 28th, I made repeated calls at the Ministry of Foreign Affairs, asking for an answer, which I was always promised but which never came.

I have now learned that Mr. Veniselos and Mr. Michalakopoulos²⁹ were of the opinion that it would be desirable not to express a written opinion in this matter, if it could possibly be avoided, until after the national elections on March 5th, when they hoped and expected to have their government confirmed. In the meanwhile, the opposition party

²⁷ Not printed.

²⁸ Note dated January 28; not printed.

²⁹ Presumably Andre Michalakopoulos, Greek lawyer and politician; chief law officer of the Ministry of Foreign Affairs.

of Tsaldaris got wind, through inside channels, of the Legation's request and determined to do something about it if they should come in power. They lost no time in bringing this matter forward after their government recently took charge.

I enclose a copy of a *note verbale*³⁰ which I received today answering my note of January 28th, a copy of which is also enclosed.³¹ Yesterday afternoon Mr. Demetrius Maximos, the new Minister for Foreign Affairs, held his first reception to the diplomatic corps. He brought up the subject of Insull's extradition and was at pains to explain to me that Premier Tsaldaris, he, Maximos, and Mr. Jean Rhallys held the view that the decision of the Court refusing the extradition was in error, both in judicial reasoning and in its political effect. He told me that the present government would be only too glad, if it had the opportunity, to review the case. This could only be done, however, much to their regret, by the presentation of a new extradition request based upon new proofs, a new warrant, and a new indictment, for an offense not connected with the one cited in the first extradition papers. He did not hesitate to tell me that he and his colleagues felt that Greece had made a mistake in refusing the extradition and continuing to give asylum to a man who is accused of grave faults in his own country and in whose protection Greece had no legitimate interest. He stated that Mr. Tsaldaris had consulted with the Minister of Justice and other government leaders, all of the high Greek judicial officials, including all the members of the Court of Appeal who rejected the Insull extradition. It was only after careful consideration by all concerned that the note, of which a copy is enclosed, was written. It had been ascertained informally from the Court of Appeal that if a request were made to reopen the case already adjudged, this request would meet with failure. Mr. Maximos was particularly anxious that a request for the presenting of additional evidence in regard to the same accusation should not be made as he and his colleagues felt that it would be doubly offensive to the United States to reject a second request, which was foreshadowed to them by their informal inquiries from the members of the Court of Appeal. He indicated just as strongly, however, that the Cabinet would be glad of an opportunity to take up the extradition under a new set of facts.

I requested the Department in my telegram of this date³² not to take any action or to give any publicity in this matter because I wish it to have this background first of all; and secondly I wish to make it clear that, according to the verbal explanation given me by Mr. Maximos and by the chief law officer of the Ministry of Foreign Affairs, it is the con-

³⁰ Note dated March 7; not printed.

³¹ Not printed.

³² Presumably refers to telegram No. 33, March 17, 4 p.m.; not printed.

ception of the Greek authorities that extradition proceedings against Insull may only be renewed upon the presentation of the necessary proofs of other crimes or offenses which have no connection with the ones already cited, even though they may be of the same nature and extraditable under the same articles of the treaty.

To illustrate by example: It is my understanding from verbal explanation that the matter may be reopened if the necessary proofs are furnished that Insull misused funds under his control in any other circumstances than in connection with the withdrawal from the Mississippi Valley Utilities Investment Company and Middle West Utilities Company for payment into the stock broking firms of Jackson Brothers-Boesel & Company and Russell, Brewster Company for the account of his brother Martin,³³ whereby \$170,000 was unlawfully taken from the funds of those two companies. If it occurred that Insull on other occasion, for example, authorized payment from the funds of the same companies to the same stock brokers for the account of Martin Insull—but different sums of money and at a different period, thereby constituting an entirely new accusation unrelated to the first—I understand that this would be considered a proper basis for a new extradition request. Obviously, if the accusation related to unlawful transactions of Insull in any other connection, the position of Greek law and the interpretation of the Greek Government in respect thereto and in respect to the treaty would be even more favorable. In this connection, Mr. Bellows, one of the Illinois State's Attorneys who visited Athens, told me that the Chicago authorities had selected the simplest and least complicated accusation against Insull on which to base the extradition proceedings. This was done, so he said, in the belief that it would facilitate the extradition by not confusing the minds of foreign judges unfamiliar with American business practices and corporation laws. He added that many grave accusations lay against Insull. If this is true it would seem possible and desirable for the Chicago authorities to present an entirely new set of facts in no way related to the accusation which failed of acceptance by the Greek court in the first instance, and preferably—if possible—unconnected with the Insull companies or the stock broking companies involved in the accusation already presented.

In order that I may not be faced with the possibility of officially presenting a second request which has no hope of favorable action and which I am led to believe would be displeasing to the present cabinet of Greece if it were forced into the position of presenting to its judicial authorities a second request foredoomed to failure, I ask the Depart-

³³ Martin Insull, president and director of Middle West Utilities Co. and Mississippi Valley Utilities Co.

ment, in case it is desired to present another request, to inform me briefly beforehand by an instruction or telegram of the nature of the accusation, with sufficient details to informally and verbally present the facts to the Foreign Office in order to ascertain the reaction of the Greek officials. This will prevent the possibility of an embarrassing and disagreeable position to both governments which would result from a refusal to reopen the case. Of course the rejection of a new formal request by the Court is always possible but that is a risk which must be run.

Respectfully yours,

LELAND B. MORRIS

251.11 Insull, Samuel/121 : Telegram

The Secretary of State to the Chargé in Greece (Morris)

WASHINGTON, April 29, 1933—1 p.m.

17. Your despatch No. 2386, March 18. The Department desires you to request personal interview with Greek Foreign Minister and to inform him orally and in strictest confidence that Federal authorities, as result of involuntary petition in bankruptcy filed on April 18, 1932, against the Corporation Securities Company of Chicago, have been investigating affairs of that Company and operations of its officers among whom is Samuel Insull. United States Attorney at Chicago is preparing to obtain indictments charging accused officers and agents on five counts with unlawfully, wilfully, knowingly, feloniously and fraudulently transferring to Northern Trust Company, National City Bank of New York, Continental Illinois Bank and Trust Company, and Central Hanover Bank and Trust Company, in contemplation of bankruptcy of Corporation Securities Company and while the Company was insolvent, assets of the Company amounting approximately to \$2,330,820 with intent to defeat the Federal Bankruptcy Acts.

Inasmuch as proposed indictment of Insull is based upon facts entirely unrelated to those set forth in connection with previous request for extradition, it is contemplated in view of statements in paragraph 4 of Greek Foreign Office note of March 7,³⁴ to submit to Greece new request for his extradition.

The Department wishes that you discuss matter with Foreign Minister in spirit of paragraph 7 your despatch No. 2386 and telegraph his reaction as well as any suggestions which he has to make.

In order to prevent flight of certain other defendants now within jurisdiction of the United States, please stress need of strictest confidence and earliest possible reply.

³⁴ Not printed.

If Insull attempts flight you should take such steps as you may deem proper to prevent it.

HULL

251.11 Insull, Samuel/125 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

[Extract]

ATHENS, May 10, 1933—5 p.m.

[Received May 10—2:55 p.m.]

48. Your 17, April 29. Formal papers must be presented to the court to decide whether new extradition request may be heard. From informal conversations with the Prime Minister and Ministers of Foreign Affairs and Justice, I derive the impression that the facts contained in your telegram will be considered by the Court of Appeals as a basis for a new hearing although the Government can give no formal assurance to this effect since only Court of Appeals is competent to decide. . . . The Foreign Minister is of the opinion that a request for preliminary arrest would be bad psychologically and should not be made. Insull will be closely watched and new formal request for extradition should reach me secretly and if possible accompanied by Greek translation to avoid delay here.

MORRIS

251.11 Insull, Samuel/140

The Acting Secretary of State to the Chargé in Greece (Morris)

No. 1230

WASHINGTON, August 1, 1933.

SIR: There is enclosed a certified set of the papers in the matter of the application for the extradition from Greece of Samuel Insull, a fugitive from the justice of the United States, charged with transfer of property in contemplation of bankruptcy, in violation of the bankruptcy laws of the United States (five offences).

The certificates of the Department of State attached to the papers should be authenticated under the seal of the Legation.

Please request the provisional arrest and detention of the fugitive and make formal application for his surrender pursuant to existing treaty stipulations between the United States and Greece, and render all proper assistance to the Agent, Mr. Forest A. Harness, who is about to proceed to Greece. Mr. Harness is a Special Assistant to the Attorney General of the United States and as such is largely responsible for the preparation of this case, which is very complicated in its nature,

and therefore it would be highly advisable for the Agent to counsel with the prosecutor prior to the hearings in the case.

The President's warrant authorizing Mr. Harness to take the fugitive into custody will be forwarded to the Legation at an early date.

Very truly yours,

For the Acting Secretary of State:

HARRY F. PAYER

251.11 Insull, Samuel/151 : Telegram

The Chargé in Greece (Morris) to the Secretary of State

ATHENS, August 26, 1933—noon.

[Received August 26—9:40 a.m.]

78. Your 35, August 25, 7 p.m.³⁵ Foreign Office has just telephoned that arrest was effected at 11 a.m. today. I received your instruction No. 1230 of August 1st on August 14th and requested arrest at once. Greek Government was reluctant to effect arrest before court had decided whether charges now presented are new and unconnected with previous charges. The Government finally concluded that it was obliged to effect arrest by reason of treaty provisions but alleged administrative delays retarded arrest despite my daily insistence. Formal demand will be presented as soon as copies of Greek text can be prepared. Please communicate arrest to Attorney General and inform him Harness has arrived here.

MORRIS

251.11 Insull, Samuel/190 : Telegram

The Minister in Greece (MacVeagh) to the Secretary of State

ATHENS, October 31, 1933—11 p.m.

[Received October 31—6:08 p.m.]

107. The extradition of Insull was refused again this afternoon and the fugitive has been set at liberty. I am unofficially informed that the vote of the court was 3 to 2. Harness requests you inform Attorney General that he will report as soon as opinion of court has been translated.³⁶

MACVEAGH

³⁵ Not printed.

³⁶ Translations of the decision of the Greek Court of Appeals and of the minutes of the Court containing the dissenting opinion of the Presiding Justice, Emmon Panegyrikis, are printed in the *American Journal of International Law*, vol. 28, No. 2 (April, 1934), pp. 362, 372.

251.11 Insull, Samuel/192 : Telegram

The Minister in Greece (MacVeagh) to the Secretary of State

ATHENS, November 1, 1933—3 p.m.

[Received November 1—11:10 a.m.]

108. Grounds of refusal cannot be definitely stated till we have had a chance to study documents. Decision apparently admits acts committed were violations of the law in both countries but contends that the proof of criminal intent so far submitted is insufficient. The prosecutor told Harness this morning that he believes the way is thus left open for introduction of new evidence and reopening the case and he is now preparing memorandum on this subject after conference with Solicitor General. Will advise further very shortly. I am seeing Foreign Minister this afternoon.

MACVEAGH

251.11 Insull, Samuel/193 : Telegram

The Secretary of State to the Minister in Greece (MacVeagh)

WASHINGTON, November 2, 1933—6 p.m.

54. Your 108, November 1, 3 p.m. Unless prompt action is taken by the Greek authorities to reopen the case, the Department is considering instructing you to lodge an emphatic protest at the decision of the court and to give formal notice of this Government's denunciation of our Extradition Treaty with Greece.

It would be helpful therefore if you would inform the Department whether in your considered opinion there is any probability of such action by the Greek authorities or whether the Greeks may be merely playing for time with a view to preventing any action by this Government at this time when the effect would be most telling.

You should in any case furnish the Department as soon as possible with the information requested in its No. 53 of October 31, 6 p.m.³⁷ The Department would be particularly interested to know whether, as reported, the Greek Court in arriving at its decision took into consideration such factors as the age of the fugitive and the success of his business career and whether the court refused to admit affidavits in support of the charges against him.

HULL

³⁷ Not printed. The Department requested "brief summary of grounds for Court's decision."

251.11 Insull, Samuel/196 : Telegram

The Minister in Greece (MacVeagh) to the Secretary of State

ATHENS, November 3, 1933—9 p.m.
[Received November 3—8:05 p.m.]

110. Your 54, November 2, 6 p.m. The court admitted all affidavits submitted including that of Attorney General. Decision made reference Insull's age and health only in passing, and cites his successes only in connection with the opportunity thus afforded him to organize the companies whose failure brought about indictments. Lack of sufficient proof of criminal intent is sole basis given for judgment in his favor, the court contending in this connection that though he committed immoral, illegal, and fraudulent acts as charged he did so with the laudable intention of saving his companies and his life's work in the face of an unforeseen general financial disaster.

It is my considered opinion that the Greek Government has no intention whatever of reopening the case unless we petition it to do so, and that the opportunity left us for such petition is merely a face-saving and possibly a time-saving device. For us to embrace it would only expose us to further rebuffs in view of the latitude taken by Greek tribunals under this treaty.

I am advised that Greek law provides possibility of expelling alien by Executive Order for reasons of public interest upon recommendation of certain Cabinet Ministers. I suggest as a possible solution that you instruct me to inform the Premier that the continued presence of the fugitive in Greece being an impediment to the desired cordial relations between our two countries, he can oblige the American Government by expelling him on these grounds now that extradition proceedings have failed; but that in default of such action I am instructed to lodge a strong protest against the court's decision and communicate a formal statement denouncing the treaty. The Foreign Minister told me that if his Government could agree in principle to expulsion the ways and means could be arranged and he went so far as to discuss with me the passport question. This could apparently be solved by our renewing the fugitive's present passport with permission only to return to the United States.

MACVEAGH

251.11 Insull, Samuel/209 : Telegram

The Secretary of State to the Minister in Greece (MacVeagh)

WASHINGTON, November 9, 1933—6 p.m.

57. Inform Harness that Attorney General desires him to remain Athens as long as there is any possibility that his services may be

needed in Greece or any neighboring countries in connection with his mission.

For information Attorney General telegraph whether in your opinion there now appears to be any possibility that Greek Government will take action resulting in expulsion of fugitive.

In reply to observations on this subject in your 109, November 2, 9 p.m.⁴⁰ and 110, November 3, 9 p.m., the Department does not intend to request or suggest that the fugitive be expelled from Greece and desires that in any further conversations you may have with the Greek authorities regarding the Insull case you carefully avoid giving the impression that this Government is itself seeking or proposing such action. However, should such action be taken voluntarily by the Greek Government it would undoubtedly go far toward appeasing public opinion in this country.

HULL

251.11 Insull, Samuel/251

The Minister in Greece (MacVeagh) to the Secretary of State

No. 39

ATHENS, November 10, 1933.
[Received November 29, 1933.]

SIR: I have the honor to report that in compliance with the Department's urgent telegram No. 55 of November 4, 11 a.m.,⁴⁰ I presented its contents to the Hellenic Government as directed, thus conveying formal notice of the denunciation of the extradition treaty. A copy of my note No. F. O. 263/33 is enclosed herewith.

I also enclose a copy of a translation of the Foreign Minister's note in reply, the substance of which I communicated to the Department by my telegram No. 114 of November 9, 10 p.m.⁴⁰

Respectfully yours,

LINCOLN MACVEAGH

[Enclosure 1]

*The American Minister (MacVeagh) to the Greek Minister
for Foreign Affairs (Maximos)*

F.O. No. 263/33

ATHENS, November 5, 1933.

EXCELLENCY: I am instructed to inform Your Excellency that the United States Government has learned with astonishment that the Greek authorities have again declined to honor the request of the United States for the extradition of Samuel Insull, a fugitive from American justice.

⁴⁰ Not printed.

My Government finds it difficult to reconcile this unusual decision with the admission of the competent authorities that the fugitive committed the acts with which he was charged and that these acts are illegal and fraudulent both in the United States and in Greece. Without going into details of the decision it is generally believed that the authorities attempted actually to try the case instead of confining themselves to ascertaining whether the evidence submitted by the United States Government was sufficient to justify the fugitive's apprehension and commitment for trial. There can be no doubt that the question of criminal intent referred to by the Hellenic Court would be fairly and judiciously passed upon by the courts in the United States. I am directed to add that my Government considers the decision utterly untenable and a clear violation of the American-Hellenic treaty of extradition signed at Athens May 6th, 1931.

Inasmuch as the Greek authorities have now seen fit on two occasions to deny the just requests of the United States made under the provisions of the above mentioned treaty, it is apparent that this treaty, although similar in terms to treaties which the United States has found effective in extraditing fugitives from other countries, cannot be relied upon to effect the extradition of fugitives who have fled to Greece. My Government therefore considers that from the American point of view the treaty is entirely useless. Accordingly I am instructed to give formal notice herewith of my Government's denunciation of the treaty with a view to its termination at the earliest date possible under its pertinent provisions.⁴¹

I avail myself [etc.]

LINCOLN MACVEAGH

[Enclosure 2—Translation]

The Greek Minister for Foreign Affairs (Maximos) to the American Minister (MacVeagh)

No. 46071/I/8

ATHENS, November 9, 1933.

MR. MINISTER: By your note of the 5th instant, No. 263/33, you have informed me that, in consequence of the decision handed down by the Court of Appeals of Athens in the Insull case, the Government of the United States has judged it expedient to denounce the treaty of extradition signed May 6, 1931, with a view to its termination at the earliest date possible under its pertinent provisions.

In taking cognizance of your communication I think it is my duty to point out that it was in virtue of an express provision of the treaty in question that the Court of Appeals entered into the examination of the

⁴¹ The American Government's notice of abrogation of the treaty was ultimately withdrawn by a note dated September 30, 1937.

substance of the case. Indeed, by an exception to the principle usually underlying conventions of this nature, the treaty of extradition of the 6th of May, 1931 contains in its first article the following clause, due to a suggestion made by the Government of the United States during the negotiations:

“Provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense has been there committed.”

It is pertinent to point out that all the extradition treaties concluded by Greece, except that with Great Britain, are based on the exactly contrary principle, namely that it is not permissible for the Court considering the request for extradition to inquire into the basis of the charges preferred against the defendant. The adoption of such a system obviously facilitates the task of the authorities charged with deciding on requests for extradition, and it is noteworthy that its use in Greece over a considerable period of time has not yet given rise to any serious difficulties.

I earnestly hope, Mr. Minister that the foregoing explanation will throw some light upon this matter and will help to clear up a misunderstanding which cannot but cause the Hellenic Government the most sincere regrets.

Please accept [etc.]

D. MAXIMOS

251.11 Insull, Samuel/217 : Telegram

The Minister in Greece (MacVeagh) to the Acting Secretary of State

ATHENS, November 16, 1933—noon.

[Received November 16—11:35 a.m.]

116. The Foreign Minister asked me to see him last evening and in a long informal conversation requested me to lay the following before the Secretary of State personally conveying at the same time his regards and remembrances: Greece would like to expel the fugitive but cannot legally expel him to any particular country. It is probable that any country he might choose would refuse to accept him and that he would be accepted only where he would be sure to be evicted. The Foreign Minister stresses his anxiety on this point, representing the fugitive as not only possessing numerous friends in Greece who regard him as a pot of gold but as having the support of two court decisions, and he points out the difficult political position facing his Government should the fugitive complain that his expulsion under the conditions outlined was a virtual turning over to the United States authorities. He asks the

Secretary to consider his quandary and advise what the United States can do to facilitate expulsion by providing passport good for contiguous and other countries and assuring fugitive's acceptability therein.

MACVEAGH

251.11 Insull, Samuel/228 : Telegram

The Acting Secretary of State to the Minister in Greece (MacVeagh)

WASHINGTON, November 22, 1933—3 p.m.

58. Your 116, November 16, noon. In the event that the Greek Government decides to expel Insull, and if it is necessary for him to be furnished with a valid travel document in order that such expulsion may be effected, the Department would be willing to rescind the cancellation of his passport accomplished by the Department's telegram of January 5, 1933, and to notify American Consular officers accordingly. Insull could be notified that the Secretary of State had authorized the cancellation to be rescinded.

Please continue to keep the Department informed of developments. Please advise Harness that the Department of Justice desires him to remain in Athens pending further instructions.

PHILLIPS

251.11 Insull, Samuel/293

The Minister in Greece (MacVeagh) to the Acting Secretary of State

[Extract]

No. 93

ATHENS, December 15, 1933.

[Received January 8, 1934.]

SIR: In further reference to my despatches No. 74 of December 5th and No. 89 of December 15th, 1933,⁴² I have the honor to report that this afternoon the Foreign Minister informed me that I might confirm officially the reports appearing in the evening papers to the effect that Insull had been notified to leave Greece by the 31st of January. To my question as to what was to be done in regard to passport facilities, he replied that the government would get in touch with me.

The chief cause of the decision thus taken by the Tsaldaris Government⁴³ appears to have been the powerful effect on American public opinion of the recent court decision in the extradition hearings. Thorough com-

⁴² Neither printed.

⁴³ Government headed by Premier Panyoti Tsaldaris.

prehesion of the effect to be expected from that decision was evinced by the Foreign Minister when I took occasion to talk with him the day after the decision was handed down. But it needed the rising tide of American indignation as expressed in telegrams, letters, petitions, editorials, and even an interpellation in the Senate, to give his hand, at first unsupported, sufficient strength to control the vacillating Tsaldaris.

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Respectfully yours,

LINCOLN MACVEAGH

ITALY

PROPOSED TREATY BETWEEN THE UNITED STATES AND ITALY CONCERNING NATIONALITY AND MILITARY OBLIGATIONS

711.654/60

Memorandum by the Ambassador in Italy (Garrett) ¹

I had a talk with Rosso ² tonight on the subject of dual nationality. I had been thinking of course a good deal about this matter and it seemed to me that it would be well to outline the position to Rosso before he went to Washington, in the hope that he and I, if we could work together, could be able to accomplish something definite. I told him that since 1870 it had been the desire of my Government to enter into a naturalization treaty with Italy but that this had never been possible up to now. I had talked frequently with Grandi ³ on the subject and he had told me several times that there was no objection on the part of Italy to enter into such a treaty with the United States, except that it would open the way for other countries to invoke the most favored nation clause, and Italy would never permit Italian subjects to be drafted, for instance, into the French Army. As he put it once, Italy did not intend to present France each year with a battalion of soldiers.

Probably as a result of the many talks that had taken place on this subject, both before my arrival and since then, the Fascist Government had adopted a new policy in regard to dual nationality cases which as long as it worked was fairly satisfactory, and it had certainly resulted in a great diminution of what had been a constant source of irritation between the two Governments. Mussolini had also made most happy pronouncements in regard to the duties of men of Italian origin domiciled in America; that they should be loyal to the country of their adoption while not forgetting their origin and the cultural value attached to it. He had advocated the coming back to Italy of Italians abroad and the renewal of their contacts here, and to this we were far from having any objection. We had naturalization treaties with a number of European countries, for instance, Germany, but there were others like Italy with which we had none, for instance, France. But the number of Frenchmen in America was so small that there was little trouble as a result of this

¹ Copy handed to the Under Secretary of State on October 14, 1932, by the Ambassador, temporarily on leave in the United States.

² Augusto Rosso, newly appointed Ambassador to the United States.

³ Dino Grandi, Italian Ambassador in Great Britain; former Minister for Foreign Affairs.

lack of a treaty. With Italy the case was entirely different on account of the great number of Italians in America.

Under the new policy there had this year been only some 12 or 15 cases called to the Embassy's attention, which was one-third or one-fourth of the usual number before, and for the most part the appeals of the Embassy in regard to these cases had been favorably met.

I was sure, particularly because of his having been in Washington when the agitation may be said to have first started, that he was thoroughly familiar with the division amongst the Italians in America in regard to Italian politics. It was an unsatisfactory condition from our standpoint and it led to violence and even to murder by one faction against the other. Many of the Italians in America were anti-Fascist and it might be said that every case of military impressment produced another anti-Fascist when the man impressed returned eventually to America and made himself the center of a little additional troublesome group.

But far more important perhaps was the feeling on the part of thousands of Americans of Italian origin who desired to come to Italy on visits but dared not do so unless they could feel sure that they would not suffer any penalties.

The policy as it was now being worked made these exceptions: In the first place, it did not apply to time of war. As far as I can see there was no objection to this.

In the second place, it did not apply to "deserters". Although the question of what constituted a deserter might be a subject for discussion, I thought that such an exemption was all right.

The only other exemption was in regard to young men who came to Italy and lived there without leaving the country for the two years next preceding the call of their Class to the Colors. This was a small class and might be considered unimportant.

The policy, in order to avoid most favored nation claims by European countries, applied only to those who came from overseas, but supposing it were possible to enter into a treaty of naturalization, it seemed to me that this phrase "overseas" would not be a very satisfactory place to draw the line. What we needed, provided we both desired to enter into a treaty, was to find some qualification which, while applying to citizens of dual nationality in the United States, could not be invoked on behalf of similar citizens of a European country, and it had recently occurred to me that such a qualification could be found, although it must be distinctly understood that in suggesting it I was doing so on my own behalf and had not taken it up with the Government at Washington.

As he knew, there was no conscription or enforced military service in the United States except in time of war. Would it not therefore be

possible, without involving the principle of most favored nation, to recognize naturalization of Italians in America on the ground that as no Italians even when they become naturalized by law or by birth in the United States are subject to military duties there, so no Americans, of whatever origin, should be subject to military duties here.

Although such exemption might apply to some of the South American countries, it would not apply to important countries on the European continent.

There was of course no conscription in England, but the question of dual nationality as between England and Italy hardly arose.

Rosso expressed his great interest in this suggestion. He said he hardly knew who to take it up with at the moment at the Foreign Office on account of the changes that were there taking place, but he would talk tomorrow with Buti⁴ and see what he had to say about it, and perhaps might be able to put it before the Minister for Foreign Affairs either before he, Rosso, left for Geneva on Monday, or in the form of a memorandum. Although he had not studied the question recently, he thought that this might very well be a way of arriving at an agreement. There might be reasons which neither he nor I could foresee which would make it impracticable, but in any event it was certainly worth serious study.

ROME, September 16, 1932.

711.654/58

The Secretary of State to the Ambassador in Italy (Garrett)

No. 816

WASHINGTON, December 14, 1932.

SIR: With reference to recent conferences with you in the Department concerning the desirability of concluding an agreement between the United States and Italy with regard to the status and liability for military service and other acts of allegiance of former nationals of either country naturalized in the other, as well as persons born in either country of parents having the nationality of the other, and themselves having the nationality of both countries, I enclose herewith for your consideration a draft of a proposed treaty.

From the discussion of this subject with you, the Department understands that the principal objection of the Italian Government to the conclusion of a treaty with the United States concerning nationality and military service arises from apprehension that the French Government might demand, under the most-favored-nation principle, privileges and immunities for Italians naturalized in France and persons born in France

⁴ Gino Buti, Director General of Political Affairs in the Italian Ministry for Foreign Affairs.

of Italian parents, similar to those contained in the proposed treaty. However, as you have pointed out, the situation of the United States differs from that of France not only in the fact that this country is far distant from Italy, whereas French territory is contiguous to Italian, but also in the fact that the law of the United States does not require involuntary performance of military service in time of peace, as does the law of France. The proposed treaty has been formulated with the point last mentioned in view. As you will observe, not only does the preamble contain the phrase, "taking into account the fact that the law of the United States contains no requirement for the performance of involuntary military service in time of peace", but Article VII, which relates to the going into effect and termination of the treaty, provides "that, if the Government of the United States shall at any time adopt a law requiring the involuntary performance of military service when the United States is at peace, the Government of Italy may by giving notice in writing immediately terminate this treaty."

In view of previous correspondence upon the subject, the other articles of the treaty do not seem to require extensive discussion. As you will observe, Article I relates to the meaning of terms, "as used in this Convention." The first paragraph speaks for itself. With regard to the second paragraph of this article, it may be pointed out that the words "manifest consent" would be applicable to cases of Italians who, after having obtained naturalization as citizens of the United States, return to Italy, reside there for two years and reacquire Italian nationality as a result of such residence, under the provision of Article IX (3) of the Italian Nationality Law of June 13, 1912. The provision of the second sentence of the same paragraph is made necessary by the provisions in the laws of the United States concerning the independent nationality of married women.

Articles II and III, which resemble corresponding articles in other treaties to which the United States is or has been a party, do not seem to require extensive explanation. It may be observed, however, that Article II is intended for the protection of persons naturalized in the one country when they visit the other temporarily for legitimate objects, whereas Article III is intended to protect the interests of the two states in cases in which naturalized citizens return to their country of origin for permanent residence. This Article should be of special benefit to the country of origin, which, according to the provisions of the article, is not obliged to recognize the claims of the country of naturalization upon the naturalized person who has returned to his country of origin for permanent residence, thereby evincing an abandonment of the rights acquired through naturalization.

Article IV of the draft is substantially similar to the corresponding

articles in a number of naturalization treaties concluded by this Government. According to this article immunity from liability for military service and from punishment for failure to perform the same begins at the moment when a prospective naturalized citizen establishes a permanent residence in the naturalizing state, although the article does not relieve him from liability which may have accrued prior to that time. This article reflects the conception of expatriation and naturalization which has been held in the United States for many years, and it is hoped that the Italian Government may be persuaded to accept it.

Article V relates to liability for military service in cases of persons who, having been born in the territory of the one country of a parent or parents having the nationality of the other, themselves have the nationality of both countries under their respective laws. This article is substantially similar to the provision of Article I of the protocol adopted at The Hague Conference on Codification of International Law in April, 1930,⁵ and ratified by this Government July 5, 1932. It is also substantially similar, although broader in scope, to the treaty on this subject between the United States and Norway signed November 1, 1930.⁶

Article VI relates to immunity from liability for military service or military contributions in cases of nationals of either country residing in the other. It will be observed that it does not refer to persons having the nationality of both countries. According to its terms, a national of the one country residing in the other shall be immune from military service and military contributions unless he has declared his intention to become a national of the country in which he resides. It seems only reasonable that persons who have taken this formal step in the process of naturalization should be held liable for the performance of military service. According to the second paragraph of Article VI, the exemption provided by the first paragraph "does not include personal services which may be required of residents generally, in cases of emergency for policing particular localities with a view to public security." This provision does not seem to require explanation.

The provision of Article VII, which is deemed to be of special importance is discussed above.

If this draft treaty appears to you to be satisfactory in all respects, you are authorized to submit it to the Italian Government. If, however, you deem it desirable to make any changes in the draft, you will please inform the Department, and the subject will be given immediate consideration. It is hardly necessary to say that the Government of the United States is desirous of concluding a satisfactory treaty with Italy concerning nationality and military obligations. While the treaty would

⁵ *Foreign Relations*, 1930, vol. I, p. 224.

⁶ *Ibid.*, vol. III, p. 713.

be in its terms reciprocal, it would, in actual practice, be applied principally to cases of persons of Italian origin who have been naturalized as citizens of the United States and to persons born in the United States of Italian parents, who should have found it necessary or desirable to visit Italy. It is believed, however, that the conclusion of such a treaty would be advantageous to Italy as well as to this country, since, while serving to encourage mutual intercourse, it would make it clear that persons of the classes mentioned above, born or naturalized in the United States, could not expect to reside indefinitely in Italy with the protection of this Government and with corresponding immunity from obligations to the country in which they or their parents were born. The treaty would set forth the limitations under which they could expect to receive the protection of this Government, as citizens of the United States, and should have the effect of preventing in the future cases in which conflicting claims are made upon individuals by the two Governments. Such cases are not only a source of constant irritation to the interested Governments, but are also frequently a cause of grievous hardship to the individuals concerned and their wives and children and a serious impediment to normal intercourse between the two countries. It may be added that, judging by the experience of this Government in the past, naturalization treaties are very practical and efficacious in the prevention or settlement of such controversies.

Very truly yours,

For the Secretary of State:
W. R. CASTLE, JR.

[Enclosure]

*Draft of a Treaty Between the United States and Italy
Concerning Nationality and Military Obligations*

The Government of the United States of America and the Government of His Majesty the King of Italy, being desirous of strengthening the bonds of friendship by the removal of impediments to mutual intercourse, so that the nationals of either state may visit the territory of the other temporarily for business or pleasure, without molestation, upon complying with the laws thereof, and to this end being desirous of defining the status and liability for military service and other acts of allegiance of former nationals of either party who, having emigrated from the one country, have acquired or shall acquire the nationality of the other by naturalization within its territory, and of persons who were or shall be born in the territory of either state of parents having the nationality of the other, and in this connection taking into account the fact that the law of the United States contains no requirement for the performance of involuntary military service in time of peace, have resolved to conclude a treaty on this subject and for that purpose have

appointed their plenipotentiaries, that is to say: The President of the United States of America and His Majesty the King of Italy: who, having communicated to each other their full powers, found to be in good and due form, have agreed upon the following Articles:

ARTICLE I

The word "national", as used in this Convention, means a person owing permanent allegiance to, or having the nationality of, the United States or Italy, respectively, under the laws thereof.

The word "naturalized", as used in this Convention, refers only to the voluntary acquisition of nationality by persons of full age, upon their own applications or with their manifest consent, and by minors through such acquisition of nationality by their parents. The provisions of this Convention concerning naturalization do not apply to the acquisition of nationality by a woman through marriage or through the naturalization of her husband.

ARTICLE II

Nationals of the United States who have been or shall at any time in the future be naturalized in Italian territory shall be held by the United States to have lost their former nationality and to be nationals of Italy.

Reciprocally, nationals of Italy who have been or shall at any time in the future be naturalized in territory of the United States shall be held by Italy to have lost their original nationality and to be nationals of the United States.

ARTICLE III

If a national of either country, who comes within the purview of Article II, shall renew his residence in his country of origin without the intent to return to that in which he was naturalized, he shall be held to have renounced his naturalization.

The intent not to return may be held to exist when a person naturalized in one country shall have resided more than two years in the other; but this presumption may be overcome by evidence to the contrary.

ARTICLE IV

A naturalized citizen of the one party on return to the territory of the other party may be held liable to trial and punishment for an offense punishable by the laws of his original country and committed before his establishment of a permanent residence in the naturalizing country.

ARTICLE V

A person born in the territory of one party of a parent having the nationality of the other party, and himself having the nationality of

both parties under their laws, shall, if he habitually resides in one of the two countries whose nationality he possesses and is in fact more closely connected with that country, be exempt from all military obligations in the other country.

ARTICLE VI

The nationals of either of the contracting parties who reside in the territory of the other, and who do not possess the nationality of the latter, and have not declared their intention of adopting such nationality by naturalization, shall be exempt from all military service whatsoever and from all military contributions whether or not imposed in lieu of personal service.

It is understood, however, that this exemption does not include personal services which may be required of residents generally, in cases of emergency for policing particular localities with a view to public security.

ARTICLE VII

The present treaty shall go into effect immediately upon the exchange of ratifications, and shall continue in force for ten years. If neither party shall have given to the other six months previous notice of its intention then to terminate the treaty, it shall further remain in force until the end of twelve months after either of the contracting parties shall have given notice in writing to the other of such intention; *Provided*, however, that, if the Government of the United States shall at any time adopt a law requiring the involuntary performance of military service when the United States is at peace, the Government of Italy may by giving notice in writing immediately terminate this treaty.

In Witness Whereof, the respective plenipotentiaries have signed this treaty and have hereunto affixed their seals.

Done in duplicate at Rome, this day of

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711.654/63 : Telegram

The Ambassador in Italy (Garrett) to the Secretary of State

ROME, February 23, 1933—11 a.m.
 [Received February 23—8:40 a.m.]

7. Your instruction No. 816, December 14, 1932. Suvich⁷ told me yesterday that some differences of opinion with other Ministries still existed but he hoped to be able to take up the proposal for a treaty with

⁷ Fulvio Suvich, Italian Under Secretary of State for Foreign Affairs.

me on Tuesday. I could not get him to commit himself further. However, in view of shortness of time, I respectfully request that you send me, by the next pouch, full powers to sign if and when our text is accepted or complete agreement with us reached. If it cannot be signed before my departure the full powers can be returned.

GARRETT

711.654/63 : Telegram

The Secretary of State to the Ambassador in Italy (Garrett)

WASHINGTON, February 28, 1933—2 p.m.

10. Your No. 7, February 23, 11 a.m. Full powers will be forwarded by the next pouch.

You are authorized to sign if our draft is accepted. Should the Italian Government propose any modifications, you are instructed to submit them to the Department for approval.

STIMSON

711.654/64

The Ambassador in Italy (Garrett) to the Secretary of State

No. 1891

ROME, May 11, 1933.

[Received May 23.]

SIR: With reference to my telegram No. 7 of February 23, 11 a.m., 1933, in regard to the proposal for a treaty of naturalization between the United States and Italy, I have the honor to inform the Department that from recent conversations at the Foreign Office it would appear that there is a real possibility of an agreement between the two countries on these lines. The matter has been deeply discussed. The Italian Government, however, before proceeding any further finds it necessary to pass a bill in regard to the loss of Italian nationality abroad. This bill has been in committee in the Senate but owing to the shortness of the session and the amount of work that had to be done in connection with the finances etc. it has not yet been possible to put it through. The President of the Senate, the Honorable Federzoni, tells me that he believes that its passage during the month of June is well assured. At the Foreign Office they tell me that they consider that a way has been found in the Department's draft of a proposal to overcome the difficulties which have stood in the way of the conclusion of a naturalization treaty since 1870. I hope that it will fall to the lot of my successor to bring the negotiations for this treaty to a successful conclusion.

Respectfully yours,

JOHN W. GARRETT

711.654/58 : Telegram

The Acting Secretary of State to the Ambassador in Italy (Long)

WASHINGTON, June [July] 14, 1933—5 p.m.

36. See Department's instructions 816, December 14, 1932, and 865 of March 3, 1933,⁸ and Embassy's despatch 1891, May 11, 1933. After familiarizing yourself with the provisions of the proposed naturalization convention, as explained by instruction 816, please discuss the subject at your earliest opportunity with the Foreign Minister. Emphasize importance this Government attaches to conclusion of treaty which would have the effect of settling troublesome citizenship conflicts and promoting intercourse between the two countries. Report result briefly by telegraph and fully in writing.

PHILLIPS

711.654/66

The Ambassador in Italy (Long) to the Secretary of State

No. 171

ROME, September 11, 1933.

[Received September 25.]

SIR: With reference to the Department's telegraphic instruction No. 36 of July 14, 5 p.m., and to my despatch No. 95 of July 21, 1933,⁹ with regard to the proposed naturalization convention, I have the honor to inform the Department that I saw Mr. Suvich, Undersecretary of State for Foreign Affairs, today and broached again the subject of the treaty. He said they had been so busy with Austrian and other affairs that they had not as yet had time but that within the next two weeks he would collect the data and give the matter sufficient thought to formulate in his mind a policy in regard to procedure. He said that it would be easier now than it had been heretofore because Signor Mussolini had assumed the post of Minister of War whereas the official who formerly held that post was indisposed to agree to some items which were essential in order that Italy might pass legislation which would support the treaty. He said that the Senate of Italy would meet in December and that the law upon which the treaty would be based could not be passed before it met; that he hoped to have the law passed early in that session and to have the text of the treaty ready by December.

I told Mr. Suvich that the United States Congress would meet in December and would be in session for some months and that I hoped that we would be able to agree upon the text so that it might be submitted to my Government during the coming session of the Senate.

⁸ Despatch No. 865 not printed.⁹ Letter not printed.

Mr. Suvich said that his colleagues in the Government were not satisfied with the text as proposed by the United States and desired to make a fresh start and that he himself was undetermined as to whether the Italian Government should propose a text to us or whether he and I should work out a text together.

Respectfully yours,

BRECKINRIDGE LONG

711.654/66

The Secretary of State to the Ambassador in Italy (Long)

No. 79

WASHINGTON, October 25, 1933.

SIR: The Department has received your despatch No. 171 of September 11, 1933, concerning the negotiation of a treaty with Italy in regard to naturalization and military service.

The Department is gratified to learn that the Italian Undersecretary of State for Foreign Affairs is giving this subject his personal attention, since it is believed that the conclusion of a satisfactory treaty would serve to settle vexatious problems arising in cases of naturalized citizens as well as persons born with the nationality of both countries and visiting or residing in the territory of the other, and thus to facilitate intercourse between the two countries to their mutual advantage.

Special note has been taken of the statement in the last paragraph of your despatch that Mr. Suvich informed you "that his colleagues in the Government were not satisfied with the text as proposed by the United States and desired to make a fresh start," and that he himself was undecided as to whether his Government should propose a new text or whether he and you should work out a text together.

As it appeared from Mr. Garrett's despatch No. 1891 of May 11, last, that it seemed likely at that time that the Italian Government would conclude the proposed treaty, and considering the long period of time during which the subject has been under discussion between the two governments, it would seem especially desirable to take whatever steps may be possible to meet the objections which the Italian authorities have in mind, in order to bring the matter to a satisfactory conclusion. It is suggested, therefore, that you avail yourself of an early opportunity to discuss this subject again with the Italian Undersecretary, and that you endeavor to ascertain the particular provisions in the draft accompanying the instruction of December 14, 1932, to Ambassador Garrett as to which the Italian authorities are not satisfied. Upon the receipt of this information it may be found possible to reach a solution of the difficulties which would be acceptable to both governments. You will please inform the Department of the result of your conference.

If, in the discussion of this matter with the Undersecretary it becomes apparent that the Italian authorities are apprehensive lest the conclusion of the treaty would encourage Italians to obtain naturalization in the United States with the purpose of returning to reside in Italy, thus evading their obligations to both countries, you may assure the Undersecretary that this would not be the case. As pointed out in the Department's instruction of December 14, 1932, mentioned above, Article III of the draft is designed to prevent such abuse of naturalization, which is as objectionable to this Government as it presumably is to the Italian Government. In general, the object of the treaty is to define the status and obligations of naturalized citizens and persons born with dual nationality in a way which would be just and reasonable, from the standpoints of the two Governments, as well as that of the individuals concerned.

Very truly yours,

For the Secretary of State:
HARRY F. PAYER

711.654/67

The Ambassador in Italy (Long) to the Secretary of State

No. 268

ROME, November 10, 1933.

[Received November 22.]

SIR: In pursuance of the Department's instruction No. 79 dated October 25, 1933, I have the honor to inform the Department that I called upon the Undersecretary for Foreign Affairs last evening and took up with him the subject matter of the proposed naturalization convention between the United States and Italy. I took a copy of the draft of the treaty as transmitted by the Department in its instruction No. 816 dated December 14, 1932, and handed it to Mr. Suvich and asked him if he would indicate the objections which his Government had to that draft in order that there might be something more concrete and that we might have an opportunity to come to an understanding. I impressed upon him the urgency of the matter if we were to have any agreement in the comparatively near future because the Italian law is such that from the point of view of the Italian Government it needs to be changed and it can only be changed with the concurrence of the Senate and the Chamber of Deputies, and as the Chamber of Deputies and the Senate will be in session only during the coming month of December, the law, if it is to be changed so as to enable Italy to enter into an agreement, must be agreed upon, at least in substance, in the near future.

To all this Mr. Suvich agreed and said that they were anxious to come to some understanding with the United States but that things closer to home and of the greatest importance had tended to exclude from their

attention the subject of this treaty. He recalled some of the various activities in which the Foreign Office had been engaged in the last few months but said that he thought that with the adjournment of the meeting of the National Council of Corporations which is now in session in Rome and which is scheduled to adjourn on Saturday, there would come next week an opportunity which he hoped to take advantage of and discuss the matter with me in more detail. He said that he would get out his papers and the file and would make an engagement with me some day during the coming week and would at that time be prepared to discuss certain points in the proposed draft of the treaty to which Italy had some objection. Mr. Suvich also indicated that it would be necessary to have an entirely new draft.

While Mr. Suvich has not indicated any particular reasons for their objections to the present draft, I am of the opinion that those objections are not related to the suggestion in the last paragraph of the Department's instruction No. 79 of October 25, 1933, "that the Italian authorities are apprehensive lest the conclusion of the treaty would encourage Italians to obtain naturalization in the United States with the purpose of returning to reside in Italy".

From my several former conversations with the Undersecretary, I am convinced that it is the situation which concerns them in southern France and in the French possessions in Africa, where there are a great number of Italian citizens. They are afraid that France will take advantage of the most favored nation clause and demand the same treatment for Italians naturalized in France. So that having studied very carefully the draft which the Department enclosed with its instruction, and considering the Italian point of view as obtained in my interview with the Undersecretary for Foreign Affairs, I believe that the lack of legal requirements for compulsory military service in the United States is not sufficiently emphasized in the draft of the treaty. In other words, I feel that, if the whole treaty was predicated upon that legal situation or absence of legal requirement, it might appeal more favorably to the Italian point of view in that it would make it perfectly clear that the basis of the treaty was such that the French could not take advantage of the most favored nation clause.

Without having discussed the draft or any proposed changes in the Department's former draft with Mr. Suvich, I have redrawn the preamble and certain other clauses of the treaty which I submit herewith for the Department's consideration.¹⁰ They are not sent with the idea at the present time of substituting it for the Department's draft, but simply in order that the Department may have more definitely in mind the principal objection which the Italians may have to the proposed

¹⁰ Not printed.

draft and a possible solution of it. During my conversations with Mr. Suvich I may have occasion to refer to this draft, though I shall not propose any new draft to Mr. Suvich, and shall not propose this draft without specific instructions from the Department.

Primarily, I feel that it would be a tactical mistake to submit any new draft until the authorities of the Italian Government have submitted a new draft or have indicated specific objections to the one already proposed.

I expect to have during the coming week another conversation with Mr. Suvich and shall not fail to keep the matter before the attention of the authorities of the Italian Government and prosecute the matter to some termination during the next two months.

Respectfully yours,

BRECKINRIDGE LONG

711.654/67 : Telegram

The Acting Secretary of State to the Ambassador in Italy (Long)

WASHINGTON, December 2, 1933—1 p.m.

65. Your despatch 268, November 10, 1933. Your suggestions for changes in the proposal for a naturalization treaty are approved in general, but certain modifications of your draft seem desirable. Redraft being mailed to you.¹¹ Meantime endeavor to reach agreement in principle.

PHILLIPS

711.654/70

*The Italian Under Secretary of State for Foreign Affairs (Suvich)
to the American Ambassador in Italy (Long)*¹²

[Translation]

MEMORANDUM

The proposal of the Government of the United States of America for a naturalization treaty with Italy comes at a moment when a bill containing new citizenship regulations is still before the Senate of the Realm.

Hence the advisability of holding up negotiations on this matter until the above-mentioned bill has been passed and become a state law.

A study of the American draft reveals that it contains provisions conflicting with principles sanctioned by Italian legislation.

¹¹ Not printed.

¹² Copy transmitted to the Department by the Ambassador in Italy in his despatch No. 319, December 15; received December 29.

Among such discrepancies, the following examples may be cited:

a) Loss of Italian nationality is incurred by those persons who at any time acquire American citizenship, and vice versa. Such a clause might present disadvantages, especially during potential periods of abnormality, although there is no doubt that the authorities of both countries would under such circumstances proceed with the utmost good faith and care.

b) With respect to the acquisition of citizenship by minor children, the draft makes no distinction between children residing with their father and those separated from him by considerable distance, which is contrary to Italian legislation now in force and to the new bill.

c) According to the draft a person who has been naturalized in one of the two countries and who returns to his native country may retain the citizenship of the former even when he remains in the latter for more than two years, provided that there is proof of his desire to retain his acquired citizenship. Such a clause, which would possibly protect momentary personal interests, might easily lead to controversies even more complicated than those which the project aims to avoid, if only because of the difficulty of weighing such evidence.

d) Moreover, the terms of the draft make it impossible to prosecute a native-born citizen who, having reacquired his original nationality, during the time in which he was in possession of the citizenship of the other country, commits misdeeds which in his native country constitute crime and occasionally serious crime. Such a situation would place the naturalized citizen in a privilege[d] position with respect to the citizens of either one of the two countries.

e) The draft does not cover serious cases of conflicting nationality arising from the diversity of the laws of the two countries, among which is the question of the citizenship of a woman contracting marriage.

The foregoing would appear sufficient to demonstrate the difficulties of reaching a settlement of the complex problem upon the basis of the American draft, although the Fascist Government is in principle favorably disposed to consider an agreement on this subject.

ROME, December 13, 1933.

[In instruction No. 129 of January 18, 1934, the Ambassador in Italy was advised that, inasmuch as the Italian Government appeared to be disinclined to conclude a naturalization treaty, "the negotiations may therefore be dropped unless and until changed conditions in the future would make their reopening opportune." (711.654/69)]

FASCIST PRESSURE ON NATURALIZED AMERICAN CITIZENS
VISITING ITALY

365.1121 Cimador, Guido/2 : Telegram

The Acting Secretary of State to the Consul at Trieste (Winslow)

WASHINGTON, August 3, 1933—6 p.m.

Guido Cimador, naturalized citizen, holder of passport No. 437712 dated September 3, 1931, is alleged to have been arrested at Prato Carnico, Udine, on June 3 and to be still in prison.

Please render appropriate assistance, telegraph brief report and send full report by pouch.

PHILLIPS

365.1121 Cimador, Guido/4 : Telegram

The Consul at Trieste (Winslow) to the Acting Secretary of State

TRIESTE, August 4, 1933—6 p.m.

[Received August 8—5:36 a.m.]

Department's August 3, 6 p.m. Cimador favorably known to and registered at Consulate was arrested June 3rd for political and moral reasons and is now confined on island near Naples. Unofficially but reliably informed that real reasons for arrest were his actions in placing flowers on bier of dead anarchist and accompanying body to grave. I will visit Carnico in the near future to make investigation. Embassy informed.

WINSLOW

365.1121 Cimador, Guido/10

The Consul at Trieste (Winslow) to the Secretary of State

No. 289

TRIESTE, August 11, 1933.

[Received August 30.]

SIR: With reference to the Department's telegram of August 3, 6 P.M. requesting a report on the arrest of Guido Cimador, a naturalized American, at Prato Carnico on June 3, 1933, I have the honor to report that I returned yesterday from Prato Carnico after making a careful investigation of the case over a period of two days.

During my stay in Prato Carnico I interviewed twenty-nine persons including two ex-mayors of the village, a former secretary of the Fascist party, four American citizens, four present members of the Fascist party, Cimador's room-mate, the widow of the alleged anarchist whose funeral caused the trouble, three Italian citizens who formerly resided

in America, an officer of the "Carabinieri", the Secretary of the Municipality and a number of peasants and tradespeople. Since these people, in some instances, ran the risk of being accused of sedition in giving their views on the case their names do not appear in the report. Though some knew more than others their statements and opinions coincided on the more important questions. Only a few were approached by me the others having come voluntarily, out of affection and respect for Cimador, in the hopes that something might be done in his behalf.

On the way to Prato Carnico I stopped over at Udine to interview the Prefect but as he was not there the Questore (Chief of Police) was interviewed in his stead.

There are enclosed herewith a copy and translation of an official communication from the Prefect of Udine¹³ from which it appears that Guido Cimador was sentenced to five years confinement on the island of Ponza because he helped to organize a subversive manifestation at the funeral of an anarchist. The Prefect adds that Cimador is a very bad individual, and a dangerous anarchist who is capable of committing irresponsible acts.

Based on the inquiries made at Prato Carnico and Udine I offer the following opinion. (It will be noted that the report is a statement of fact and does not contain expressions of opinion):

1. That Cimador did not organize a subversive manifestation at the funeral, though he did assist at the funeral.
2. That the deceased was not at the time of his death an anarchist.
3. That Cimador is probably neither a bad individual nor a dangerous anarchist though it is quite probable that he is not sympathetic to fascism and is, in all probability, a socialist.
4. That Cimador did not receive, under American standards, a fair trial since it appears that he was not permitted to produce witnesses in his own behalf and because his sentence was largely based on reports made by persons who were prejudiced by the circumstances.
5. That the conviction of Cimador was based purely on very limited circumstantial evidence.
6. That Cimador is not, (as alleged by the Prefect of Udine in his telephone conversation with me) an immoral person but instead is a person of high morals and charitable character.
7. That the Italian authorities were fully aware of Cimador's American citizenship notwithstanding contrary statements made by the Prefect and Questore of Udine.

Since the Italian authorities, for political reasons, will not permit an examination of the record in Cimador's case the foregoing opinion is necessarily based, in part, on a conjecture as to the evidence presented at his trial.

Respectfully yours,

ROLLIN R. WINSLOW

¹³ Not printed.

365.1121 Cimador, Guido/8 : Telegram

The Ambassador in Italy (Long) to the Secretary of State

ROME, August 14, 1933—7 p.m.

[Received August 14—3 p.m.]

87. Department's 42, August 9, 5 p.m.¹⁴ Consul after personal investigation has mailed full report direct to the Department. It adds but little new substance to matter of his telegram of August 4th but relates facts at length. Embassy making representations to central political authority here looking to his release. Will keep Department advised.

LONG

365.1121 Cimador, Guido/20

*The American Ambassador in Italy (Long) to the Italian Director
General for Political Affairs (Buti)*¹⁵

ROME, August 15, 1933.

MY DEAR SIGNOR BUTI: I am enclosing herewith a memorandum¹⁴ concerning a certain Guido Cimador, an American citizen, who was arrested on June 3, 1933, at Prato Carnico, Province of Udine, was found guilty shortly thereafter of subversive activities, and sentenced by the "Commissione per il Confino" to five years "confino".

While enquiries in regard to the case at the instance of the Department of State have been made locally by the American Consul in Trieste, I, nevertheless, feel that it might be well for the central political authorities here to be apprised of the fact that Guido Cimador is an American citizen, so that he may benefit from extenuating circumstances, if there are any, due to the fact of his American nationality.

I am [etc.]

BRECKINRIDGE LONG

365.1121 Cimador, Guido/13

*Memorandum by the Consul at Trieste (Winslow)*¹⁶

TRIESTE, August 23, 1933.

REVIEW OF THE CIMADOR CASE

On June 15, 1927, Guido Cimador, a native of Prato Carnico, Italy, was naturalized as an American citizen. While in the United States

¹⁴ Not printed.

¹⁵ Copy transmitted to the Department by the Ambassador in Italy in his despatch No. 226, October 23; received November 7.

¹⁶ Copy transmitted to the Department by the Ambassador in Italy in his despatch No. 169, September 8; received September 21.

Cimador resided in the following places: Pittsburgh, Detroit, Rochester (N. Y.) Buffalo, Welch (W. Va.), Durham, (N. C.).

Once, while residing in Pittsburgh, he was passing down a street in the west-end which led to a theatre where Italian fascists were holding a meeting, when he met an acquaintance (Attilio Solari, bearer of passport No. 322415 issued at Washington on October 28, 1930—now residing at Prato Carnico) who was being taken to the police station for making a demonstration in front of the fascist meeting place. Cimador attempted to dissuade the policeman from arresting Solari but the officer took him along instead. After remaining for two hours in jail Cimador and Solari were released on payment of \$15.00 bail each, and they were tried next morning before the police magistrate and immediately released. During his examination at the trial Cimador was asked by the magistrate whether he was for or against fascism and he replied that he was against it. This latter statement was probably reported to the Italian Government by the Italian Consul at Pittsburgh.

Early in 1931, Cimador received an injury to his spine while working as a bricklayer on Federal Street, Pittsburgh, so in October he returned to his mother's home at Prato Carnico, Italy, to recover from the injury and to visit his mother and brothers. After his arrival Cimador was kept under surveillance by the Italian authorities who asked to see his passport a number of times.

Cimador planned to return to the United States in June 1933, but on June 3, he was arrested and charged with organizing a subversive manifestation at the funeral of Giovanni Cassali which took place on June 1st. At this funeral one d'Agaro made a speech which the Italian authorities considered seditious but which in fact was extremely mild.

Cimador made no speech at the funeral his only activity being an effort to keep the members of the funeral procession in line.

A few minutes before the funeral took place Cimador joined a group which was discussing the funeral. There were present at the time: Cimador, Innocente Petris, Aldo Fabian, one Cristofoli, d'Agaro, and a number of others. It being known that d'Agaro planned to speak at the funeral all considered, knowing d'Agaro's radical leanings, that the speech might be of a radical character so Cimador asked him to show the speech he had written. This d'Agaro refused to do saying that there was nothing dangerous in it whereupon, Cimador in the presence of all, strongly advised d'Agaro against making any speech whatever.

After Cimador's arrest on June 3 he was taken to Ovaro where he remained in jail for 30 hours. During this time he was examined for a short time by a police commissioner from Udine. Cimador then disclaimed having rendered any assistance whatever in the preparation of d'Agaro's speech and denied having organized the so-called subversive

manifestation. He did not tell the agent that a few moments prior to the funeral he had advised d'Agaro, in the presence of witnesses, not to make the speech, because he was aware of the fact that d'Agaro's radical tendencies were well known and he feared that by admitting to have been in d'Agaro's company just before the funeral he would unjustly incriminate himself.

On June 4, Cimador was removed to a jail in Tolmezzo where he remained for two days and was then sent to Udine where he remained in prison until July 14, when he was taken to the confinement colony on the island of Ponza near Naples.

He was tried on June 25th before the Confinement Commission at Udine when he was asked the following questions:

1. Are you an anarchist?
2. Do you know one Di Giovanni?
3. Why did you come back to Italy?
4. How did you receive your injury?
5. Do you receive a pension from your injury?
6. When you were in America did you reside at 1331 East Nelson Street, Pittsburgh?

No questions were asked by the commission concerning the funeral or the alleged cause of his arrest. After a few minutes Cimador was informed that he would be sent into confinement and was then led back to his cell. On his departure for Ponza he was informed that he had been sentenced to five years confinement.

On August 1st Cimador dispatched a registered letter to the American Ambassador at Rome but a receipt was refused him.

On August 18th, or thereabouts, Cimador was escorted to Prato Carnico under guard for the purpose of visiting his aged mother who was dying. He remained at Prato Carnico until August 28, when he was returned to Ponza. On August 25th he was examined by the American Consul from Trieste who had gone to Prato Carnico upon receiving a letter which Cimador had dispatched through a friend.

365.1121 Cimador, Guido/9 : Telegram

The Ambassador in Italy (Long) to the Secretary of State

ROME, August 31, 1933—11 a.m.
[Received August 31—8:30 a.m.]

95. My 87, August 14, 7 p.m. Consul Trieste informs me Cimador has been released.

LONG

811.00F/163

The Consul at Trieste (Winslow) to the Secretary of State

No. 308

TRIESTE, October 19, 1933.

[Received November 7.]

SIR: I have the honor to report that it appears that pressure is brought by Italian fascists upon naturalized American citizens of Italian birth to induce them to become members of the Fascist party and to take the Fascist oath of allegiance and that Italian officials endeavor to control the actions, in the United States, of naturalized Americans of Italian birth. An excellent example of both activities is represented by the case of Aurelio Toppano which is reported herewith, while no better example of the latter activity may be found than that of Guido Cimador whose case was reported in this Consulate's despatch No. 289 of August 11, 1933, and a report to the Embassy at Rome dated August 28, 1933.²²

The Department's instruction of September 11, 1933,²² authorized the issuance of a passport to Aurelio Toppano valid for one year. After the passport had been executed it was discovered that the photographs presented showed Toppano to have in his lapel a Fascist button thus indicating him to be a member of the Fascist party. He was asked to present himself at the Consulate and upon invitation he voluntarily surrendered his Fascist membership card as enclosed herewith. The Fascist oath which appears over Toppano's signature may be translated as follows:

"In the name of God and of Italy, I swear to obey the orders of the Duce and to serve with all my strength (or power) and, if it is necessary with my blood, the cause of the Fascist Revolution."

As will be noted from Toppano's affidavit as attached hereto,²² he apparently did not realize that he had taken an oath and was induced to become a member of the Fascist party because of special privileges promised to him while here and when in the United States. One of the most interesting promises was that the Italian Consul in the United States through fascists and regardless of Toppano's American citizenship, would, in view of his Fascist membership, assist him in obtaining work in the United States.

It is understood that the Fascist oath appears in application forms for membership but Toppano did not recall having seen it.

If the Department desires further information on the case it may address Toppano in care of his cousin, Victor Toppano, at R.F.D. No. 2, Walla Walla, Washington, after December 15, 1933.

In view of the new facts presented Toppano was requested to execute a revised form No. 213, which is enclosed herewith.²²

²² Not printed.

I take this occasion to commend the efficient manner in which Vice Consul T. Monroe Fisher handled this case.

Respectfully yours,

ROLLIN R. WINSLOW

REPRESENTATIONS BY THE ITALIAN EMBASSY RESPECTING VIOLENT DEATH OF AN ITALIAN NATIONAL WHILE DETAINED IN JAIL AT NEW ORLEANS

411.65 Palumbo, Rosolino/7

*The District Attorney of New Orleans (Stanley) to the Secretary of the Governor of Louisiana (Leche)*²³

NEW ORLEANS, June 27, 1932.

DEAR SIR: I beg to acknowledge your letter of June 17th enclosing copies of letters from Dr. Vitale G. Gallina, Acting Royal Italian Consul at New Orleans.

Replying to the inquiries contained in the letter dated May 30th, 1932, from Dr. Gallina to His Excellency, O. K. Allen, Governor of Louisiana, I beg to advise:—

An investigation was made into this case by myself, as District Attorney for the Parish of Orleans, and numerous witnesses were summoned before the Orleans Parish Grand Jury, for the Purpose of investigating into the death of the said Ross Palumbo.

The persons suspected of having caused the death of the said Ross Palumbo were Detective William Vandervort and Detective William F. Grosch, members of the Detective Department of the City of New Orleans.

In addition to these men, the State also investigated the alleged brutality committed upon the persons of Samuel Mistretta, Joseph Polizzi and Charles Labella, by certain other members of the New Orleans Police Force.

The Grand Jury, after hearing the entire case, voted "No True Bills" against the following persons for the following offenses:—

1. State of Louisiana *vs.* Robert Stack and Jos. Raggio, No. 65090-Sec. "E", Indictment for Assault and Battery of one Samuel Mistretta.
2. State of Louisiana *vs.* William Vandervort and William F. Grosch, No. 65083-Sec. "E", Indictment for Assault, Beating and wounding one Joseph Polizzi;
3. State of Louisiana *vs.* William Vandervort and William F. Grosch, No. 65088-Sec. "E" Indictment for Assault, Beating and Wounding one Charles Labella;
4. State of Louisiana *vs.* William Vandervort and William F. Grosch, No. 65089, Sec. "E", Indictment for Manslaughter of one Ross Palumbo.

²³ Copy transmitted to the Secretary of State by the Office of the Governor of Louisiana under covering letter of July 29, 1932; received August 5.

I beg to advise that the State is barred from further action in the matter, and according to the Louisiana law, the cases are closed.

I have furnished to the office of the Italian Consul copies of statements taken by my office, and will be pleased to furnish the Italian Consul with whatever additional data may be in the possession of my office, which may be desired by the Italian Consul.

I have [etc.]

EUGENE STANLEY

411.65 Palumbo, Rosolino/1

The Italian Ambassador (Martino) to the Secretary of State

WASHINGTON, July 14, 1932.

MR. SECRETARY OF STATE: On May 10, 1932, at 2 A.M. the police arrested on a street of New Orleans, Louisiana, one Rosolino Palumbo, an Italian subject, aged 33, generally known under the name of Ross Palumbo. He was taken to jail and, later, at 4 P.M. of the same day, he was found dead in his cell.

An inquiry was ordered concerning the causes of his death. Herewith I am sending the procès-verbal of autopsy (Enclosure 1)²⁵ and the Coroner's statement (Enclosure 2),²⁵ both of which documents show unquestionably that Palumbo's death was the result of shock inter-abdominal hemorrhage following traumatic rupture of mesenteric vessel.

The inquiry was pursued by taking numerous affidavits from witnesses copies of which are annexed (Enclosures from N.3 to N.24).²⁵ All of these depositions prove beyond any possible doubt that, at the moment of his arrest, Palumbo was in normal physical condition; and several among them show that death was due to violent blows to which the deceased was subjected while in jail; and that the parties guilty of such barbarous proceeding are the two detectives who repeatedly visited Palumbo in his cell, namely, William Grosch and William Vandervort.

This is in fact the conclusion reached by the six jurors called in the case (Enclosure N.25).²⁵

The occurrence appeared so serious to the District Attorney of New Orleans that he ordered an investigation of his own, summoned witnesses and finally filed a bill with the Grand Jury against the two detectives named above for the murder of said Palumbo.

Notwithstanding the testimonies and the results of the inquiry as shown by the documents here enclosed, the Grand Jury (by secret proceedings) returned a "no-true bill".

In the presence of such an outcome and of facts of such extreme seriousness as the ones indicated, Your Excellency will recognize that this

²⁵ Not printed.

appears to be a case of gross miscarriage of justice. The Attorney who, on behalf of the Italian Consul at New Orleans, attended to the case, declares that no hope is to be entertained of arriving locally at any practical results. I therefore must have recourse to Your Excellency asking for the State Department's intervention so that this wrong may have adequate redress. Justice demands that the parties guilty of the brutal conduct receive exemplary punishment. Justice demands also that the widow and child of the murdered man receive due indemnity for the loss of their husband and father respectively.

That this case has caused a wave of indignation and horror to rise in New Orleans is shown by the newspaper clippings collected in the annexed scrap-book. (Enclosure 26).²⁶

That the Grand Jury, in rendering their verdict, have proven to be in a frame of mind incompatible with administration of justice one can unfortunately appreciate when one reads the inconceivable utterances attributed by the newspaper *New Orleans States* in its issue of May 12, 1932, to Judge Alexander C. O'Donnell, who presides in one of the criminal Courts of New Orleans, and who appears to come openly in defense of third degree methods. (Your Excellency will find these utterances reproduced on page 10 of the accompanying scrap-book.)

In the presence of a case like the one in question, the consequence of which was the death of the Italian subject Rosolino Palumbo, it is my duty to request the intervention of the State Department to the end that redress be made, the punishment of the guilty ones assured and a just indemnity accorded to the widow and child of the murdered man.

Accept [etc.]

GIA MARTINO

411.65 Palumbo, Rosolino/9

The Secretary of State to the Italian Chargé (Diana)

The Secretary of State presents his compliments to the Royal Italian Chargé d'Affaires *ad interim* and refers to the Embassy's note of October 31, 1932,²⁷ and the previous correspondence concerning the death of Rosolino Palumbo. In response to the Embassy's request for information which the Department may have secured in a preliminary way regarding this matter, the Embassy is advised that a letter has been received from the Governor of Louisiana,²⁷ in which it was stated that this matter was immediately investigated in May, 1932, by the District Attorney for the Parish of Orleans. The Governor has transmitted a copy of the letter of June 27, 1932, addressed to his secretary by the District Attorney,

²⁶ Not reprinted.

²⁷ Not printed.

Mr. Eugene Stanley. A copy of this letter, which reports the results of the investigation, is enclosed herewith.²⁸

WASHINGTON, December 1, 1932.

411.65 Palumbo, Rosolino/10

The Italian Chargé (Diana) to the Secretary of State

The Chargé d'Affaires of Italy presents his compliments to His Excellency the Secretary of State and has the honor to acknowledge the receipt of the Department's *note-verbale* of December 1st concerning the death of the Italian subject Ross (Rosolino) Palumbo, following to a "third degree" proceeding.

While thanking for the kind communication contained therein, the Chargé d'Affaires feels that he must call attention to the fact that the letter addressed by the District Attorney of the New Orleans Parish dated June 27, 1932, enclosed to the said *note verbale*, had already been communicated by the District Attorney himself to the Italian Consul at New Orleans who had transmitted it to the Embassy before Ambassador de Martino directed to the Secretary of State his note of July 14, 1932.

The Chargé d'Affaires, therefore, has been unable to gather from it any new element in regard to the question about which the situation appears to him to be at the same point as at the time when His Excellency de Martino's note was sent. This note was in fact addressed to His Excellency the Secretary of State precisely in view of the reply given by the District Attorney to the Governor of the State of Louisiana in the particular case of Ross Palumbo. The Chargé d'Affaires deems it his duty to inform the Department of State that it is not possible for him to agree in any way with the conclusions contained in the letter by the said District Attorney, according to which the Ross Palumbo case ought to be considered closed as far as the State of Louisiana is concerned. The Embassy has no way to ascertain whether the opinion of the Governor coincides with that expressed by the District Attorney; but it believes this cannot be the case as the point of view of the District Attorney, namely that, after the verdict of the Grand Jury, any action of the State concerning Palumbo's death is precluded, does not appear juridically tenable.

In fact, in respect to the State, once Palumbo was arrested and jailed, the Superintendent of the jail (in this case Warden George Miller) and the Criminal Sheriff (in this case Mr. George E. Williams) became legally accountable for the prisoner. Palumbo who entered the jail

²⁸ *Ante*, p. 591.

healthy in body and mind, was later found dead in his cell, from a cause due to violence and the autopsy has excluded the theory of suicide.

The contacts held with the authorities of the State of Louisiana by the Italian Consul at New Orleans have so far been only of an informative nature, as the Embassy did not instruct the Consul as to his action with the State Authorities, since the Embassy had already officially laid the matter before the United States Government.

The Chargé d'Affaires has therefore the honor to call the State Department's attention on the gravity of the facts which led to the death of the Italian subject Ross Palumbo while under the third degree and in the hands of the local police, and has the honor to ask to be kindly informed of the action the Department has judged it appropriate to take in order that a result conformable to justice may be obtained, as indicated in Ambassador de Martino's note of July 14, 1932, both for what concerns the responsibilities of the deed, and for what regards the just indemnity to which the widow and son of the murdered man are entitled.

The Chargé d'Affaires therefore trusts to receive information the Department of State will courteously communicate to him on the case in question.

WASHINGTON, January 9, 1933.

411.65 Palumbo, Rosolino/12

The Secretary of State to the Governor of Louisiana (Allen)

WASHINGTON, February 7, 1933.

SIR: The Department refers to your letter of July 29, 1932,²⁹ concerning the death of Ross (Rosolino) Palumbo in New Orleans on May 10, 1932, and encloses for your further information a note of January 9, 1933, from the Chargé d'Affaires of Italy.

You will observe that the Chargé d'Affaires invites attention to the gravity of the circumstances which led to the death of Ross Palumbo while in the hands of the local police and asks to be informed of the action this Government has deemed it appropriate to take "in order that a result conformable to justice may be obtained, as indicated in Ambassador de Martino's note of July 14, 1932, both for what concerns the responsibilities of the deed, and for what regards the just indemnity to which the widow and son of the murdered man are entitled".

May I, in this relation, invite your particular attention to the report of January [June] 27, 1932, of Mr. Eugene Stanley, District Attorney, in which he states that the Grand Jury, after hearing the entire case, voted not to indict William Vandervort and William F. Grosch for

²⁹ Not printed.

manslaughter, that the State is barred from further action in the matter and that according to the laws of Louisiana the case is closed. I would appreciate it if you would be good enough to furnish me with authenticated copies of all official records relating to the case and inform me, with appropriate citation of pertinent authorities, more particularly concerning the laws of Louisiana which Mr. Stanley states render the case closed.

In view of the serious manner in which the Italian Government views this lamentable case, I would appreciate it also, if you would give it your personal attention with a view to taking such further steps as may be possible and proper in the circumstances looking to the determination of the person or persons responsible for the death of Palumbo and, if possible, to the administration of the proper punishment when such responsibility shall have been determined.

In view of the fact that Ross Palumbo was taken into custody by the competent local authorities, that he died as the result of violence while in the lawful custody of such authorities and that none of the said authorities has been indicted, you will appreciate that this Government is under an international obligation to render a more satisfactory accounting of the matter to the Italian Government than is contained in the report of the District Attorney. As you are aware, it is a well recognized principle of international law that governments are responsible in damages for wrongful deaths of nationals of other countries within their jurisdiction in cases where appropriate action looking to the apprehension and punishment of the wrong-doers is not taken. It is, therefore, incumbent upon this Government in this case to establish by satisfactory evidence that efficient measures were taken to determine the persons responsible for the death and to mete out adequate punishment after the responsibility shall have been determined, or to pay the Italian Government a proper indemnity. In this connection, I am enclosing a copy of a decision rendered on November 16, 1926, by the Commission established pursuant to the convention of September 8, 1923, between the United States and Mexico in the case of *Francisco Quintanilla et al. v. the United States of America*.³⁰

It appears that the Italian Government intends to press a claim for international reclamation growing out of the death of Ross Palumbo. Inasmuch as the question of citizenship is important in a claim for international reclamation, I would appreciate it further if you would ascertain very definitely the citizenship status of the deceased and of the widow and child, as well as the date of the arrival of the deceased in this country and his place of residence after his arrival.

I have [etc.]

H. L. STIMSON

³⁰ For text of decision, see *Opinions of Commissioners Under the Convention Concluded September 8, 1923, Between the United States and Mexico*, pp. 136-139.

411.65 Palumbo, Rosolino/11

The Secretary of State to the Italian Ambassador (Rosso)

The Secretary of State presents his compliments to the Royal Italian Ambassador and has the honor to acknowledge the receipt of his Embassy's note of January 9, 1933, concerning the death of Ross (Rosolino) Palumbo in New Orleans.

A copy of the note under acknowledgment has been transmitted to the Governor of the State of Louisiana with a view to ascertaining whether any further steps in the premises can be taken by the competent authorities of the State of Louisiana. Upon receipt of a reply from the Governor a further communication will be addressed to the Ambassador.

WASHINGTON, February 7, 1933.

411.65 Palumbo, Rosolino/15

The Italian Ambassador (Rosso) to the Acting Secretary of State

The Italian Ambassador presents his compliments to the Honorable Acting Secretary of State and, referring to the Embassy's note of January 19 [9], 1933, has the honor to invite his kind attention on the opportunity of reaching as soon as possible a definition of the case concerning the death of the Italian citizen Rosolino Palumbo.

The Ambassador would be much obliged to the Honorable Acting Secretary of State for having the appropriate authorities solicited to send a prompt and exhaustive reply to the objections contained in the note indicated above, so that all penal and civil responsibilities in the death of the said Italian subject may be ascertained.

The desire of the Ambassador to have the question speedily and satisfactorily settled arises, not only from the delicate nature of the case, but also from the evident moral and material interest that its investigation presents for the family of the deceased.

WASHINGTON, July 5, 1933.

411.65 Palumbo, Rosolino/19

The Secretary of State to the Governor of Louisiana (Allen)

WASHINGTON, August 12, 1933.

SIR: Reference is made to the letter of July 24, 1933, and its enclosure,³¹ received from your secretary, Richard W. Leche, regarding the death of Ross (Rosolino) Palumbo, in New Orleans on May 10, 1932.

³¹ Neither printed.

I regret to say that the letter under reference and its enclosure do not supply the information requested in the Department's letter of February 7, 1933. In that letter the Department expressed a desire to be furnished (1) with authenticated copies of all official records relating to the case, and (2) with the citation of pertinent authorities concerning the laws of Louisiana which the District Attorney stated render the case closed.

In addition to the foregoing, the Department expressed a desire that you would be good enough to take such *further* steps as might be possible and proper to determine the person or persons responsible for the death of Palumbo, and to have proper punishment administered. The Department also asked to be informed with respect to the citizenship status of the deceased and of the widow and child.

The requests just indicated were made because of the receipt by the Department of a note from the Italian Embassy, dated January 9, 1933—copy of which was enclosed with the Department's letter to you of February 7, 1933,—wherein the Embassy stated: (1) that it did not agree with the conclusions contained in the District Attorney's letter of June 27, 1932, to the effect that the case ought to be considered closed; (2) that it desired to know whether the opinion of the Governor of the State of Louisiana coincided with the opinion expressed by the District Attorney; (3) that the Warden and Sheriff were legally accountable for the prisoner who entered the jail, healthy in mind and body; and (4) that it viewed the matter with great concern and desired to know the attitude of this Government with respect to the punishment of the responsible parties and the payment of an indemnity to the widow and son of the deceased.

You will appreciate, I am sure, the necessity on the part of this Government of maintaining a proper attitude toward the reasonable requests of foreign Governments in matters of this kind. The detailed information indicated in the Department's letter of February 7, 1933, and in the note of January 9, 1933, from the Italian Embassy, is needed in order that I may make an appropriate reply to the Embassy.

It is proper to add that unless this Government is able to show, by convincing evidence, either that the death of Palumbo was not wrongful, or that the guilty parties have been properly punished, it is not improbable that the Italian Government will insist upon the payment of an indemnity.

I should like to avoid such a situation by showing that the authorities of the State of Louisiana have not failed to do their full duty in the premises.

I have [etc.]

CORDELL HULL

411.65 Palumbo, Rosolino/21

The Secretary of State to the Governor of Louisiana (Allen)

WASHINGTON, November 3, 1933.

SIR: Reference is made to your letter of September 28, 1933, and its enclosures,³² regarding the death of Rosolino Palumbo in New Orleans on May 10, 1932.

Permit me to thank you for the documents you have submitted which have served to enable the Department to perceive the precise character of the questions of fact and of law involved in the claim presented by the Italian Government on behalf of the widow and minor child of the deceased. The essential facts as related by the Italian Ambassador in his note of July 14, 1932, are established by the evidence you have submitted. It appears that Rosolino Palumbo was taken into custody by the competent local authorities in good physical condition, that his death was a result of violence inflicted while in the lawful custody of such authorities and that the authorities responsible for his death have not been indicted. The question of international law involved is, therefore, whether there rests upon the competent authorities of the State of Louisiana the obligation to do more than has already been done in this matter.

It would seem to be clear from the statements made by the Italian Ambassador and from the evidence you have submitted that the Italian Government will not be disposed to consider the State of Louisiana has discharged its full responsibilities in the premises until it has succeeded in apprehending and prosecuting the persons responsible for the death of Palumbo, and until an appropriation of funds is made for the payment of a suitable indemnity to the widow and minor child of the deceased.

In a memorandum of July 14, 1932, enclosed with the note of July 15, 1932,³³ from the Italian Ambassador, a copy of which is enclosed, Mr. Augusto P. Miceli, attorney for the Royal Italian Consul at New Orleans, expressed the opinion that notwithstanding the fact that the Grand Jury returned a verdict of a "no true bill" against the two detectives, the District Attorney under the Code of Criminal Procedure could, if he so desired, file a bill of information for manslaughter and bring the case to the courts for trial.

In his letter of April 4, 1933, the District Attorney, without citing any applicable statutes or pertinent cases, states:

"Since the Grand Jury returned "No True Bills" on all the Bills submitted by me as District Attorney to that body, as I stated in my letter of June 27th, 1932, to Honorable Richard W. Leche, Secretary to the

³² None printed.

³³ Neither printed.

Governor of the State of Louisiana, the State of Louisiana is barred from prosecuting before the Criminal Courts of the State the parties alleged to be responsible for the death and beating of the said prisoners, as, once a Grand Jury returns a "No True Bill" in a case, a District Attorney is powerless to bring the matter before the Trial Courts, as the finding of the Jury is conclusive and final against the State."

The pertinent part of the letter of June 27, 1932, referred to by the District Attorney in the above quotation, reads:

"I beg to advise that the State is barred from further action in the matter, and according to the Louisiana law the cases are closed."

In view of the difference of opinion I should be pleased to receive from you for transmission to the Italian Ambassador a considered legal opinion by the Attorney General of your State, approved by you, covering in a complete and convincing manner the precise legal question presented.

In the event the State of Louisiana is, as stated by the District Attorney, barred from prosecuting the persons alleged to be responsible for the death of Palumbo, may I express the hope that you will be disposed to bring the facts to the attention of the proper authorities of the State and to recommend that an appropriation of funds be made for the payment of a suitable indemnity to the legal representatives of the deceased.

The rule of international law in such cases is clear. Reference might be made to the case of *Francisco Quintanilla et al. v. The United States* decided on November 16, 1926, by the Commission established pursuant to the Convention of September 8, 1923, between the United States and Mexico,³⁵ a copy of the decision in which case was enclosed with the Department's letter of February 7, 1933. The opinion in the case reads in part as follows:

". . . A foreigner is taken into custody by a State official. It would go too far to hold that the Government is liable for everything which may befall him. But it has to account for him. The Government can be held liable if it is proven that it has treated him cruelly, harshly, unlawfully; so much the more it is liable if it can say only that it took him into custody—either in jail or in some other place and form—and that it ignores what happened to him.

"4. The question then arises whether this duty to account for a man in Governmental custody is modified by the fact that the custodian himself is accused of having killed his prisoner and, as an accused, can not be made to testify against himself. The two things clearly are separate. If the Government is obligated to state what happened to the man in its custody, its officials are bound to inform their Governments. It might be that the custodians themselves perish in a calamity together with the men in their custody, and therefore can not furnish any in-

³⁵ General Claims Convention, *Foreign Relations*, 1923, vol. II, p. 555.

formation. But if they are alive, and are silent, the Government has to bear the consequences. The Commission holds, therefore, that under international law and under Article I of the Convention of September 8, 1923, the respondent Government is liable for the damages originating in this act of a State official and resulting in injustice." (*Opinions of the Commissioners under the Convention of September 8, 1923, between the United States and Mexico*, pages 138-139.)

Reference might also be made to the decisions rendered in the case of *Janes v. Mexico* and in the case of *Galván v. The United States*. In the opinion rendered on November 16, 1926, in the *Janes* case the Commission stated:

"... The international delinquency in this case is one of its own specific type, separate from the private delinquency of the culprit. The culprit is liable for having killed or murdered an American national; the Government is liable for not having measured up to its duty of diligently prosecuting and properly punishing the offender. The culprit has transgressed the penal code of his country; the State, so far from having transgressed its own penal code (which perhaps not even is applicable to it), has transgressed a provision of international law as to State duties..." (*Ibid.* 115.)

In the *Galván* case decided on July 21, 1927, the Commission said:

"... This case presents no difficulties. The question at issue is whether it reveals a failure of compliance with the general principle of international law requiring authorities to take proper measures to apprehend and punish a person who appears to be guilty of a crime against an alien. The Commission is bound to conclude that there was a clear failure on the part of the authorities of the state of Texas to act in conformity with this principle..." (*Ibid.* 410.)

It is hardly necessary for me to add in conclusion that it is cases of the *Palumbo* character which make it difficult for the Department to obtain on behalf of American citizens who are similarly mistreated abroad the full measure of protection to which they are entitled under the recognized principles of international law.

I have [etc.]

CORDELL HULL

[On April 13 and July 5, 1934, requests for a reply to the above letter were addressed to the Governor of Louisiana, but no reply has been found in the files of the Department of State. Aside from a note of June 27, 1934, asking whether further information had been received from the Governor of Louisiana, the Italian Government apparently made no further representations with regard to this case.]

LATVIA
REPRESENTATIONS REGARDING ALLEGED DISCRIMINATION
AGAINST AMERICAN TRADE IN LATVIA

660P.1111/1

The Secretary of State to the Minister in Latvia (Skinner)

No. 182

WASHINGTON, April 4, 1933.

SIR: Reference is made to the Legation's despatch No. 1192 of March 3, 1933,¹ reporting on the conference of American Government officers in Latvia, and more particularly to page 4 [2] of enclosure thereto where the following discussion with respect to trade promotion is set down in the report of the conference:

"The Commercial Attaché, Mr. Morse, reported that he had not noticed any tendency on the part of the Latvian Foreign Exchange Committee to discontinue its discrimination against importers of products from the United States. Four specific instances came to his attention since the last meeting where representatives of American firms had received orders from Latvian Government departments for goods manufactured in the United States and in each the Foreign Exchange Committee had refused to authorize the importers to pay for the goods in dollars. In each of these instances the importers were instructed by the Latvian Foreign Exchange Committee to place the order in countries other than the United States, regardless of the fact that to do so would increase the cost to the departments requiring the goods."

The report of the proceedings of the conference fails to record what action, if any, was taken by the Legation in connection with these four cases which, in so far as the facts are set forth by Mr. Morse, appear to constitute discrimination against American trade by officials of the Latvian Government. There is nothing in the report to show whether the Legation called upon the Commercial Attaché to furnish it with specific and detailed information regarding these cases with a view to making representations, either formally or informally, to the Latvian Foreign Office with regard to such discrimination against American trade.

The Department has noted in a number of other reports of the proceedings of the conferences of American officers at Riga similar statements regarding discrimination by Latvian officials against American trade. Mention in this connection is made among others of the Legation's

¹ Not printed.

despatch No. 1096 of January 26, 1933,² in which on page 2 you discuss such discrimination, and in the enclosure to which on pages 4 and 5 the Commercial Attaché reported in general terms allegations of discriminatory actions. It is noted that no reference is made in these reports of any action taken or contemplated by the Legation in the protection of American interests suffering as a result of this alleged discrimination; nor has the Legation reported in subsequent individual despatches any action taken by it in connection with the various points raised in the discussions at the conferences in question of alleged discrimination against American trade.

The Department suggests that cases involving discrimination brought to the attention either of the Legation or the Consulate from whatever source be subjected to a careful and exhaustive scrutiny with a view to the determination of their merits and the basis of any possible protest to the competent Latvian authorities. If the Commercial Attaché should, in the work of his office in connection with the promotion of American trade, become conversant with and report to the Legation cases, similar to those referred to in the above quotation, which appear to involve discrimination, he should be directed to submit promptly to the Legation in writing a report containing detailed information of a factual character covering the cases. The Legation should then itself make, or call upon the Consulate to make, such supplementary investigation as may be necessary to determine the additional facts essential to a proper consideration of the case which may not have been available to the office of the Commercial Attaché.

As the Department has already pointed out to the Legation in its instruction No. 90 of August 2, 1932,² the function of protecting the interests of American trade is inherently a prerogative and an obligation of the Department and its representatives abroad. The Department expects its representatives in the field to take prompt and appropriate measures in the protection of American commercial interests when cases involving discrimination against our trade come to their attention.

In order that the Department may have an accurate record of laws, regulations and acts tending to discriminate against American trade, the Legation is directed to submit quarterly beginning April 1, 1933, a survey of its activities in protecting American trade. This survey, which is not intended to supplant reports on important individual developments of this nature, should outline for the preceding quarter the new legislation, regulations, and practices which operate to restrict or to discriminate against American trade, list the specific instances of discrimination coming to the attention of the Legation, and report the action taken by

² Not printed.

the Legation and the results thereof. It is anticipated that the Legation and the Consulate will cooperate to the fullest extent in the performance of this important work.

Very truly yours,

For the Secretary of State:
WILBUR J. CARR

660P.1111/3

The Minister in Latvia (Skinner) to the Secretary of State

No. 1307

RIGA, April 21, 1933.

[Received May 2.]

SIR: I have the honor to acknowledge the receipt of the Department's Instruction No. 182, dated April 4, 1933, in regard to discrimination against American trade. I regret to infer therefrom that the feeling prevails in the Department that particular cases of discrimination have not been enquired into and dealt with appropriately, and especially as such is not at all the case.

1. Our trade relations with Latvia are covered by a guarantee of "most favored nation" privileges. Yielding to circumstances, the Latvian Government has set up a system of complicated contingents and "valuta" regulations, the latter more trying than the former. Thus, when the importer obtains a permit to bring in certain goods he may be, and if the goods are of American origin, frequently is, refused a permit to purchase exchange with which to pay for them. Large committees dispose of these questions, and it is not easy to establish responsibility. The fact is undeniable, however, that importers of American goods are advised to place their orders in Great Britain or Germany, as they can obtain "valuta" with which to pay their bills. In numerous instances the Consulate and the Commercial Attaché's office have intervened successfully; in others, importers have quietly refrained from purchasing desired American goods, and in still many other cases, possibly the most numerous class, intending importers of American goods have evaded the restrictions by the use of influence. I am handicapped in my efforts to overcome obstacles to particular importations by the usual refusal of the importer to give particulars upon which official action might be based, lest reprisals against him follow.

2. Whenever information of a specific character is available respecting obstacles placed in the way of importing American goods, officers of the Legation have appealed to the competent authorities. Invariably, action is promised but long delayed. In some instances representations have been successful, in others partially successful, and at other times they have failed. I have, myself, personally, and in writing, dealt with the Minister of Foreign Affairs on these matters, and in despatches to the

Department have disclosed the situation, among these despatches being my No. 88 of February 26, 1932; No. 201 of May [*March*] 30, 1932; No. 292 of April 25, 1932; No. 657 of August 24, 1932; 1096 of January 26, 1933.⁴ On March 30, 1932, I left an *Aide-Mémoire* with the Minister of Foreign Affairs, a copy of which is enclosed herewith. On January 23, 1933, after a conversation, and to assist the Minister, I sent him a formal note, a copy of which is enclosed herewith, and on March 9, 1933, having in the meantime received no reply, I sent him another.

3. As the correspondence above mentioned discloses, I have complained orally and in writing, in season and out of season, about trade discrimination. I suspect that under the preceding Government the amiable dispositions of the Minister followed by inaction arose from lack of authority on his part; that is, the committees dictated to the Government and not the Government to the committees. At all events the Government in which Mr. Zarins was Minister for Foreign Affairs fell some weeks ago before I could obtain from him any statement in reply to my complaint that our Treaty rights were not being respected. The question remained open and in a most unsatisfactory state when the Ministry fell.

4. Early in March a new Government was formed, with Mr. Salnais as Minister of Foreign Affairs. At my first meeting with him in his present capacity I pointed out various facts, and especially that I was awaiting an answer to my enquiries. He promised to familiarize himself with the circumstances, and I have heard unofficially that some sort of a note is being drafted at the present time in the Foreign Office, with respect to which I shall report as soon as I receive it.

5. I anticipate that the Latvian Government, if and when they terminate their policy of avoidance, will say that they were not the only ones to invent restrictions and contingents, that they have been forced into their present position, that we buy little from them, whereas other countries buy a good deal, and finally, that necessity knows no law. It is a fact, I believe, that the British, who are the best customers of this country, constantly urge the local Government to direct their purchases into British channels, and the implied threat of losing British trade is used to our disadvantage.

6. The Department mentions four cases discussed at the Conference of American Government officers, held on February 23, 1933. The following are the particulars:

Underwood Typewriters: The intending importer, after consultation with the Commercial Attaché, consulted a certain Mr. Kacens, of the Import Regulating Committee, and eventually secured the foreign exchange permit;

Tractor Parts: In this case the local representative of the Ford Motor Car Company was informed that there were no dollars available, and

⁴ None printed.

that American parts invoiced in dollars could not be brought in. He was told to buy his parts elsewhere, and as the importer was obliged to fill the order within a limited time, he procured the goods in England rather than drop out of the business. He gave the information in confidence and did not desire any of our officials to intervene;

Petroleum Products: The director of the Standard Oil Company stated to the Commercial Attaché that he had been compelled to resort to barter in order to get money out of the country, and had made one transaction involving 20,000 lats worth of Latvian lumber. This information was given in confidence;

Spark Plugs: In this matter the importer, who also represents the Ford interests, applied for an import permit for 1,000 kilograms of spark plugs from the United States; 200 from Germany; and 100 from England. The permit received by him authorized him to import 300 kilograms from England and none from the United States. This importer, as above related, spoke in confidence, and as he imports from several countries and not alone from the United States, was unwilling to endanger his position with the authorities by stressing the American case and obtaining action from the Legation.

Thus, while it is often impossible to force the particular case upon the attention of the authorities, I have used the information to the best advantage in my general representations.

7. A quarterly report asked for in the last paragraph of the Department's Instruction will be provided, but it might be remarked in this connection, that the Department is always informed respecting new laws and decrees affecting trade, and of our action in such cases, in separate despatches.

8. The Legation and the Consulate, and the Commercial Attaché, as well, are cooperating to the fullest extent and are doing their utmost in difficult circumstances to relieve our trade of its burdens. I have never failed to have prompt and effective assistance in these matters from all of our representatives.

Respectfully yours,

ROBERT P. SKINNER

[Enclosure 1]

AIDE-MÉMOIRE

The American Minister called upon His Excellency, the Minister for Foreign Affairs, today, to express the concern of the Government of the United States over the various trading restrictions which have been put into effect in Latvia in consequence of the economic crisis. Mr. Skinner reiterated that the difficulties of the situation were fully appreciated and that he had no desire to add to them unnecessarily, but rather to be of practical assistance if that were possible. On the other hand, his Government expected that in the application of restrictions, either upon the importation of goods, or upon the purchase of exchange, the spirit of treaty

obligations would be respected more carefully than now appears to be the case.

As respects the importation of American goods, it was recognized that the share of the United States might not always easily be determinable, but certainly a share corresponding to the average annual imports from the United States over a period of several years preceding the adoption of restrictions might constitute a fair standard. It would be possible to prevent a fair distribution of importations into Latvia just as certainly by restrictions on the purchase of exchange as by an arbitrary distribution of imports, themselves.

As respects the purchase of exchange, Mr. Skinner expressed regret on hearing that the Latvian Government had given assurances that countries with which Latvia enjoyed a favorable trade balance would receive first consideration, and he believed it to be a fact that firms in the United States were not obtaining their proper proportion of the whole. Any arbitrary arrangements of this kind must necessarily provoke great dissatisfaction, as the obviously fair method would be to grant a uniform percentage of all applications, so long as complete satisfaction is impossible.

Mr. Skinner pointed out that the theory now accepted in Latvia, to the effect that countries with which Latvia did not have a favorable trade balance, were to receive consideration last, was quite erroneous. Importations from the United States are not absorbed by purchasers in Latvia as a result of idle chance, but because the commodities imported are required, and in due course are employed for the production of the very articles which are subsequently exported from Latvia. It is impossible, therefore, to declare categorically that either exports or imports are entitled to special favor, the necessity for both standing on a parity. In a note received from the Ministry some days ago, it was mentioned that the sale of exchange would have to continue upon a restricted basis until fresh capital were brought into the country. Mr. Skinner felt sure that Mr. Zarins would agree that fresh capital, as, for example, further deposits from the General Motors Acceptance Corporation, would be most unlikely so long as remittances were governed by the uncertain rules which now prevail and which were giving considerable dissatisfaction.

Mr. Skinner concluded by hoping that at an early date business would improve and that these vexatious incidents would cease to arise. He was confident that the Latvian Government, upon reconsideration, would deal with American trade and commerce on no less favorable terms than those which were assured to the United States under the commercial treaty.⁵

RIGA, March 30, 1932.

⁵ Treaty of Friendship, Commerce and Consular Rights, *Foreign Relations*, 1928, vol. III, p. 208.

[Enclosure 2]

*The American Minister (Skinner) to the Latvian Minister for
Foreign Affairs (Zarins)*

RIGA, January 23, 1933.

EXCELLENCY: I have the honor to call your attention to the deliberate efforts of those in authority to prevent importers of goods in Latvia from purchasing supplies in the United States, in violation of the commercial agreement between the United States and Latvia signed on April 20, 1928.

It is well known in trading circles that discrimination has been practised during a considerable period, and in the public press of this city, on January 19, it was conspicuously announced that the Council of the Bank of Latvia had come to the conclusion that foreign goods should be imported from those countries which bought Latvian products and that instructions had been given to draw up a project for enforcing this point of view more completely.

While the Government of the United States sympathizes with the Government of Latvia in its endeavors to meet a difficult economic situation, it nevertheless remains a fact that this should and may be accomplished with due respect to treaty engagements. I must, therefore, invite you to inform me at an early date whether it is proposed to continue the practises to which I have alluded, and in the contrary event, to indicate to me the ways and means whereby American trade hereafter shall enjoy access to the Latvian market on equal terms with those of other countries.

I avail myself [etc.]

[File copy not signed.]

[Enclosure 3]

*The American Minister (Skinner) to the Latvian Minister for
Foreign Affairs (Zarins)*

No. 159

RIGA, March 9, 1933.

The American Minister presents his compliments to His Excellency the Minister for Foreign Affairs and desires to refer to his note of January 23, 1933, to which no definite answer thus far has been returned in regard to discriminatory practices applied to American trade in this country, notwithstanding the guarantees set out in the commercial agreement between the United States and Latvia signed on April 20,

1928. Mr. Skinner hopes that an early reply will be made to his inquiries.

In this connection he would also call attention to an article published in issue No. 2, of 1933, of the *Ekonomists* a publication for which it is understood that the Ministry of Finance is responsible, under the heading of "The Effect of Contingents and Valuta Restrictions on our Imports." The author of this article is Mr. K. Kacens, director of the Department of Trade and Industry of the Ministry of Finance, and a member of the Commission for Regulating Imports. In this article Mr. Kacens sets forth the view that the most favored nation principle is generally regarded as impracticable, and the further opinion that the policy of regulating imports and valuta operations gave the Government of Latvia the opportunity of directing purchases to those countries that purchase Latvian goods. Mr. Skinner would be glad to know whether the Latvian Government accepts responsibility for this publication and for the view expressed by Mr. Kacens.

660P.1111/4

The Minister in Latvia (Skinner) to the Secretary of State

No. 1314

RIGA, April 26, 1933.

[Received May 11.]

SIR: In my No. 1307 of April 21, 1933, I replied at some length to the Department's instruction No. 182 of April 4, 1933, and in my reply mentioned that I was expecting at any moment to receive a note on the subject from the Minister for Foreign Affairs. This note has now been received, and a copy is enclosed herewith.* I also enclose a copy of my reply to this note, which I am taking personally to the Minister for Foreign Affairs. I trust that what I have said to the Minister will commend itself to the Department.

Respectfully yours,

ROBERT P. SKINNER

[Enclosure 1]

The Latvian Ministry for Foreign Affairs to the American Legation

RIGA, April 21 [20?], 1933.

The Ministry for Foreign Affairs has given thoughtful consideration to His Excellency the American Minister's notes dated January 23 and March 9, in which His Excellency has made reference to several articles

* The list annexed to the enclosure has not been copied, being irrelevant. [Footnote in the original.]

in the local newspapers and the attitude of the Latvian authorities with regard to the importation of products into Latvia originating in the United States.

After having made inquiries of the competent authorities, the Ministry for Foreign Affairs has come to the conclusion that the protests of the American Minister regarding the violation of certain clauses of the commercial agreement of Latvia and the United States are unfounded.

Though the balance of trade and the balance of payments of Latvia with the United States of America have always been unfavorable, yet no discrimination has been shown with reference to the importation of American goods. In 1932 the Exchange Commission has sanctioned the transfer of funds to cover the payment of American goods and commercial debts in the amount of Lats 3,744,369.60 which is 5.58% of the total permits issued by the Foreign Exchange Commission in that year. Taking into consideration the general shrinkage of trade, the proportion of American participation in Latvian imports has not thus decreased, but even increased, namely, the American share in the total of Latvian imports shows 3.5% for 1931 and 3.7% for 1932. Also in 1933 the foreign exchange permits for transfers to the United States have remained approximately in the same proportion.

That no discriminatory practices have been applied to American trade in this country is to be seen also from the attached list showing the amount of American goods which the Commission Regulating Imports has authorised to be imported into Latvia during the 3rd and 4th quarter of 1932.

Up to now the value of American goods coming to Latvia by far exceeds the amount of Latvian goods that go to the American market. In the last twelve years the adverse trade balance of Latvia with the United States is approximately 85,3 million Lats, which is not an insignificant sum counting Latvia's turnover. Besides, consideration must also be given to the fact that a considerable quantity of American products reach Latvia indirectly by transit over other countries (Denmark, Germany, etc.).

In view of these facts the Ministry of Foreign Affairs cannot concur in the conclusion made by the American Minister that American interests are not recognised.

It may also be noted in this connection that disregarding the acute depression existing in 1932 Latvia has paid America for goods and other transactions the sum of Lats 3,744,369.61 but has actually imported goods valued at Lats 3,164,000.

With reference to the articles appearing in the press and the discussions by various organisations regarding the necessity of adapting new principles in foreign trade policy, the Latvian Government cannot

be held responsible for originating the principle of reciprocity in foreign trade relations or for recommending to purchase more of the necessary import goods in those countries to which Latvian products go. As the American Minister may be aware, such policy was and is proposed in the first place by some of those great countries in Europe to which Latvian exports find their outlet. It is natural that Latvia cannot disregard totally these tendencies, having to safeguard her vital export trade interests. Latvia would, however, be highly content if the United States Government would exert its enormous influence and induce the greater powers to abandon this policy and to recognise and apply in practice the most favored nation principle without any restriction.

Latvia having no other means of paying for imports than its export goods, an increase of American imports in this country during the period of depression can be brought about only by an increase of Latvian exports to the United States, and the Latvian authorities would highly appreciate such possibilities.

Finally, it may be observed that Mr. K. Kacens, referred to in the American Minister's note of March 9th, is neither a director of the Department of Trade and Industry of the Ministry of Finance, nor a member of the Commission regulating imports.—

[Enclosure 2]

*The American Minister (Skinner) to the Latvian Minister for
Foreign Affairs (Salnais)*

No. 176

RIGA, April 24, 1933.

The American Minister has the honor to acknowledge the receipt of a Note from His Excellency, the Minister for Foreign Affairs, dated April 20th, 1933, (610.63/33—8740), respecting difficulties encountered by intending importers of American goods as contrasted with the facilities enjoyed by importers of goods of non-American origin. Mr. Salnais mentions, especially, Notes from this Legation dated January 23rd and March 9th, 1933, but omits to comment upon Mr. Skinner's preceding discussions with Mr. Zarins which gave rise to the Notes, and, in the course of which the situation was more particularly described and many instances were given to the Ministry of discrimination against American goods. Many additional cases could be given, except that the intending importers have supplied the data in confidence, for various reasons. Even at this moment Mr. Skinner has before him an application for an import license, signed by a Riga firm, in which a request was made for permission to import kilograms of a certain article from the United States, kilograms from Great Britain, and from

Canada, upon which favorable action was taken with respect to goods from Great Britain, alone. Mr. Skinner has before him still another application for the right to import identical quantities of goods of a certain kind from the United States and Great Britain, upon which the proper authority took favorable action respecting the British goods, alone. It would be unprofitable to multiply these examples, especially as Mr. Skinner does not understand that the facts are questioned.

Mr. Skinner comprehends sympathetically the troubles with which the Government is laboring, and which do not greatly differ from those with which many governments are struggling at this time. He has no desire to offer ill-considered criticism, and would be glad, indeed, to assist the Latvian Government in any proper way. This said, he must point out to Mr. Salnais, as he did also to his predecessor, Mr. Zarins, that the complaints of discrimination are not "unfounded" but are substantial and arise from the unconcealed policy of the administrative authorities to force buying orders for goods away from the United States on account of exchange conditions. Importers who previously obtained all their supplies from the United States have been compelled to find substitute goods elsewhere. The good-will built up after many years of effort is being gradually undermined, and, unless a remedy can be provided, the damage to American trading interests in this market will be permanent rather than transitory. Mr. Skinner desires to point out that the question is not whether more or less goods are received from the United States than are exported to the United States from Latvia, but whether or not treaty rights are respected. The Latvian Government has assumed the obligation to extend to importers from the United States "most favored nation" privileges, and it has furthermore guaranteed that any advantage extended to the goods of any other foreign governments "shall simultaneously and unconditionally, without request and without compensation" be extended to goods from the United States. Mr. Skinner is confident that Mr. Salnais will agree that these rights are now withheld, and must therefore request that the practices complained of be abandoned and that full treaty rights be restored.

The object which the Latvian Government obviously has in mind, namely that of the preservation of its exchange balance, can be attained without penalizing importers of American goods. It is not sufficient, in explanation of refusals to license American goods, that dollar exchange is not immediately available with which to pay for them. It is quite possible, when dollar exchange is unavailable, to authorize importers of American goods to acquire exchange on other countries which the importers themselves can dispose of for dollar exchange.

Mr. Skinner has pleasure in assuring Mr. Salnais that the United States Government is doing its utmost to bring about the abandonment

of the various restrictions upon trade which are causing so many inconveniences at the present time. Nor has it failed at any moment to do its own part in maintaining constantly an open door policy in the United States, as a consequence of which the goods of all countries are received on equal terms; nor has the Government of the United States at any moment failed to recognize all treaty rights of every description. It is quite true that the Latvian Government did not invent the restrictive policies which so generally prevail and from which the most certain mode of escape is by a return to obligations imposed by treaty, and, in so far as limitations upon imports are necessary, to so impose them that they shall fall upon all countries alike, whereupon none can complain and the vicious circle by which trade is now confined may be broken.

In conclusion, Mr. Skinner must re-state that his Government, having steadfastly maintained all of its obligations under the treaty with Latvia and with the friendliest disposition for the Latvian Nation, naturally expects the same treatment from the Government of this country.

660P.1111/5

The Chargé in Latvia (Cole) to the Acting Secretary of State

No. 1461

RIGA, July 7, 1933.

[Received July 21.]

SIR: I have the honor to refer to the Department's instruction No. 182, dated April 4, 1933, requesting a quarterly report, beginning April 1, 1933, on regulations and acts tending to discriminate against American trade, together with a survey of the Legation's activities in protecting American trade.

In the course of the June quarter, no new legislation, regulations, or practices which tend to restrict or to discriminate against American trade were enacted or placed in operation.

The Consulate has informed the Legation that during the June quarter no specific instances of discrimination were brought to its attention.

Two instances of discrimination were brought to the Legation's attention on April 20, 1933, by a local importer of American goods. The facts in these cases are as follows:

1. An application was made to the Import Regulating Commission for permission to import during the second quarter of 1933, 2000 kilograms of automobile tires and tubes from the United States; 10,000 kilograms from Great Britain; and 3000 kilograms from Canada. Permission was granted to import 6000 kilograms, and all of British origin.

2. An application was made to the Import Regulating Commission for permission to import during the second quarter of 1933, 3000 kilograms of motor oil from the United States and 3000 kilograms from Great Britain. Permission was granted to import only 3000 kilograms of British origin.

The two instances mentioned above were brought to the attention of the Latvian Minister of Foreign Affairs in the Legation's note No. 176, dated April 24, 1933, a copy of which accompanied the Legation's despatch No. 1314 of April 26, 1933.

With reference to this note, the Legation expressed the hope in its despatch of April 26th that its language would commend itself to the Department. No reply has as yet been received from the Foreign Office to this note. The Department's observations on the note in question would be appreciated before the Legation undertakes to press the Foreign Office for a reply.

Respectfully yours,

FELIX COLE

660P.1111/5

The Secretary of State to the Chargé in Latvia (Cole)

No. 221

WASHINGTON, August 12, 1933.

SIR: Reference is made to the Legation's despatch No. 1461 of July 7, 1933, reporting on discriminatory trade legislation in Latvia and more particularly to the two cases of alleged discrimination against imports of American automobile tires and motor oil described on page two thereof. The Department has carefully examined the facts set forth in the Legation's despatch under reference but it is not able to determine therefrom whether these two cases actually constitute discrimination by the Latvian authorities against American trade, since the Legation has failed to include in its report complete and precise data with respect to Latvian imports of these two commodities.

There is, for example, nothing in the despatch to show whether the United States is receiving equitable treatment with regard to the granting of permission to import automobile tires and motor oil of American origin into Latvia. In the case covering the imports of automobile tires, the Latvian Imports Regulating Commission denied an application for permission to import some 2,000 kilograms of automobile tires of American origin while at the same time granting in part another application filed by the same importer for permission to import tires of British origin. Such action in a single case may not constitute discrimination against American trade by officials of the Latvian Government. If the Latvian authorities have granted equitable quotas to tires of American origin in acting on other applications for permission to im-

port tires, the action taken by the Imports Regulating Commission in the case reported in the Legation's despatch under reference would not necessarily constitute discrimination against American trade. This same comment applies to the case with regard to the imports of motor oil of American origin.

The Department has observed that the Latvian Ministry of Foreign Affairs in its note to the Legation dated April 21, 1933, a copy of which was transmitted to the Department by the Legation as enclosure No. 1 to its despatch No. 1314 of April 26, 1933, states strongly, and supports its statements with statistics covering imports from the United States, that American commerce is receiving equitable treatment in Latvia. In its reply to the Latvian Foreign Office, the Legation apparently cites in its note No. 176 of April 24, 1933, a copy of which was transmitted to the Department as enclosure No. 2 to despatch No. 1314 of April 26, 1933, the two cases commented on hereinbefore as examples of actual discrimination against American trade by Latvian officials. While the Department approves of the general statements regarding most-favored-nation treatment made by the Legation in this note, it believes that the two cases should not have been brought to the attention of the Latvian Foreign Office in this manner without the inclusion of the pertinent facts relating to American participation in Latvian imports of tires and motor oil tending to establish definitely discrimination against American trade, particularly in view of the fact that the Latvian Foreign Office had already asserted to the Legation that statistical data covering imports from, and the release of foreign exchange to, the United States indicated that American trade was receiving equitable treatment in Latvia.

The Department is of the opinion that its instruction No. 182 of April 4, 1933, pointed out clearly to the Legation the need for careful investigation into, and accurate determination of, all the facts relating to cases of seeming discrimination against American imports into Latvia in order that it may take appropriate measures properly to protect American trade. The data contained in the Legation's despatch under reference does not indicate that such investigations are being made or, at least, reported to the Department by it. The Legation is again cautioned to be in full possession of all the facts before taking action on cases involving alleged discrimination against American trade. The Department hopes that the next quarterly report on the Legation's activities in connection with the protection of American trade in Latvia will reflect greater diligence and precision in carrying out this important function of the Department and its representatives in the field.

Very truly yours,

For the Secretary of State:

WILBUR J. CARR

860P.1111/6

The Chargé in Latvia (Cole) to the Secretary of State

No. 1657

RIGA, October 13, 1933.

[Received October 26.]

SIR: In compliance with the last paragraph of the Department's instruction No. 182, dated April 4, 1933, I have the honor to report that during the September 1933 quarter no new legislation operating to restrict or discriminate against American trade has been enacted in Latvia, nor have any specific instances of discrimination come to the attention of the Legation or Consulate.

Respectfully yours,

FELIX COLE

NETHERLANDS

PROPOSAL FOR THE ESTABLISHMENT OF A RECIPROCAL AIR NAVIGATION ARRANGEMENT BETWEEN THE UNITED STATES AND THE NETHERLANDS ¹

711.5627/58

The Netherlands Minister (Van Royen) to the Secretary of State

No. 761

WASHINGTON, March 29, 1933.

SIR: With reference to Mr. Stimson's letter of the 16th of November last, No. 711/5627/46[54a],² I have the honor, acting on instructions from the Minister of Foreign Affairs at The Hague, to enclose a copy of a decision of the Minister of Public Works at The Hague (Minister van Waterstaat) of the 23rd of February of this year, No. 473, containing general regulations concerning the admission on certain conditions of American Aircraft in The Netherlands.

The promulgation of the regulations above referred to is due to a wish on the part of the Netherland Government to facilitate immediately as much as possible, the admission of American Aircraft into The Netherlands also during the period that the Air Navigation Arrangement concluded between The Netherlands and the United States of America ³ has not yet entered into force.

Please accept [etc.]

J. H. VAN ROYEN

[Enclosure—Translation]⁴

*Netherlands Ministry of Public Works Decree No. 473,
February 23, 1933*

The Minister of Public Works,

Considering that it is desirable, as long as the Air Navigation Agreement concluded on November 16, 1932 between Holland and the United States of America shall not have come into effect as a result of approval by the States General, to effect a general regulation for the admittance of American aircraft into this country;

¹ Continued from *Foreign Relations*, 1932, vol. II, pp. 492-499.

² *Ibid.*, p. 492.

³ By exchange of notes, November 16, 1932; see *ibid.*, pp. 492, 497.

⁴ Translation of preamble supplied by the editors; remainder of translation taken from the text printed in Department of State, *Press Releases*, May 27, 1933, p. 400.

Having taken note of articles 6 and 15 of the Air Navigation Act;
HAS APPROVED THE FOLLOWING STIPULATIONS:

I. Without prejudice to the provisions of Article 11 of the Air Navigation Act, exemption is granted from the prohibition clauses contained in Articles 6 and 15 of the Air Navigation Act, on behalf of aircraft registered in the Air Navigation Register of the United States of America, provided they are not transport aeroplanes,⁵ and provided the following conditions are complied with:

1. The planes must bear the registration marks that are allotted by the competent authority in the United States of America, as well as all other marks that are required by the air navigation legislation of that country.

2. The planes must be provided with valid certificates of registration and airworthiness issued or declared to be valid by the United States of America and they must carry aircraft, engine, and journey log books.

3. The pilots must be provided with valid certificates of competence, issued or declared valid by the United States of America.

4. The other members of the crews of aircraft must have documents in their possession showing their duties on board, their calling, identity and nationality. In so far as they do work on board for which a special license is required in the United States of America they must be provided with licenses issued or declared to be valid by the competent authorities there.

5. No installation for the transmission of wireless reports of any nature whatsoever shall be carried without special permission issued by the competent authorities in the United States of America. Such installations may only be used by members of the crews who are provided with a special license issued for that purpose by the competent authorities in the United States of America.

II. This decree comes into effect on the date of its signature. It shall lapse on the date when the Air Navigation Agreement mentioned at the beginning hereof shall come into force.

For the Minister:
The Secretary General
G. VAN DER MEULEN

711.5627/60

The Secretary of State to the Netherlands Minister (Van Royen)

[WASHINGTON,] May 6, 1933.

SIR: I have the honor to refer to your note of March 29, 1933, in regard to the conditions under which American registered civil aircraft may enter the Netherlands pending the coming into force of the air

⁵The Netherlands authorities informed the American Legation at The Hague that the term "transport aeroplanes" shall be understood to mean aircraft engaged in the commercial transportation of goods or persons (711.5627/59).

navigation agreement concluded between the Government of the United States and the Government of the Netherlands on November 16, 1932.

I now take pleasure in informing you that until such time as the agreement referred to becomes effective, civil aircraft registered in the Air Navigation Register of the Netherlands with the exception of aircraft engaged in the commercial transportation of persons or goods will be permitted to enter continental United States of America, exclusive of Alaska, under the conditions set forth below:

[Here follows the text of paragraphs numbered 1, 2, 3, 4, 5, *mutatis mutandis*, printed *supra*.]

6. Air navigation regulations in force in the United States including those relating to the entry and clearance of aircraft must be observed.

I shall be glad to have you communicate the foregoing to your Government.

Accept [etc.]

For the Secretary of State:
FRANCIS WHITE

711.5627/63 : Telegram

The Secretary of State to the Minister in the Netherlands (Swenson)

WASHINGTON, September 18, 1933—7 p.m.

28. Department's 1496, January 9, 1933.⁶ Aviation arrangements in course of negotiation with other countries provide for exclusion of Philippine Islands, Hawaiian Islands and Panama Canal Zone from their operation. Ascertain from Netherland authorities whether they can withdraw arrangement from Parliament so as to amend Article 1. If so, you should propose that Clause A of Article 1 be amended as follows: transpose the words "including territory over sea and territorial waters" by placing them after the word "colonies" and insert the words "with the exception of the Philippine Islands, Hawaiian Islands and the Panama Canal Zone" after the word "jurisdiction".

If, because of desire to limit number of Netherland possessions, Netherland authorities should definitely reject above proposal this Government would be willing to consider revision of Article 1 to read:

"For the purpose of the present arrangement the term 'territory' shall be understood to mean the United States of America, the Netherlands and likewise the following possessions, territories and colonies, including territorial waters, over which they respectively exercise jurisdiction:

(a) Alaska, Puerto Rico, Virgin Islands of the United States and American Samoa.

(b) [Here insert names of Netherland possessions.]⁷

⁶ Not printed.

⁷ Brackets appear in the original.

The term 'aircraft' shall be understood to embrace private aircraft and commercial aircraft including state aircraft used exclusively for commercial purposes."

If Netherland authorities insist upon second formula Department should be advised as to what Netherland possessions they desire to have named in sub-paragraph (b).

For your information and guidance. Should second formula be adopted this Government would be pleased if Netherland authorities could insert in sub-paragraph (b) names of the Netherland possessions of the Western Hemisphere, as well as any others they may be disposed to specify.

You should state that Aleutian Islands and Island of Guam would be considered among prohibited areas referred to in first paragraph of Article 4 of air navigation arrangement over which flights may not be made without authorization.

Ascertain also whether it would be agreeable to have new exchange of notes with Netherland Legation Washington including any revision of Article 1.

HULL

711.5627/69

The Minister in the Netherlands (Swenson) to the Secretary of State

No. 792

THE HAGUE, October 17, 1933.

[Received October 28.]

SIR: With reference to my despatch No. 785, of the tenth instant,⁸ I have the honor to report that Mr. E. Th. de Veer, the Chief of the Air Navigation Service of the Ministry of Public Works, called on the Counselor of the Legation⁹ today to discuss the Department's last proposal regarding the air navigation arrangement under negotiation between the United States and Holland.

Mr. de Veer said that he had discussed this matter with officials at the Colonial Ministry and that it was their opinion as well as his own that it would be impossible to amend Clause A of Article 1 of the arrangement in a manner which would make an exception of the Philippine Islands, the Hawaiian Islands, and the Panama Canal Zone although Dutch colonial possessions were not to be considered exceptions. He added that the arrangement as it now stands had been passed upon by the Government of the Netherlands Indies and by the Volksraad and that he did not believe that these bodies would sanction an amendment which did not provide for reciprocal treatment as regards the Indies

⁸ Not printed.

⁹ Hallett Johnson.

and the Philippines. Moreover, he thought that the Dutch Government was unlikely to ask the administrations of Surinam and Curaçao to approve an arrangement by which planes from the Panama Canal Zone could fly over their territories whereas planes from Surinam and Curaçao would not have reciprocal rights in the Panama Canal Zone. He continued by pointing out in a friendly but definite manner that the suggested amendment made a one-sided agreement inasmuch as it excepted American overseas possessions from the terms of the arrangement but included Dutch overseas possessions. The only reason given by the United States for the perhaps unusual request was that "aviation arrangements in the course of negotiation with other countries provide for the exclusion of American possessions from their operation". Thus no adequate reasons could be advanced to the authorities of Dutch overseas possessions for the proposed change. If an exception had been asked, say for Hawaii alone and some definite reason given for the exception of the Canal Zone, and the Philippines had been left in the arrangement, then something possibly might be worked out. He saw no chance for the acceptance of our amendment as it now stands. On the other hand, if we should propose a modification of Article 1 excluding both American and Dutch overseas possessions from the arrangement, Mr. de Veer believed that such a proposal would prove acceptable. Mr. de Veer concluded by stating that he had asked for an informal conference with Mr. Johnson in order that the above point of view could be transmitted to the Department before the Ministry of Public Works made definite recommendations to the Dutch Foreign Office concerning the nature of the reply to be made to the American proposal.

Later the same day Mr. Johnson saw Mr. Snouck Hurgronje, the Secretary General of the Foreign Office, who was aware of Mr. de Veer's visit. Mr. Snouck Hurgronje merely said that the Foreign Office would probably be guided by the recommendations of the Ministries of Public Works and Colonial Affairs as the proposed arrangement was more a technical than a political matter.

As Mr. Johnson did not consider the remarks of Mr. de Veer or Mr. Snouck Hurgronje to constitute "a definite rejection of the proposed amendment" by the Netherlands Government, he said nothing to either man regarding the confidential portion of the Department's instruction No. 266, of October third.¹⁰ He merely acceded to Mr. de Veer's suggestion that the Legation should take the matter up further with the State Department.

There would now appear to be two courses to pursue:

1. To request a reply to the formal Note sent the Foreign Office,¹⁰

¹⁰ Not printed.

a copy of which was transmitted to the Department in my above-mentioned despatch. This course would probably involve a long delay, as the Dutch Government might feel that it should take the matter up with the Governments of its colonial possessions, and would probably end by the rejection of the amendment proposed by the United States.

2. At once to suggest a modification of Article 1 along the lines of the confidential portion of the Department's above-mentioned instruction. This modification would probably be immediately accepted.

The Department's further instructions in this regard are respectfully requested.

Respectfully yours,

LAURITS S. SWENSON

711.5627/71

*The Minister in the Netherlands (Swenson) to the
Acting Secretary of State*

No. 834

THE HAGUE, November 22, 1933.

[Received December 5.]

SIR: With reference to the Department's instruction No. 273, of the 6th instant,¹² I have the honor to report that I have proposed to the Netherlands Government that Article I of the Air Navigation Arrangement between the United States and the Netherlands be amended to read in the sense of the above-mentioned instruction.

The Counselor of Legation has shown the draft of the amended Article I to Mr. de Veer, the Chief of the Air Navigation Service of the Ministry of Public Works, who is of the opinion that this proposal has some chance of acceptance. He said, however, that he would have to confer with the appropriate officials of the Ministry of Colonies before making any recommendations to the Foreign Office. He also desired to ascertain whether the United States has at present any Air Navigation Arrangement with other countries which do not exclude from their terms the Philippine Islands, the Hawaiian Islands and the Panama Canal Zone. Mr. de Veer particularly regrets the exclusion of the Philippine Islands as an air line between them and the Netherland East Indies is a possibility of the future. The arrangement as originally proposed had already been accepted by the Volksraad of the Indies.

Respectfully yours,

LAURITS S. SWENSON

¹² Not printed; it authorized the Minister to present to the Netherlands Government the revision of article 1 suggested in Department's telegram No. 28, September 18, paragraph beginning, "For the purpose of . . ." p. 619.

[Enclosure]

*The American Minister (Swenson) to the Netherlands Minister for
Foreign Affairs (de Graeff)*

No. 294

THE HAGUE, November 22, 1933.

EXCELLENCY: With reference to my note No. 279, of September 20th last¹³ and to subsequent conversations between officials of this Legation and the appropriate Netherlands authorities regarding the Air Navigation Agreement concluded at Washington November 16th, 1932 by an exchange of notes between the Netherlands Legation and the Department of State, I am authorized to propose that Article I of the above-mentioned Air Navigation Arrangement be amended to read:

ARTICLE I

[Here follows text as quoted in telegram No. 28, September 18, printed on page 619.]

In this connection I desire to add that the Aleutian Islands and the Island of Guam would be considered among the prohibited areas referred to in the first paragraph of Article 4 of the Air Navigation Arrangement, over which flights may not be made without authorization.

If the proposed amendment meets with the approval of Your Excellency I wish to ascertain whether it would be agreeable to the Netherland authorities to have a new exchange of notes with the Netherland Legation at Washington including the revision of Article I.

I avail myself [etc.]

LAURITS S. SWENSON

¹³ Not printed.

NORWAY

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND NORWAY

611.5731/60

Memorandum by the Secretary of State

[WASHINGTON,] March 30, 1933.

The Minister of Norway¹ came in and inquired as to whether our Government would negotiate reciprocal commercial treaties based on mutual tariff concessions with a given country now or after the World Economic Conference.² I replied that our Government would be prepared to enter upon such negotiations after the desired legislation is had by Congress, giving the President authority to negotiate such agreements; that it is hoped to get such authority as would enable these agreements to become operative if, after a certain time following their presentation to Congress, the Congress should not veto or reject them.

The Minister assured me that his country was interested in the moderation of tariffs and the liberalization of commercial policy as per our plans and purposes.

C[ORDELL] H[ULL]

611.573/12

The Norwegian Legation to the Department of State

AIDE-MÉMOIRE

In the official American trade statistics importation of whale oil figures as an important item in the American imports from Norway. From 1923 till 1931 the figures were:

<i>Total imports of whale oil:</i>			<i>Imports from Norway:</i>		
	<i>Quantities</i>	<i>Values</i>		<i>Quantities</i>	<i>Values</i>
1923	3,975,003 gls.	\$2,068,038	1923	6,186 gls.	\$ 3,570
1924	5,074,271 "	2,515,325	1924	2,580,269 "	1,220,746
1925	7,399,372 "	4,328,414	1925	4,735,789 "	2,797,373
1926	8,457,870 "	4,225,455	1926	5,231,318 "	2,523,587
1927	5,299,981 "	2,641,777	1927	4,373,879 "	2,122,878
1928	9,118,067 "	4,202,059	1928	8,529,199 "	3,976,462
1929	7,270,900 "	3,320,520	1929	618,940 "	306,400
1930	9,955,088 "	4,054,414	1930	6,515,563 "	2,722,165
1931	18,625,701 "	7,682,667	1931	18,183,674 "	7,529,750

¹ Halvard H. Bachke.

² For correspondence concerning this Conference, see vol. I, pp. 452 ff.

The Norwegian Statistics do not contain this item in their figures concerning exportation from Norway to the United States, and for the following reason:

Though the whale oil must certainly be considered, from an American point of view, as an item of importation, the oil is not exported from Norway. The oil is the produce of the Norwegian whaling ships, which operate mainly in the Antarctic Ocean, and only a small part of the oil ever reaches Norway. The main produce is delivered direct from the floating factories etc. to the importers in the United States and other countries.

Before going into further details concerning the importation of whale oil to the United States it may be of interest to consider the importance of the Norwegian American trade.

During the years 1929–1931, according to Norwegian statistics, the trade between the two countries show the following figures (in millions of Norwegian Kroners)

<i>U.S.A.'s imports from Norway</i>	<i>Norway's imports from U.S.A.</i>
1929—73,67	1929—112,29
1930—55,12	1930—102,94
1931—32,90	1931— 66,03

As will be seen from these figures the United States had a favorable balance of trade during these years. (As regards the discrepancies between Norwegian and American statistics these have been explained in the Norwegian Legation's *Note Verbale* of November 30, 1932).³ During the year 1932, according to American statistics, there was a favorable balance for Norway, whereas Norwegian statistics show a favorable balance for the United States. (The discrepancy in this case is partly explained by the fact that a large quantity of wheat shipped from the United States via Canadian ports does not figure in American statistics as exported to Norway.) Though the question of the balance of trade in 1932 may be doubtful, statistics show that Norway generally imports for her own consumption from the United States considerably more than the United States imports from Norway. The following figures show the value of importation from the United States during the years mentioned of some outstanding commodities:

	1929	1930	1931
Wheat	kr. 2,435,700	kr. 6,392,900	kr. 4,375,100
Flour of wheat	" 10,974,700	" 6,818,200	" 3,658,200
Apples and pears	" 2,359,100	" 1,739,300	" 2,035,900
Tobacco	" 5,010,600	" 4,557,200	" 5,164,200
Cotton	" 1,978,500	" 2,062,900	" 1,273,400
Gasoline	" 6,082,000	" 9,984,400	" 3,592,200
Automobiles	" 8,386,100	" 7,237,800	" 4,619,900

These figures show a considerable importation, especially when the

³ Not printed.

population of Norway is considered. With a population of 2,800,000 inhabitants Norway imported in 1930—a normal year—American articles for 102 millions, i.e. approximately 36 kroner or \$9.60 per inhabitant. With a population of about 123 million inhabitants the United States the same year imported from Norway merchandise for about 55 million kroners, i.e. approximately kroner 0.45 or \$0.13 per inhabitant.

The above figures show that the trade between Norway and the United States, profitable, of course, to both countries, is certainly advantageous to the United States. It would therefore seem to be in the interest of the United States to increase their importation from Norway in order to enable Norwegian importers to carry on and further develop their purchases in the United States.

As regards the whale oil imported by the United States, it is used mainly, and probably entirely, for technical purposes, especially for the manufacturing of soap.

Importation of whale oil on a somewhat larger scale started in 1921, and reached its climax in 1931. Since then the importation has decreased as a result of the general depression.

Whereas in Europe whale oil is used to a great extent in the manufacturing of margarine, this does not seem to be the practice in the United States, probably because of the legislation ruling the manufacturing of margarine in this country. Consequently, it stands to reason that there is actually no competition between the whale oil and the edible oils produced in the United States and used in the production of margarine and other edible fat-stuffs in this country.

On the other hand a competition exists between whale oil and other oils imported into the United States for the manufacture of soap. Whale oil is thus subject to competition from palm oil and palm kernel oil. Whereas a duty of \$0.06 per gallon (corresponding to \$17.52 per long ton) is imposed on whale oil, palm oil enters free of duty, and palm kernel oil for technical purposes is also duty-free. The latter commodity when imported to the United States for technical purposes (Manufacturing of soap) is denatured under supervision of the Customs authorities.

It would be of great interest to the Norwegian whaling industry to obtain duty-free entry of whale oil to the United States, or at least, a substantial reduction of the existent duty. In case duty-free entry, or reduction of the import duty on whale oil for edible purposes, could not be obtained, it would be of interest to examine whether a substantial reduction of the duty on whale oil imported for *technical* purposes and denatured under the provisions of paragraph 1732 of the Tariff Act of

1930,⁴ so as not to be used for edible purposes, might not constitute an advantage both for the United States and for the whaling industry.

In this connection a memorandum furnished by the Norwegian firm Bull Øvrevik & Co., Bergen, which provides the whale oil imported to the United States, may be of interest:

"The produce of the season just terminated amounts to about 2,5 million barrels or about 400,000 tons, which has already been sold for delivery in Europe. It is not probable that next year's produce will exceed 400,000 tons, and it seems probable that the main part of this produce will be delivered in Europe during the season of 1934, as in previous years. It has proved that even with America on the gold standard Europe has bought the main part of the whale oil produce. Since 1931 practically all whale oil produced has been sold in Europe and even oil which has been stored in America has been reexported to Europe.— The reason is that in Europe whale oil is mainly used as edible oil, as a raw material in the manufacturing of margarine, whereas in America it is used as cheaper grease for technical use, the result being that whale oil in Europe is supplanting the more valuable American edible fats which previously were used for manufacturing margarine, such as cotton-seed oil, oleo oil, Premier Jus etc.

It is probable, however, that if whale oil for technical purposes were duty-free in America, an increased importation of whale oil for such purposes would result and there would consequently be less whale oil available for consumption in Europe. This would cause a lack of edible fats in Europe and the result would be that American raw materials for the manufacturing of margarine would be sold in Europe in greater quantities and at better price than before."

As regards the possibility of denaturing the whale oil the memorandum states:

"It may be noted that palm kernel oil is subject to an import duty of 1 c. per. lb., but is free when the oil is denatured in the port of importation. A precedent is thus established.

It is a fact that whale oil is only used for technical purposes in America, and it would be neither too difficult nor too expensive to denature the oil in the port of importation, under the control of the Customs authorities, in such way as to render it inapplicable for edible purposes but without decreasing its value as a raw material for the manufacturing of soap."

According to the memorandum whale oil has during recent years to a great extent supplanted such American oils as oleo oil, cotton seed oil and Premier Jus as a raw material for the manufacturing of margarine in Europe. The following extract of American trade statistics relating to exportation of crude cotton seed oil, refined cotton seed oil, and oleo oil from the United States during the years 1923-1931, shows a considerable decrease:

⁴ 46 Stat. 590, 680.

	<i>Cotton seed oil crude</i>	<i>Cotton seed oil refined</i>	<i>Oleo oil</i>
1923	27,781.523 pounds	21,826.194 pounds	98,954.904 pounds
1924	18,948.410 "	24,394.107 "	99,379.879 "
1925	33,553.552 "	28,861.920 "	91,971.845 "
1926	27,356.852 "	27,356.852 "	96,901.849 "
1927	51,406.875 "	16,574.842 "	78,781.070 "
1928	41,126.482 "	10,575.764 "	62,779.381 "
1929	19,292.131 "	6,782.890 "	68,208.850 "
1930	16,393.539 "	11,903.072 "	56,483.104 "
1931	9,732.945 "	12,844.712 "	47,322.604 "

If the import duty on whale oil to the United States were abolished or substantially reduced this would of course increase the importation of this commodity. As the production of whale oil is limited, by mutual agreement within the whaling industry, to a certain amount for every season—for the season 1933–34 about to 2,4 million barrels—an increase of the American importation would lead to reduced importation of whale oil in Europe. Manufacturers of margarine in Europe would consequently be obliged to seek other raw materials, and American exporters of edible oils—such as oleo oil, cotton seed oil and Premier Jus—would probably benefit from the increased demand for edible oils in Europe. It will be of interest in this connection that oils and fats sold for edible purposes bring a considerably higher price than those sold for soap making usage.

It would thus seem that whereas abolishment of the import duty on whale oil or a substantial reduction of the duty would not cause any disadvantage to the producers of edible oils in the United States—there being no competition between the commodities in question—it would help to increase American exports to Europe of the American edible oils mentioned above.

WASHINGTON, August 22, 1933.

611.573/16

*The Chairman of the Tariff Commission (O'Brien) to the
Secretary of State*

WASHINGTON, September 15, 1933.

MY DEAR MR. SECRETARY: The Tariff Commission has received your note of August 29 (File No. WE),⁵ in which you ask for comment upon an *aide-mémoire* presented by the Norwegian Legation.⁶ You ask particular comment on the suggestion put forward by the Norwegian Government that it would be advantageous to the American farmer for the United States to admit whale oil in greater quantities in order that edible oils might be exported in greater quantities.

⁵ Not printed.

⁶ *Supra*.

There is enclosed herewith a memorandum on whale oil, prepared in the Chemical Division of the Tariff Commission,⁷ in which you will observe it is stated that there may be merit in the argument presented by the Norwegian Government but that it is a difficult matter to appraise. You will observe also that the memorandum deals with the matter only from the point of view of the farmer and the soapmaker and that no attempt has been made to comment on other aspects of commercial policy.

Comment may be made on one other point in the *aide-mémoire*. The statement that in 1930 Norwegians purchased \$9.60 per capita of American products while Americans purchased only \$0.13 per capita of Norwegian products seems to add nothing of significance to the figures showing the disparity in the trade in the two directions. Smaller countries normally have a greater international trade per capita than larger countries, and normally the trade between a large country and a small one will constitute a small percentage of the trade of the large country and a large percentage of the trade of the small country. Another way of stating the matter is that the United States in 1930 bought from each Norwegian about 20 kroner worth of merchandise, whereas Norway bought from each American less than one kroner worth.

Very sincerely yours,

ROBERT L. O'BRIEN

611.5731/72

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] December 16, 1933.

The Minister of Norway called to see me this morning in order to inquire whether the Department was yet ready to begin conversations with reference to the negotiation of a reciprocal bargaining treaty with Norway. I informed him that the Department had the matter in mind but that it was not yet prepared to begin conversations owing to the press of work in connection with conversations being carried on with certain of the South American countries. I asked the Minister how long it would take for his Government to prepare a list of desiderata in connection with such a treaty. He replied that such a list could doubtless be prepared in about three weeks. He said that Norway would be particularly interested in whale oil and in fish. He also made inquiries concerning the discussions which are being carried on in connection with the increasing of wine and liquor quotas during the four months' temporary period.

F[RANCIS] B. S[AYRE]

⁷ Not printed.

ARRANGEMENT BETWEEN THE UNITED STATES AND NORWAY REGARDING AIR NAVIGATION, EFFECTED BY EXCHANGE OF NOTES SIGNED OCTOBER 16, 1933

Executive Agreement Series No. 50
711.5727/21

The Secretary of State to the Norwegian Minister (Bachke)

WASHINGTON, October 16, 1933.

SIR: Reference is made to the negotiations which have taken place between the Government of the United States of America and the Government of Norway for the conclusion of a reciprocal air navigation arrangement between the United States of America and Norway, governing the operation of civil aircraft of the one country in the other country.

It is my understanding that it has been agreed in the course of the negotiations, now terminated, that this arrangement shall be as follows:

ARTICLE 1

Pending the conclusion of a convention between the United States of America and Norway on the subject of air navigation, the operation of civil aircraft of the one country in the other country shall be governed by the following provisions.

ARTICLE 2

The present arrangement shall apply to the United States of America and Norway and likewise territories and possessions over which they respectively exercise jurisdiction, including territorial waters, with the exception of the Philippine Islands, Hawaiian Islands and the Panama Canal Zone.

ARTICLE 3

The term aircraft with reference to one or the other Party to this arrangement shall be understood to mean civil aircraft, including state aircraft used exclusively for commercial purposes, duly registered in the territory of such Party.

ARTICLE 4

Each of the parties undertakes to grant liberty of passage above its territory in time of peace to the aircraft of the other party, provided that the conditions set forth in the present arrangement are observed.

It is, however, agreed that the establishment and operation of regular air routes by an air transport company of one of the parties within the territory of the other party or across the said territory, with or without intermediary landing, shall be subject to the prior consent of the other party given on the principle of reciprocity and at the request of the party whose nationality the air transport company possesses.

Each party to this arrangement agrees that its consent for operations over its territory by air transport companies of the other party may not be refused on unreasonable or arbitrary grounds. The consent may be made subject to special regulations relating to aerial safety and public order.

The parties to this arrangement agree that the period in which pilots may, while holding valid pilot licenses issued or rendered valid by either country, operate registered aircraft of that country in the other country for non-industrial or non-commercial purposes shall be limited to a period not exceeding six months from the time of entry for the purpose of operating aircraft, unless prior to the expiration of this period the pilots obtain from the Government of the country in which they are operating, pilot licenses authorizing them to operate aircraft for non-industrial or non-commercial purposes.

ARTICLE 5

The aircraft of each of the Parties to this arrangement, their crews and passengers, shall, while within the territory of the other Party, be subject to the general legislation in force in that territory as well as the regulations in force therein relating to air traffic in general, to the transport of passengers and goods and to public safety and order in so far as these regulations apply to all foreign aircraft, their crews and passengers.

Each of the Parties to this arrangement shall permit the import or export of all merchandise which may be legally imported or exported and also the carriage of passengers, subject to any customs, immigration and quarantine restrictions, into or from their respective territories in the aircraft of the other Party, and such aircraft, their passengers and cargoes, shall enjoy the same privileges as and shall not be subjected to any other or higher duties or charges than those which the aircraft of the country imposing such duties or charges, engaged in international commerce, and their cargoes and passengers, or the aircraft of any foreign country likewise engaged, and their cargoes and passengers, enjoy or are subjected to.

Each of the parties to this arrangement may reserve to its own aircraft air commerce as defined in the last paragraph of this article. Nevertheless the aircraft of each party may proceed from any aerodrome in the territory of the other party which they are entitled to use to any other such aerodrome either for the purpose of landing the whole or part of their cargoes or passengers or of taking on board the whole or part of their cargoes or passengers, provided that such cargoes are covered by through bills of lading, and such passengers hold through tickets, issued respectively for a journey whose starting place and destination are not both points between which air commerce has been duly so reserved, and such aircraft, while proceeding as aforesaid, from one aerodrome to another, shall, notwithstanding that both such aerodromes are points between which air commerce has been duly reserved, enjoy all the privileges of this arrangement.

The term "air commerce" as used in the preceding paragraph shall, with respect to the Parties to this arrangement, be understood to mean:—(a) navigation of aircraft in territory of either Party in furtherance of a business; (b) navigation of aircraft from one place in territory of either Party to another place in that territory in the conduct of a business; (c) the commercial transport of persons or goods between any two points in the territory of either Party.

ARTICLE 6

Each of the Parties to this arrangement reserves the right to forbid

flights over certain areas of its territory which are or may hereafter be designated as prohibited areas.

Each of the Parties reserves the right under exceptional circumstances in time of peace and with immediate effect temporarily to limit or prohibit air traffic above its territory on condition that in this respect no distinction is made between the aircraft of the other Party and the aircraft of any foreign country.

ARTICLE 7

Any aircraft which finds itself over a prohibited area shall, as soon as it is aware of the fact, give the signal of distress prescribed in the Rules of the Air in force in the territory flown over and shall land as soon as possible at an aerodrome situated in such territory outside of but as near as possible to such prohibited area.

ARTICLE 8

All aircraft shall carry clear and visible nationality and registration marks whereby they may be recognized during flight. In addition, they must bear the name and address of the owner.

All aircraft shall be provided with certificates of registration and of airworthiness and with all the other documents prescribed for air traffic in the territory in which they are registered.

The members of the crew who perform, in an aircraft, duties for which a special permit is required in the territory in which such aircraft is registered, shall be provided with all documents and in particular with the certificates and licenses prescribed by the regulations in force in such territory.

The other members of the crew shall carry documents showing their duties in the aircraft, their profession, identity and nationality.

The certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one of the Parties to this arrangement in respect of an aircraft registered in its territory or of the crew of such aircraft shall have the same validity in the territory of the other Party as the corresponding documents issued or rendered valid by the latter.

Each of the Parties reserves the right for the purpose of flight within its own territory to refuse to recognize certificates of competency and licenses issued to nationals of that Party by the other Party.

ARTICLE 9

Aircraft of either of the Parties to this arrangement may carry wireless apparatus in the territory of the other Party only if a license to install and work such apparatus shall have been issued by the competent authorities of the Party in whose territory the aircraft is registered. The use of such apparatus shall be in accordance with the regulations on the subject issued by the competent authorities of the territory within whose air space the aircraft is navigating.

Such apparatus shall be used only by such members of the crew as are provided with a special license for the purpose issued by the Government of the territory in which the aircraft is registered.

The Parties to this arrangement reserve respectively the right, for

reasons of safety, to issue regulations relative to the obligatory equipment of aircraft with wireless apparatus.

ARTICLE 10

No arms of war, explosives of war, or munitions of war shall be carried by aircraft of either Party above the territory of the other Party or by the crew or passengers, except by permission of the competent authorities of the territory within whose air space the aircraft is navigating.

ARTICLE 11

Upon the departure or landing of any aircraft each Party may within its own territory and through its competent authorities search the aircraft of the other Party and examine the certificates and other documents prescribed.

ARTICLE 12

Aerodromes open to public air traffic in the territory of one of the Parties to this arrangement shall in so far as they are under the control of the Party in whose territory they are situated be open to all aircraft of the other Party, which shall also be entitled to the assistance of the meteorological services, the wireless services, the lighting services, and the day and night signalling services, in so far as the several classes of services are under the control of the Party in whose territory they respectively are rendered. Any scale of charges made, namely, landing, accommodation or other charge, with respect to the aircraft of each Party in the territory of the other Party, shall in so far as such charges are under the control of the Party in whose territory they are made be the same for the aircraft of both Parties.

ARTICLE 13

All aircraft entering or leaving the territory of either of the Parties to this arrangement shall land at or depart from an aerodrome open to public air traffic and classed as a customs aerodrome at which facilities exist for enforcement of immigration regulations and clearance of aircraft, and no intermediary landing shall be effected between the frontier and the aerodrome. In special cases the competent authorities may allow aircraft to land at or depart from other aerodromes, at which customs, immigration and clearance facilities have been arranged. The prohibition of any intermediary landing applies also in such cases.

In the event of a forced landing outside the aerodromes, referred to in the first paragraph of this article, the pilot of the aircraft, its crew and the passengers shall conform to the customs and immigration regulations in force in the territory in which the landing has been made.

Aircraft of each Party to this arrangement are accorded the right to enter the territory of the other Party subject to compliance with quarantine regulations in force therein.

The Parties to this arrangement shall exchange lists of the aerodromes in their territories designated by them as ports of entry and departure.

ARTICLE 14

Each of the Parties to this arrangement reserves the right to require that all aircraft crossing the frontiers of its territory shall do so between

certain points. Subject to the notification of any such requirements by one Party to the other Party, and to the right to prohibit air traffic over certain areas as stipulated in Article 6, the frontiers of the territories of the Parties to this arrangement may be crossed at any point.

ARTICLE 15

As ballast, only fine sand or water may be dropped from an aircraft.

ARTICLE 16

No article, or substance, other than ballast, may be unloaded or otherwise discharged in the course of flight unless special permission for such purpose shall have been given by the authorities of the territory in which such unloading or discharge takes place.

ARTICLE 17

Whenever questions of nationality arise in carrying out the present arrangement, it is agreed that every aircraft shall be deemed to possess the nationality of the Party in whose territory it is duly registered.

ARTICLE 18

The Parties to this arrangement shall communicate to each other the regulations relative to air traffic in force in their respective territories.

ARTICLE 19

The present arrangement shall be subject to termination by either Party upon sixty days' notice given to the other Party or by the enactment by either Party of legislation inconsistent therewith.

I shall be glad to have you inform me whether it is the understanding of your Government that the arrangement agreed to in the negotiations is as herein set forth. If so, it is suggested that the arrangement become effective on November 15, 1933.

Accept [etc.]

[SEAL]

CORDELL HULL

Executive Agreement Series No. 50
711.5727/22

The Norwegian Minister (Bachke) to the Secretary of State

WASHINGTON, October 16, 1933.

SIR: I have the honor to acknowledge the receipt of the note of October 16, 1933 in which Your Excellency communicated to me the text of the reciprocal air navigation arrangement between Norway and the United States of America, governing the operation of civil aircraft of the one country in the other country, as understood by Your Excellency to have been agreed to during the negotiations, now terminated, between the two countries.

The text communicated to me by Your Excellency is reproduced below:

[Here follows text of arrangement printed *supra*.]

I am glad to assure Your Excellency that the foregoing text is what has been accepted by my Government in the course of the negotiations and is approved by it.

In accordance with the suggestion of Your Excellency it is understood that the arrangement will come into force on November 15, 1933.

Accept [etc.]

[SEAL]

H. H. BACHKE

ARRANGEMENT BETWEEN THE UNITED STATES AND NORWAY REGARDING PILOT LICENSES TO OPERATE CIVIL AIRCRAFT, EFFECTED BY EXCHANGE OF NOTES SIGNED OCTOBER 16, 1933

Executive Agreement Series No. 51
711.5727/19

The Secretary of State to the Norwegian Minister (Bachke)

WASHINGTON, October 16, 1933.

SIR: Reference is made to the negotiations which have taken place between the Government of the United States of America and the Government of Norway for the conclusion of a reciprocal arrangement between the United States of America and Norway providing for the issuance by the one country of licenses to nationals of the other country authorizing them to pilot civil aircraft.

It is my understanding that it has been agreed in the course of the negotiations, now terminated, that this arrangement shall be as follows:

ARTICLE 1

The present arrangement between the United States of America and Norway relates to the issuance by each country of licenses to nationals of the other country for the piloting of civil aircraft. The term "civil aircraft" shall be understood to mean aircraft used for private, industrial, commercial or transport purposes.

ARTICLE 2

(a) The Ministry of Defense of Norway will issue pilots' licenses to American nationals upon a showing that they are qualified under the regulations of that Ministry covering the licensing of pilots.

(b) The Department of Commerce of the United States of America will issue pilots' licenses to Norwegian nationals upon a showing that they are qualified under the regulations of that Department covering the licensing of pilots.

ARTICLE 3

(a) Pilots' licenses issued by the Department of Commerce of the

United States of America to Norwegian nationals shall entitle them to the same privileges as are granted by pilots' licenses issued to American nationals.

(b) Pilots' licenses issued by the Ministry of Defense of Norway to American nationals shall entitle them to the same privileges as are granted by pilots' licenses issued to Norwegian nationals.

ARTICLE 4

Pilots' licenses issued to nationals of the one country by the competent authority of the other country shall not be construed to accord to the licensees the right to register aircraft in such other country.

ARTICLE 5

Pilots' licenses issued to nationals of the one country by the competent authority of the other country shall not be construed to accord to the licensees the right to operate aircraft in air commerce wholly within territory of such other country reserved to national aircraft, unless the aircraft have been registered under the laws of the country issuing the pilots' licenses.

ARTICLE 6

(a) Norwegian nationals shall while holding valid pilot licenses issued by the Ministry of Defense of Norway be permitted to operate in Continental United States of America, exclusive of Alaska, for non-industrial or non-commercial purposes for a period not exceeding six months from the time of entering that country, any civil aircraft registered by the Ministry of Defense of Norway, and/or any civil aircraft registered by the United States Department of Commerce. The period of validity of the licenses first mentioned in this paragraph shall, for the purpose of this paragraph, include any renewal of the license by the pilot's own Government made after the pilot has entered Continental United States of America. No person to whom this paragraph applies shall be allowed to operate civil aircraft in Continental United States of America, exclusive of Alaska, for non-industrial or non-commercial purposes for a period of more than six months from the time of entering that country, unless he shall, prior to the expiration of such period, have obtained a pilot license from the United States Department of Commerce in the manner provided for in this arrangement.

(b) American nationals shall while holding valid pilot licenses issued by the United States Department of Commerce be permitted to operate in Norway for non-industrial or non-commercial purposes for a period not exceeding six months from the time of entering that country, any civil aircraft registered by the United States Department of Commerce, and/or any civil aircraft registered by the Ministry of Defense of Norway. The period of validity of the licenses first mentioned in this paragraph shall, for the purpose of this paragraph, include any renewal of the license by the pilot's own Government made after the pilot has entered Norway. No person to whom this paragraph applies shall be allowed to operate civil aircraft in Norway for non-industrial or non-commercial purposes for a period of more than six months from the time of entering that country, unless he shall, prior to the expiration of such period, have

obtained a pilot's license from the Ministry of Defense of Norway in the manner provided for in this arrangement.

(c) The conditions under which pilots of the nationality of either country may operate aircraft of their country in the other country, as provided for in this article, shall be as stipulated in the air navigation arrangement in force between the parties to this arrangement for the issuance of pilot licenses; and the conditions under which pilots of the nationality of either country may operate aircraft of the other country, as provided for in this article, shall be in accordance with the requirements of such other country.

ARTICLE 7

The present arrangement shall be subject to termination by either Party upon sixty days' notice given to the other Party or by the enactment by either Party of legislation inconsistent therewith.

I shall be glad to have you inform me whether it is the understanding of your Government that the arrangement agreed to in the negotiations is as herein set forth. If so, it is suggested that the arrangement become effective on November 15, 1933.

Accept [etc.]

[SEAL]

CORDELL HULL

Executive Agreement Series No. 51
711.5727/20

The Norwegian Minister (Bachke) to the Secretary of State

WASHINGTON, October 16, 1933.

SIR: I have the honor to acknowledge the receipt of the note of October 16, 1933 in which Your Excellency communicated to me the text of the reciprocal arrangement between Norway and the United States of America providing for the issuance by the one country of licenses to nationals of the other country authorizing them to pilot civil aircraft, as understood by Your Excellency to have been agreed to during the negotiations, now terminated, between the two countries.

The text communicated to me by Your Excellency is reproduced below:

[Here follows text of arrangement printed *supra*.]

I am glad to assure Your Excellency that the foregoing text is what has been accepted by my Government in the course of the negotiations and is approved by it.

In accordance with the suggestion of Your Excellency it is understood that the arrangement will come into force on November 15, 1933.

Accept [etc.]

[SEAL]

H. H. BACHKE

ARRANGEMENT BETWEEN THE UNITED STATES AND NORWAY REGARDING RECIPROCAL RECOGNITION OF CERTIFICATES OF AIRWORTHINESS FOR IMPORTED AIRCRAFT, EFFECTED BY EXCHANGE OF NOTES SIGNED OCTOBER 16, 1933

Executive Agreement Series No. 52
711.5727/23

The Secretary of State to the Norwegian Minister (Bachke)

WASHINGTON, October 16, 1933.

SIR: Reference is made to the negotiations which have taken place between the Government of the United States of America and the Government of Norway for the conclusion of a reciprocal arrangement between the United States of America and Norway providing for the acceptance by the one country of certificates of airworthiness for aircraft exported from the other country as merchandise.

It is my understanding that it has been agreed in the course of the negotiations, now terminated, that this arrangement shall be as follows:

ARTICLE 1

The present arrangement applies to civil aircraft constructed in continental United States of America, exclusive of Alaska, and exported to Norway; and to civil aircraft constructed in Norway and exported to continental United States of America, exclusive of Alaska.

ARTICLE 2

The same validity shall be conferred on certificates of airworthiness issued by the competent authorities of the Government of the United States for aircraft subsequently to be registered in Norway as if they had been issued under the regulations in force on the subject in Norway, provided that in each case a certificate of airworthiness for export has also been issued by the United States authorities for the individual aircraft, and provided that certificates of airworthiness issued by the competent authorities of Norway for aircraft subsequently to be registered in the United States of America are similarly given the same validity as if they had been issued under the regulations in force on the subject in the United States.

ARTICLE 3

The above arrangement will extend to civil aircraft of all categories, including those used for public transport and those used for private purposes.

ARTICLE 4

The present arrangement may be terminated by either Government on sixty days' notice given to the other Government. In the event, however, that either Government should be prevented by future action of its legislature from giving full effect to the provisions of this arrangement it shall automatically lapse.

I shall be glad to have you inform me whether it is the understanding of your Government that the arrangement agreed to in the negotiations is as herein set forth. If so, it is suggested that the arrangement become effective on November 15, 1933.

Accept [etc.]

[SEAL]

CORDELL HULL

Executive Agreement Series No. 52
711.5727/24

The Norwegian Minister (Bachke) to the Secretary of State

WASHINGTON, October 16, 1933.

SIR: I have the honor to acknowledge the receipt of the note of October 16, 1933 in which Your Excellency communicated to me the text of the reciprocal arrangement between Norway and the United States of America providing for the acceptance by the one country of certificates of airworthiness for aircraft exported from the other country as merchandise, as understood by Your Excellency to have been agreed to during the negotiations, now terminated, between the two countries.

The text communicated to me by Your Excellency is reproduced below:

[Here follows text of arrangement printed *supra*.]

I am glad to assure Your Excellency that the foregoing text is what has been accepted by my Government in the course of the negotiations and is approved by it.

In accordance with the suggestion of Your Excellency it is understood that the arrangement will come into force on November 15, 1933.

Accept [etc.]

[SEAL]

H. H. BACHKE

PORTUGAL
PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT
BETWEEN THE UNITED STATES AND PORTUGAL

611.5331/68

Memorandum by the Acting Secretary of State (Phillips)

[WASHINGTON,] July 13, 1933.

I asked the Portuguese Chargé d'Affaires¹ to call this morning and told him that we desired to explore the possibilities of negotiating some sort of reciprocal trade agreement between the United States and Portugal. The Chargé d'Affaires said he was glad to hear this, that just before Viscount d'Alte² retired he had received a communication from the Foreign Office, asking whether there was any possibility of negotiating on a reciprocal basis.

I asked the Chargé d'Affaires when the new Minister would arrive and was informed that he was expected about the middle of September. I said that I should be grateful if the Chargé d'Affaires would write to his new Chief to tell him of our conversations and suggest that when he arrives here it would be a good time to discuss these questions, that he would then be in a position to have the latest information from his Government. The Chargé d'Affaires agreed and said he would communicate at once with the Foreign Office and felt sure that the Minister would be glad to go into the subject on his arrival.

WILLIAM PHILLIPS

611.5331/70

Memorandum by the Acting Secretary of State (Phillips)

[WASHINGTON,] July 17, 1933.

The Portuguese Chargé d'Affaires handed me the accompanying note³ in which his Government accepts the suggestion of preliminary conversations in regard to a projected trade agreement. I expressed satisfaction at this reply and asked the Chargé d'Affaires whether he had any idea when his Government would be disposed to begin the conversations. Mr. da Silva did not know. I said that inasmuch as the new Minister would

¹ H. Gabriel da Silva.

² Portuguese Minister who retired May 12, 1933.

³ Not printed.

not arrive for a couple of months, it seemed a pity that meanwhile we should not be making a little progress; and I suggested that he ask his Government whether it could be prepared to send him instructions on which he could open the conversations, or whether his Government preferred to wait until the arrival of the new Minister. I added that as far as this Government was concerned, I thought we would be ready to talk within a week or ten days. The Chargé said that he would communicate with his Government and let me know as soon as he had received a reply.

WILLIAM PHILLIPS

611.5331/75

Memorandum by the Acting Secretary of State (Phillips)

[WASHINGTON,] July 27, 1933.

The Portuguese Chargé d'Affaires called to say that the new Minister, Dr. Bianchi, had been instructed by his Government to proceed at once to Washington, in order to open the conversations concerning a reciprocal trade agreement with Portugal; the Chargé d'Affaires did not know the date of the Minister's arrival, but thought it might be as early as the 10th of August or even earlier.

I gave Mr. da Silva the President's plans and said that I expected that the President would be in Washington between the 5th and 12th of August, at which time, presumably, he would be able to receive the new Minister.

WILLIAM PHILLIPS

611.5331/79

The Chargé in Portugal (Magruder) to the Acting Secretary of State

No. 1015

LISBON, August 4, 1933.

[Received August 16.]

SIR: In pursuance of the Department's telegraphic instruction No. 9 of July 29, 2 P.M.,⁴ directing me to prepare a report containing specific suggestions regarding tariff reductions or similar concessions which might profitably be requested of Portugal by the United States, as well as suggestions regarding like concessions which might be expected of the United States by Portugal, I have the honor to submit the following report.

The abandonment in principle of the policy of levying discriminatory duties announced by the Portuguese Government under the terms of

⁴ Not printed.

Decree No. 20,304 of September 12, 1931,⁵ affords ground for asking Portugal to render effective in fact the abolition of discriminatory rates to which she is committed. In this connection, reference is made to the Legation's despatch No. 783 of January 4, 1933,⁶ and to previous despatches on the subject of flag discrimination, particularly despatch No. 496 of November 7, 1931,⁷ despatch No. 515 of December 1, 1931,⁶ and despatch No. 524 of December 17, 1931.⁶ At the same time, there is ground for making an effort to bring about the abolishment of flag discrimination on the part of the Portuguese colonies, in accordance with the desire expressed by the United States Shipping Board, as set forth in the enclosure to the Department's instruction No. 177 of February 1, 1933.⁶

Inasmuch as the United States now enjoys unrestricted Most Favored Nation Treatment in Portugal, any concessions sought of Portugal on the basis of reciprocal concessions will presumably be in the nature of a reduction in the rates applicable to specific items or in the nature of a reclassification affecting certain items. Reductions might profitably be requested in respect of cotton, wheat and machinery, while a reclassification in respect of automobiles so as to favor the importation thereof rather than that of light-weight French, British, and Italian cars would appear to be most desirable, particularly, inasmuch as the foreign cars in question have been enjoying the benefit of a classification on the basis of weight which has enabled them to compete with American cars on advantageous terms. On the other hand, the United States has accorded very favorable customs treatment to Portugal, as is well shown by the memorandum by the Commercial Attaché which accompanied the Legation's despatch No. 546 of January 18, 1932.⁶ It may be worth the Department's while to refer to this memorandum.

With regard to the concessions which Portugal may be expected to request of the United States, I do not hesitate to express the opinion that the first and foremost of these will relate to the wine industry. Portugal is committed to a commercial policy wherein paramount importance is attached to the protection of her wine trade. During the course of the past three and a half years, there have been concluded no less than thirteen commercial agreements between Portugal and other countries providing special protection for Portuguese wines. Reference to the Legation's despatch No. 720 of October 1, 1932,⁶ will show that in one of the most recent of these agreements Cuba undertook to permit the importa-

⁵ *Foreign Relations*, 1931, vol. II, p. 967.

⁶ Not printed.

⁷ *Foreign Relations*, 1931, vol. II, p. 972.

tion, consumption and sale of all Portuguese wines of an alcoholic content not exceeding twenty-one degrees and to extend thereto most favored nation treatment, aside from that enjoyed by the United States. She recognized "Porto", "Madeira", "Moscatel de Setubal" and "Carcavelos" as marks of origin belonging exclusively to the wines produced in the Portuguese regions indicated and prohibited the importation, storage, exportation, manufacture, transportation, sale or offer for sale of wines so designated other than those originating in the aforesaid Portuguese regions. Furthermore, she undertook to apply these provisions even though the foregoing marks of origin were followed or preceded by an indication of the true place of origin or by such expressions as "type", "kind" or "quality". If the United States is not prepared to concede to Portugal protection for her wines as ample as this, there would appear to be little likelihood of obtaining from Portugal any concessions worth while. The existing commercial dispute between Portugal and France has virtually closed the French market to Portugal, with the result that it is the more essential that she should find an outlet for her wines elsewhere, particularly inasmuch as the wine trade has a vital bearing on the prosperity of the country. That the United States is likely to become more addicted to wine-drinking than ever before is a consideration which might well serve as an inducement to Portugal to make additional concessions.

Cork is another commodity for which Portugal may conceivably ask favorable treatment. Reference to the Legation's despatch No. 47 of May 13, 1930,⁸ will show how deeply concerned Portugal is over any proposed increase of the customs duties levied on cork and on articles manufactured therefrom, regardless of the circumstance that, on January 6, 1930, the Portuguese Government promulgated a new customs tariff by virtue of which the customs duties on practically all of the most important articles of export from the United States to Portugal were very materially increased.

Finally, the importance of the Portuguese sardine packing industry and the difficulties it has recently encountered may possibly lead Portugal to request concessions in respect of the duties levied on preserved sardines.

I have the honor to enclose herewith a copy of a letter from the Consul General in Lisbon⁸ covering a memorandum containing such pertinent information on the subject in question as he has been able to submit. I can add nothing further, other than the doubtless superfluous suggestion that any concessions obtained from Portugal with regard to her colonial possessions be embodied in specific commitments incapable of varied interpretation and the suggestion that it may be well to ask for a guar-

⁸ Not printed.

antee against quotas and similar restrictions, particularly in respect of automobiles.

Respectfully yours,

ALEXANDER R. MAGRUDER

611.5331/84

The Chargé in Portugal (Magruder) to the Secretary of State

No. 1020

LISBON, August 8, 1933.

[Received August 22.]

SIR: With reference to the Legation's telegram No. 16 of August 8, 5 P.M.,¹³ reporting that the Minister had been received by the Minister for Foreign Affairs this afternoon, I have the honor to quote the following memorandum of the interview, prepared by Mr. Caldwell:

"The Minister for Foreign Affairs spoke with evident enthusiasm of the suggestion of a bilateral agreement with the United States. He said in this connection: 'I regard general agreements involving many nations as inevitable chimaeras. The hope of better trade relations lies in agreements between individual nations. There will be no difficulty in this matter'.

"It is very probable that the strained commercial relations with France which have been fully reported on by the Legation make the government here especially anxious to enter into some agreement which may offset commercial losses in other directions. These circumstances seem to make the time for the suggested negotiations especially propitious."

Respectfully yours,

ALEXANDER R. MAGRUDER

611.5331/96

Memorandum by the Under Secretary of State (Phillips)

[WASHINGTON,] November 2, 1933.

The Portuguese Minister asked me how soon we would be ready to open the conversations with him looking to reciprocal trade agreements with Portugal. He was prepared, he said, at any time to open these discussions. I replied that I hoped very soon we would be in a position to proceed, but that for the moment the interdepartmental committee was absorbed with the conversations with the three Latin American states;¹⁴ I did not wish to crowd them too much. The Minister said that he understood and would wait to hear from us.

WILLIAM PHILLIPS

¹³ Not printed.

¹⁴ Reciprocal trade agreement discussions with Argentina, Brazil, and Colombia; see vol. iv, pp. 642 ff.; vol. v, pp. 13 ff. and pp. 217 ff.

611.5331/103

*Memorandum by the Chief of the Division of Western European Affairs
(Moffat)*

[WASHINGTON,] December 5, 1933.

The Portuguese Minister called this morning again to urge that we start our commercial treaty negotiations.

He said that these fell into two parts: (1) the immediate question of a wine quota, and (2) the provisions to be included in a treaty which was a matter of less urgency.

He said that his Government was very much upset by the smallness of the quota allotted to Portugal. In the first place, basing the quota on the average for the years 1910 to 1914 was unfortunate, as during those years a relatively small amount of Port and Madeira had been exported; in the second place, the fact that Portugal's quota was allocated on the same basis as France's, when the latter had not paid its debt to us, seemed slightly unfair; in the third place, Portugal bought from the United States about five times what the United States bought from Portugal; in the fourth place, Portugal had always bought all of its foreign wheat in the United States and of recent years, particularly since its trade war with France, had favored us in the matter of purchasing automobiles. He therefore felt that Portugal had a right to expect more favorable treatment in the matter of her liquor quota. For instance, with Madeira, there were bona fide orders for five thousand cases and the figure allowed was no more than seventeen hundred.

I told him that I was much interested to hear his point of view; that Mr. Culbertson¹⁵ had been doing a good deal of work on different elements of Portuguese-American commercial relations; that Mr. Sayre¹⁶ who was going to have charge of the negotiations, was at the present moment studying the matter, and hoped to be able to have a preliminary talk with the Minister before his departure at the end of the week.

We then talked for a little bit of Portuguese internal conditions and I expressed my admiration of the extraordinary financial progress Portugal had made in the last two years. He said that Salazar¹⁷ was a real genius and that much of the improvement could be attributed to his personal efforts.

PIERREPONT MOFFAT

¹⁵ Paul T. Culbertson, Assistant Chief of the Division of Western European Affairs.

¹⁶ Francis B. Sayre, Assistant Secretary of State.

¹⁷ Oliveira Salazar, Portuguese Prime Minister.

611.5331/106

Memorandum by the Assistant Secretary of State (Sayre)

[WASHINGTON,] December 13, 1933.

Mr. Bianchi was asked to come in yesterday afternoon at four o'clock in order that Mr. Sayre might lay before him in an informal way the various items which this Government would wish to have included in any commercial treaty which may be negotiated with Portugal. Mr. Sayre opened the discussion with an expression of hope that a trade agreement satisfactory to both nations could be concluded. He felt, however, that there may be some obstacles to overcome and preferred that we be perfectly frank and place our cards on the table from the beginning.

Mr. Sayre stated that there were two phases for discussion: (1) that involving the temporary liquor quota, and (2) the permanent trade agreement discussions.

(1). In so far as the temporary liquor quota was concerned it was necessary to see what basis might be arrived at upon which to strike a bargain, it being necessary for this Government to have in exchange for an increased liquor quota some *quid pro quo*. Mr. Sayre said that as a suggestion from this Government, we would be prepared to increase the present Portuguese quota of 60,000 gallons to a quota of 180,000 gallons in return for an undertaking on the part of the Portuguese Government to extend national treatment to American shipping. Mr. Bianchi explained the Portuguese laws with regard to shipping, and pointed out that it is the policy of his Government gradually to remove these flag discriminations¹⁸ and that in a couple of years the present discriminations would have been removed. Shipping between Portugal and Portuguese colonies is, however, considered as coastwise trade and is similar to the coastwise trading regulations of the United States. The Minister also pointed out that the suggestion with regard to the extension of national treatment to American shipping involved a permanent concession in return for a temporary concession to Portuguese wine exporters.

He expressed some doubt as to whether the Portuguese Government would look upon this suggestion with favor, particularly in view of the fact that the amount of wine involved is so small and also in view of the fact that commercial treaty discussions are now in process between Portugal and France, the latter country proposing to take as much as three million gallons of Portuguese wines. Mr. Sayre pointed out that a provision for national treatment of shipping would be included as one of the points to be covered by the regular trade agreement. The Minister doubted whether the extension of national treatment of shipping could

¹⁸ See correspondence regarding discriminatory charges in Portuguese ports, pp. 649 ff.

be gotten through the Portuguese Government quickly enough to take care of this temporary liquor quota, even though the Portuguese Government might be willing to make a bargain on this basis.

[(2).] Mr. Sayre then turned to a discussion of a permanent trade agreement. He handed to the Minister a list of commodities¹⁹ on which we would either wish a reduction in duty or a binding of the existing duty. He then said that in addition to these items we would wish to have included in the trade agreement an unconditional most-favored-nation clause. Mr. Bianchi said that Portugal is at the moment more or less trying to get away from this clause since it was found not to be to Portugal's advantage. It might, however, be possible in the Minister's opinion to develop some type of conditional most-favored-nation clause. He also pointed out that in all of her treaties Portugal excepted the treatment which she might accord to Brazil and Spain, since the latter was such a near neighbor and since Brazil was so closely bound by language and otherwise to Portugal. Mr. Sayre further suggested that the trade agreement should contain a provision for national treatment in respect of internal taxes in Portugal on all products originating in the United States, and a provision against any increase in internal taxes on products in the list. Mr. Bianchi did not know the situation in Portugal with regard to this point, but felt that there would be no difficulty in connection with it.

Mr. Sayre further indicated that this Government would wish the trade agreement to provide that there be no quotas or restrictions in Portugal on the American products on which tariff concessions are granted, as set forth in the list handed to the Minister. The Minister felt that this would meet with the approval of Portugal, since Portugal does not look with favor upon quota restrictions.

It was also indicated by Mr. Sayre that this Government would wish to have included in the trade agreement a clause providing for national treatment of shipping which would, of course, be on a reciprocal basis. A brief discussion similar to that mentioned above with regard to the temporary liquor quota followed.

Mr. Sayre then mentioned that we would wish to have certain special provisions included in the treaty for the treatment of American wheat and flour, and that these two items were really the most important ones to be included in the proposed agreement. Mr. Sayre made clear to the Minister that he was aware of the difficulties which our request in this connection might raise, but that it would be necessary, should a trade agreement be concluded, to show that we had obtained substantial trade advantages if we were to hope to get favorable approval of the agreement by the Congress. This Government is interested in obtaining an in-

¹⁹ Not printed.

crease of our exports to Portugal of wheat and flour. We would wish to keep them both on the free list and obtain removal of all restrictions adversely affecting their importation into Portugal. It would appear necessary to modify the Portuguese milling requirements in order to prevent a further cutting down of American exports of these items. In so far as flour is concerned we would wish to have the Portuguese Government reestablish the acidity requirements which were in force prior to 1930, and which, by reason of their being altered had materially affected the importation into the Azores and Madeira of American wheat flour. The Minister stated that the campaign for wheat production to take care of domestic needs in Portugal arose out of the necessity of reducing demands for foreign exchange with which to take care of Portuguese trade. The production of wheat and other flour cereals had now been brought to a point where Portugal was practically self-sufficient. Mr. Sayre suggested that the exchange situation now existing differs from that which gave rise to the wheat development program in Portugal. He also pointed out that in the negotiation of a treaty of this sort it was necessary to arrange for the exchange of goods between the two countries and that it could be presumed that the United States can produce wheat more cheaply than Portugal can produce it, and on the other hand Portugal is in a position to produce wines which American consumers are glad to take.

Mr. Bianchi stated that the main articles of export in which the Portuguese Government would be interested are wines, sardines and cork. The Portuguese Government is not fearful of the competition with regard to these wines, so long as their wines are not obliged to compete with "misbranded" wines. The Portuguese position is that no wines should be marked "Port" or "Madeira" unless those wines originated in Portugal or Madeira. The Portuguese Government would, therefore, seek in this treaty as they have sought in other treaties, to obtain protection for the names "Port" and "Madeira". It was pointed out that there would in all likelihood be considerable difficulty in obtaining protection of this sort against the use of such appellations as "Port type" or "California Port", "Australian Port", et cetera. The Minister threw out the suggestion that perhaps we might be in a position to give complete protection against the misuse of the names Port and Madeira on imported wines only.

Mr. Bianchi then returned to the question of the temporary liquor quota, and reiterated that he did not feel that the shipping request was on the same basis as the temporary quota. Some discussion followed this with regard to the recent Portuguese-British arrangement and a portion of the text of the agreement between those two countries. Mr. Sayre pointed out again to the Minister that we would not necessarily hold to

our request for this national treatment of shipping as a *quid pro quo* for an increased liquor quota, but that we had put that out as a suggestion for his and his Government's consideration. If some other *quid pro quo* could be found we would be glad to give it consideration, but that we were under obligation to make some showing in return for the granting of an additional quota to any particular country.

In concluding the conversation, Mr. Sayre said that what he had presented to the Minister represented that [*what*] we would like to obtain in any treaty to be negotiated and that we would, of course, be prepared to give consideration to the requests which Portugal would no doubt wish to submit to this Government. The Minister seemed to be surprised that Mr. Sayre was not handing to him some sort of memorandum and asked whether it would not be possible to have in writing the points discussed. Mr. Sayre explained that he was most anxious to keep this initial discussion on a most informal basis and that he preferred not to hand the Minister any written communication. The Minister, however, asked that some very informal memorandum be given to him so that he would have all the points straight and would not misinterpret these points. Mr. Sayre said that such a memorandum would be drawn up and given to the Minister, it being understood of course that it was entirely informal and should not be considered as a communication from this Government to him.*

**REPRESENTATIONS REGARDING DISCRIMINATORY CHARGES
IN PORTUGUESE PORTS ²⁰**

653.116/110

The Minister in Portugal (South) to the Secretary of State

No. 718

LISBON, September 29, 1932.

[Received October 15.]

SIR: With reference to my despatch No. 496 of November 7, 1931,²¹ and to previous correspondence on the subject of flag discrimination, I have the honor to enclose herewith a copy of a letter²² from my British colleague, Sir Claud Russell, and a copy of a note which I have deemed it incumbent upon me to address to the Minister for Foreign Affairs in order to go on record at the present time as protesting against Portugal's continued inactivity in respect of the abolition of dis-

* Mr. Hawkins prepared a memorandum of this nature, the blue carbon of which is attached hereto. Mr. Culbertson handed the white copy to Mr. Bianchi, Wednesday afternoon, December 13. [Footnote in the original. The memorandum referred to is not printed.]

²⁰ Continued from *Foreign Relations*, 1931, vol. II, pp. 965-974.

²¹ *Ibid.*, p. 972.

²² Not printed.

criminatory duties to which she is committed in principle. I have acquainted my British colleague with the text of this note.

Respectfully yours,

J. G. SOUTH

[Enclosure]

The American Minister (South) to the Portuguese Minister for Foreign Affairs (Mendes)

No. 384

LISBON, September 28, 1932.

EXCELLENCY: With reference to the abandonment in principle of the policy of levying discriminatory duties announced by Your Excellency's Government under the terms of Decree No. 20,304 of September 12, 1931,²³ I have the honor to bring to Your Excellency's attention my note No. 260 of October 19, 1931,²⁴ in which I had the honor, acting under instructions from my Government, to inform Your Excellency's distinguished predecessor, Captain Branco, that, in the absence of information from Your Excellency's Government in respect of its plans for rendering effective in fact the abolition of discriminatory rates, my Government would reluctantly be forced to the conclusion that the decree in question appeared to represent an inadequate remedy for the inequalities practised.

Under date of November 4, 1931, (Processo No. 78/27)²⁵ His Excellency Captain Branco replied at length to the representations to which I have made reference hereinabove. From this note, I venture to quote in translation the following pertinent passages:

"With reference to the Legation's note No. 260 of October 19, last, I have the honor to inform you that the Government of the Republic, faithful to the principle expressed in Decree No. 20,304, is endeavoring to adopt all measures for the early extinction of the customs bonus by which the Merchant Marine has been benefited and under which there has been created a state of affairs the immediate suppression of which would gravely affect national economics."

"The good faith of the Portuguese Government thus becomes evident from the conciliation of all points of view and interests to the extent which is just and reasonable. And under such a criterion, doubt cannot be cast upon the efforts employed for the rapid realization of a complete plan of protection of the national merchant marine (Decrees Nos. 20,321 of September 18, 1931, 20,333 of September 22, 1931, and others under consideration) which through its effects may render possible the gradual suppression of the customs bonus in harmony with the general provisions set forth in Decree No. 20,304."

²³ *Foreign Relations*, 1931, vol. II, p. 967.

²⁴ For substance of note, see telegram No. 24, October 16, 1931, to the Minister in Portugal, *ibid.*, p. 970.

²⁵ *Ibid.*, p. 973.

Now, however, Your Excellency's Government, instead of providing for further reductions looking toward the total extinction of discriminatory duties in conformity with the terms of Article 1 of Decree No. 20,304, has suspended (by Decree No. 21,670 of September 19, 1932) Decree No. 20,333 of September 22, 1931,—one of the very decrees cited by Captain Branco as evidence of the good faith of Your Excellency's Government in its expressed determination to render effective in fact the abolition of discriminatory rates to which it is committed in principle.

Under the circumstances, I venture to submit that the course of the negotiations which have taken place on the subject under discussion would appear to justify my Government in the expectation of a further reduction in the discriminatory duties applicable to the fiscal year 1932-1933.

Accept [etc.]

J. G. SOUTH

653.116/110

The Secretary of State to the Minister in Portugal (South)

No. 159

WASHINGTON, October 20, 1932.

SIR: The receipt is acknowledged of your despatch No. 718, of September 29, 1932, concerning your representations to the Portuguese Government with further reference to flag discrimination.

Your action is approved. Kindly inform the Department, by telegraph if necessary, of any developments.

Very truly yours,

For the Secretary of State:
W. R. CASTLE, JR.

653.116/113

The Portuguese Minister for Foreign Affairs (Mendes) to the American Minister in Portugal (South) ²⁶

[Translation]

No. 78/27

LISBON, October 27, 1932.

MR. MINISTER: In reply to your note No. 384, of September 28, last, I have the honor to inform you that decree No. 20,333 of September 22, 1931, was suspended merely to make place for another act which may effect a more equitable distribution of the fuel subsidy.

As for the future reductions of the customs bonus, these are dependent upon the reconstruction of the long distance merchant fleet, on the

²⁶ Copy transmitted to the Department by the Minister in his despatch No. 742, October 29, 1932; received November 21.

basis of principles of collateral credit which are at present being studied by the Ministry of Marine.

I avail myself [etc.]

CESAR DE SOUSA MENDES

653.116/114 : Telegram

The Minister in Portugal (South) to the Secretary of State

LISBON, January 4, 1933—noon.
[Received January 4—11:10 a.m.]

1. My despatch No. 718, of September 29. Reductions in discriminatory duties of 2 and 4 percent, respectively, conceded by decree of January 2nd, effective that day.

SOUTH

653.116/123 : Telegram

The Minister in Portugal (Caldwell) to the Secretary of State

LISBON, October 18, 1933—6 p.m.
[Received October 18—2:42 p.m.]

22. Referring to the Legation's despatch No. 783, January 4, 1933.²⁷ I am informed unofficially that decrees imposing discriminatory charges have been revoked. Foreign Office advise that new decree on the subject will be published within a few days.

CALDWELL

653.116/125

The Minister in Portugal (Caldwell) to the Secretary of State

No. 68

LISBON, October 23, 1933.
[Received November 6.]

SIR: With reference to my telegram No. 22 of October 18, 6 P.M., I have the honor to report that the local Press carried a news item on October 19 of which the following is a literal translation:

"The Anglo-Portuguese Agreement with regard to flag discrimination was concluded on the 14th last.

"By this Agreement, the Portuguese Government binds itself to abolish any flag discrimination, in respect of British vessels in Portugal and the Adjacent Islands, until July 1, 1934, and in the Portuguese colonies until July 1, 1936.

"In compensation, the Government of the United Kingdom guarantees to continue until June 30, 1941, the protection set forth in the Anglo-Portuguese Agreement of 1914 and accorded in England to the trade-

²⁷ Not printed.

marks of "Porto" and "Madeira" wines, even if the treaty ceases to be valid. The Agreement is not applicable to coastwise service."

The same announcement appears in the London *Times* for October 19 (page 11), the only significant difference being that, while the Lisbon papers said that Portugal had promised to abolish flag discrimination "until" certain dates (July 1, 1934, July 1, 1936, respectively), the London *Times* states that Portugal had agreed to give up these discriminations "by" July 1, 1934, for Portugal and the Adjacent Islands, and "by" July 1, 1936, for the Portuguese colonies. While I have not seen the text of the agreement between Portugal and Great Britain, I am assured by Mr. A. H. W. King, Commercial Secretary of the British Embassy here, whom I have consulted in the absence of the British Ambassador, Sir Claud Russell, from Lisbon, that the form of the announcement in the London *Times* for October 19 is substantially correct.

The above item, taken by itself, is somewhat disturbing, for it seems to indicate a special concession to Great Britain rather than a new policy on the part of Portugal on the question of flag discrimination, fulfilling previous promises, which will apply generally, or, at least, to all countries, including the United States, which have most favored nation agreements.

I am assured, however, by Mr. King, confidentially, that the Embassy here understands clearly that Great Britain can gain no special favors in the matter which do not also apply to other countries. Mr. King further says that he has every reason to believe that when the necessary decree is published it will be found to apply to the United States, Germany, Norway and other countries.

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Beyond an informal inquiry at the Foreign Office, already reported to the Department, I have felt that the present moment would not be well chosen for such representations. The various ministers, including Dr. Caeiro da Mata, have been very busy with conferences arising out of a cabinet crisis which has been described in other despatches, and are, accordingly, unlikely to be willing to give a definite ruling on the effect on American interests of the Anglo-Portuguese agreement of October 14. Mr. Koren, the able and experienced Minister of Norway, whose position in the matter is almost precisely similar to our own, is expected to return to Lisbon on November 1. I think it is likely that, if the matter is not cleared up in the meantime, he will desire to make concurrent representations and inquiries. For these reasons I have decided to wait for the time being and in the meantime I respectfully request the Department's instructions in the premises. Of course, it is

entirely possible that new developments may either make prompt action necessary, or may, on the other hand, clear up the whole situation without any further steps.

Respectfully yours,

R. G. CALDWELL

653.116/127

The Minister in Portugal (Caldwell) to the Secretary of State

No. 73

LISBON, October 28, 1933.

[Received November 14.]

SIR: Referring to my Despatch No. 70 of October 26, 1933,²⁸ I have the honor to report that I had an interview today with the Prime Minister, Dr. Oliveira Salazar, who gave me the impression of keen intelligence and immense energy.

Dr. Salazar said that he was greatly interested in the efforts which were being made by President Roosevelt in America to overcome the difficulties of the crisis, but that he had been very much disappointed to read in the newspapers recently that no immediate steps were to be taken to stabilize the dollar on a definite basis. By this remark I took him to be referring to the gold standard. He went on to say that in former times, commercial rivalry between nations had taken the form of tariff wars; that today the same rivalry seemed to be expressed in constant changes in the standard of value. He said that the two great currencies of the world were the dollar and the pound and a contest between these two currencies, to see which one could stay below the other, would be in his judgment more ruinous to international trade than a serious tariff war.

In reply to the observations of Dr. Salazar, I merely remarked that, so far as I understood the matter, the devaluation of the dollar had been motivated not by the external relations of the United States nor by its commerce, but by the immense difficulties in which all Americans found themselves on account of the huge volume of internal debts which had to be paid on a basis of low prices.

As Dr. Salazar gave me the opportunity to do so, I raised the question of flag discrimination which I had discussed with the Foreign Minister, Thursday, taking the matter up entirely from the point of view of its economic consequences. I said in this connection to Dr. Salazar that when flag discrimination was once given up, as it seemed to be under the agreement of October 14, for a great maritime nation like England, the possible benefits to Portuguese shipping of continuing the policy for other nations seemed negligible. Injury to a few lines of American ships under continued flag discrimination, defeat of any

²⁸ Not printed.

growing purpose for closer commercial relations between the United States and Portugal and her colonies, seemed to me to be the only possible results of the policy which appeared to be indicated. All this would be, at the present moment, a great pity.

Dr. Salazar replied that he agreed substantially with what I had said, and that for that reason he was thinking of the new agreement between England and Portugal as merely a first step; that he felt very certain that long before the treaty with England went into final effect for the colonies on July 1, 1936, a commercial agreement with the United States would make possible the same advantages which had already been promised to British ships.

The approach to the problem along economic lines with Dr. Salazar seemed to me to be more effective and useful than any discussion of the purely legal and technical phases of the problem under the most favored nation agreement of 1910.

Again, as in my talk of October 26 with the Foreign Minister, Dr. Caeiro da Mata, I gained the very definite impression that, both with the Foreign Minister and with the Prime Minister, the question of flag discrimination is at the present time entirely secondary and incidental to the negotiation of commercial treaties with the United States, France and other countries. From the Portuguese point of view, the first condition of such treaties would be an ample protection to the regional marks of Portuguese wines.

Respectfully yours,

R. G. CALDWELL

653.116/125 : Telegram

The Secretary of State to the Minister in Portugal (Caldwell)

WASHINGTON, November 8, 1933—8 p.m.

12. Your despatch 68, October 23. Since it is expected that commercial treaty discussions will be started in a day or so with the Portuguese Minister, I feel that it will be better to delay for the time being the representations you suggest making.

HULL

RUMANIA

RECOGNITION BY THE UNITED STATES OF RUMANIA'S DE FACTO SOVEREIGNTY OVER BESSARABIA ¹

871A.014 Bessarabia/185

*The Chief of the Division of Near Eastern Affairs (Murray) to the
Secretary of State and the Under Secretary of State*

[WASHINGTON,] March 6, 1933.

MR. SECRETARY:

MR. UNDER SECRETARY:

The Rumanian Minister ² came in to see me this morning to discuss further the Bessarabian question.

For convenient reference there is attached a memorandum ³ setting forth briefly an outline of this question, which has occupied the attention of the Department almost continuously for the last 12 years.

The Rumanian Minister asserts that the United States is the only country besides Soviet Russia that has refused to recognize the annexation by Rumania of Bessarabia, a former Russian province. While we have no means of ascertaining positively the accuracy of the Minister's contention, we are aware that several Powers have formally recognized the annexation and we have no record that any have declined to do so. We have consistently refused to consider Bessarabia as a part of Rumanian territory as long as the dispute over the possession of this province has not been settled by the two parties to the dispute. As a special concession to Rumanian sensibilities on this subject, the Department, in June 1931, separated the Bessarabian immigration quota from the Russian quota and set up an independent Bessarabian quota. The Rumanians have since that time urged that the Department go one step further and include the Bessarabian quota in the Rumanian quota. This cannot be done without at the same time tacitly recognizing Bessarabia as a part of Rumania.

The immediate and urgent concern of the Rumanian Government is that before this Government comes to any decision with regard to the recognition of the present régime in Russia ⁴ it should give careful and

¹ For previous correspondence regarding the status of Bessarabia, see *Foreign Relations*, 1932, vol. II, pp. 503 ff.

² Charles A. Davila.

³ Not printed.

⁴ For correspondence regarding recognition of the Soviet Union by the United States, see pp. 778 ff.

impartial consideration to the Rumanian case respecting Bessarabia. The Rumanians, quite naturally, fear that it would be difficult, if not impossible, for us to alter our position on the Bessarabian question once we shall have recognized the Soviet régime.

The Rumanian Minister emphasized the viewpoint of Mr. Titulescu, the Rumanian Foreign Minister, that if we recognize the Soviet régime without modifying our position on the Bessarabian question we shall be recognizing at the same time that a dispute—"question litigieuse"—exists between Rumania and Soviet Russia. The Rumanian Government steadfastly refuses to admit the existence of such a dispute and considers that the possession of Bessarabia by Rumania is a *fait accompli*. The Rumanian Minister described our present position on the Bessarabian question as a "public discrimination" against Rumania. He said that while it had been possible hitherto to suppress discussion of this question in the Rumanian press, it would not be possible to do so in the future; that Rumanian official opinion is aroused at our attitude and that public opinion will be much more so once the question is discussed in the Rumanian press.

I reiterated to the Rumanian Minister this Government's traditional policy of refraining from being drawn into questions of this kind and repeated what I had told him before, namely that any settlement which the Rumanian Government and the Soviet régime might be able to arrive at in this matter would hardly be questioned by this Government. I reminded him that we had consistently adhered to such a policy of detachment in the case of many territorial disputes in Latin America. I pointed out further that there was no such thing as recognizing a "country"; that *governments* or *régimes* are recognized, not the specific territories over which they exercise control. I referred to the fact that in recognizing the Government of Yugoslavia in 1919,⁵ as well as that of Armenia in 1920,⁶ this Government had specifically refrained from recognizing the territorial boundaries of either country, it being considered that the boundaries thereof were matters not of concern to this Government. I contested his statement that a commercial treaty between two countries necessarily implied a recognition by each of the boundaries of the other. I pointed out that when our new commercial treaty with Turkey⁷ came up in the Senate in 1930 and when certain Senators desired to add an amendment to the effect that this treaty should not be taken to imply that we recognize the present territorial boundaries of Turkey, the Department strongly objected on the grounds that a com-

⁵ See telegram No. 622, February 6, 1919, 4 p.m., from the Commission to Negotiate Peace, *Foreign Relations*, 1919, vol. II, p. 899.

⁶ See note to the Representative of the Armenian Republic, April 23, 1920, *ibid.*, 1920, vol. III, p. 778.

⁷ Signed at Angora, October 1, 1929, *ibid.*, 1929, vol. III, p. 838.

mercial treaty was not concerned with the exact territorial delimitations of any given country.

Returning to the subject of Soviet Russia, I stated that, in my opinion, if and when American recognition of the Soviet régime came up for consideration, I saw no reason why Soviet territorial questions need necessarily be involved in the discussions. I did not of course say that such questions would *not* be discussed.

The Minister then added that in any eventual conversations that this Government might have with the Soviet authorities concerning recognition a suggestion from us to the Russians that it would be desirable for them to come to an amicable settlement of the Bessarabian question with the Rumanians would go far to bringing about such a settlement. He said that Bessarabia was one of the danger spots in the world and that the failure of Soviet Russia to come to a satisfactory understanding with the Rumanians on this issue constituted a menace to world peace. For that reason, and in view of this Government's interest in the proper functioning of the Kellogg Pact,⁸ he felt that we should be willing to use our influence with the Russians with a view to removing this menace. The Minister remarked that he could of course not make such a request officially but that it would be proper for him to do so informally. He thought that such a move on our part would undoubtedly be successful and said it would earn for us the eternal gratitude of the Rumanian Government and people.

I promised the Rumanian Minister that I would not fail to inform you of the substance of our conversation and said I felt sure that due consideration would be given to the Rumanian position on the Bessarabian question if and when the matter of Soviet recognition became active.

WALLACE MURRAY

871A.014 Bessarabia/175

*Memorandum by the Chief of the Division of Eastern
European Affairs (Kelley)*

[WASHINGTON,] March 16, 1933.

During the course of an extended conversation at the Rumanian Legation on the evening of March 15,⁹ the Rumanian Minister urged that the United States, in any discussions which it might have with the Soviet government preceding the extension of recognition, indicate to the Soviet authorities the desirability of the Soviet government coming to a

⁸ Treaty for the Renunciation of War, signed at Paris, August 27, 1928, *Foreign Relations*, 1928, vol. I, p. 153.

⁹ Present were: Charles A. Davila, the Rumanian Minister; F. C. Nanno, the Rumanian Counselor; George Boncesco, the Rumanian Financial Counselor; Andrei Popovici, the Rumanian Secretary; and Robert F. Kelley.

settlement with the Rumanian Government with respect to the question of Bessarabia. Mr. Davila emphasized that he did not mean that we should inject ourselves into the details of the settlement to be arrived at between Rumania and Russia, but merely that we should indicate to the Soviet authorities that we would like to see the Bessarabian question settled. He said that such a suggestion on our part would be in accord with the policy which we have been pursuing with respect to promoting international peace and cooperating in efforts made to solve problems standing in the way of the reduction of armament and strengthening of world peace. He referred to the recent statement made by the Department in connection with our acceptance of the invitation to cooperate with the Advisory Committee created by the League of Nations with reference to the Far Eastern situation:

“The promotion of peace, in no matter what part of the world, is of concern to all nations. It has been and is the desire of the American people to participate in efforts directed toward that end. In this spirit we have in the past established the practice of cooperation and observation without direct participation.”¹⁰

He expressed the opinion that the Soviet authorities would be so pleased with the prospect of our recognition that they would readily comply with a suggestion on our part with regard to the settlement of their differences with Rumania. He said that the Rumanian Minister for Foreign Affairs, Mr. Titulesco, was very much interested in bringing about a settlement of the dispute with Russia over Bessarabia and that he had received numerous telegrams from him indicating that Mr. Titulesco thought that the most propitious time for a settlement of the matter would be that preceding the resumption of relations between the United States and Russia.

Mr. Davila set forth at great length the Rumanian position with respect to Bessarabia and reviewed the discussions that have taken place with Soviet officials concerning this matter since 1920. He stated that in the period from 1920 to 1925 the Soviet government was willing to recognize the incorporation of Bessarabia into Rumania in return for the renunciation by Rumania of its claim to the gold, amounting to approximately \$80,000,000, and other treasure which had been deposited in Moscow by the Rumanian Government and seized by the Soviet government. Mr. Davila said that unfortunately the Rumanian Government was not prepared at that time to come to an agreement on these terms. Since 1925, however, the Soviet government has taken the position that it cannot recognize the annexation of Bessarabia by Rumania unless Rumania holds a plebiscite in that territory. Mr. Davila

¹⁰ See telegram No. 87, March 13, 1933, 6 p.m., to the Minister in Switzerland, *Foreign Relations, Japan, 1931-1941*, vol. 1, p. 118.

emphasized repeatedly that the Soviet government, in its discussions with representatives of the Rumanian Government, did not lay claim to Bessarabia on the basis of historic rights, but merely took the position that it could not recognize such a transfer of territory without a plebiscite. He said that it was clear to him from his conversations with Litvinov¹¹ that the Soviet government believed that it must have some good grounds on which to base its acceptance of the Rumanian annexation of Bessarabia in order to satisfy the extremists in the Communist Party, and it was for this reason that it insisted upon a plebiscite. He was of the opinion that the atmosphere which would be engendered in Moscow in connection with recognition by the United States would make it easier for the Soviet authorities to enter into a settlement of the matter with Rumania, especially if the Government of the United States indicated that it would like to see the dispute settled.

In the course of the conversation the Rumanian Minister referred to the recent strengthening of the alliance between Rumania, Yugoslavia, and Czechoslovakia and stated that under the new arrangement Rumania will be able to prevent the recognition of the Soviet government by either Czechoslovakia or Yugoslavia. I gathered pretty clearly that Rumania intends to use its veto power in this respect until a settlement is reached between itself and Russia with respect to the Bessarabian question. He stated that in return for the recognition by Russia of the incorporation of Bessarabia into Rumania, Rumania would be willing to renounce its claims to the Rumanian gold reserve seized in Moscow by the Soviet authorities and enter into agreements with Russia, such as a non-aggression pact, etc., which would strengthen the security of the Soviet State as concerns any intervention from Western Europe. In addition, the Soviet government would obtain recognition by all the States of the Little Entente.

The Minister also advanced the argument that the settlement of the Bessarabian question would tend to strengthen Russia's position in the Far East, and he thought that this was a factor which would be of interest to us. He said that if the Bessarabian question were not definitely settled at the time of our recognition of the Soviet government, the matter would probably drag on indefinitely, and while he did not foresee any war arising out of this question, yet the mere fact that it was unsettled would be prejudicial to the cause of disarmament and the promotion of world peace.

The Minister also touched upon the question of the abolishment of the special immigration quota for Bessarabia, urging that we eliminate what he referred to as "public discrimination" with regard to Bessarabia. He also thought that we ought to recognize the present situation existing with

¹¹ Maxim Litvinov, Soviet Commissar for Foreign Affairs.

respect to Bessarabia in view of the fact that we had recognized the decision of the Conference of Ambassadors in the matter of the territorial dispute between Lithuania and Poland,¹² although Lithuania had not accepted the decision. I pointed out that it has been the policy of the Department to refrain from participating in purely European territorial adjustments and to take cognizance of such territorial adjustments when the parties concerned had come to an agreement. I said that the Department's action in the case of Poland had been based on the belief that both Lithuania and Poland had agreed to accept the decision of the Conference of Ambassadors. Mr. Davila, however, did not press the question of our recognition of the annexation of Bessarabia by Rumania and the abolishment of the special immigration quota for Bessarabia, but devoted the greater part of his remarks to urging that the United States, in its discussions with the Soviet authorities preceding recognition, intimate that it would be pleased if a settlement were reached between Rumania and Russia with respect to Bessarabia.

ROBERT F. KELLEY

871A.014 Bessarabia/189

The Rumanian Minister (Davila) to the Secretary of State

WASHINGTON, March 29, 1933.

DEAR MR. SECRETARY: As agreed in our last conversation, I have embodied in the attached *aide-mémoire* my views on the opportunities for constructive cooperation now arising for the new American administration, insofar as the relations between Russia on one side and Roumania and the Little Entente on the other side are concerned.

I wish to make it clear that the first part of the *aide-mémoire* contains my own interpretation of my Government's views with regard to the possibility of friendly mediation by the United States, and that should they be favourably received, I would be grateful if I could be notified as promptly as possible, in order to acquaint my Government with this development and obtain its formal approval of the suggested course of action.

I take the liberty of stressing here an idea outlined in my *aide-mémoire*: that Russia's policy towards Roumania can well be regarded as a touchstone for the value of her pacific protestations. Even leaving Roumania's interests completely aside, no better test could be imagined for the ultimate aims of Russian policy, in view of the great interest she has in making the normalization of her relations with the countries

¹² For French text of the decision of the Conference of Ambassadors on the subject of the frontiers of Poland, Paris, March 15, 1923, see *British and Foreign State Papers*, vol. CXXVIII, p. 960.

forming the Little Entente possible, than her attitude on the Bessarabian question. As I have indicated, if Russia insists on a plebiscite, which in its turn explains why she refuses a satisfactory formulation of the nonaggression pact she herself proposes, it proves one thing very clearly: that stripped of all sophisms, Russia's policy is not one of genuine and lasting peace. If one really wants peace, one has to be willing to fulfill the conditions which alone can make it lasting. Otherwise, it has no value.

Neither Roumania nor her allies have been able so far to obtain from Russia a frank avowal of her aims, for she knows perfectly well that her demand for a plebiscite is absurd, cannot be granted, and is, therefore, a mere subterfuge to mask ulterior motives. In her anxiety to obtain American recognition, she might be forced to formulate her objectives clearly and unequivocally, in order to satisfy a perfectly legitimate American demand for a reassuring statement of her aims, inasfar as they affect world peace. She could not refuse, neither could she risk an unsatisfactory reply. And I repeat, as long as she puts impossible conditions for the normalization of her relations with her neighbours, her policy cannot be considered pacific.

I beg [etc.]

DAVILA

[Annex]

The Rumanian Legation to the Department of State

AIDE-MÉMOIRE

Assuming the widespread belief that the new administration is not opposed to the idea of recognizing the Russian Government, to be correct, it must be assumed that the numerous implications and consequences of such a step are receiving the renewed and most careful consideration of the Department of State.

The Department will, therefore, undoubtedly welcome an exposé from the Roumanian point of view, of some of the aspects of this question, particularly as Russia and Roumania are neighbours and there are a certain number of problems, mostly deriving from the union of Bessarabia with Roumania, still unsettled. This situation vitally affects world peace, and, to quote the words of a recent statement of the Department of State, "the promotion of peace, in no matter what part of the world, is of concern to all nations. It has been and is the desire of the American people to participate in efforts directed towards that end."

Roumania's attitude, briefly, is the following:

Bessarabia, that is the territory which, since the foundation of the ancient Moldavian Principality, in the Fourteenth Century, constituted its eastern half, situated between the Pruth and the Dniester, was

annexed in 1812, in violation of treaties and international law, by Russia, after her victory over the Turks, the suzerain power. After a series of vicissitudes, marked by renewed treaty violations on the part of Russia, the population of that province, christened by her conquerors Bessarabia, decided to take advantage of the right of self-determination of peoples, including the complete separation from the state into the composition of which they enter, proclaimed by the Russian Socialist Federal Soviet Republic in 1917, and declared themselves first an autonomous republic, later independent and finally, in March 1918, voted their reunion with Roumania,¹³ a state itself resulted from the union, in 1859, of Moldavia and Wallachia.

Roumania takes the stand that this act is internationally valid regardless of its recognition by any other power, including Russia. However, it is not denied that even a valid act needs general recognition, which although it adds nothing to its validity, is necessary in order to produce its full effects "inter tertios," and that the creation of new states or territorial changes having important international consequences, it is customary, in order to give them effect, that these changes should be recognized by other states, either formally or else implicitly, by the fact of settling by negotiations the consequences above referred to.

The explanation of the apparent inconsistency between the action of Roumania in securing formal treaty recognition by the principal European powers * of the union of Bessarabia (in the Treaty of Paris, October 1920),¹⁴ and its contention that formal Russian recognition is not only unnecessary but not even desired, is to be found in the circumstance that Russia herself had never secured either in 1812 or 1878, Roumanian recognition of the seizure and incorporation of that province. If recognition by the parent state is deemed essential for the acquisition of title, to a territory, Russia would have had to obtain it from Moldavia in 1812 and Roumania in 1878, as Turkey could never validly cede territories which did not belong to her. Turkey had only rights of suzerainty over the Roumanian principalities and had expressly guaranteed by treaty the integrity of their territory. This did not prevent Russia and Roumania from signing treaties affecting the consequences of the change of sovereignty over Bessarabia. Furthermore, should Roumania have seemed to admit that the validity of the Union of Bessarabia was dependent upon formal recognition by the Russian Government, the danger arose that the whole question might again be reopened in

¹³ See *Foreign Relations, 1918, Russia*, vol. II, pp. 707 ff.

* Japan was included for technical reasons, being one of the "Big 4" which, in those days, were settling the outstanding problems left by the great war. [Footnote in the original.]

¹⁴ *British and Foreign State Papers*, vol. CXIII, p. 647.

case of a change of government in Russia, which might not have recognized the acts of her present dictatorial rulers.

The Russian position is very curious: In September 1921, in the course of the Russo-Roumanian negotiations which took place in Warsaw, the chief Russian delegate, Mr. Karakhan, said (privately) to the Roumanian delegate, Mr. Filality: "We know that Bessarabia will remain yours, as we do not want to, or cannot, take it back; but you must pay the price of our recognition of your title to Bessarabia, an act which will weigh heavily in the balance later on."

The price was the abandonment by Roumania of her demand that the gold reserves of the National Bank of Roumania (about \$80,000,000) which had been sent to Moscow for safekeeping during the war, be returned, and the signature of a treaty of neutrality with Russia. Roumania refused to pay for what she considered the mere reparation of an ancient wrong, and the negotiations were broken off.

In 1924, Russia made fresh advances to Roumania, and another conference was arranged in Vienna. On this occasion, the conference broke up before it really began, as the Russians unexpectedly came out, at the outset, with a new theory: They had decided to consider themselves as invested with a kind of moral trusteeship for the races formerly part of the Russian Empire, and this sacred trust obliged them to see to it that former subject races could express their will without any shadow of a doubt as to its freedom. Therefore, they had to insist on a plebiscite in Bessarabia, before recognizing the *status quo*. At the same time, Mr. Krestinsky solemnly declared that Russia did not and never would base her claims on former imperialistic czarist rights of sovereignty. (The same point of view was reiterated in 1929 by Mr. Litvinoff to Mr. Davila in Moscow, on the occasion of the signature of the Litvinoff Peace Pact).¹⁵ The inconsistency, to say the least, of the Russian thesis, is too glaring to need any rebuttal. Not only did they never allow any plebiscites in Russia proper, but there never has been any suggestion on their part of a plebiscite in any of the territories which they reconquered, after having even formally recognized their independence, (The Far Eastern Republic, Georgia, etc.), not to mention all the other countries, formerly part of Russia, which broke away and whose territorial status is now recognized by her.

It is hard to discern the reasons for the Russian attitude. Perhaps they are putting conditions which they know Roumania cannot accept, in the hope of inducing Roumania to offer, in exchange for their withdrawal, in the words of Mr. Karakhan, a higher price for their acquies-

¹⁵ Protocol between Estonia, Latvia, Poland, Rumania, and the Soviet Union for the immediate entry into force of the Treaty of Paris of August 27, 1923, for the Renunciation of War, signed at Moscow, February 9, 1929, League of Nations Treaty Series, vol. LXXXIX, p. 369.

cence in the territorial *status quo*. Perhaps, on the other hand, they have no intention of abandoning their claim at any price, but in that case, its maintenance can only be explained by the intention of keeping open indefinitely a source of friction, which might sometime offer a convenient pretext for creating trouble, to be taken advantage of when world conditions may seem favourable for communist expansion.

It would obviously be of paramount interest not only for Roumania, but also for the rest of the capitalist world, to force the Russian Government to lay its cards on the table. Should it insist on the plebiscite in Bessarabia, which it knows perfectly well can never be granted, and whose acceptance no foreign country would think of urging, and its corollary the wording "existing conflicts" (*litiges existants*) in the draft of the proposed nonaggression treaty, the conclusion would be obvious that Russia persists in nourishing ulterior motives, which cannot be but highly disquieting for the capitalist world and should give those contemplating resumption of normal relations with Russia food for serious thought.

There exists, however, a third possibility: That the argument advanced by Russian statesmen on various occasions in conversations with Roumanian diplomats (for instance, by Mr. Litvinoff to Mr. Davila in 1929), namely that their public opinion makes it exceedingly difficult for them to reverse their attitude towards Roumania, is more than a mere pretext for raising their price and that they indeed would need some outstanding success in the foreign field to overshadow a retreat from their stand on the Bessarabian question. They undoubtedly would demand some direct concessions from Roumania, probably the same they demanded in 1921, that is abandonment of her claim for the return of the gold of the National Bank, and a nonaggression treaty. It is not impossible that Roumania might accept now what she refused in 1921, it being very unlikely that much of that gold is still available, and the same reasons for Roumania to refuse a nonaggression pact, no longer existing, providing it is satisfactorily worded.

The Russian Government would probably prefer to avoid a formal and explicit recognition of Roumania's sovereignty over Bessarabia, and as Roumania, for the reasons outlined above, does not wish it either, a treaty could probably be agreed upon, in which the consequences of the change of sovereignty might be settled, i.e., questions of navigation on the Dniester, communications, the exact boundary in the "liman" of the Dniester, abandonment of mutual claims for property and damages, consular and commercial questions, etc. It goes without saying that the controversy concerning the inclusion of the word "*existing conflicts*," which prevented the conclusion of a non-aggression pact until now,

would "eo ipso" become without object and no difficulty should stand in the way of its conclusion.

As a matter of fact, even the signature of the latter treaty alone, would go far towards improving relations between the two countries, an improvement which might easily lead to a friendly settlement of the other outstanding matters, deriving from the change of sovereignty over Bessarabia. Although Mr. Litvinoff is still anxious to sign this treaty, he insists on the formula "that the settlement of 'existing conflicts' (*litiges existants*) or 'present and future conflicts' must only be sought by pacific means", and that the treaty should only run for five years. The Roumanian Government holds that the words "existing" or "present" might imply a recognition by Roumania of the Russian contention that her acquiescence in the present territorial status of Bessarabia is indispensable and that should it be withheld, the dispute would have to be settled by arbitration. This, of course, Roumania refuses to do, and neither would any other country accept to arbitrate a foreign claim on one of its provinces. The limitation of the treaty's validity to five years also gives ground for serious misgivings, as it is hard to explain why similar treaties concluded by Russia with France and Latvia for instance, are of unlimited duration, and that with Roumania not. The inference is that Russia is actuated in this matter also by ulterior motives, a fact which is far from reassuring. There are various other minor objections to the wording of the proposed non-aggression treaty, but it can safely be assumed that should Russia abandon her insistence on the wording "existing" or "present and future" (conflicts) Roumania would be prepared to sign the treaty. If Russia really desired to live on friendly terms with her neighbour and not merely sign a truce to gain time for her consolidation, it is difficult to understand why she insists on that formula. She certainly knows, that in order to ensure a durable peace and the indispensable feeling of security and confidence, without which peace can only be precarious, she must acquiesce in the Bessarabian *status-quo*. A non-aggression treaty would naturally be a valuable corollary. However, Russia is much more anxious to obtain it than Roumania.

It is with regard to the mutually satisfactory normalization, on the bases outlined above, of Russo-Roumanian relations, that the United States might now have a unique opportunity to interpose their good offices, in case, of course, they do begin conversations with Russia on the subject of recognition.

As suggested above, Russia might be in reality quite anxious to resume friendly relations with Roumania, but her pride might prevent her from making the first step, and neither would Roumania be willing to weaken her position by requesting a resumption of negotiations. The

friendly interventions of Poland and France in the past, have failed, and it is not impossible that their efforts may have been more harmful than helpful, Russia not wishing to appear to have given in to the pressure of these two European powers, insofar as the settlement of her relations with Roumania are concerned. The United States are the only great power left which can still offer Russia something she ardently desires, namely recognition. It is, therefore, not impossible that she might be quite willing to listen to a suggestion from a disinterested power like the United States to settle the Bessarabian question, in the first place to please them, in the second because she would only stand to gain from a resumption of normal relations with Roumania and the whole Little Entente (providing, of course, she is sincere in her pacific protestations), and in the third, because the gain in prestige for the Russian Government accruing from American recognition would completely outbalance and overshadow whatever internal dissatisfaction might be stirred by receding from her stand on the Bessarabian question.

It should be observed that the Russian Government has repeatedly seemed quite anxious to settle outstanding differences with Roumania, provided it could be done without "losing face." In the first place, it is undoubtedly worried about the possible attitude of Roumania in case of a conflict in the Far East. Although it is unthinkable that Roumania could have aggressive designs against Russia if they enjoyed normal relations, the Russians probably fear that if, under present conditions, they were engaged in a hard struggle, Roumania might be tempted to intervene on behalf of the unfortunate inhabitants of the "Moldavian Republic," rather imprudently created by the Bolsheviki themselves on the eastern bank of the Dniester, or in case of not unlikely separatist movements in the Ukraine, might be in a position, as a neighbouring power, to give them direct or indirect assistance. Although such fears have but slight foundation, the Russian complex of continual fear of a capitalist onslaught would force her to keep a substantial force on her western frontier, thus considerably weakening her military power in the East.

Furthermore, the Russian Government is obviously more and more anxious to take its place in the family of nations, and it cannot be a matter of indifference whether it has or has not normal relations not only with Roumania, but also, as said above, with Czechoslovakia and Jugoslavia. It must not be forgotten that the agreement signed recently between these three powers,¹⁶ with a total population of fifty million inhabitants, binds them to follow a common foreign policy, and failing

¹⁶ Pact of Organization of the Little Entente, signed at Geneva, February 16, 1933, League of Nations Treaty Series, vol. cxxxix, p. 233.

normal diplomatic relations with Roumania, they cannot be resumed by Russia with the other two members of the Little Entente either.

The importance of this point cannot be sufficiently emphasized, especially in view of the slavie character of Roumania's two partners in this newly created weighty international unit. There is no doubt that the Little Entente having recently manifested in Geneva its firm resolve to have an independent policy—which will be one of the determining factors in the European situation—an American suggestion would certainly be received in Moscow with great interest and in case of success would furnish America an opportunity to achieve a diplomatic triumph of immense importance for the consolidation of peace.

Another argument of great weight must be the fascist victory in Germany. This event might easily hasten a *rapprochement* between the U.S.S.R. and the democratic states of the world and prove to be an important milestone on the path of Russian evolution towards western ideals. It might well turn out to be the most important result of American recognition, if this materializes, as chances for commercial benefits do not seem very encouraging after the experiences of France, Germany and England. As the countries forming the Little Entente are to be found in the camp of democracy (Yugoslavia is only a temporary exception, as her ruler is firmly resolved to reintroduce parliamentary democratic government, as soon as the present difficulties, principally in the foreign field, will have disappeared; a step in that direction was made recently by the introduction of a new electoral law, and the process will undoubtedly be hastened after the recent strengthening of the Entente) a contribution of democratic America towards a *rapprochement* between the Little Entente and Russia would be of the greatest significance for the pacification and the reorganization of Europe, providing, of course, such an evolution on the part of Russia is deemed likely by the U.S.A.

That friendly relations between Roumania and her eastern neighbour would greatly facilitate disarmament, is obvious.

A further practical benefit for the United States, which would accrue from successful mediation in this controversy, would undoubtedly be improved trade with Roumania. Her exposed position forces her, whether she likes it or not, to rely to a great extent for assistance in case of need on those powers which are able and willing to help. That promise of assistance has to be balanced by the grant of commercial and financial concessions. Consequently, the lesser the probability of needing assistance, the more independence Roumania would enjoy in her economic policies, and she would be able to open her markets more widely to other countries, particularly to those for whom also sentimental considerations and popular feeling would militate.

One of many precedents for the suggested mediation can be found in the history of American relations with Spain.

The words of Mr. Clay, Secretary of State, (to Mr. Middleton, Minister to Russia, May 10, 1825) can *mutatis mutandis* be applied exactly to the present situation between Russia and Roumania:

“When the epoch of separation between a parent state and its colony, from whatever cause, arrives, the struggle for self-government on one hand, and for the preservation of power on the other, produces mutual exasperation and leads to a most embittered and ferocious war. It is then that it becomes the duty of third powers to interpose their humane offices, and calm the passions and enlighten the counsels of the parties. And the necessity of their efforts is greatest with the parent country, whose pride and whose wealth and power, swelled by the colonial contributions, create the most repugnance to an acquiescence in a severance which has been ordained by providence.”¹⁷

John Bassett Moore adds:

“In conformity with the views expressed by Mr. Clay in the foregoing extract, the United States sought, by direct representations, as well as by the counsels which it solicited friendly European governments to tender, to induce Spain to recognize the independence of Mexico and of the Central and South American governments.”¹⁸

Should the Government of the United States, for some reason or other, deem it inadvisable to use their good offices in order to attempt to remove radically the cause of friction between the U.S.S.R. and Roumania, or should the attempt prove unsuccessful, which seems unlikely, it would appear highly desirable that the New Deal announced by the President should include at least a revision of the attitude taken so far by the Department of State, with regard to the political status of Bessarabia.

Alone among all the countries of the world, excepting of course Russia, which tacitly or formally have recognized that Bessarabia is an integral part of Roumania, the United States maintain an overt discrimination intended to show that they still consider this matter unsettled. This discrimination is to be found in the immigration quotas, which provide a separate quota for Bessarabia.

The question can well be raised whether there is any justification for the maintenance of this double anomaly, if there ever was one. It might undoubtedly create a great deal of resentment in Roumania and constitute another barrier against economic concessions. The feeling exists among Roumanians that it is hard to see why Roumania should grant more favourable treatment to American trade, when in the only important matter in which the United States so far had occasion to dis-

¹⁷ *British and Foreign State Papers*, vol. XIII, pp. 403, 404. Also quoted in John Bassett Moore, *A Digest of International Law*, vol. I, p. 94.

¹⁸ *Moore, Digest*, vol. I, p. 94.

criminate against Roumania, they chose to do it. As will be more fully shown later, America is not only the only country which adopted that attitude, but it is only with regard to Roumania that it is maintained, whereas it has long since given it up in all similar cases involving other countries (the Baltic States, Wilna, etc.) The contention that in refusing to recognize Bessarabia as an integral part of Roumania, the Department of State has merely refrained from taking sides, is untenable, for the Russians do not claim that that province is Russian, but merely that it is not Roumanian. The Department has therefore adopted the Russian thesis, purely and simply. Furthermore, Roumania is *de facto* in possession of Bessarabia and expects recognition of that fact, in conformity with all precedents of international law, whereas Russia is merely advancing a nebulous and specious objection founded solely on a novel communist principle, invented "ad hoc," six years after the event.

The American attitude, if persisted in, also tends to stiffen Russian reluctance to settle her differences with Roumania on reasonable terms, as it seems to give moral support to their attitude on the Bessarabian question.

It might also put the United States in an embarrassing position, in case of a Russian aggression in that province. Recent developments in the American peace policy seem to preclude an attitude of complete aloofness in any conflict. The fact that Russian jurists might be quite capable of evolving a theory of self defense in what the United States would be considering "no man's land" would create a difficult situation for the Department of State.

The attitude preserved so far by the United States towards Bessarabia has been described above as constituting a double anomaly:

In the first place, it is an anomaly that one of two states enjoying normal and friendly relations should not recognize the sovereignty of the other over its entire territory. The American Government has signed numerous treaties and agreements with the Roumanian Government since 1918, which are meant to apply to Bessarabia also. The "ex-equaturs" asked for and granted to American consuls include that province too.

In the second place, although the Department of State has never explained or justified its point of view in writing, it has given to understand that it was based on the principles enunciated by Mr. Colby in his note of August 10, 1920,¹⁹ but when confronted by the objection that in that case neither Lithuania, Esthonia, etc., should have been recognized, replied that the difference was that these territorial changes had been recognized by the Soviet Government. Yet the Colby note expressly stated that the Soviet Government could not speak for Russia. The

¹⁹ *Foreign Relations*, 1920, vol. III, p. 463.

recognition of the Vilna territory as part of Poland is another striking instance of disregard for the principles of that note, and could well serve as a precedent for Bessarabia. The only conclusion to be drawn is that the Colby doctrine was abandoned as far back as 1922, in so far as former Russian territories were concerned, with but one sole exception, Bessarabia. The history of the United States themselves provide more than one precedent exactly applicable to Bessarabia for recognition of territorial changes, regardless of the consent of the former sovereign, and even when it was charged that foreign interference had helped to bring about the successful revolution which preceded them, Panama and Texas, for instance. The similarity between the case of Texas and Bessarabia was discussed at length in a memorandum of the Roumanian Legation (Apr. 1932),²⁰ but it might be of interest to review the situation briefly once more, from the point of view of precedents and international law.

No one will nowadays dispute the advantage, for the "comitas gentium" of creating, whenever possible, a stability of international order, by recognizing existing conditions, unless it be achieved in violation of international agreements specifically destined to prevent such violations. Prior to the signature of the Pact of Paris, every mode of acquisition of territory, even through a war of ruthless conquest, was considered legitimate and was recognized by the nations of the world, provided the situation seemed destined to be of sufficient durability. Since 1929, war cannot create a valid title, but all the other time honoured modes of transfer of sovereignty have remained legitimate. It is hard to see on what grounds any state can justify, in any particular case, an exception to well established traditions, especially when it has consistently followed them itself.

That Roumania has, since 1918, exercised continuous and undisturbed sovereignty over Bessarabia, is undisputed. There are apparently two opinions concerning the mode of acquisition of this sovereignty, but whichever theory is adopted, the legitimacy of that title is undisputable, and hence its recognition should be accorded by all friendly or even impartial third powers.

The Roumanian contention is that Russia, the former sovereign state, abandoned whatever rights she had over Bessarabia, by the well known proclamation of November 2, 1917,²¹ recognizing the right of all subject races to complete secession. Bessarabia, like many other Russian provinces, immediately proclaimed her autonomy, in January 1918 her independence, and in March of the same year her reunion with Roumania. But even if Russia had not recognized the right to secession, Bessarabia

²⁰ Not printed.

²¹ *Post*, p. 673.

enjoyed the right, universally conceded but especially so in America, to break away and establish her independence. As an independent state, it had the further right to dispose of its sovereignty as it thought fit, in this case to merge it with Roumanian sovereignty. The parallelism between Roumania's acquisition of Bessarabia and the acquisition of Texas by the United States is too striking to need further amplification. But as in some instances the Russian claim has been reechoed that the presence in Bessarabia of some Roumanian troops for police purposes vitiated the freedom of expression of popular will in Bessarabia, and, therefore, made it impossible that the fact of her independence should be recognized, even retroactively, by third powers, the reproduction of a part of President Pierce's message of May 15, 1856, should be of striking interest:

"We do not go behind the fact of a foreign Government exercising actual power to investigate questions of legitimacy; we do not inquire into the causes which may have led to a change of Government. To us it is indifferent whether a successful revolution has been aided by foreign intervention or not; whether insurrection has overthrown the existing government and another has been established in its place according to preexisting forms or in a manner adopted for the occasion by those whom we may find in the actual possession of powers. All these matters we leave to the peoples and public authorities of the particular country to determine. And their deliberation [*determination*], whether it be by a positive action or by ascertained acquiescence, is to us a sufficient warranty of the legitimacy of the new government."²²

The reason usually advanced by representatives of the Department of State to justify its exceptional attitude in the case of Roumania, has been that the independence of Bessarabia had been of too short duration to satisfy the traditional (but by no means invariable, as the case of Panama proves) requirement of proof of stability before recognizing a new state. In that case, the acquisition of Bessarabia by Roumania would not fit exactly into any of the modes recognized by international law. It would not be exactly occupation, neither would it be conquest, as Roumania was never at war with Russia (this Russia recognized formally in the preamble to the Litvinoff Pact of 1929). Some new mode would have to be defined, somewhere between the two, partaking of some of the characteristics of relinquishment, albeit with the implication of conditionality on the part of Russia, and some of those of occupation. Whatever name would be chosen is, however, immaterial, as the mode of acquisition would in any case fall well within the limits drawn by international law and practice for legitimate acquisition of title. It would be absurd to maintain that a change of sovereignty can be prop-

²² James D. Richardson, *Messages and Papers of the Presidents*, vol. v, pp. 372-373; also quoted in John Bassett Moore, *A Digest of International Law*, vol. I, p. 142.

erly recognized, regardless of the consent of the parent state, if a seceding territory remains independent, but not if it merges its sovereignty with that of another state. And the policy of the United States has been invariably to ignore the refusal of recognition by the parent state. All the South American republics, for instance, were recognized by America long before Spain did so.

Likewise, even if title to Bessarabia had changed hands as the result of conquest, it ought to be recognized, as consent of the former sovereign has never been deemed indispensable, for the good reason that often the whole former state was absorbed and there was no one left to grant that consent (for instance, the South African Republics, conquered by Great Britain). It might at most be conceded that in case the new territory does not remain independent, a somewhat closer examination of the acquiescence of the population might be insisted on. The other conditions would obviously remain the same. But, as stated above, the history of the last fifteen years, confirms beyond any possible doubt the complete and active acquiescence of the vast majority of Bessarabians in the present situation.

The well established American doctrine in the matter of changes of sovereignty is to make recognition conditional on:

- (1) A reasonable period of stability of the new situation;
- (2) Acquiescence, even tacit, of the population;
- (3) Willingness and ability of the new government to discharge its obligations.

The case of Bessarabia meets all these tests. More than that: It has in its favour, in common with Texas, the unusual circumstance that Russia conceded in advance her right to independence. The relevant part of the proclamation, reproduced in the *Izvestia* of November 3, 1917, is as follows:

"The Congress of Soviets in July of this year has decided the right of the peoples of Russia to free self-determination.

"The second Congress of Soviets in October of this year confirmed this inalienable right of the peoples of Russia with greater finality and definiteness.

"In carrying out the will of these congresses, the Council of Peoples' Commissars decided to lay down as a basis for its activity on the question of the nationalities of Russia the following principles:

1. The equality and sovereignty of the peoples of Russia;
2. The right of the peoples of Russia to free self-determination to the point of separation and formation of independent governments;
3. Abolition of all and sundry national and national-religious privileges and restrictions;
4. The free development of national minorities and ethnic groups populating the territory of Russia.

"The concrete decrees resulting from this will be worked out immediately upon the organization of a commission on affairs of nationalities.

"In the name of the Russian Republic,
the People's Commissar on Affairs of Nationalities
Iosif Dzhugashvili-Stalin
President of the Council of Peoples' Commissars
V. Ul'ianov (Lenin)."

With regard to Texas, President Polk wrote in his first annual message (December 2, 1845):

"The agreement to acknowledge the independence of Texas whether with or without this condition (i.e., that she should not annex herself to any other power) is conclusive against Mexico. The independence of Texas is a fact conceded by Mexico herself, and she had no right or authority to prescribe restrictions as to the form of government which Texas might afterward choose to assume."²³

It having been shown that no reason of policy, logic or absence of precedents can justify a refusal by any third state to recognize the union of Bessarabia with Roumania, quite the contrary, there would only remain to be examined whether such action might be refused, on the practical grounds that it might be legitimately resented by the parent state. But as mentioned above, the United States have consistently refused to admit that recognition of new states, prior to that of the parent state, can be considered an unfriendly act, providing the above conditions are fulfilled. Practically all the Latin American republics were recognized in the face of protests from Spain and other countries.

"This recognition is neither intended to invalidate any rights of Spain nor to affect the employment of any means which she may yet be disposed or enabled to use with the view of reuniting those provinces to the rest of her dominions. It is the mere acknowledgment of existing facts . . ." Mr. Adams to the Spanish Minister, April 6, 1822.²⁴

Mr. Cheney Hyde, "International Law," (page 62, Vol. I), writes with regard to Poland, for instance:

"No duty on the part of the United States with respect to Germany or Austria-Hungary forbade recognition, while the freedom of the new Republic from actual domination by Russia removed from the act of recognition a character to be regarded as hostile to that country."

No one will claim that the recognition of the loss of Poland in 1919 could not be resented by Russia, but that that of Bessarabia could be in 1933.

The above considerations are believed to show that there is no reason for the United States not to recognize the *de facto* situation and to continue to discriminate against a Roumanian territory. As pointed out

²³ Richardson, *Messages*, vol. iv, p. 389.

²⁴ *American State Papers*, vol. iv, p. 846. Also printed in Moore, *Digest*, vol. I, p. 88.

in the memorandum of 1930,²⁵ any international agreement between the United States and Roumania, ratified by the Parliament of the latter Country, in which sit the representatives of Bessarabia, would be of doubtful validity if America does not recognize even tacitly that Bessarabia is an integral part of Roumania.

If the immigration quotas had not existed, the whole question would not have arisen. America would have been in the same position as the majority of the other countries, from whom Roumania has never asked any formal recognition, but who, by maintaining the usual diplomatic relations implicitly recognize the territorial integrity of Roumania.

Unfortunately, an American law, the Immigration Act, establishes geographical quotas which can reflect overt discriminations against foreign territories. Conceding the right of any country to legislate for itself as it pleases, yet the question may well be raised whether it is compatible with international custom to establish by a domestic law public discrimination with regard to the territories of another friendly state, signifying thereby that one country, in this case the United States, openly takes a stand on a territorial situation, with which it has no direct concern and which is subject to no treaty provisions.

This paradoxical situation can be summed up as follows:

(1) If it is adopted as a guiding principle that the recognition of the former sovereign is indispensable (a very doubtful principle, particularly after the Russian proclamation of November 1917;)

(2) If the "Colby" doctrine^{25a} had as its object the protection of the Russian people against themselves, or better still against the regime which they had accepted,

it is evident that no act signed by the Soviet Government should be recognized as valid and logically none of the liberated states should have been recognized by the United States.

If on the other hand America recognized the new states—which obviously could not be explained by their recognition by the U.S.S.R., themselves not recognized by the United States—it must be assumed that she judged their races to be entitled to their freedom (thus making her protectress not only of the Russian, but also of the other races), and their states sufficiently stable, and in this case there is no reason why she should not do the same thing for Bessarabia and extend her protection to the Roumanian race inhabiting Bessarabia. No one will deny moreover that Roumania shows at least as many signs of stability as the other new states formerly part of Russia.

Neither has the Russian argument that Bessarabia was "occupied" by the soldiers of "Roumanian capitalism" any value, as the other states

²⁵ *Foreign Relations*, 1930, vol. III, p. 801.

^{25a} See note from the Secretary of State to the Italian Ambassador, August 10, 1920, *ibid.*, 1920, vol. III, p. 463.

whose freedom they recognized without any plebiscite, were overrun by the troops of the Central powers, when they seceded from Russia.

But it is in the case of the Wilna territory that the application of the Colby doctrine is the most curious. Here, the principle of recognition by the former sovereign, as in the case of the Baltic States, and that of protection as in the Bessarabian case, have both been discarded. Indeed, neither has Russia, first former sovereign, or Lithuania, second former sovereign, by virtue of the cession of Wilna in the Treaty of Moscow (July 12, 1920)²⁶ which antedates the Treaty of Riga between Russia and Poland (March 18, 1921),²⁷ ever signed a treaty by which Wilna was ceded to Poland. As for the protection of the population of Wilna, formerly part of Russia, the question never seems to have been raised. Nevertheless, although avoiding any definite stand on the matter, the United States have merged the immigration quota for Wilna with the Polish quota, thus implicitly recognizing the *de facto* situation.

Of course, a formal reason has been advanced to justify such a departure from the above formulated principles: The appearance of a new factor, namely a decision, favourable to Poland (but hotly contested by Lithuania), of the Council of Ambassadors. But it must seem very strange that a decision of four Ambassadors recognizing Wilna as Polish should carry more moral weight than that of the same four Ambassadors and a Prime Minister (the French Premier), who signed the Treaty of Paris²⁸ recognizing the union of Bessarabia with Roumania. Surely the additional subsequent ratification by three Powers can hardly be considered to have weakened it either. It goes without saying that there can be no question of anything but moral weight, as the decisions of the Council of Ambassadors could not be legally binding for the United States.

The conclusion is unavoidable that the attitude of the United States with regard to the union of Bessarabia with her mother country is dictated by three guiding principles, which seem to contradict each other and are in turn applied or rejected in similar cases:

(1) Principle of recognition by the former sovereign state. This principle was contradicted in the case of Panama, Texas and almost all other Latin American republics, not applied in the case of the forcible annexation of Bessarabia by Russia in 1812 and 1878, and not respected in the case of Wilna.

(2) Principle of protection of Russia after the bolshevist revolution. This principle was not applied in the cases of Finland, Lithuania,

²⁶ Treaty of peace between Lithuania and Russia, signed at Moscow, July 12, 1920, League of Nations Treaty Series, vol. III, p. 122.

²⁷ *Ibid.*, vol. VI, p. 123.

²⁸ Treaty between the Principal Allied Powers and Rumania concerning Bessarabia, signed at Paris, October 28, 1920, *British and Foreign State Papers*, vol. CXIII, p. 647. For attitude of the United States regarding this treaty, see *Foreign Relations*, 1920, vol. III, pp. 426 ff.

Esthonia, etc., or for the benefit of the people of Wilna, but strictly adhered to in the case of the people of Bessarabia. If, on the other hand, the application of the principle was not intended to be limited to the Russian people, but to be extended to all races inhabiting the former Empire, there is no reason why it should not apply to the Roumanians of Bessarabia, who want to be protected against the Russians.

(3) Principle that the policy of the United States is based on decisions of four Ambassadors. But then, why should they have no weight in the case of Bessarabia?

One can add that a comparison of the cases of Bessarabia and Wilna is all the more interesting, as Lithuania formally claims Wilna, on ethnic, historic and juridical grounds and made formal reservations in that respect when she joined the League of Nations, whereas Russia does not claim Bessarabia, but merely demands a plebiscite and that not even on ethnic or juridical grounds, but admittedly for "political" reasons.

Under the circumstances, it seems very difficult to find any reasons to justify the United States in maintaining any longer their attitude on a matter of small consequence to Russia, but which is of such vital importance to Roumania, a country with which America has maintained friendly relations and in which important American interests have always received the most favourable treatment possible under circumstances existing at any given time.

It will suffice, in order to substantiate this statement, to recall, among other instances, that Roumania has always granted and still grants most favoured nation treatment to American imports, without demanding any compensations. The tremendous advantage for America is obvious, as in normal times America's exports to Roumania reach a substantial sum, whereas Roumania could never expect to sell any of her agricultural products to America in more than negligible quantities. For the five year period (1926-1930), American imports to Roumania were valued at \$32,182,000, while Roumanian exports to America were valued at \$3,297,000, according to American statistics. The Roumanian statistics are even much more favourable to America, owing to the inclusion of goods shipped through a third country, not only direct shipments. Other instances of minor importance could be quoted, which alone more than offset the occasional complaints of some American firms and which, as mentioned elsewhere, are unavoidable under present conditions.

It must be borne in mind that should the United States neglect to adopt now an attitude conforming with all precedents and satisfactory to Roumania with regard to Bessarabia, and in case no settlement can be reached by Roumania with Russia, it will be undoubtedly much more difficult ever to settle the question as between Roumania and the United States. If the United States now decided to tacitly recognize Bessarabia as part of Roumania, Russia could not protest, or if she did, it would be

a mere gesture, like the one she made when the French Parliament ratified the Treaty of Paris of 1920, prior to recognizing the Soviet Government. Once diplomatic negotiations were resumed, such a protest might be more embarrassing, although it is true that when Italy ratified that Treaty in 1926,²⁹ the Russian Ambassador's protest was simply disregarded and had no perceptible consequences.

Should the American Government concur in these views, that is that regardless of whether it decides to mediate between Roumania and Russia in the matter and this mediation is successful or not (of course, in the case that it intends to recognize Russia) it is urgent that it should itself recognize Bessarabia as Roumanian, if it does not wish to miss a favourable opportunity which may not reoccur for a long time, it is suggested that this might be done most simply by an ambiguous but confidential communication similar to the one concerning the case of Wilna. When the immigration quotas are established sometime in June, the Bessarabian quota would merely be omitted and the Roumanian slightly augmented. If negotiations began with Russia before the establishment of the quotas and they protested against this change, the significance of which they would undoubtedly realize, they would be told that the decision was made sometime before and would not be rescinded.

One of the fundamental American prerequisites in the matter of recognition is stability of the new government and ability to exercise its authority with the acquiescence at least of the population. If the Government of the Soviet Republic is recognized now, the argument will undoubtedly be used that its existence for fifteen years is sufficient proof that it satisfies those requirements. The identical argument would be equally applicable to Roumanian sovereignty over Bessarabia. No better proof could be adduced than the fact that at no time since 1918 and although numerous elections were held, was there a secessionist or even autonomist deputy returned from that province. The record of Bessarabia compares extremely favourably with that of the Ukrainian parts of Poland and many other provinces in various countries.

Finally, it is very significant that although labor troubles of communist inspiration recently obliged the Roumanian Government to proclaim martial law in a number of cities, in the early part of February, it was not deemed necessary to extend it to Bessarabia.

No one will deny that it is of paramount importance for the United States, as for any other power anxious to consolidate peace, to assist in stabilizing and regularizing as far as possible, existing territorial situations, or alternatively to suggest a solution it favours. The question then arises: If Roumania were willing to grant the concessions outlined

²⁹ Italy ratified the Treaty of Paris, May 23, 1927; see *British and Foreign State Papers*, vol. cxxvi, p. 450.

in the first part of this *aide-mémoire* (financial and nonaggression treaty) and if Russia still refused, the only way to ever settle the problem would be by a war or by granting the Russian demand for a plebiscite. America certainly does not recommend the first solution. Would it advocate the second? For it must not be forgotten that the Russians themselves freely admit the existence of a Roumanian majority in Bessarabia (according to the Russian census of 1897 there were only 19.6% of Russians and Ruthenians) and that the question would be decided on social grounds. The issue would be communism versus capitalism. Would the United States urge Roumania to grant the Third Internationale such an opportunity? Should by any chance the Russians be victorious, it would be the most severe blow to the economic organization of the rest of the world. It would be the first time the issue of capitalism versus communism had been submitted to a free popular vote. A communist triumph in Bessarabia would justify a demand for similar expressions of opinion everywhere. But even if capitalism won, as it undoubtedly would, the propaganda preceding the plebiscite would leave the seeds of most serious unrest in Bessarabia and elsewhere.

The conclusion is unavoidable that the practical solution of this question for Russia is the abandonment of her claim to have a voice in settling the political status or [of] Bessarabia and to enter into negotiations in order to settle the consequences of the change in sovereignty and other border problems. Failing a suggestion for a better solution—and it is hard to imagine what other solution could be recommended by any impartial student of the question—it would appear to be the moral duty of all powers desiring peace to make every effort, consistent with their policy, to persuade Russia to yield. One cannot well conceive that any statesman could disapprove of Roumania's attitude and yet be unable to suggest a better one. But if nothing better can be devised, it follows that every attempt should be made to assist in reaching the best available solution.

Roumania's situation which makes of her a bulwark of the capitalist world against communism, should entitle her to expect the strongest possible assistance from the United States in these circumstances.

A further point deserves emphasis: The reunion of Bessarabia with her mother country should not only be not frowned upon by the United States, but should be eagerly welcomed. For it constitutes the perfection, as far as Roumania is concerned, of the principle of self-determination, so ardently championed by Woodrow Wilson. No one will contest that if that principle is just, it must apply to all branches of a race; circumstances made it impossible at the time the fourteen points were formulated to mention the Roumanians of Bessarabia, alongside of those of Transylvania, but no believer in that principle could fail to welcome the

almost unhopèd for opportunity to broaden the scope of its application, offered by the Russian revolution and subsequent events. Or is the Pruth to be deemed the boundary line for principles? "Verité en deçà, erreur au delà?["]

It goes without saying that if the American Government decides not to pursue either of the possible courses of action outlined above, Roumania trusts that in any case it will at least avoid the use of any formula which might be construed by the Soviet Government as a direct or indirect endorsement of its stand with regard to Bessarabia, should it decide to recognize the latter Government. It may be pertinent to recall that when Great Britain extended recognition to the U.S.S.R., it was specifically stated that the Russian Government was recognized within the limits of the territories which themselves recognized its sovereignty. Not to specify this and to maintain at the same time the present discrimination against Bessarabia would imply that the United States recognize publicly the Russian thesis that there is a "litige existant" between her and Roumania.

To conclude, it appears useful to recall that not only does the tacit recognition of Bessarabia's union with Roumania by the United States seem highly desirable, nay even necessary at this time, but that in the interests of peace and legitimate trade, the constructive policy of the new administration might very properly include the tender of its good offices in order to achieve the normalization of Russia's relations with the Little Entente, providing of course conversations in view of recognition are begun.

The United States, Roumania and the world can only stand to gain from both steps, and in no case can America lose anything.

WASHINGTON, March 28, 1933.

811.111 Quota—National Origins/68 ½

The Secretary of State to President Roosevelt

WASHINGTON, April 12, 1933.

MY DEAR MR. PRESIDENT: On numerous occasions during the past few years the Rumanian Government has urged that the United States recognize Rumanian sovereignty over Bessarabia. This territory, which was formerly a part of the Russian Empire, proclaimed its independence on December 2, 1917, and on November 26, 1918, its Supreme Council decided to unite with Rumania.

The union of Bessarabia with Rumania was recognized by the Principal Allied Powers in a treaty signed at Paris on October 28, 1920. This treaty has been ratified by all of the signatory Powers except Japan and it appears that no Power, except the United States and Soviet Russia,

now questions Rumanian sovereignty over the territory. In reply to requests from certain of the Allied Powers as to the American attitude toward the question of Bessarabia, Mr. Colby stated in 1920 that the United States was of the opinion that all decisions of vital importance to Russia, and especially those concerning its sovereignty over the territory of the former Russian Empire, should be held in abeyance. Consequently this Government declined to be drawn into any discussion as to the Rumanian claim to Bessarabia. This attitude has been maintained up to the present time despite the fact that Rumania has continued to exercise sovereignty over the territory uninterruptedly and despite the fact that we have recognized the detachment from Russia of other territories such as the Baltic States.

The manner in which the American Government has manifested its unwillingness to recognize the *de facto* situation has been by the establishment of a separate immigration quota for the Bessarabian territory. However, this Government has acquiesced in the situation to a certain extent by including Bessarabia in the jurisdiction of our consular representatives at Bucharest, by granting visas to natives of Bessarabia bearing Rumanian passports, and by other acts.

After a careful examination of the facts I have come to the conclusion that there is no longer any reason why we should continue to adhere to the doctrine enunciated by Mr. Colby in 1920. On the contrary, I feel that we should now recognize the *de facto* situation. This can be accomplished in the following way by a simple administrative act. A proclamation must in any case be issued in the near future to effect certain administrative changes in the immigration quotas for the year beginning July 1, 1933. It would be my idea to omit any reference to Bessarabia in this proclamation. The elimination of the Bessarabian quota and the inclusion of the territory within the Rumanian quota area would have the effect of according American recognition to Rumanian sovereignty over Bessarabia and would set at rest the contention of Rumania that the existence of the Bessarabian quota constitutes a "public discrimination" against that country.

If you approve of this proposal I shall make the necessary arrangements to have it put into effect.³⁰

Faithfully yours,

CORDELL HULL

³⁰ This paper bears the following endorsement by the President: "Approved—It is sensible. Franklin D. Roosevelt, April 15, 1933."

811.111 Quota 71A/44

Memorandum by the Acting Secretary of State (Phillips)

[WASHINGTON,] May 31, 1933.

The Rumanian Minister referred to the Bessarabian situation, and I explained to him what we proposed to do in connection with the Bessarabian quota, provided the Rumanian Government did not continue its policy of discrimination against American trade. Mr. Davila said that Mr. Murray³¹ had already spoken to him about it and that he had sent a telegram to his Government recommending that everything possible be done to satisfy our complaints, which, in his opinion, were well founded. He explained that this discrimination had been brought about by reason of the efforts which the Rumanian Government was making to preserve, so far as possible, a balance of trade with individual countries. I said that I felt sure his efforts would be helpful and I hoped that we would soon receive some communication from the Rumanian Government indicating that all discriminations against American trade were at an end.³²

WILLIAM PHILLIPS

811.111 Quota 71A/45a

The Assistant Secretary of State (Carr) to the Rumanian Minister (Davila)

WASHINGTON, June 21, 1933.

MY DEAR MR. MINISTER: I enclose three copies of the President's Proclamation No. 2048 of June 16, 1933,³³ establishing immigration quotas for the year beginning July 1, 1933.

As you will observe this Proclamation omits any reference to Bessarabia. The effect of this omission is to abolish the Bessarabian quota established under Executive Order No. 1952 [*Proclamation No. 1953*] of June 19, 1931.³⁴ The Bessarabian quota area has been included within the Rumanian quota area and, as you will note upon comparing the new order with that of June 19, 1931, the Rumanian quota has been increased from 295 to 377.

I am [etc.]

WILBUR J. CARR

³¹ Wallace Murray, Chief of the Division of Near Eastern Affairs.³² See telegram No. 12, June 15, 6 p.m., from the Minister in Rumania, p. 690.³³ 48 Stat. (pt. 2) 1697.³⁴ 47 Stat. (pt. 2) 2456.

SUSPENSION OF PAYMENTS BY RUMANIA ON WAR DAMAGE BONDS
HELD BY THE ROMANO-AMERICANA, SUBSIDIARY OF THE STAND-
ARD OIL COMPANY OF NEW JERSEY ³⁵

371.115 St 2/127

The Minister in Rumania (Wilson) to the Acting Secretary of State

No. 1087

BUCHAREST, June 30, 1933.

[Received July 19.]

SIR: I have the honor to enclose herewith a copy of a letter, with enclosure,³⁶ dated June 22, 1933, from Mr. J. P. Hughes, General Manager of the "Romano-Americana," the local subsidiary of the Standard Oil Company of New Jersey. In his letter, which is self-explanatory, Mr. Hughes requests the Legation to protest against a decision of the Rumanian Government to suspend payment of the coupons of War Damage Bonds issued in accordance with an agreement between the Rumanian Government and its creditors.

The British and Dutch Legations were instructed by their Governments to make a formal protest to the Rumanian Government against what appears to be an arbitrary and unjust decision which was adopted by that Government without any discussion with the other parties to the contract between them. Copies of the British and Dutch protests are enclosed herewith.³⁷

Although I have received no instructions from the Department on this subject, nevertheless, as it seems that American interests are clearly involved, I have ventured to send a note, a copy of which is enclosed herewith, to the Acting Minister for Foreign Affairs, expressing the hope that the decision of the Rumanian Government may be reconsidered.

Respectfully yours,

CHARLES S. WILSON

[Enclosure]

*The American Minister (Wilson) to the Rumanian Acting Minister
for Foreign Affairs (Mironescu)*

No. 489

BUCHAREST, June 30, 1933.

EXCELLENCY: The "Romano-Americana," a subsidiary of the Standard Oil Company of New Jersey, has informed the Legation that the Rumanian Government, by a decree published in the *Monitorul Oficial* No. 107 of May 17, 1933, announced its decision to suspend part of the oil annuities payable under an agreement between the Rumanian Government and the "Romano-Americana" of October 1, 1928.

It appears to be obvious that bonds issued, as these were, for damage

³⁵ For previous correspondence, see *Foreign Relations*, 1929, vol. III, pp. 757-758.

³⁶ Neither printed.

³⁷ Not printed.

sustained are in an entirely different category from ordinary interest-bearing bonds and should not, therefore, be included in the general agreement arrived at with the Association of Foreign Bondholders.

In bringing this matter to Your Excellency's attention, I venture to hope that the Royal Rumanian Government will find it possible to cancel its decision and to make full payment of the coupons which became due on June 1, 1933, and that subsequent payments may be made in full, in conformity with the War Damage Settlement which was agreed upon between the Royal Government and the "Romano-Americana."

I avail myself [etc.]

CHARLES S. WILSON

371.115 St 2/127

The Secretary of State to the Minister in Rumania (Wilson)

No. 18

WASHINGTON, November 10, 1933.

SIR: Reference is made to the Legation's despatch No. 1087 of June 30, 1933, regarding the decision of the Rumanian Government to suspend payment of coupons on War Damage Bonds and particularly to that portion of the Legation's communication of June 30, 1933, to Mr. Mironescu, Acting Minister for Foreign Affairs, which read as follows:

"It appears to be obvious that bonds issued, as these were, for damage sustained are in an entirely different category from ordinary interest-bearing bonds and should not, therefore, be included in the general agreement arrived at with the Association of Foreign Bondholders."

The Department encloses in this connection certain self-explanatory extracts³⁸ from a memorandum prepared in the Office of the Economic Adviser.

It is suggested that if a situation arises in the future similar to that under reference, the Legation should request the Department for specific instructions in the matter.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

371.115 St 2/129

The Minister in Rumania (Owsley) to the Acting Secretary of State

No. 50

BUCHAREST, December 18, 1933.

[Received January 8, 1934.]

SIR: I have the honor to refer to the Department's instruction No. 18 of November 10, 1933, and to inform the Department that on the several

³⁸ Not printed.

dates hereinafter mentioned the Legation has received communications from Mr. J. P. Hughes, General Manager of the Româno Americană, which is an American institution and, the Legation is informed, controlled by the Standard Oil Company of New Jersey, asking the cooperation of the Legation in protesting on behalf of this Company against the suspension of payment of coupons on the war damage bonds held by the American company under a settlement between the Rumanian Government dated August 21, 1928, in consideration of damages inflicted to the Româno Americană properties by order of the Rumanian Government in 1916.

I have the honor to enclose a copy of the communication dated Bucharest, December 6, 1928 [1933], addressed to Mr. Titulescu, Minister for Foreign Affairs, presenting the Legation's point of view in this matter. I would particularly ask the attention of the Department to the wording of my communication to the Foreign Ministry in that it does not undertake to declare the war indemnity bonds held by the Româno Americană to have preference over any other outstanding obligations of the Rumanian Government. It is my intention to direct the attention of the Rumanian authorities to their failure to pay to the Româno Americană the amount of money now apparently due under the provisions of certain obligations held by the Româno Americană and executed by the Rumanian Government, and the question of priority of outstanding obligations does not enter into it.

Certainly the late Minister of Finance, Mr. Madgearu, or some properly accredited official of the Finance Ministry should have consulted with a representative of the Româno Americană, as the owner and holder of Rumanian obligations, before an arbitrary decision of the Rumanian Government was published in the official *Monitorul Oficial* (No. 278) as was done under the date of November 30, 1933.

The position of the Româno Americană as presented to the Legation clearly appears in a letter dated November 28, 1933, addressed to me, which has attached to it and made a part of the letter a communication under date of November 15, 1933 to the Minister for Foreign Affairs, Mr. Titulescu, over the signature of one H. E. Medlicott. As I understand, Mr. Medlicott is the attorney and the personal representative of the Româno Americană out of the London office. Copies are herewith enclosed for the further information of the Department;³⁹ also a second letter addressed to me under date of December 4, 1933, and its enclosure.³⁹

Bearing in mind the instructions of the Department hereinbefore referred to, I have assured Mr. Hughes, the representative of the Ro-

³⁹ Not printed.

mâno Americană here in Bucharest, that I will use my best energies to assist in the proper presentation of the position of his company in this case, which presents several delicate sidelights.

Respectfully yours,

[Enclosure]

*The American Minister (Owsley) to the Rumanian Minister for
Foreign Affairs (Titulescu)*

No. 13

BUCHAREST, December 6, 1933.

EXCELLENCY: By recent communication the Româno Americană, a subsidiary of the Standard Oil Company of New Jersey, has brought to the attention of the Legation that the Rumanian Government by decree published in the *Monitorul Oficial* No. 278 of the date of November 30, 1933, announces the decision of the Minister of Finance relative to the payment of the coupons on the bonds issued in compensation for damages to the petroleum industry, and gives notice of a suspension of a part of the oil annuities payable under a settlement between the Rumanian Government and the Româno Americană, dated October 1, 1928, in consideration of damages inflicted to the Româno Americană properties by order of the Rumanian Government in 1916.

I am informed that this decision was taken without prior consultation with the American concern, which feels that it is entitled to a hearing in the matter. The bonds in question were issued pursuant to a bilateral contract, and the minimum requirements of accepted commercial and financial practice would demand the consent of both parties thereto if the contract is to be altered. Only by the freest discussion of the question of indebtedness and the capacity to pay, passing from the creditor to the debtor, can we arrive at the high plane of settlement which doubtless the Rumanian Government desires to sustain in the settlement of its financial obligations to all concerned.

In bringing this matter to Your Excellency's attention, I entertain the hope that the Royal Rumanian Government will find it expedient to recall the arbitrary decision of the Minister of Finance, and that an equitable settlement of the matter will be reached in such a manner as to be acceptable to the Româno Americană.⁴⁰

I avail myself [etc.]

ALVIN M. OWSLEY

⁴⁰ No further correspondence on the case is found in Department files.

REPRESENTATIONS AGAINST THE APPLICATION OF THE RUMANIAN
SYSTEM OF IMPORT QUOTAS

671.116/9

The Minister in Rumania (Wilson) to the Secretary of State

No. 1048

BUCHAREST, April 12, 1933.

[Received May 6.]

SIR: In its despatch No. 1026 of February 21, 1933,⁴¹ the Legation reported the difficulties experienced in securing permits for the importation of merchandise from the United States owing to the application of the Rumanian system of import quota. These difficulties have continued to increase until, at the present time, it is almost impossible to secure permits for the import of any American goods. The Commercial Attaché has intervened constantly, but with slight results, with the Minister of Industry and Commerce in behalf of persons wishing to import goods from the United States and, in conversations on this subject which I have had with the King, Mr. Mironescu, the Vice President of the Council of Ministers and Acting Minister for Foreign Affairs, Mr. Madgearu, Minister of Finance, and Mr. Lugoşianu, Minister of Industry and Commerce, and others, I have pointed out that if the present policy of the Rumanian Government continues, it will practically put an end to commercial exchange between Rumania and the United States. As previously reported, this quota system is the pet scheme of Mr. Madgearu, the Minister of Finance, and he is absolutely intransigent in his intention to push it to its extreme limit which, as far as the United States is concerned, makes the import of American goods almost prohibitive owing to the alleged unfavorable trade balance between Rumania and the United States. On the other hand, I know from personal conversations with the King, Mr. Mironescu and Mr. Lugoşianu and, I believe, the Prime Minister, that they are opposed to the quota system but that, owing to Mr. Madgearu's violent character and his position and following in the National Peasant Party, nobody dares to oppose him openly.

The situation would be bad enough if the quota system were properly applied, but I am convinced that it is applied most arbitrarily and, in my opinion, although it is difficult to secure proof, in a discriminatory manner, especially in so far as the United States is concerned. I am also convinced that permits are granted for pecuniary compensation.

Yesterday, I called on the Under Secretary of State for Foreign Affairs and discussed the question generally as to the effect of the present quota system on American-Rumanian commercial relations. I pointed out that although Rumania and the United States have a commercial agreement providing for reciprocal most-favored-nation treatment,⁴² nevertheless,

⁴¹ Not printed.

⁴² Signed at Bucharest, August 20, 1930, *Foreign Relations*, 1930, vol. III, p. 799.

American goods were not, owing to the quota system, receiving the same treatment as merchandise from certain other countries. I added that conditions were constantly growing worse and that it was now practically impossible for importers of American goods to secure import permits, so that unless conditions changed it meant almost the closing of the Rumanian market to American products.

As a proof of this, I left with him a memorandum, a copy of which is enclosed herewith,⁴³ showing the fate of six recent applications to import American goods into Rumania. I especially called his attention to the last paragraph of the memorandum where it is stated that in these six cases import permits were requested for over 70,000 kilograms of American goods (this figure was based on the quantities imported in 1931) and that permits have been granted for only 55 kilograms. This treatment, I added, seemed to me to go beyond the requirements of the quota system and to be discriminatory. I further pointed out that the trade balance between Rumania and the United States was not unfavorable to the former country, as certain invisible exports from the United States were not taken into consideration (immigrant remittances, for example, which were \$15,000,000 in 1931, and that the very lowest estimate for 1932 must be at least \$2,000,000. See the Legation's despatch No. 995 of December 27, 1932).⁴³ I also referred again to the acknowledged case of discrimination against the American firm of the General Railway Signal Company, for which the promised compensation has not yet been forthcoming, and, in view of the statement contained in the Department's instruction No. 259 of August 24, 1932,⁴³ I repeated that I felt that the treatment accorded American interests could not fail to cause an unfavorable impression in the Department of State and other departments of the Government.

The Under Secretary of State promised to discuss this question with the Acting Minister for Foreign Affairs and with the Minister of Industry and Commerce, but I do not anticipate any improvement in the treatment of American goods as long as Mr. Madgearu is allowed to continue to impose the quota system.

In view of this situation, and in view of the Department's strictly confidential instruction No. 289 of March 23, 1933,⁴³ I venture to inquire whether the Department would consider it advisable, the next time the Rumanian Minister calls at the Department to discuss the American recognition of Russia and the Bessarabian question, to refer to the unfortunate situation arising from the practical exclusion of American goods from the Rumanian market owing to the application of the quota system.

⁴³ Not printed.

It further seems to me that this practical exclusion of American goods from the Rumanian market might properly be taken into consideration when the time comes to discuss the question of Rumania's war debts to the United States.

Respectfully yours,

CHARLES S. WILSON

671.118/15

The Chief of the Division of Near Eastern Affairs (Murray) to the Acting Secretary of State

[WASHINGTON,] June 8, 1933.

MR. PHILLIPS: The Rumanian Minister called on me this morning to discuss further certain phases of the most recent Rumanian discrimination against American imports.

Mr. Davila said that in order to be able to bring effective pressure on his Government in this matter he would like to know more precisely what we interpreted as being discrimination against American imports under the Rumanian import quotas. I told the Minister that, while we did not like the idea of import quotas, we nevertheless realized that under the present abnormal economic conditions in the world the establishment of some sort of import quotas was more or less inevitable. What we are protesting against is therefore not the establishment of import quotas by Rumania, but the arbitrary administration of those quotas which threaten[s] to shut us out of the Rumanian market altogether. I said that we would not object if Rumania, in administering the quota, would accord us a share of import permits proportionate to the share held by American exporters over a given period of years prior to the setting up of the quota. This, however, the Rumanian Government has refused to do. What the Rumanians are actually doing at the present time is to refuse to grant permits to importers of American goods and to grant such permits to importers of goods from other countries on the score that Rumania's trade with each and every country should be made to balance. I said that such treatment in American trade with Rumania was in gross violation of our provisional trade agreement with that country.

Mr. Davila argued that Rumania was in such a precarious position at the present time that she was obliged to trade primarily with countries that purchased from her. I pointed out that Rumania had enjoyed a favorable trade balance of considerable size prior to the inauguration of the present discriminatory quota procedure, and reminded him that this favorable trade balance had only begun to diminish after the present quota practices were introduced. He answered that import quotas were not of Rumania's invention; that Rumania disliked them but had been

forced to introduce them because her favorable trade balance was beginning to diminish. He pointed out that all the agrarian countries in South-eastern Europe were against import quotas and would work for their abolishment at the London Conference. Pending a solution of the question, however, he felt that we should not be too severe on Rumania even though the present practices are in violation of our most-favored-nation agreement with her. I told the Minister that it would be difficult, if not impossible, for us to acquiesce in any such practices as are now being followed by the Rumanian Government and that we are bound to oppose out and out discrimination of this kind against us.

WALLACE MURRAY

671.116/13 : Telegram

The Minister in Rumania (Wilson) to the Acting Secretary of State

BUCHAREST, June 15, 1933—6 p.m.

[Received June 15—2:30 p.m.]

12. The Ministry of Foreign Affairs requests Legation to transmit to the Department the following telegram sent to Rumanian Minister at Washington 4:30 today:

“The Rumanian Government cannot make in writing a declaration contrary to the import quota regulations which would be in contradiction to the entire present Rumanian commercial policy, nevertheless, Davila has been instructed to give to the Secretary of State categorical assurances that in fact Roumania will act with the greatest consideration in regard to the importation of American merchandise and will especially make no discrimination unfavorable to the United States but will on the contrary whenever possible favor products habitually imported from the United States.”

WILSON

671.116/24

The Minister in Rumania (Owsley) to the Secretary of State

No. 26

BUCHAREST, November 3, 1933.

[Received November 29.]

SIR: I have the honor to acknowledge the Department's instruction No. 10 of October 13, 1933,⁴⁶ relative to the difficulties which three American concerns have encountered in exporting their products into Rumania

⁴⁶ Not printed.

under the present Rumanian import quota system. The firms mentioned were namely:

Firestone Tire and Rubber Export Company, Akron, Ohio.
Atlas Asbestos Company, North Wales, Pennsylvania.
McLaughlin Gormley King Company, Minneapolis, Minnesota.

As is well understood by the Department, we here have a very heavy burden cast upon us to overcome the discrimination the Rumanian import quota law places upon proposed American exporters into Rumania. There is an apparent direct discrimination against American goods and against American manufacturers and traders. The record is replete with unmistakable evidence of discrimination. The case of the General Railway Signal Company,⁴⁷ now history, is only the beginning. This case loomed large because of the size of the contract and the extent of the effort made by the Legation to secure this contract for the American concern. Many other cases have accumulated, and now are accumulating, the three cases at hand among them.

In the mail on yesterday, Thursday, November 2, 1933, I transmitted a written communication to the Director General of the Rumanian State Railways, asking for the full payment to the Bedford Petroleum Company of 20,000 American dollars for a special quality of lubricating oil sold to the Government. This case would not be of any particular importance or significance but for the fact that a French concern having a like demand against the Rumanian Government was paid a week or so ago, and the American representative of the American concern had not been paid. There may be circumstances warranting a delay in payment of the American concern and a favoring of the French concern, but we were not able to discover them.

Within the last three weeks I personally called upon Mr. Gafencu, Under-Secretary of State for the Ministry of Industry and Commerce, and pled the cause of the representatives of several American concerns, for entry permits and for increases in import allotments based on the import percentage of 1931 and 1932. The personal visit to the Under-Secretary was partially rewarded with success.

I have the honor to further call the attention of the Department to the past effort of the Legation through my predecessor, Mr. Charles S. Wilson, and the present Secretary of the Legation, Mr. J. C. Holmes, when acting as Chargé d'Affaires ad interim at this Legation before I assumed charge. It has become a fixed opinion at this office now that we shall continue to have our troubles and that our difficulties will grow until a change in the present policy of the Government now in power is brought about. It is not beyond the realm of speculation to predict a very decided

⁴⁷ See *Foreign Relations*, 1932, vol. II, pp. 508 ff.

shake-up and change in the present Government, or its fall and complete loss of power. Only by constantly keeping at it and making frequent demands and personal calls upon those in authority in the Rumanian Government, yes, only by eternal vigilance, can we expect a partial measure of success for American concerns.

Less than three weeks ago I personally interviewed Mr. Madgearu, Minister of Finance, on a similar matter, and reminded him as forcefully as possible of the assurances given to the Government of the United States by the Rumanian Ministry of Foreign Affairs as set forth in the Legation's telegram No. 12 of June 15, 1933, six P.M., and the response was practically negative. At the same time Mr. Madgearu suggested that the United States Government and the Government of Rumania should hurriedly enter into reciprocal trade agreements in order that our apparent differences might be settled as far as possible.

I thanked him for his very valuable suggestion, bearing in mind all the while the views of the Department concerning our trade treaty status.

At the time of the present writing the S.A.R. de Telefoane, (the Telephone Company of Rumania,) has appealed to the Legation for immediate assistance in connection with the transfer and change from the old system to the new automatic system, which automatically under their franchise and trade operation agreement grants to the Telephone Company an increase in telephone rates. Already I have called upon the Minister for Foreign Affairs, Mr. Titulescu, and have interceded for the Telephone Company. A serious crisis has arisen. The press of Rumania is denouncing the American telephone company and Americans in a very unfavorable way. The matter is in suspension now, and will be the subject of a special despatch to the Department when enough accurate information is obtained, or a correct report of the matter, to be presented.

In obedience to the present instruction which I now have in hand, conferences and engagements with the proper Rumanian authorities have been asked for and our request is expected to be granted immediately. Further reports concerning these instructions will follow.

Respectfully yours,

ALVIN M. OWSLEY

671.116/26 : Telegram

The Acting Secretary of State to the Minister in Rumania (Owsley)

WASHINGTON, December 20, 1933—1 p.m.

32. Your despatch No. 36 November 20.⁴⁸ In connection with discussion of liquor quota for Rumania Davila asserts that Popescu of Ministry

⁴⁸ Not printed.

of Industry and Commerce and other officials can now convince you of non-discriminatory attitude of Rumanian Government toward allotment of import licences for American products.

Please confer with appropriate officials and advise the Department promptly whether Rumanians are now fulfilling in a reasonable manner the assurance conveyed by the Legation's No. 12, June 15, 6 p.m.

PHILLIPS

671.116/28 : Telegram

The Minister in Rumania (Owsley) to the Acting Secretary of State

BUCHAREST, December 27, 1933—4 p.m.

[Received 4:07 p.m.]

33. Department's December 20, 1 p.m. Allotment import quota licenses improved, officials indicate important favorable changes pending. Full report by mail will be forwarded after further consultation with proper authorities. Strongly urge no liquor quota agreement pending receipt of full report.

OWSLEY

SPAIN

EFFORTS OF THE GOVERNMENTS OF THE UNITED STATES AND SPAIN TO ELIMINATE MUTUAL TRADE GRIEVANCES ¹

611.0031/448

Memorandum by the Under Secretary of State (Phillips)

[WASHINGTON,] April 6, 1933.

The Spanish Ambassador ² called to ask when the President was going to seek authority from Congress to negotiate reciprocal trade agreements. I told him that the draft legislation was nearly completed and that it would go up to the Capitol accompanied by a special message from the President; I did not think that the President had decided precisely when he would send up his message, but presumably within a month; in view of the rapidity of the legislative action on the Hill,³ it seemed possible that Congress might be completing its work by May 15th, although this was purely a personal impression.

WILLIAM PHILLIPS

611.5231/761

Memorandum by the Acting Secretary of State

[WASHINGTON,] June 27, 1933.

The Spanish Ambassador came in to ask me whether I could give him any information regarding the prospects of negotiating a new commercial treaty with Spain, to which he had referred some days ago. I said that we were hoping to be able to negotiate trade agreements with a few countries and to submit them to the Senate next winter, but that as far as we had gone Spain was not included among those countries. I pointed out the fact that Spain was discriminating against American trade and it did not seem to me to be a good moment to negotiate a trade agreement with Spain. The Ambassador replied that there were complaints on both sides, that Spain had a good many complaints against the United States, and that it was his hope that all of these complaints could be straightened out through a new commercial treaty. I did not give the Ambassador a

¹ Continued from *Foreign Relations*, 1932, vol. II, pp. 527-560.

² Juan Francisco de Cárdenas.

³ i.e., in Congress.

definite reply but left him with the impression that we were not eager to go forward with Spanish treaties at this time.

WILLIAM PHILLIPS

611.5231/770

Memorandum by the Acting Secretary of State

[WASHINGTON,] July 14, 1933.

The Spanish Ambassador came in to tell me of the receipt of a long telegram from his Government expressing in strong terms the Government's disappointment at the receipt of the Ambassador's report that there seemed to be little hope of negotiating a new commercial treaty at the present time with Spain. The Ambassador said that his report had been based on his conversations with me in which I had spoken about the discriminations against American exports to Spain, etc., etc. It was evident, however, that the Ambassador had received new instructions to press for a reconsideration on our part.

He referred to the fact that there were two exports on which Spain desired to have relief: one, grapes, and two, cork.

The Ambassador went on to explain the manner in which Argentine grapes were shipped to the United States; that the same fly which existed in Spain existed in the Argentine; but that to overcome this difficulty the Argentine's grape growing industry had been segregated into districts and grapes were allowed to be imported into the United States if they came from certain districts that were known by us to have no fly. The Ambassador said he understood perfectly that the real reason for the discrimination against the Spanish grapes was the fact that the Spanish grapes were exported during the summer season in competition with the California grapes, whereas the Argentine grapes reached the United States in winter. He said the Spanish Government could not recognize the right of such discrimination. He asked that the Spanish grape growing industry should be divided into districts according to the presence or non-presence of the fly, precisely similar to the district divisions in the Argentine, and that we should permit the import of grapes from the healthy districts. Inasmuch as this was purely an administrative matter and was within the powers of the Department of Agriculture, he asked that this Department should express to the Department of Agriculture his Government's interest and its hope that the Department of Agriculture would reconsider the subject with the technical experts in the Spanish Embassy.

As far as cork was concerned, this was a matter solely within the province of the Tariff Commission. The Ambassador expressed the hope that we could in some way facilitate or hasten a decision regarding the

duties on the import of cork, which he felt sure would be favorable to the Spanish cause.

With these two items disposed of, the Ambassador said that the attitude of Spain towards American imports would be wholly changed and that some very satisfactory arrangements could be made. He felt that this could all be worked out and put into effect this summer since no Senatorial action would be necessary.

WILLIAM PHILLIPS

611.5231/774

Memorandum by the Secretary of State

[WASHINGTON,] September 28, 1933.

The Spanish Ambassador called and stated that before leaving for Spain he would be glad to have the latest and fullest statement I might be able to make as to when our Government would be able to take up with the Spanish Government conversations looking towards improved commercial relations and dealing with more or less discriminatory practices by each government against the other, including the matter with regard to Spanish grapes, etc. I stated to him that my government would be engaged in similar negotiations with other countries during the present year; that I personally felt his government and mine owed it to each other to endeavor to establish closer and more satisfactory relations; and that I had the highest regard for the people of Spain and was likewise personally desirous of seeing closer relations, in every possible way, between the two governments and the two peoples. I stated that extreme, high tariffs or embargo tariffs had become the practice here and throughout the world for the time being; that American sentiment and the American Congress were overwhelmingly favorable to any kind of extreme practices in this line; and that there would be real difficulty in securing the ratification of any commercial treaty that might embrace tariff reductions. I added that it would be useless to negotiate such treaties unless there was a chance for them to be ratified; that more education on the subject of trade barriers would be necessary before statesmen either at home or abroad would be very much disposed towards material reductions of trade barriers; and that, therefore, it would probably be important and wise to enter into reciprocity arrangements with respect to as many minor commodities, not too keenly competitive, as might be possible, and that after a reasonably short lapse of time it would be much more possible to extend these treaties by including more commodities and those of a competitive character. I concluded by expressing the hope that he would call at the State Department from month

to month, and said I would frankly advise him as to our situation, so far as it related to the suggested negotiations between our governments.

C[ORDELL] H[ULL]

611.526 Wines/3 : Telegram

The Ambassador in Spain (Bowers) to the Acting Secretary of State

MADRID, December 21, 1933—11 a.m.

[Received December 21—10:30 a.m.]

81. Surprise rapidly turning to indignant resentment because of notable discrimination against Spanish wines in the quota and press reports that for small concession France to be given ten times more. Feeling here that failure to invite similar bargaining with this country indicative of unfriendliness. Wine people are demanding Government here protest. *El Sol* carries attack in which such American interests as telephone company significantly mentioned. Rock ⁴ ascribes it to the reaction on wine and is so informing New York. A stiff indifferent attitude on Spanish wines harmful at this time. With Mallorcan hearing ⁵ probable within a week present insignificant quota Spanish wine compared with Italy and France will if continued accentuate all American problems here.

BOWERS

611.526 Wines/4 : Telegram

The Acting Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, December 21, 1933—5 p.m.

59. Your 81, December 21, 11 a.m. shows a complete misunderstanding by the Spanish of our present quota policy with regard to wines. For the present, importations of alcoholic beverages, except beer and other fermented malt beverages, are subject to a license system which is administered by a special governmental committee. Licenses are issued to American importers. Immediate imports from any particular country are limited to one-third of the average annual import trade based on figures for the years 1910-1914. These temporary quotas may be increased if any particular country wishes, through bargaining, to offer a satisfactory *quid pro quo* preferably benefiting American agricultural exports.

You will see from the foregoing that there has been no discrimination against Spanish wines, nor is it fair to characterize its quota of 394,874 gallons as insignificant either in itself or by comparison with that of other

⁴ Logan Rock, executive vice president of the National Telephone Company of Spain.

⁵ Court Martial trial of five Americans at Palma de Mallorca.

countries; furthermore that it is open to Spain at any time to make a bargaining suggestion for a larger quota. This Government has not invited such bargaining, but has been approached by a number of countries and is at present engaged in negotiations. The Spanish Embassy in Washington is one of the few missions which has not indicated interest in obtaining additional quota although wide publicity has been given as to our quota policy.

You may, of course, use this information in any way you feel would produce the best results.

PHILLIPS

REPRESENTATIONS AGAINST BILLS INTRODUCED IN THE SPANISH CORTES TO ANNUL THE CONTRACT OF THE INTERNATIONAL TELEPHONE AND TELEGRAPH COMPANY⁶

852.75 National Telephone Company/149

The Acting Secretary of State to the Vice President of the International Telephone and Telegraph Company (Page)

WASHINGTON, January 10, 1933.

MY DEAR MR. PAGE: I was pleased to receive your letter of December 28⁷ in which you expressed appreciation for the assistance rendered by the Department and the American Embassy at Madrid in the protection of your Spanish interests. Recent reports from Madrid indicate that the Embassy believes that while this Government has succeeded in its immediate objective,—the withdrawal from the Cortes of the so-called nullification bill,—further difficulties may nevertheless be anticipated before the question is finally settled.

I am not personally familiar with the progress which is being made toward the establishment of the proposed joint committee, nor of the choice which you have made with respect to representation by the telephone company thereon. I assume, however, that you will keep the officials of the Department primarily handling the matter closely informed.

Sincerely yours,

W. R. CASTLE, JR.

⁶ Continued from *Foreign Relations*, 1932, vol. II, pp. 560-581.

⁷ Not printed.

852.75 National Telephone Company/151 : Telegram

The Ambassador in Spain (Laughlin) to the Secretary of State

MADRID, February 4, 1933—3 p.m.
[Received February 4—2:20 p.m.]

5. Rock ⁸ has received following letter from Azaña ⁹ under date of February 2:

"As members of the Commission which is to prepare the revision of the existing contract between your company and the State the following have been designated: the Director General of the Administration of Justice (Casanueva), Director General of Telecommunication (Sastre) and Garate, representative of the Ministry of Finance in the company.

"I hope that corresponding designations will be made on your part so that the labors may commence immediately."

Rock has no further information. He has hitherto been given to understand that a Cabinet minister would sit in the joint committee as "moderator" and that designations would be made on basis of a decree.

My opinion that telephone company should be strongly represented has not been modified.

LAUGHLIN

552.75 National Telephone Company/161

The Ambassador in Spain (Laughlin) to the Secretary of State

No. 1088

MADRID, February 23, 1933.
[Received March 9.]

SIR: With reference to previous communications on the subject of the CTNE,¹⁰ I have the honor to transmit herewith in copy and translation a communication ¹¹ addressed over the signature of Sr. Rico, the General Director of the Telephone Company, to the Spanish Prime Minister under date of February 21. It informs the Spanish Government that for the purpose of participating in the proposed joint committee for the revision of the Telephone contract the Honorable Frank L. Polk,¹² Captain Logan N. Rock and Sr. Rico will compose the Company's representation. But it does not stop at that; for you will also note that in paragraph two the Telephone Company makes very definite reservations with regard to the terms of reference under which the joint committee will function.

⁸ Executive vice president of the National Telephone Company of Spain.

⁹ Prime Minister of Spain.

¹⁰ Compañía Telefónica Nacional de España.

¹¹ Not printed.

¹² New York attorney and banker.

I wish to point out for your confidential information, and to record my opinion, that this communication was made without consulting with me, and that I am uneasy lest the very precise terms of the second paragraph open an opportunity to the Spanish side to begin a further discussion in an attempt to recover lost ground.

Respectfully yours,

IRWIN LAUGHLIN

852.75 National Telephone Company/168

The Chargé in Spain (Flack) to the Secretary of State

No. 1167

MADRID, April 26, 1933.

[Received May 6.]

SIR: With reference to previous despatches on this subject, I have the honor to enclose in copy and translation the draft of a project of law¹⁵ presented to the Cortes by Rafael Salazar Alonso, a Radical Deputy, calculated to abolish the exemptions from municipal and provincial taxation which was granted in Section 6 of the Telephone Contract.

The Bill has not been discussed as yet but with the reconvening of the Cortes on April 25 it stood No. 20 on the Order of the Day. Whether it will ever be discussed is problematical. Captain Rock of the Telephone Company entertains the hope that it will not reach discussion in the Cortes. He states that his conversations with Prime Minister Azaña reveal that the latter is not anxious to have the Bill reach discussion, but has no power to prevent the introduction of such a Bill. If it should reach the point of imminent discussion, the Prime Minister will probably announce in the Cortes that the matter bears on the Telephone Contract and remind that body that the matter of the revision of the contract was being considered by the Committee appointed for that purpose. This might precipitate a meeting of the Committee before Mr. Polk, Chairman of the members selected by the Company for that purpose, could reach Madrid. In that event, I understand the Company will, through its two designated members now in Madrid, ask the Government to present a plan which will be carefully answered by them in writing, thus giving Mr. Polk time to reach Madrid.

In the event that the Bill comes to a point where it is likely to be discussed in the Cortes, it may be useful to remind the Minister of State that in his letter of December 9, 1932, to the Ambassador he confirmed the Government's criterion of "joint examination" (see enclosure No. 6 with despatch No. 996 of December 13, 1932).¹⁵ Such a step might conceivably strengthen the Prime Minister's position in endeavoring to remove the Telephone matter from Cortes discussion and would merely

¹⁵ Not printed.

amount to the reiteration of a principle already accepted by the Spanish Government in the matter. In agreement with Captain Rock, I am prepared to take this step at any moment if the matter should develop.

Respectfully yours,

JOSEPH FLACK

852.75 National Telephone Company/169 : Telegram

The Chargé in Spain (Flack) to the Secretary of State

MADRID, May 15, 1933—3 p.m.

[Received May 15—1:25 p.m.]

20. Learn from Rock that he has sent important communications to his principals concerning indirect efforts to impair telephone contract.

In the absence of specific instructions I shall reiterate our position enunciated last year¹⁶ should action be required.

FLACK

852.75 National Telephone Company/182

The Ambassador in Spain (Bowers) to the Acting Secretary of State

No. 87

MADRID, July 25, 1933.

[Received August 5.]

SIR: Referring to your telegraphic instruction No. 17 of May 27, 2 p.m., 1933,¹⁷ authorizing me after consultation with Captain Rock, and whenever I think it would be most effective, to inform the Minister of State orally that the position of the United States had not been modified in any way since the presentation of its Note of November 23, 1932,¹⁸ I have the honor to inform you that, at Captain Rock's suggestion, during a recent interview with the Minister of State concerning the five American prisoners in Mallorca, I alluded casually to the Radical Socialists' program, recently presented to the Government as the minimum basis for the collaboration, Article 21 of which called for the annulment of the Telephone Company's concession, and was reported in my despatch No. 66 of June [July] 12, 1933.¹⁷ I told Sr. de los Ríos¹⁹ that though this would appear to be a political maneuver of the Radical Socialist party, and that I assumed it had no particular importance, I desired to inform him that the position of the United States Government

¹⁶ See telegram No. 90, November 23, 1932, from the Ambassador in Spain, *Foreign Relations*, 1932, vol. II, p. 566.

¹⁷ Not printed.

¹⁸ See *Foreign Relations*, 1932, vol. II, p. 566.

¹⁹ Minister of State (Minister for Foreign Affairs).

had in no way been modified since the presentation of the Note of November 23 referred to above.

Sr. de los Ríos made no comment and I then took up other matters having no bearing on the Telephone Company.

Respectfully yours,

CLAUDE G. BOWERS

852.75 National Telephone Company/190

The Ambassador in Spain (Bowers) to the Acting Secretary of State

No. 234

MADRID, December 13, 1933.

[Received December 26.]

SIR: I have the honor to enclose herewith copy of the Decree of November 30, 1933, published in the *Gaceta de Madrid* for December 1, 1933,²¹ providing for the transfer to the Catalan government of the execution of Spanish legislation relating to the Telephone Company and the company's service in the Generalidad. The transfer is to be effective from December 1, 1933, and adaptation of the service is to be made in accordance with certain reservations on the part of the State as stated in paragraphs Nos. 4 and 11 of Article 5 of the Catalan Statute, covering eventual "termination for any cause, legal or contractual, of the present administrative concession relative to lease of telephone service," and the subsequent executive functions of the autonomous region in accordance with its legislation.

A copy of the Catalan Statute as published in the *Gaceta de Madrid* of September 21, 1932, was enclosed in the Embassy's despatch No. 875 of September 27, 1932.²²

I have called the enclosed decree to the attention of Captain Rock, the head of the Telephone Company, who said that he would let me know whether he wished me to take any action, as a matter of record, with the Minister of State on the subject.

Respectfully yours,

CLAUDE G. BOWERS

852.75 National Telephone Company/191 : Telegram

The Acting Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, December 21, 1933—6 p.m.

60. If, as officials of the International Telephone and Telegraph Company fear, developments in the Cortes again threaten the introduction of legislation for the nullification of their contract or other confiscatory

²¹ Not reprinted.

²² Not printed.

measures, you may rest assured that this Government's position has not changed from that set forth in Mr. Laughlin's note of November 23, 1932.

Within this general instruction the Department gives you wide latitude in the means you choose to meet the situation as it arises, but desires to be kept currently informed of developments.

PHILLIPS

REPRESENTATIONS RESPECTING DISCRIMINATION AGAINST AMERICAN AUTOMOBILE TRADE IN SPAIN

652.116/23

The Chargé in Spain (Flack) to the Secretary of State

No. 1189

MADRID, May 17, 1933.

[Received May 27.]

SIR: Adverting to my telegram of May 13, 12 noon (1933),²³ I have the honor to enclose in quintuplicate the Spanish text with translation of the Decree, dated May 9, and published in the *Gaceta de Madrid* of May 11 on this subject.²⁴ The translation was kindly furnished by the office of the Commercial Attaché.

The two Articles of the short Decree are prefaced with an explanation of the reasons for its issuance, which assert its temporary nature. According to Article 1, Section (a), the "benefits" (*retornos*) are to be determined on the statistical results of completed quarters.

On the morning of May 13, I called to see Señor Doussinague, Political and Commercial Director in the Ministry of State, to seek such additional information as he might care to give me about the Decree, and telephoned him later for a further interpretation. A copy of the Memorandum of the conversations is enclosed.²³

It should be noted in Section (b) of Article 1, that the amount of the benefit to be obtained is not fixed but may not exceed 35%. The amount is undoubtedly intentionally undefined to provide an additional bargaining point in the special agreements which I was informed would be essential to claiming the benefits.

I shall report promptly any additional information concerning the Decree and its application as it becomes available.

Respectfully yours,

JOSEPH FLACK

²³ Not printed.

²⁴ Not reprinted.

652.116/27 : Telegram

The Ambassador in Spain (Bowers) to the Acting Secretary of State

MADRID, June 10, 1933—noon.

[Received June 10—11:30 a.m.]

33. Embassy's despatch number 1189, May 17. Commercial Attaché²⁶ unofficially informed that Spain is seriously considering granting "benefits" of 30 percent to French automobiles under decree of May 9th.

BOWERS

652.113 Auto/61 : Telegram

The Acting Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, June 12, 1933—5 p.m.

24. Your telegram No. 33, June 10, noon. Should the Spanish Government grant any concessions to French automobiles as outlined in your message you are instructed to protest at once against this further discrimination affecting American trade.

PHILLIPS

652.113 Auto/62 : Telegram

The Ambassador in Spain (Bowers) to the Acting Secretary of State

MADRID, June 26, 1933—4 p.m.

[Received June 26—2:10 p.m.]

37. Your telegram No. 24, June 22 [12], 5 p.m. I am unofficially informed that Spain has granted "benefits" of 32 percent on French automobiles by an unpublished agreement which parties apparently wish to keep secret. I have written a note of inquiry to the Foreign Minister and will protest as soon as I can obtain official confirmation.

BOWERS

652.113 Auto/64

*The American Ambassador in Spain (Bowers) to the Spanish Minister for Foreign Affairs (de los Ríos)*²⁷

No. 38

MADRID, July 5, 1933.

EXCELLENCY: I have the honor to acknowledge the receipt of your courteous Note No. 110, dated June 29, 1933,²⁸ received today, informing

²⁶ Charles A. Livengood.²⁷ Copy transmitted to the Department by the Ambassador in his despatch No. 57, July 5; received July 15.²⁸ Not printed.

me that the commercial "avenant" between Spain and France, mentioned in my Note No. 33 of June 26th,²⁹ was published in the official gazette of June 23rd.

After a careful examination of the "avenant" mentioned above, I fail to find any reference direct or indirect to the granting by Spain of a reduction in the existing tariff of 32% to automobiles of French origin, which was specifically reported in the clipping from *La Voz* contained in my above mentioned Note No. 33 of June 26th.

I should be much obliged, therefore, if Your Excellency would be good enough to indicate which paragraph in the "avenant" covers this reduction in tariff to automobiles of French origin. If this point is not covered in the "avenant", I should be grateful if Your Excellency would be so kind as to send me a copy of the separate agreement, if made, having the effect of a reduction in the existing Spanish tariff on automobiles of French origin.

I avail myself [etc.]

CLAUDE G. BOWERS

652.113 Auto/67

*The Spanish Minister for Foreign Affairs (de los Ríos) to the American Ambassador in Spain (Bowers)*³⁰

[Translation]

No. 112

MADRID, July 8, 1933.

SIR: I have the honor to acknowledge to your Excellency receipt of his note of the 5th instant by which he wishes to ascertain the effect (*alcance*) which the "avenant" concluded between Spain and France has on the importation into our country of automobiles of French manufacture.

The terms of the Agreement entered into with France are those which have been published in full in the *Gaceta de Madrid* for June 23rd last. Possibly some newspapers, while dealing with a hypothetical (*supuesta*) reduction of the customs tariff applicable to French automobiles, refer to the possibility that France may request a reduction of certain customs tariffs which the present Spanish regulations make it possible to grant in favor of foreign countries whose consumption of our basic products of exportation attain a certain proportion; tariff advantages that can be made effective by virtue of the so-called policy of "benefits" (*retornos*) and can be requested by all the nations which, as buyers of Spanish products, may find themselves in the same position as France.

I avail myself [etc.]

(By direction)

J. GÓMEZ OCERÍN

²⁹ Not printed.

³⁰ Copy transmitted to the Department by the Ambassador in his despatch No. 70, July 12; received July 26.

652.113 Auto/78

The American Ambassador in Spain (Bowers) to the Spanish Minister for Foreign Affairs (de los Ríos) ³¹

No. 67

MADRID, August 29, 1933.

EXCELLENCY: I have the honor to enclose herewith the copy of a letter dated August 3rd ³² from Señor Don V. R. Taribó, Acting Director General of Customs, issuing orders concerning the measures which Spanish customs officials are to take toward the granting of tariff advantages, amounting to 35%, to automobiles of French origin. A copy of that communication was shown to Señor Taribó by a member of the Embassy who was informed that such orders had been issued.

Acting upon instructions from my Government, I, therefore, have the honor to present its protest against this further discrimination affecting the trade of the United States.

I avail myself [etc.]

CLAUDE G. BOWERS

REPRESENTATIONS TO MITIGATE SEVERITY OF TREATMENT OF AMERICANS HELD AT PALMA FOR ALLEGED ATTACK UPON CIVIL GUARDS

352.1121 Blodgett, Walton/2 : Telegram

The Consul General at Barcelona (Dawson) to the Acting Secretary of State

BARCELONA, June 16, 1933—5 p.m.

[Received June 16—1:30 p.m.]

Your cable June 15, 5 [6] p.m.³² Americans named and three others including wife of one of them imprisoned since June 4th charged with assaulting civil guards and wounding one which Spanish law takes most seriously. Drink apparently at root of incident: accused admit some drinking but claim self-defense against attack by civil guards.

The case being under military jurisdiction and trial Consulate General's efforts to obtain prompt and lenient settlement unsuccessful and Embassy fully informed that its intervention is unavoidable. Prisoners' counsel similarly informed the Embassy after unsuccessful effort to secure liberty under bond.

Unless Embassy can obtain prompt action case likely to follow same trend as that reported in Malaga Consulate's despatch No. 91 of July 25,

³¹ Copy transmitted to the Department by the Ambassador in his despatch No. 122, August 29; received September 9.

³² Not printed.

1932.³³ Other accused are . . . the latter said to be held more as material witness than as accused. No present indications need of funds.

DAWSON

352.1121 Blodgett, Walton/7 : Telegram

The Ambassador in Spain (Bowers) to the Acting Secretary of State

MADRID, June 29, 1933—noon.

[Received 1:50 p.m.]

38. Your telegram No. 27, June 28, 5 p.m.³³ On June 17th on receipt of the first communication from . . . and in conformity with request therein I handed Foreign Minister an urgent note requesting provisional release of all five prisoners and if not at once possible, the immediate release of . . . owing to signed statement of other four that he was in no way involved and of Mrs. . . . because of her sex. During conversation I urged Minister to press for speedy and favorable action; I acted immediately on learning of incident. Parties failed to notify Consul Barcelona until 6 days after incarceration.

This request has been supported by Embassy's subsequent oral representations all of which I am informed were communicated to Ministry of War, since this is unfortunately a case for courts martial as in that of . . . (see despatch No. 785 of July 27, 1932).³³ Foreign Office has received no word from Ministry of War other than case is receiving attention.

Yesterday I requested appointment with Foreign Minister to discuss this and other matters which has been granted for this evening.

Please inform Congressman Lamneck of Ohio reference his telegram to me June 28th on behalf of . . .

BOWERS

352.1121 Blodgett, Walton/10 : Telegram

The Acting Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, July 1, 1933—3 p.m.

29. Friends telegraph no relief given five prisoners Palma and situation serious. Urge release be expedited.

PHILLIPS

³³ Not printed.

352.1121 Blodgett, Walton/14 : Telegram

The Acting Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, July 8, 1933—1 p.m.

30. Department's July 1 and previous telegrams regarding five prisoners Palma. Absolutely imperative some report be submitted immediately. Department confidentially awaits immediate and favorable telegraphic report.

PHILLIPS

352.1121 Blodgett, Walton/29 : Telegram

The Acting Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, July 13, 1933—6 p.m.

31. I sent for the Spanish Ambassador today and expressed our deep concern over the fate of the five Americans imprisoned in the Island of Majorca; I reminded him that we had been expressing our interest in telegrams of inquiry and instruction since June 15th and, so far, had received no definite information for the reason that our representatives in Madrid and in Palma had been unable to secure any information. Without condoning the acts of the Americans I felt it was highly important for us to be advised of the actual situation and asked the Ambassador to be so good as to communicate with his Government in this sense.

PHILLIPS

352.1121 Blodgett, Walton/26 : Telegram

The Ambassador in Spain (Bowers) to the Acting Secretary of State

MADRID, July 15, 1933—9 a.m.

[Received July 15—7:11 a.m.]

41. My telegram No. 40, July 11, 11 a.m.³⁷ Military judge submits report hostile to any concession Palma case on strictly legalistic grounds refusing to consider extenuating circumstances. Prisoners charged under military code with attacking civil guard. Assistant of judge in his absence agreed to bail if judge consented but latter forbade. Military caste involved. Dawson reports prisoners comfortable with the exception of woman. Appeal will be made to the Prime Minister at first possible opportunity on his return to Madrid. Reports of Dawson and military judge being sent by next pouch.

BOWERS

³⁷ Not printed.

352.1121 Blodgett, Walton/36 : Telegram

*The Acting Secretary of State to the Consul General at Barcelona
(Dawson)*

WASHINGTON, July 18, 1933—1 p.m.

Proceed Majorca immediately, remaining there pending further orders. Do everything possible on behalf Americans now under arrest. Keep Department fully informed of developments by telegraph. Transportation and per diem \$6 authorized.

PHILLIPS

352.1121 Blodgett, Walton/46 : Telegram

*The Consul General at Barcelona (Dawson) to the Acting Secretary
of State*

PALMA, MAJORCA, July 21, 1933—5 p.m.

[Received July 21—12:25 p.m.]

All the five Americans at liberty under joint bond 20,000 pesetas. Returning Barcelona tonight with the approval of Ambassador.

DAWSON

352.1121 Blodgett, Walton/83

The Ambassador in Spain (Bowers) to the Acting Secretary of State

No. 91

MADRID, August 1, 1933.

[Received August 12.]

SIR: With reference to my telegram No. 43 of July 22, 12 noon, 1933,³⁸ concerning the five Americans who have until recently been held in prison in Mallorca, I desire to place before you the following observations concerning this case and the situation in Mallorca arising from the unfortunate activities of other Americans there.

While the five Americans, . . . at Palma have been released on bail on the orders of Azaña,³⁹ the incident will not be closed until the case is finally disposed of through a trial or a dismissal of the case. This is appreciated by the Foreign Office and by Azaña here, and both the latter and Sr. de los Ríos⁴⁰ have voluntarily assured me that they will continue to interest themselves personally until the case finally is disposed of.

Consul General Dawson reports that a representative of the International News Service informs him, after a conversation with the Juez

³⁸ Not printed.

³⁹ Manuel Azaña y Diaz, Prime Minister of Spain.

⁴⁰ Minister for Foreign Affairs.

Instructor, that the military authorities in Palma plan to proceed with the trial with the view to giving the Americans the minimum sentence. This would mean serving a longer time in jail. I have reasons to believe that this is not in accord with Azaña's idea. This Juez Instructor has been summoned to Madrid, and I have no doubt that Azaña has sought to impress upon him the importance of abandoning the trial or of limiting the sentence, in case of trial, to the seven weeks already served, which would mean the unconditional release of the prisoners. I shall talk with Sr. de los Ríos and try to impress him with the importance of following this course.

I.

In view of possible contingencies certain fundamental facts should be in your possession. Evidently there has been a wholly erroneous impression in the United States regarding the case.

First, this is not a police court case, or anything like it. The offense is considered one of the most serious in Spain, not only now, but it was during the monarchy.

Second, the Guardia Civil is not an organization of policemen under the civil authority despite its apparent direction by the Department of the Interior, but it is the very cream of the military organization, and no attack on, or resistance to, its members is a matter for the civil courts.

Third, there was nothing unusual in the proceedings against the five Americans, and their legal rights, and all their legal rights, were scrupulously observed.

We had, then, no legal grounds on which to protest. We had to make our play on public policy—the effect on public opinion in the United States.

II.

Aside from the legal phase, there are political complications in this case. The Guardia Civil since the fifth decade of the last century has been a high-grade and very efficient agency in the maintenance of law and order. It was organized to meet the crime and lawlessness that developed between the time of the Napoleonic invasion and the time of its formation. It speedily vindicated itself. It has been efficient because its members have been more or less sacrosanct; because it has been understood that to resist or attack a member of the organization would mean a severe punishment by a military court. The result has been that for generations a few of the guard have been able to cow a mob. This has made them both respected and feared. Among the disorderly elements it has made them hated.

In recent months a number have been killed by the subversive forces

and this has made the guards all the more arrogant and intolerant of opposition or even criticism and all the more insistent with the civil authorities in demanding all their privileges under the law.

III.

In the initial stages of the Revolution the republic was suspicious of the loyalty of the Guardia Civil, and, without interfering with them, a purely republican military organization was perfected with the probable ultimate view to disbanding the Guards entirely. Time has failed to disclose the feared disloyalty, and the Government probably is now convinced that the old military organization is the most dependable of all in the maintenance of law and order. Just now there is an unmistakable tendency in the Government to cultivate its good will. This has embarrassed even Azaña in brushing it aside rather arbitrarily in the case of the five Americans.

IV.

There is another explanation for the evident prejudice of the Guardian military authorities in Palma in this case. In a despatch No. 217 of February 21, 1933,⁴¹ Consul General Dawson informed the Department of the increasing embarrassment to Americans and American officials here, due to the conduct of so many of our people in Mallorca. There are many Americans in Mallorca who conduct themselves in such a way as to reflect credit upon us; there are many others, and these are increasing, who are a disgrace to us. These are an irresponsible group who live in a chronic state of drunkenness and indecency, parading the streets half clothed, offending local feeling, treating the natives with arrogance, and their laws and regulations with a jeering levity. These have been attacked even in the Madrid press. The English colony in Palma refuses to associate with them, and the respectable American element there is constantly humiliated. The military authorities in Palma have had much trouble with them, and this explains in large measure its uncompromising attitude in the case of the five Americans—whose offense happens to have been the straw to break the camel's back.

This is unfortunate, since these five are not of the disreputable group that has caused the most trouble. They have done serious work as painters, have excellent family connections, and but one of these was drunk at the time of the fracas. The trouble was caused by this one man.

In the midst of the attempts to serve these five Americans, Theodore Pratt's⁴² scurrilous article sneering at the people of Mallorca and

⁴¹ Not printed.

⁴² An American resident in Palma.

shamelessly slandering them appeared, and but for the Guardia Civil he would have been roughly handled.

It is possible that the severity of the punishment of the five may have a sobering effect upon the irresponsibles of the American colony. If not, we shall be continuously involved in unpleasant incidents that reflect seriously on the American character, and the Consulate at Barcelona and the Embassy will be devoting much of its [*their*] time and energy to demanding that there shall be no interference with the drunken and indecent element which violates the laws of Spain.

Respectfully yours,

CLAUDE G. BOWERS

352.1121 Blodgett, Walton/100 : Telegram

The Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, September 7, 1933—6 p.m.

42. Your despatches No. 91 of August 1 and No. 115 of August 23⁴³ concerning the imprisonment of five American citizens at Palma have been received. Full instructions are being sent you by pouch leaving September 8. However, in view of possible delay in arrival, the following summary is sent for your guidance when you judge the moment most opportune. Although the Department does not overlook the special position of the Guardia Civil or the differences in legal procedure in the two countries, nevertheless wide spread indignation has been aroused both in the press and in Congress by the long imprisonment without bail or trial of these five Americans of good repute for what is considered here a minor offense. In view of the fact that the relations between the two countries are being rapidly embittered out of all proportion to the gravity of the offense and the satisfaction to be gained by the Spanish authorities in inflicting further punishment, you are requested again to call on the Prime Minister and the Minister for Foreign Affairs suggesting to them that in these circumstances they may desire to consider the advisability of bringing this matter to a speedy and final solution by dismissal or otherwise.

If your efforts in this direction are unsuccessful and the accused as a result of the trial are sentenced to additional imprisonment or to pay other than nominal fines, you are instructed promptly to forward to the Department a complete record of the trial and proceedings and a copy of the charges together with pertinent provisions of the Spanish penal or military code, as in these circumstances the Department will desire to take such steps as any denial of justice may warrant. You should also make definite arrangements for the attendance of Consul General Dawson at the trial should it be held.

HULL

⁴³ Latter not printed.

352.1121 Blodgett, Walton/120

The Ambassador in Spain (Bowers) to the Secretary of State

No. 141

MADRID, September 19, 1933.

[Received September 30.]

SIR: With reference to your instruction No. 32 of September 8, 1933 (File No. 352.1121 Blodgett, Walton/83 [102]),⁴⁴ directing me to again see the Prime Minister and the Minister of State in reference to the case of the five Americans at Mallorca, I had before receiving the instruction seen them again and impressed upon them the seriousness of imposing a sentence in excess of the time already served in jail.

I was satisfied at the time that everything possible was being done by Sr. Azaña. But with the fall of his Ministry I thought it wise to see Sr. Lerroux⁴⁵ and the Foreign Office again lest the Prime Minister be in ignorance of the case. He fixed five o'clock on Monday, the 18th, for the conference at the Presidencia. Accompanied by Mr. Schoellkopf,⁴⁶ I went to the Presidencia at the appointed time and found the Ministers' ante-room crowded with importunate office-seekers, but was admitted soon. As I had feared, Sr. Lerroux knew nothing of the case. After I had explained the situation, he said he would go the next day directly from the Council of Ministers to the Foreign Office and familiarize himself with the case. "I shall do everything possible within the law," he said, and then added that he would go beyond that, if necessary, to prevent any bad feeling between the two peoples.

We went directly from Sr. Lerroux to the Foreign Office to see Sr. Cruz Marín, the Undersecretary under Sr. de los Ríos, who retains his post pending the return to Spain of the new Minister of State and who is entirely familiar with the case. He promised to impress its importance on Sr. Lerroux and added: "I have no right to say this to you, but I will in confidence say that I am sure the matter has been attended to satisfactorily. I know that Sr. Azaña was deeply interested and I myself was present when he called the authorities at Palma and I know what he said". He said he intended to take the matter up with Sr. Sánchez Albornoz, the new Minister of State, on his return. He has been asked by the latter to retain his post as Undersecretary, but he had come to Madrid because of his personal friendship for Sr. de los Ríos and preferred service in America and will go to New York as Consul General.

I left with the feeling that there will be no further imprisonment of the five Americans. In the event it turns out otherwise I shall follow the instructions in your instruction under reference.

Respectfully yours,

CLAUDE G. BOWERS

⁴⁴ Not printed.⁴⁵ Alejandro Lerroux, Prime Minister of Spain.⁴⁶ Walter Schoellkopf, translator for Ambassador Bowers in Spain.

352.1121 Blodgett, Walton/134 : Telegram

The Ambassador in Spain (Bowers) to the Secretary of State

MADRID, October 27, 1933—10 a.m.

[Received October 27—7:45 a.m.]

65. My telegram No. 64.⁴⁷ Following from Dawson at Palma de Mallorca:

“Acquittal all five subject to review.”

BOWERS

352.1121 Blodgett, Walton/145 : Telegram

The Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, November 10, 1933—5 p.m.

52. Publication in the United States of news stories stating that the Military Auditor has refused to approve the verdict of acquittal in the Mallorca case and that the case has been referred to the Supreme Court has disturbed public opinion and we are receiving anxious inquiries from relatives of the five Americans. When, in your opinion, may the Supreme Court's decision be expected? Your handling of this case has been admirable and we shall be guided by your recommendations in regard to further representations to the Spanish authorities.

HULL

352.1121 Blodgett, Walton/146 : Telegram

The Ambassador in Spain (Bowers) to the Secretary of State

MADRID, November 11, 1933—1 p.m.

[Received November 11—11 a.m.]

71. Your telegram No. 52, November 10, 5 p.m. Action of the Auditor was expected since he is the man who refused bail and acts now on spite. I am in close touch with the authorities here who are seeking to speed Supreme Court decision. Government anxious as we to close incident. I am confident that Court will sustain verdict of acquittal. Will telegraph if and when pressure from the Department seems necessary or desirable.

BOWERS

⁴⁷ Dated October 25, not printed; it indicated that the trial of the five Americans would take place October 26th.

352.1121 Blodgett, Walton/165 : Telegram

The Ambassador in Spain (Bowers) to the Acting Secretary of State

MADRID, January 11, 1934—1 p.m.
[Received January 11—9:35 a.m.]

2. Department's telegram No. 61, December 26, 6 p.m.⁴⁸ Trial held and concluded before the Supreme Court this morning. Decision expected any time within 8 days.

BOWERS

352.1121 Blodgett, Walton/166 : Telegram

The Ambassador in Spain (Bowers) to the Acting Secretary of State

MADRID, January 19, 1934—2 p.m.
[Received January 19—1:25 p.m.]

9. My telegram No. 2, January 11, 11 a.m. [1 p.m.]. Informed confidentially by Associated Press representative that Court acquits . . . and gives other four including Mrs. . . . 6 months and 1 day apparently without recommendation. Positively known Court made a decision but probably no announcement will be made before tomorrow. Asking for immediate audience with the Minister of State to ask intention of the Government in case my information is correct.

BOWERS

352.1121 Blodgett, Walton/168 : Telegram

The Ambassador in Spain (Bowers) to the Acting Secretary of State

MADRID, January 21, 1934—4 p.m.
[Received January 21—2:40 p.m.]

11. My telegram No. 10, January 20, 3 p.m.⁴⁸ Upon receiving information this morning that . . . had been reimprisoned last night immediately got in touch with the Foreign Minister who states this action must have been taken not because of judgment but because of what I am positive was a false accusation from Palma that they were planning escape. Judgment which may be announced tomorrow will merely place accused at disposition of the Court and will not according to the Foreign Office entail reimprisonment. Minister of Foreign Affairs after our conversation talked with Ministers of War and Justice and thereafter telephoned me that imperative orders for release of prisoners from jail would

⁴⁸ Not printed.

be sent first thing tomorrow morning. He expects to phone me at noon tomorrow that prisoners have been released.

You may wish to inform press of exact situation so that Monday's papers may carry true story.

BOWERS

352.1121 Blodgett, Walton/171 : Telegram

The Ambassador in Spain (Bowers) to the Secretary of State

MADRID, January 23, 1934—11 a.m.

[Received January 23—10 a.m.]

12. My telegram No. 11, January 21, 4 p.m. Saw Foreign Minister last night. Government amazed at taking two Americans to jail Saturday. As promised, Minister of War Sunday morning telegraphed instructions to Auditor at Palma not to imprison anyone and after receipt of instructions Auditor sent other two to jail. Taken to task he said he had instructions from Supreme Court which were superior to those of Government to imprison Americans. Learned Court ordered it on representations from Auditor prisoners planning escape. Foreign Minister says this disobedience of Auditor to be subject of serious consideration Council of Ministers today.

Foreign Minister explained Government plan to have decision accompanied with provision that prisoners to be "held at the disposal of Court" rejected by Court on the ground that since pardon to be asked sentence must be in operation before petition can be considered. Process of pardon follows: The military division of Supreme Court that decided the case acts first on application for pardon. If it decides favorably Council of Ministers instantly asks President of the Republic for pardon. If unfavorable, entire Supreme Court acts on it and Foreign Minister says pardon positively certain here. Meanwhile Government earnestly seeking formula through which prisoners may be out of jail in the interval. Informed confidentially by Associated Press its man told last night by the judge of the military division who wrote the decision that the Fiscal of the Republic would recommend pardon, the Court would accept his recommendation and that pardon will be granted within 5 days.

Am positive Government has exerted itself consistently to end the case satisfactorily to us and has been hampered by conflict of authority in the courts and harrassed by the malice against the regime by the Auditor at Palma de Mallorca.

. . . here insistent that Dawson be ordered to Palma de Mallorca to investigate prison conditions of prisoners. Is the cost authorized?

BOWERS

352.1121 Blodgett, Walton/176 : Telegram

The Ambassador in Spain (Bowers) to the Secretary of State

MADRID, January 25, 1934—2 p.m.
[Received January 25—12:35 p.m.]

13. Your telegram No. 7, January 24, 6 p.m.⁵⁰ In view of the fact that Minister of Justice informed me this morning he has personally instructed prison authorities in Palma de Mallorca to accord prisoners every facility for additional food, heat, et cetera, I have informed Dawson his visit unnecessary.

BOWERS

352.1121 Blodgett, Walton/179 : Telegram

The Secretary of State to the Ambassador in Spain (Bowers)

WASHINGTON, January 27, 1934—3 p.m.

8. So far the Department has succeeded in carrying out your recommendations that the press treat the Palma case in a restrained and unprovocative manner. However, continued delay and resort to technicalities as reported in this morning's newspapers is making this increasingly difficult and there are indications that the matter may be brought up on the floor of Congress shortly. The Department is again being subjected to great pressure to secure a final and satisfactory settlement. Please inform the Spanish authorities of this and urge the necessity in the interest of Spanish American general relations for expediting a favorable decision.

HULL

352.1121 Blodgett, Walton/180 : Telegram

The Ambassador in Spain (Bowers) to the Secretary of State

MADRID, January 29, 1934—2 p.m.
[Received January 29—11:07 a.m.]

14. Your telegram of January 27, 3 p.m. Just saw Foreign Minister. Papers from Palma de Mallorca arrived with condition of prisoners described as excellent. Minister made engagement in my presence to see President Supreme Court to arrange and to recommend pardon so Council Ministers can act Friday. Unprecedented rapidity in pardon case. Vitally important that press and Congress keeps hands off.

BOWERS

⁵⁰ Not printed.

352.1121 Blodgett, Walton/185 : Telegram

The Ambassador in Spain (Bowers) to the Secretary of State

MADRID, February 3, 1934—2 p.m.
[Received February 3—10:45 a.m.]

16. My telegram No. 14, January 29, 2 p.m. Four prisoners pardoned this morning with customary condition that they leave the Balearic Islands which does not preclude their living in Spain. Assured by Minister of State that telephonic instructions would be sent to Palma de Mallorca for their immediate release.

BOWERS

SWEDEN

PRELIMINARY DISCUSSIONS RESPECTING A TRADE AGREEMENT BETWEEN THE UNITED STATES AND SWEDEN

611.5831/50 : Telegram

The Acting Secretary of State to the Minister in Sweden (Steinhardt)

WASHINGTON, July 13, 1933—5 p.m.

25. I asked the Swedish Chargé d'Affaires¹ to call today and discussed with him the idea of exploring the possibilities of a reciprocal trade agreement and told him that Sweden so far was the only European country we were approaching, although we might soon approach Portugal. I referred to Boström's² repeated overtures and explained that the conversations I had in mind would be purely informal, preliminary, and of an exploratory nature. Formal negotiations would only follow if both countries agreed that such negotiations would be mutually beneficial. I said I was sure that the commercial situation existing between the two countries would enable us to reach a satisfactory exchange of items without difficulty.

I asked the Chargé d'Affaires to cable his Government of our willingness to begin the discussions at once and added that I would inform you of our conversation.

PHILLIPS

611.5831/53a : Telegram

The Acting Secretary of State to the Minister in Sweden (Steinhardt)

WASHINGTON, August 3, 1933—3 p.m.

28. In connection with the Department's forthcoming conversations with the Swedish Chargé on the matter of a reciprocal trade agreement, you are requested to prepare, in cooperation with the Consul General and the Commercial Attaché, a report listing the commodities on which tariff concessions might be requested from Sweden with specific suggestions as to the amount and character of such concessions to be asked. Your report should also summarize impediments and restrictions other than customs duties wherein there may be room for Swedish concessions.

¹ Johan Beck-Friis.

² Woolman F. Boström, Swedish Minister.

Any information which you may obtain, without reference to the Swedish authorities, as to concessions likely to be desired by Sweden from the United States, should likewise be included.

PHILLIPS

611.5831/54 : Telegram

The Minister in Sweden (Steinhardt) to the Secretary of State

STOCKHOLM, August 11, 1933—noon.

[Received August 11—11:10 a.m.]

19. With reference to the Department's telegram 28, August 3, 3 p.m., material reduction of duty might be asked on the following:

Foodstuffs including fresh fruit, canned fruit and vegetables; motor vehicles, increased differential on trucks between unassembled and completed; parts for assembly, accessories and tires; upper leathers; motion pictures; and silk manufactures. Other impediments are excise tax on gasoline and tires, stringent pharmaceutical regulations and grain-mixing regulations. A further possible impediment may be the threatened compulsory mixing of alcohol with gasoline and a government monopoly on motor fuel distribution; also dumping of petroleum products by Russia which has been extensive.

Swedish objections [*objectives?*] no doubt will be retention on the free list without reduction as to quantity of wood pulp, newsprint, paper, and reductions for iron and high grade steel and steel products, granite, matches and industrial art products particularly glassware, pewter.

Report follows by mail.

STEINHARDT

611.5831/58

Memorandum by the Chief of the Treaty Division (Barnes)

[WASHINGTON,] August 28, 1933.

Mr. Gustaf Weidel, Commercial Counselor of the Swedish Legation, called at the Treaty Division this afternoon in regard to the proposed negotiation of a reciprocity agreement between the United States and Sweden. Mr. Weidel said that he was about to leave the United States for a vacation in Sweden but that in view of the Minister's absence on vacation he had received telegraph instructions from the Foreign Office to remain here in order to discuss the reciprocity negotiations. He inquired particularly as to when the Department would be ready to begin the negotiations and suggested that he be furnished at the Department's

convenience with some suggestions for the consideration of his Government which he might take with him to Sweden a little later.

Mr. Barnes, Mr. Hawkins and Mr. Weidel discussed informally certain articles of trade between the United States and Sweden, making reference to telegram No. 19 of August 11, noon, from the American Legation at Stockholm. It was ascertained by telephone from the Department of Commerce that the trade analysis concerning Sweden which is being prepared in that Department would be ready about September 2.

Mr. Weidel also inquired concerning the most-favored-nation clause. Mr. Barnes informed him that the proposals so far as they had up to this time been developed embraced the inclusion in the reciprocity agreements of the model most-favored-nation clause recommended by the Economic Committee of the League of Nations,³ with perhaps minor variations.

It was agreed that Mr. Barnes would telephone Mr. Weidel in about a week and inform him as to the wishes of the Department with respect to his having another conference with Mr. Barnes or other officials of the Department.

CHARLES M. BARNES

611.5831/69

Memorandum by the Chief of the Treaty Division (Barnes)

[WASHINGTON,] October 18, 1933.

Mr. Boström called on Mr. Barnes in pursuance of an understanding between him and the Secretary of State that he keep in touch with Mr. Barnes with reference to ascertaining when the Department would be in a position to begin conversations with him for the negotiation of a reciprocity treaty between the United States and Sweden.

Mr. Boström stated that he was authorized by his Government to begin conversations. He stated that about 70 per cent. of the Swedish imports into the United States were wood pulp and newsprint, which were on the free list; and that there were a few articles the chief of which as he recalled impromptu were matches and certain manufactures of steel imported from Sweden on which the duties are high. He stated that his Government would probably ask for continuation of wood pulp and newsprint on the free list and for reductions in the duties on matches and certain steel manufactures.

The Minister also stated, on the other hand, that the rates of the

³ League of Nations, Economic Committee, *Recommendations of the Economic Committee Relating to Tariff Policy and the Most-Favored-Nation Clause* (Geneva, February 16, 1933).

Swedish tariff with very few exceptions are low and that there was little which Sweden could accord the United States in the way of reductions of import duties. The Minister referred to the fact that the flour-mixing regulations in force in Sweden under which millers are required to use a certain percentage of native wheat in all flour had been mentioned by Mr. Barnes in a conversation with Mr. Weidel, Commercial Counselor of the Swedish Legation, several weeks previously, and the Minister stated that he was confident that his Government would be unable to agree to any change in these milling regulations which contemplated an increase in importations of wheat.

The Minister stated that primarily his Government would desire an assurance that there would be no increase in import duties on Swedish products under the National Recovery Act⁴ in the United States. He stated that an assurance on this point would be a condition precedent to beginning negotiations. The Minister said that he had mentioned the last point to the Secretary of State about a week previously and that the Secretary informed him that consideration would be given to harmonizing the proposed reciprocity negotiations with the execution of the National Recovery Act.

CHARLES M. BARNES

611.5831/75

Memorandum by Mr. Harry C. Hawkins, of the Treaty Division, of a Conversation Between the Swedish Minister (Boström) and the Assistant Secretary of State (Sayre)

[WASHINGTON,] December 20, 1933.

The Minister inquired regarding the status of the preparations for the proposed negotiations. Mr. Sayre replied that up to the present the personnel available for making the necessary studies had been completely occupied with similar studies in connection with proposed negotiations with other countries. However, Mr. Sayre stated that the plan is to take up the question of the negotiations with Sweden immediately after Christmas.

The Minister said that he had in mind for the moment only exploratory discussions designed to lay the basis for the negotiations. Mr. Sayre agreed on this point. He said that the best procedure apparently would be for each government to submit its desiderata to the other and then see if a basis exists for entering into more definite and detailed negotiations.

The Minister indicated that he is under instructions to find out

⁴48 Stat. 195.

whether assurances could be obtained that no action would be taken under the National Industrial Recovery Act which would limit the importation of pulp and paper from Sweden. Mr. Sayre said that we must of course consider the National Industrial Recovery Act in relation to the proposed agreement; that if the domestic recovery program succeeds in increasing prices materially there might be a serious influx of imports. He said however that he does not by any means despair of finding a means of reconciling commitments to Sweden regarding importation of Swedish products with the domestic recovery program; that this question will be taken up with the appropriate authorities of the recovery administration next week. The Minister, in reply to a question from Sayre, implied that it would not be necessary to include a provision concerning the National Industrial Recovery Act in the proposed agreement; that Sweden might be satisfied with collateral assurances of some sort.

REFUSAL OF THE SWEDISH STATE RAILWAYS TO PAY DEXTER AND CARPENTER, INC., JUDGMENT GRANTED BY A UNITED STATES COURT⁵

458.11 Dexter and Carpenter/148 : Telegram

The Secretary of State to the Minister in Sweden (Morehead)

WASHINGTON, January 25, 1933—10 a.m.

4. Your despatch No. 614, November 16, 1932.⁶ Please ask Foreign Office when reply to Legation's note March 10 last,⁷ concerning Swedish State Railways case, may be expected. Point out that Foreign Office has had note for nearly a year and that Swedish Government has had since 1922, when it brought action in courts of United States, to study implications of case.

STIMSON

458.11 Dexter and Carpenter/157

The Minister in Sweden (Morehead) to the Secretary of State

No. 657

STOCKHOLM, February 17, 1933.

[Received March 1.]

SIR: With further reference to the Department's instruction No. 96 of February 23, 1932,⁸ relating to the claim of Dexter and Carpenter, Incorporated, against the Royal Administration of the Swedish State Railways, and in confirmation of my telegram No. 6 of February 11,

⁵ Continued from *Foreign Relations*, 1932, vol. II, pp. 582-603.

⁶ *Ibid.*, p. 602.

⁷ Not printed; it was based upon Department's instruction No. 96, February 23, 1932, *ibid.*, p. 582.

⁸ *Ibid.*, p. 582.

3 p.m.,⁹ I have the honor to transmit herewith a copy of a communication received from the Acting Minister for Foreign Affairs, dated February 9, 1933, in reply to my note No. 148 of March 10, 1932, informing me, after a detailed review of the case, and a consideration of each of the points brought out in my note, that if the submission of the case to a Swedish court is not satisfactory to the United States Government the Swedish Government is willing to submit the question to arbitration or to give earnest attention to any other proposal for a settlement, provided the points of view of the Swedish Government receive due and sufficient consideration.

The enclosures mentioned in the Royal Ministry's communication of February 9, 1933, were not transmitted with it but were forwarded under separate cover, dated February 15, 1933, and were not received by the Legation until February sixteenth. In view of the number and length of the enclosures it was not possible to have them copied in quintuplicate in time to be included in the pouch of today's date in which the copies of the communication are being sent to the Department in accordance with the statement made in my above-mentioned telegram. In order to make the enclosures available simultaneously to the Department one copy of each enclosure which the Royal Ministry for Foreign Affairs kindly furnished to the Legation, together with copies of a translation of the note of transmission are enclosed herewith.

In the first portion of the communication from the Acting Minister for Foreign Affairs, devoted to questions of fact, great importance has been attached to the Railway Administration's disavowal of the actions of Mr. Gustav Lange Jr., the lawyer who filed suit against Dexter and Carpenter, Incorporated, in the name of the Royal Administration of the Swedish State Railways. The Legation is not in possession of the records of the court proceedings in the case, therefore it is not in a position to know how much, if any, of the material contained in the Royal Ministry's communication has not been presented before. However, in view of certain passages in the opinion of Judge Hand quoted in the Department's above-mentioned instruction, it would appear that in the main the facts are merely being restated, or certain ones only being selected and interpreted to fit the Railway Administration's point of view, regardless of the fact that the same evidence had been presented in court in America and was not construed in accordance with the contention of the Railway Administration. This position with regard to individual facts in the case is entirely consistent with the attitude taken by the Swedish Government in connection with the whole case, namely, the refusal to recognize as binding on the Railway Administration a judgment of an American court.

⁹ Not printed.

One point which is made by the Royal Ministry for Foreign Affairs in its communication of February 9, 1933, for the first time in so far as the Legation is able to ascertain is that "in view of the unambiguous manner in which Dexter and Carpenter have maintained their claim against the Administration, prescription of that claim cannot, according to Swedish law, be considered to have been established". Furthermore, the Railway Administration is reported as having declared to the Swedish Government that it does not consider it justifiable to raise nor is there any intention of raising the objection of prescription in any possible action against the Administration in Sweden within ten years from the latest time when Dexter and Carpenter's claim was made or reiterated.

This point was made in reply to the statement brought out in the judgment of the Court of Appeals to the effect that the Railway Administration had not claimed sovereign immunity until after a sufficient number of years had expired to make possible a plea of limitation or laches against suing in Sweden. It is presumed that the position of the Railway Administration has been explained with a view to making the suggestion that the case be referred to a Swedish court seem less illogical than if it were to be expected that the Railway Administration would plead the statute of limitations, or the Swedish equivalent.

The Royal Ministry's note of February 9, 1933, which indicates that my note of March 10, 1932, has not altered the position of the Swedish Government with regard to the payment of the claim, and in view of the fact that the proposal to refer the case to a Swedish court is not agreeable to the United States Government, could scarcely conclude otherwise than with the expression of the willingness to have the question submitted to arbitration, or to consider any alternate solution which the United States may wish to propose.

Respectfully yours,

JOHN M. MOREHEAD

[Enclosure]

*The Acting Swedish Minister for Foreign Affairs (Undén) to the
American Minister (Morehead)*

STOCKHOLM, February 9, 1933.

MONSIEUR LE MINISTRE: In a note of March 10, 1932, addressed to Mr. Gyllenswård, then acting Chief of the Department of Foreign Affairs, you have, acting under instructions from your Government, replied to Baron Ramel's note of July 18, 1931,¹⁰ concerning the judgment rendered by an American court against the Royal Administration

¹⁰ *Foreign Relations*, 1931, vol. II, p. 1014.

of the Swedish State Railways in favor of the American firm of Dexter & Carpenter, Inc., and at the same time you expressed the hope that the further consideration which the Swedish Government would give to this case, would lead to the adjudged amount, with interest, being paid.

In support of this renewed request you have given a detailed account of the court proceedings leading up to the said judgment. As a motive for giving this account you have specifically stated that in the opinion of your Government the assertions and conclusions set forth in Baron Ramel's note of July 18, 1931, "are not supported by complete comprehension of the rather intricate, legal and factual situation out of which the claim arose".

In view hereof I feel it incumbent upon me to point out at the outset that, before taking a standpoint to the question of whether there be proper cause for the Administration of the State Railways to comply with the judgment, the Swedish Government naturally have not only examined this question from a formal legal point of view but have also endeavoured to form an opinion as to the material justification of the claim sanctioned by the American court on the basis of American law and an American jury's application thereof. In this connection I consider I ought not to omit to mention that two prominent Swedish lawyers, specialists in the field of the law of contract and one of them now member of the Supreme Court of Sweden, were commissioned to undertake an impartial investigation of the question whether, according to principles of Swedish law, the claim could be considered a just one. The previously announced standpoint of the Swedish Government in this case was based on the opinion of these experts.

In view of the fact, however, that the account given in your note of the course of events has been found to contain several errors or incomplete statements of fact in important respects, I deem it desirable, before proceeding to a discussion of the conclusions arrived at by your Government, to give the following supplementary account of the facts of the case.

1. The position of Mr. Beijer in relation to the Administration of the State Railways.

Owing to the difficulties existing in 1919 for the State Railways to obtain fuel for locomotives, the Administration in September of that year commissioned the chief of their Bureau of Supplies, Mr. A. Tausen, to proceed to the United States in order to investigate the possibilities of procuring coal. Mr. Tausen was not commissioned to conclude contracts for the purchase of coal but was only to transmit to the Administration the offers which he might be able to obtain.

Some time after Mr. Tausen's arrival Mr. W. Beijer, managing director of the Swedish coal importing firm, G. & L. Beijer's Import- &

Exportaktiebolag, also arrived in America. With regard to Mr. Beijer's mission in the United States, there appears to be some misapprehension on the part of your Government. Mr. Beijer together with the director of another well-known Swedish coal importing firm were officially commissioned by the Swedish Government to investigate the possibilities of importing coal from the United States for Swedish industry and for other home consumption, and had for that reason been given a passport by the Department of Foreign Affairs. But he had no commission from and was not acting for the Railways' Administration. In order to illustrate the nature of the commission entrusted to Mr. Beijer I beg leave to transmit herewith a translation of the letter from the Department of Foreign Affairs to the Swedish chargé d'Affaires a. i. in Washington, in which an account is given of the reasons for Mr. Beijer's journey (enclosure 1).¹¹ I might also mention that in the records, deposited in the archives of the Department of Foreign Affairs, of a meeting held in the presence of the then Foreign Minister with representatives of Swedish industry and trade previous to the decision to send Mr. Beijer to America, no mention is made of and there is nothing to indicate that there was any intention that Mr. Beijer should have any commission from the Administration of the Railways. Through enquiries carried on in connection with the preparation of this note the Administration have recently confirmed that Mr. Beijer's decision to proceed to the United States was not arrived at as the result of any consultations with the Administration.

2. The contracts for the purchase of coal.

Mr. Tausen, whose investigations regarding the possibilities of obtaining coal for the State Railways did not lead to any results, after a time received a communication from Mr. Beijer, who was then in America, stating that he had a firm offer of a considerable consignment of coal. On the basis of telegraphic communications, on the one hand from Mr. Tausen to the Administration, and on the other from Mr. Beijer to the offices of his company in Stockholm, an agreement was concluded by correspondence between the Administration in Stockholm and the firm of G. & L. Beijer's Import & Exportaktiebolag on October 30–November 6, 1919, for the purchase of a consignment of 150,000 tons of coal at prices varying between \$31:50 and 33:25 per ton, to be delivered c.i.f. certain ports in Sweden during a period of six months, beginning November, 1919 (enclosures 2 and 3). The explanation of the circumstance that the Administration concluded the contract with G. & L. Beijer and not direct with an American seller is to be found in the fact that the purchase of coal was attended with great difficulties at this

¹¹ The enclosures referred to in this communication are not printed.

juncture and that the Administration had not succeeded in obtaining any offers of coal from American sellers.

G. & L. Beijer, who had business connections in America of many years' standing had received an offer of a large consignment of coal from the American firm of Akerlund & Semmes. When, however, certain difficulties later arose for G. & L. Beijer with this firm, they instead made a contract on December 4, 1919, with the American firm of Dexter & Carpenter, Inc., for the delivery of the 150,000 tons of coal contracted for by the Administration through the correspondence of October 30–November 6, 1919. The prices according to this contract were \$1 to \$0:75 less per ton than those contracted for by the Administration. The deliveries were arranged to begin within thirty days from the raising of the then existing embargo on coal.

After Mr. Tausen's and Mr. Beijer's return to Sweden a contract was drawn up between the Administration and G. & L. Beijer's Import- & Exportaktiebolag regarding the consignment in question (signed by the two parties on January 16/17, 1920, respectively), whereby certain modifications were made in their previous agreement of October 30–November 6, 1919 (enclosure 4). As regards the time of delivery, this contract stipulated that delivery was to take place within six months counted from February 1, 1920,—that is to say, before August 1, 1920. According to the contract the buyers were entitled to cancel the monthly quantities or parts thereof, which were not chartered or for which tonnage had not been reported for loading during the month when delivery was to take place (the contract between G. & L. Beijer and Dexter & Carpenter did not contain a corresponding clause). The prices were the same as those of the original contract of October 30–November 6, 1919, between the Administration and G. & L. Beijer and were stated to cover delivery c.i.f. certain ports; regarding the mode of payment the contract stipulated that, after G. & L. Beijer had announced a steamer as ready for loading, the Administration should pay the computed value of the cargo in advance, final settlement to be made later after receipt and approval of the cargo; G. & L. Beijer were to place a security for repayment of the advance in case of non-delivery. It might be mentioned in this connection that G. & L. Beijer endeavoured to induce the Administration to accept a stipulation regarding the time of delivery, corresponding essentially to the stipulation contained in the contract between G. & L. Beijer and Dexter & Carpenter; the Administration, however, did not consider themselves in a position to consent thereto.

Supplementary to this contract an agreement was entered into between the Administration and G. & L. Beijer's bank, Aktiebolaget Göteborgs Bank in Stockholm, providing that the amount of each advance should

be paid into G. & L. Beijer's "American coal account" with the bank and that these funds were to be accounted for either by delivery of proper shipping documents, or in the case of a certain shipment not being effected, by delivery of dollar exchange purchased with the funds. This provision was intended to create the security stipulated for in the contract for non-fulfilment of delivery.

Dexter & Carpenter were paid by letter of credit opened by the Göteborgsbanken with the National City Bank of New York on instructions from G. & L. Beijer for each consignment.

3. The cancellation of the two contracts.

The embargo on coal in the United States was not raised until the beginning of May. This circumstance together with strikes at the coal-mines etc., resulted in deliveries not being effected to the extent provided for in the contract between the Administration and G. & L. Beijer. At the expiration, on August 1, 1920, of the six months' period stipulated in the contract for fulfilment of delivery, the Administration therefore decided to cancel their contract with G. & L. Beijer.

This, however, placed G. & L. Beijer in a difficult position, the time of delivery according to their contract with Dexter & Carpenter being dependent on the time of the raising of the embargo, and the full period being far from expiration on August 1. On the grounds that the Administration were oversupplied with coal and did not desire further consignments, G. & L. Beijer attempted to have the deliveries postponed, and at the end of September 1920 they finally cancelled their agreement with Dexter & Carpenter.

4. The origin of the law-suit of the Administration against Dexter & Carpenter.

The origin of the case between the Administration and Dexter & Carpenter is to be sought in certain events occurring in connection with the shipment of the cargo of coal on the S/S *Alderman*. On May 5, 1920, the Administration were notified by G. & L. Beijer that the S/S *Alderman* was ready for loading. The Administration paid in advance into G. & L. Beijer's coal account with the Göteborgsbanken an amount corresponding to the stated value of the coal cargo, or \$117,800.98. The Göteborgsbanken arranged a letter of credit with the National City Bank, which in their turn made payment of the amount due Dexter & Carpenter, or \$114,106.30, against delivery of certain documents, amongst which an insurance certificate delivered by the brokerage firm of Osborn & Co., stating that the cargo was insured in English companies to the amount of \$125,500.

The S/S *Alderman*, however, after being loaded, on or about May 9, 1920, and while still in the port of Philadelphia, ran aground and had

to be docked for repairs. On account hereof and owing to certain other circumstances the departure of the ship was delayed, and as a consequence of the long delay over-heating occurred in the cargo on July 20, 1920. The cargo had to be discharged and was then again reloaded. Further delays, however, occurred and in September 1920 the cargo again caught fire. It was now found that the ship could not sail, and the damaged cargo was again discharged. On the initiative of representatives of the underwriters the cargo was put up for auction which, however, does not appear to have led to any results. In December 1920 the Shipping Board finally bought the cargo from the representatives of the underwriters at a price of \$2 per ton, or in all \$7.100, the ship thereupon being laid up.

At the outset there was a divergence of opinion between the Administration of the State Railways and G. & L. Beijer as to who should properly attend to the rights and interests of the cargo owners in the case of the S/S *Alderman*. In view of the fact that the coal had already been loaded and that insurance and other documents had been forwarded to the Administration, the Administration finally agreed to accept G. & L. Beijer's standpoint that the ownership of the cargo had passed to the Administration, and the Administration then assumed charge of the case. The Administration asked the Swedish Consul General in New York to aid them in the handling thereof. The Consul General, having no reason to foresee any particular complications, in his turn instructed Mr. Gustav Lange, Jr., to take over the case. The Consulate General had previously employed Mr. Lange in legal matters.

In compliance with his instructions, Mr. Lange seems to begin with to have directed his efforts towards obtaining payment of the insurance money. Having received information from Osborn & Co. as to the identity of the underwriters, he ascertained, however, that no real insurance policies existed, but only the aforementioned certificate; he therefore found that there were difficulties in the way of obtaining payment from the underwriters. In view hereof Mr. Lange had to consider what other means might be employed for obtaining indemnity for the damages resulting from the loss of the S/S *Alderman* and circumstances in connection therewith. Thus in a letter to the Consul General of January 14, 1921, he pointed out that a claim for damages could be made either on Osborn & Co., who had delivered the certificate (although in Mr. Lange's opinion no real contract of insurance had been made) or on the National City Bank on the ground of its having paid the amount of the letter of credit to Dexter & Carpenter without demanding proper documents of insurance from them. In this connection Lange stated that he did not wish to waive any claim which the Administration might have against Dexter & Carpenter, the sellers of the cargo c.i.f. Malmö, the

National City Bank for violation of instructions or Osborn & Co., adding that he at the same time wanted to press the claim against the insurance companies with all possible vigour.

In the same letter Mr. Lange requested the Consul General to ask the Administration whether they wished him to proceed against the National City Bank, Dexter & Carpenter, Inc. and Osborn & Co. and, if so, to provide him with the necessary authorization. In a later letter he suggested that the Administration should also assert their rights against G. & L. Beijer.

After receipt of Mr. Lange's abovementioned letter, a certified extract of which is herewith enclosed (enclosure 5), the Administration telegraphed instructions to the Consulate General on February 16, 1921, (enclosure 6) to proceed further with the presentation of their claim against Osborn & Co. or the insurance companies; the Administration confirmed this cable by letter to the Consul General of February 18, 1921, the contents of which were transmitted to Mr. Lange by the Consulate General on March 7, 1921 (enclosure 7). In this connection the Administration wrote that in the first place the firm of Osborn & Co., who had signed the certificate of insurance, should be requested to pay out the amount of the insurance, \$125,500, or else to produce the original policies, so that claim might be made against the insurance companies. In response to Mr. Lange's request for certain documents the Administration transmitted, *inter alia*, a power of attorney for Lange to proceed against Osborn & Co. and the insurance companies—ten in all—, indicated in the power of attorney (enclosure 8). On the other hand the Administration forwarded no power of attorney to Mr. Lange to proceed against the National City Bank or Dexter & Carpenter.

In a letter to the Consulate General in New York on June 15, 1922, a translation of which (enclosure 9) was forwarded to Mr. Lange by the Consulate General on June 30, 1922, the Administration stated that, if insurance for the full amount actually had been taken out, and if at the time when this was done no reason could have been found to question the solvency of the underwriters, the Administration could not see how proceedings could be opened against the National City Bank, Dexter & Carpenter or G. & L. Beijer, since, if proper insurance had been taken out, the sellers had fulfilled their obligations in so far as insurance was concerned. In the opinion of the Administration the course now open was to proceed against the underwriters.

On August 30, 1922, the Administration received a cable from the Consulate General, dated August 29, 1922, stating that Mr. Lange had opened proceedings against the National City Bank, Dexter & Carpenter, etc. The text of this cable was as follows: "After having exhausted every

possible means of settling now Lange suing everybody concerned including City Bank and Dexter & Carpenter."

This cable was understood by the Administration to be intended merely to supply information regarding the state of the case. There was no request for an answer or for a telegraphic power of attorney to sue the National City Bank and Dexter & Carpenter. The Administration assumed that a letter would be forthcoming containing a more detailed account of the situation regarding the insurance of the S/S *Alderman* cargo as well as a request for a power of attorney to be used in the suit announced against the National City Bank and Dexter & Carpenter. Not being familiar with American court procedure the Administration did not conceive the possibility of Mr. Lange's instituting suit on behalf of the Administration without having received a specific power of attorney to do so. The Administration was further confirmed in this view by the fact that Mr. Lange had previously asked for and obtained a power of attorney to institute proceedings against Osborn & Co. and the insurance companies. They consequently refrained from taking further steps in the matter until they had heard from Mr. Lange.

Subsequently, on January 3, 1923, the Administration received a letter from the Consulate General, dated December 19, 1922, with which was enclosed a letter from Mr. Lange of December 18, 1922 (enclosure 10). In this letter Mr. Lange informed the Consulate General that he had commenced an action in the United States' District Court for the Southern District of New York against the National City Bank, Dexter & Carpenter, Inc. and the various members composing the firm of Osborn & Co. The Administration, being thus confronted with an accomplished fact, were still without any details as to how the case had been dealt with by Mr. Lange. The letter contained, however, a statement by Mr. Lange to the effect that, when he had received the answers of the various defendants and had had an opportunity to examine them, he would forward copies of the various pleadings or extracts therefrom to the Administration, so as to enable them to familiarize themselves with the nature of the action.

5. Correspondence exchanged between the Administration of the State Railways and Mr. Lange during the first stage of the proceedings.

With a letter to the Administration of June 7, 1923, the Consulate General forwarded a letter from Mr. Lange together with a copy of Dexter & Carpenter's answer in the suit instituted by Mr. Lange; with a letter from the Consulate General of June 14, 1923, the Administration received a copy of the answer of the National City Bank.

Not yet having received the text of Mr. Lange's complaint, the Administration cabled to the Consulate General on June 21, 1923, for a copy thereof (enclosure 11). In compliance herewith the Consulate General forwarded a copy of the complaint with a letter of June 23, 1923.

On examining this document, an extract of which is enclosed herewith (enclosure 12), the Administration were surprised to find that Mr. Lange had under paragraph 6, contrary to the actual facts, declared that G. & L. Beijer had purchased the consignment of coal shipped on the S/S *Alderman* from Dexter & Carpenter for the account of the Administration; and further that under paragraph 12 he had stated that the coal was to be delivered according to the contract between the Administration and Dexter & Carpenter. In paragraph 6 Mr. Lange had also declared that the purchase of the coal in question was made on April 6, 1920.

After having gone through the court documents forwarded by Mr. Lange, the Administration in a letter to the Consulate General of July 17, 1923, transmitted to Mr. Lange on August 1 of that year (enclosure 13), pointed out that they had in the present case no relations whatever either with the National City Bank or with Dexter & Carpenter. The coal shipped on the S/S *Alderman* was purchased from G. & L. Beijer who in their turn and on their own account had purchased it from Dexter & Carpenter in conformity with a contract concluded between them, G. & L. Beijer, and Dexter & Carpenter. In the opinion of the Administration, G. & L. Beijer had, when contracting for the coal with Dexter & Carpenter by no means acted on their behalf or as their agents; the Administration had not remitted any documents or made any statements to the effect that G. & L. Beijer when signing the contract with Dexter & Carpenter were the representatives or agents of the Administration. The Administration further declared themselves entirely unable to understand why Mr. Lange had sued the National City Bank, Dexter & Carpenter and Osborn & Co., as there were actually policies of insurance covering the cargo of S/S *Alderman*; they desired to learn what motives had actuated Mr. Lange in adopting this procedure; at any rate the Administration had not given Mr. Lange any authorization or power of attorney to open proceedings against Dexter & Carpenter.

In a letter to the Consulate General of August 7, 1923, a translation of which was transmitted to Mr. Lange on August 25 (enclosure 14), the Administration thereupon sent a commentary, point by point, on the court documents forwarded by Mr. Lange.

As regards paragraph 6 of Mr. Lange's complaint the Administration pointed out, referring to the previous letter of July 17, 1923, that G. & L. Beijer had, independently and for their own account, contracted with Dexter & Carpenter for the purchase of coal, part of which was the cargo shipped on the S/S *Alderman*, and they had thus not acted as agents or representatives for the Administration. G. & L. Beijer had

under a special contract between them and the Administration, in their turn sold the coal purchased from Dexter & Carpenter to the Administration. Consequently Mr. Lange's statements under this paragraph were not correct.

As regards the way in which the coal purchased by the Administration from G. & L. Beijer should be paid, the Administration in the same letter gave the above related account concerning their agreement with G. & L. Beijer; they criticized Mr. Lange's statement on this point as being in contradiction with the facts. They further stated that the Aktiebolaget Göteborgs Bank, in arranging for a letter of credit to be opened with the National City Bank, did not act as their representative. The Administration finally expressed the opinion that it would have been desirable for them to have been given an opportunity to go through the prospective complaint before the suit was started.

As to the answer of Dexter & Carpenter the Administration advanced *inter alia*

that the agreement between G. & L. Beijer and Dexter & Carpenter had not been approved or confirmed by the Administration; the Administration had had no reason to do so in as much as they had only transactions with G. & L. Beijer;

that the statement according to which the Administration had authorized Dexter & Carpenter to apply on their behalf for a licence for shipping coal on the S/S *Alderman*, was not correct;

that the Administration, having had nothing to do with the agreement between G. & L. Beijer and Dexter & Carpenter, had had no occasion to occupy themselves with the question of the insurance of the S/S *Alderman*, nor had they done so in fact; the insurance question was entirely a matter between G. & L. Beijer and Dexter & Carpenter;

that the Administration, not having had a contract with Dexter & Carpenter, had not been in a position to refuse to comply with such a contract, and finally

that the Administration refused to admit the counter-claim made by Dexter & Carpenter.

The contents of the Administration's letter to the Consulate General of July 17, 1923, having been transmitted to Mr. Lange, Mr. Lange replied in a letter to the Consulate General dated August 18, 1923, which was forwarded by the Consulate General to the Administration. In this letter, an extract of which is herewith enclosed (enclosure 15) Mr. Lange stated *inter alia*:

He regretted that a misunderstanding had arisen between him and the Administration as to the manner and capacity in which G. & L. Beijer were acting. He had always appreciated and did still appreciate that the Administration had stated on April 13, 1921 (Mr. Lange here refers to a letter of March 30, 1921, from the Administration to the Consulate General), that the Administration had bought the coal from

G. & L. Beijer and had had no dealings with Dexter & Carpenter. The Administration had repeated this statement on May 26, 1923 (reference is here made to a letter of May 8, 1923, from the Administration to the Consulate General). In looking over the papers Mr. Lange had, however, found that it could be successfully contended that G. & L. Beijer had acted as agents of the Administration. Having, however, now been definitely and unambiguously informed of the relations between the various parties Mr. Lange had amended the complaint accordingly. He had omitted any statement that G. & L. Beijer had acted as agents of the Administration and had laid his action upon a slightly different theory from the one which he set forth in his original complaint.

Mr. Lange further declared that the Administration had, as stated in their letter, never specifically authorized Mr. Lange to take any proceedings except against Osborn & Co. But Mr. Lange's opinion in this case, as well as in all other cases handled by him, was that a client, particularly a foreign client, gives his attorney considerable discretion as to the theory upon which such client's rights should be protected and the persons against whom such protection should be sought. Even if G. & L. Beijer had not acted as agents of the Administration when purchasing the coal from Dexter & Carpenter, this latter firm was, according to Mr. Lange, responsible to the Administration. In Mr. Lange's opinion the cause of action as pleaded by him after being informed that G. & L. Beijer had not acted as agents of the Administration was sound and he was very confident of the prospects of recovery of the Administration. From the letter of the Administration Mr. Lange had gained the impression that the Administration would prefer to discontinue the pending action against the National City Bank, Dexter & Carpenter and Osborn & Co. He would, however, not advise such discontinuance.

On receipt of this letter from Mr. Lange the Administration was confronted with the question whether to allow Mr. Lange to proceed with the action instituted by him against Dexter & Carpenter and the National City Bank without any authorization or to discontinue this action. In view of the opinion expressed by the American lawyer the Administration arrived at the conclusion that the action should not be discontinued and thereupon declared in a letter to the Consulate General of October 15, 1923, that the Administration would not oppose Mr. Lange's proceeding with the action in question.

A further reason for the continuance of the action was that Mr. Lange had, at a personal meeting with representatives of the Administration, made the following oral declarations,

that the Administration could not discontinue or recall the action against Dexter & Carpenter without their consent, and

that, even if the Administration were to discontinue their action, Dexter & Carpenter would be entitled to have their counter-claim against the Administration dealt with by the court.

With reference to the passage in your note where you state that the Administration knowingly had caused their lawyer to place the action on the basis that the contract was concluded with Dexter & Carpenter by G. & L. Beijer as agents for the Administration, the following may also be submitted.

With a letter of October 5, 1920, to the Consulate General in New York the Administration had already forwarded the bill of lading and the insurance certificate received by them. By another letter to the Consul General, dated the following day, a translation of which is enclosed herewith (enclosure 16), the Administration among other documents transmitted an extract from the contract between the Administration and G. & L. Beijer as well as a copy of the account of G. & L. Beijer against the Administration. In this connection the Administration made the following statement: "As appears from the foregoing the Administration concluded the contract with the firm of G. & L. Beijer, Stockholm, which firm in their turn had made a contract with Dexter & Carpenter, Inc., New York, for the delivery of coal". The Consul General immediately handed these documents to Mr. Lange.

In a letter to the Consul General, dated January 14, 1921, Mr. Lange declared that in his opinion Dexter & Carpenter, who were the original sellers of the coal and had sold it c.i.f. and who were under obligation to furnish and deliver insurance, were liable because they had not furnished it.

In a letter of August 22, 1921, an extract whereof is herewith enclosed (enclosure 17), Mr. Lange further declared, that G. & L. Beijer had purchased the cargo of coal from Dexter & Carpenter and that, from what Dexter & Carpenter had said from time to time, they had had considerable business dealings with G. & L. Beijer. Mr. Lange said that he assumed that G. & L. Beijer had sold the cargo of coal in question to the State Railways after payment therefor had been made to Dexter & Carpenter through the National City Bank. Later on in the same letter Mr. Lange states that it might be well for the Administration to protect their legal rights also against G. & L. Beijer in that they undoubtedly sold this coal to the Administration c.i.f. and that, if Dexter & Carpenter did not effectuate the contract but failed to deliver insurance documents when they received payment for the cargo, G. & L. Beijer had not fulfilled their contract with the Administration in that they likewise failed to deliver documents.—From these statements of Mr. Lange the Administration could gather no other impression but that Mr. Lange realized that G. & L. Beijer had acted independently when purchasing the coal

from Dexter & Carpenter and not as agents of the Administration. Had they been agents, they could not, of course, be liable as sellers.

It might also be mentioned that, in response to a telegraphic request from the Consulate General, the Administration forwarded a full text of the contract of January 16/17, 1920, between the Administration and G. & L. Beijer with a letter of February 23, 1923, a translation of which was transmitted to Mr. Lange by the Consulate General on March 9 of that year (enclosure 18).

The Administration thus furnished Mr. Lange with correct information regarding the legal relations between the Administration and G. & L. Beijer on the one hand and G. & L. Beijer and Dexter & Carpenter on the other, and it would seem to be equally clear that this information was correctly apprehended by Mr. Lange.

That the Administration did not instruct Mr. Lange to put forward any statements in conflict with this information or that they had cognizance of the fact that such statements had been put forward, would seem to be evident from the correspondence adduced.

6. The allegation that the Administration is of the nature of a corporation.

With regard to the passage in your note where you comment upon the fact that the Administration had in Mr. Lange's complaint been termed a corporation, I would like to state the following:

The Administration of the State Railways is a State institution. On account of the special administrative functions devolving on the Administration, they enjoy, as is the case with other similar Swedish State institutions, a very independent position in relation to the Government. Within the scope of their general instructions they are thus entitled to decide on their own responsibility matters of considerable importance; they administer their own funds and may sue and be sued in courts of law.

The discrepancy between Swedish and American legal nomenclature renders it difficult clearly and exactly to define the legal status of the Administration of the State Railways from the point of view of American law.

When Mr. Lange asked for information as to the status of the Administration, he was furnished by the Administration with a certificate from the Secretary General of the Department of Justice regarding the rights of the Administration to proceed in and before any courts of law and other authorities on behalf of the State Railways in any matter pertaining to the recovery of debts and the obtaining of damages (enclosure 19). The Administration assumed that Mr. Lange only desired official proofs regarding their competence to take legal proceed-

ings and made no close investigation of the significance in different respects of the American term "corporation".

7. *Have the Administration of the State Railways asserted that they concluded a contract with Dexter & Carpenter?*

Your presentation of the course of events in the case opens with the indication that when the Administration instituted proceedings against Dexter & Carpenter, they alleged that Dexter & Carpenter breached a contract made with the State Railways; this is taken by you to mean that the Administration *eo ipso* asserted that there was a contract between them and Dexter & Carpenter. Seeing, however, that the purport of the point in Mr. Lange's complaint, to which you refer in the above-mentioned communication, seems to have been misunderstood in important respects, I deem it incumbent on me, in order to correct this misapprehension, to submit that Mr. Lange having been sworn before the Court (cfr published proceedings of second trial of the case, page 452) made the following statement.

When Mr. Lange filed the complaint on March 23, 1923, he had never heard of any contract between G. & L. Beijer and Dexter & Carpenter dated December 4, 1919, nor did he hear of that contract until he received the answer of Dexter & Carpenter to which was attached a copy of the contract in question. The allegation in the original complaint as to the contract, which G. & L. Beijer as agents of the Administration had concluded with Dexter & Carpenter, did not relate to Dexter & Carpenter's contract with G. & L. Beijer but to a contract according to which a letter of credit had been arranged for the payment of the cargo shipped by S/S *Alderman*. (Mr. Lange stated in the complaint that the coal was purchased on April 6, 1920. He manifestly intended to say May 6, 1920, or the day when a letter of credit was arranged for the payment of the cargo of the S/S *Alderman*.) He was never informed by the Administration or anybody else of the contract concluded between Dexter & Carpenter and G. & L. Beijer on December 4, 1919. He did not immediately forward to the Administration a copy of the complaint filed by him at the court. The reason for his not doing so was, that he thought he would wait until he had received all the answers and then forward the entire collection of documents. By a letter from the Consulate General of November 23, 1920, he had received an extract of the contract between the Administration and G. & L. Beijer together with an invoice of Dexter & Carpenter to G. & L. Beijer concerning the cargo of the S/S *Alderman*. By letter to the Consulate General of February 23, 1923,—thus before the counter-claim of Dexter & Carpenter had been raised—the Administration had forwarded a complete copy of the contract of January 16/17, 1920, between the Administration and G. & L. Beijer. Mr. Lange was never told or instructed by the Administra-

tion, or anybody acting for the Administration, to insert in the original complaint the allegations contained in paragraphs 6 and 12 (that is to say the paragraphs containing the allegations that G. & L. Beijer had acted on behalf of the Administration).

The "contract" referred to by Mr. Lange's complaint is consequently the contract concluded in May 1920, according to which a letter of credit was arranged for the cargo shipped by the S/S *Alderman* and not the contract concluded on December 4, 1919, as you seem to have assumed.

8. *The contract between G. & L. Beijer and Dexter & Carpenter denominated "the State Railways Administration contract" by both the above-mentioned firms.*

From your note it seems that the fact that G. & L. Beijer and Dexter & Carpenter have in their correspondence designated the contract concluded on December 4, 1919, as "the State Railways Administration contract", has greatly contributed to the final issue of the case. This being so it seems desirable to point out that the way in which the contract was designated by the parties cannot possibly be any concern of the Administration. As a matter of fact, it can be assumed that this designation was chosen for the sake of brevity since the Administration was the ultimate recipient of the coal and not in order to give any legal characterization of the contract. It may be mentioned that between G. & L. Beijer and Dexter & Carpenter there had been concluded several other contracts for the delivery of coal, of which at least one was current at the same time as the one designated "the State Railways Administration contract", and this second contract was designated "the Gasworks' contract".

Even assuming that G. & L. Beijer had intended to suggest some kind of agency for the Administration, they can only have meant an agency of the kind which is dealt with in the Swedish law of April 18, 1914, chapter 2, articles 4 and 56, the text of which here follows in translation.*

Article 4. "For the purposes of this law a 'Kommissionär' is one who has undertaken for the account of some other person, but in his own name, to sell or to purchase goods, securities, or other movable property. The person on whose behalf the sale or the purchase shall take place is called a 'Kommittent' (principal).

If the 'Kommissionär' is a merchant and if the 'Kommission' entrusted to him consists in the sale or the purchase of goods in the ordinary routine of business, he is called a commercial 'Kommissionär' and the 'Kommission' a commercial 'Kommission'.

Article 56. Through a contract concluded with a third party by a 'Kommissionär' on behalf of his principal, but in his own name, the said

* There being no exact equivalents in English legal nomenclature to the Swedish (and German) terms "Kommission", "Kommissionär", "Kommittent", these have been retained in the English text. [Footnote in the original.]

party obtains a claim only against the 'Kommissionär', but not against the 'Kommittent' (principal).

A third party can base no rights against the 'Kommissionär' or his creditors on the fact that the 'Kommissionär' has a claim on the 'Kommittent' (principal) or has already received from him goods or money in fulfilment of the contract."

That at any rate those interested in this matter clearly understood the real purport of the contracts in question, should with full clarity appear from the enclosed summary of extracts from the correspondence between the Administration and G. & L. Beijer on the one hand and between G. & L. Beijer and Dexter & Carpenter on the other (enclosure 20).

In this connection it may also be pointed out that the printed records of the second hearing of the case before the United States' District Court for the Second District of New York show, that Mr. William H. Carpenter, who had acted as vice president and cashier of the firm of Dexter and Carpenter, when called upon as a witness, in answer to questions from Mr. Lange stated *inter alia* the following:

Previous to December 4, 1919, Dexter & Carpenter had at various times several business transactions with G. & L. Beijer. Thus they had had commercial relations with G. & L. Beijer in the beginning of September, 1919. To the best of Mr. Carpenter's recollection his company had been in business relations with G. & L. Beijer since 1915 (cfr printed documents, p. 186). Neither Mr. Carpenter himself nor, as far as he knew, any other member of the company's staff had ever met any functionary of the Railway Administration. Nor had any letter or telegram ever been dispatched to the Railway Administration by Dexter & Carpenter. The name of the State Railways was not to be found in the books of Dexter & Carpenter nor in any bill of lading or account or otherwise in any of the company's documents, with the only exception of the correspondence between G. & L. Beijer and Dexter & Carpenter concerning the contract of December 4, 1919 (v. pp. 205, 206). Dexter & Carpenter had effected several shipments under the said contract. All accounts concerning these shipments had been rendered to G. & L. Beijers. In the case of every shipment G. & L. Beijer had been indicated as the consignees (v. p. 225). In the book-keeping of Dexter & Carpenter no difference had been made between earlier contracts concluded between G. & L. Beijer and Dexter & Carpenter and the contract of December 4, 1919 (v. p. 207).

Questioned by Mr. Lange whether Dexter & Carpenter had ever sent any account to or put forward any claim against the Administration in connection with the contract of December 4, 1919, before Dexter & Carpenter received the original complaint in the present case, Mr. Car-

penter said that Dexter & Carpenter had not until then taken any steps with a view to taking proceedings against anybody in this matter (v. p. 249). Dexter & Carpenter had not previously formulated any demand such as they had in the counter-claim, either against G. & L. Beijer or against the Railway Administration. Dexter & Carpenter had known that they had a claim, but they had not presented it (v. p. 249).

It appears from the printed records concerning the first trial of the case that Mr. Lange, when examining Mr. Carpenter as a witness, had demanded that Mr. Carpenter should produce any letter or telegram wherein Mr. W. Beijer mentioned or explained to Dexter & Carpenter that it was on the account of the Administration and on their behalf that he concluded the contract of December 4, 1919. To this Mr. Carpenter answered that such a letter or telegram did not exist (v. p. 705).

The said printed records also prove that Mr. Carpenter said that he had never read the complaint of the plaintiff in this case. Mr. Carpenter had certified the answer on oath. This document had been drawn up by the lawyers of Dexter & Carpenter and they had said that the answer was correct; and Mr. Carpenter had agreed that this was the case (v. p. 712).

9. The date when immunity was claimed.

As to the question referred to in your note concerning the claim for sovereign immunity, with regard to the counter-claim of Dexter & Carpenter, put forward by the Administration during the legal proceedings, the fact is that the Administration had no knowledge of the grounds on which the District Court rejected the said claim, until they received on April 29, 1929, a letter from the Consulate General, of April 16, 1929, transmitting a copy of the decision of the Court of Appeals. The Administration had not till then been informed by Mr. Lange that the claim for sovereign immunity must be put forward by an accredited diplomatic representative.

10. Summary of the facts submitted above.

Summing up what I have already said, I beg to state the following points:

Mr. Lange instituted legal proceedings against Dexter & Carpenter without any power of attorney or authorization from the Administration.

The Administration have not instructed or asked Mr. Lange to claim, in a possible lawsuit against Dexter & Carpenter, that G. & L. Beijer had acted as the Administration's agent.

Mr. Lange's complaint was not, before its presentation to the Court, submitted to the Administration for scrutiny or otherwise communicated to them.

Mr. Lange did not, before the beginning of the lawsuit against Dexter & Carpenter, inform the Administration of his intention to contend that G. & L. Beijer, in buying coal from Dexter & Carpenter, had acted as the agents of the Administration.

When the Administration received Mr. Lange's complaint—which was not until July 1, 1923, and only on their special request—they immediately contested the accuracy of Mr. Lange's assertion as to G. & L. Beijer's agency.

Thus the Administration did not, as is stated in your note, knowingly permit Mr. Lange to base the lawsuit on an allegation to the effect that G. & L. Beijer concluded the contract with Dexter & Carpenter in the capacity of agent of the Administration.

Mr. Lange stated in his complaint that it was on or about April 6, 1920, (evidently Mr. Lange, owing to a clerical error, gave this date instead of May 6, 1920, or the day when the letter of credit for the payment for the cargo of the S/S *Alderman* was arranged) that G. & L. Beijer on the account of the Administration and as their agent bought the coal shipped by the S/S *Alderman* from Dexter & Carpenter. This statement of Mr. Lange can manifestly not have in view or refer to the contract concluded on December 4, 1919, between G. & L. Beijer and Dexter & Carpenter.

Mr. Beijer, managing director of G. & L. Beijer, stated in a letter to the Administration that neither he himself nor his company had at the time in question been authorized by the Administration to buy coal on behalf of the Administration.

In Dexter & Carpenter's books neither the State Railways nor the Administration were entered as the contracting party with Dexter & Carpenter in respect of the contract concluded on December 4, 1919, between G. & L. Beijer and Dexter and Carpenter.

Dexter and Carpenter did not send to or receive from the Administration any cable or written communication concerning the said contract, nor has any representative of this firm come into contact with any member of the Administration's staff.

The accounts delivered by Dexter & Carpenter concerning the coal shipped in accordance with the contract in question were all addressed to G. & L. Beijer and not to the Administration.

Dexter & Carpenter have previously, viz. before December 4, 1919, on several occasions sold coal to G. & L. Beijer.

As regards Dexter & Carpenter's book-keeping entries referring to the selling agreement with G. & L. Beijer of December 4, 1919, and the deliveries effected in accordance with this contract, no difference was made between the said contract and other contracts concluded by Dexter & Carpenter with G. & L. Beijer.

After G. & L. Beijer had informed Dexter & Carpenter of the cancellation of the contract, Dexter & Carpenter, in a letter to G. & L. Beijer, declared their intention to make G. & L. Beijer responsible for the loss which might arise for Dexter & Carpenter as a result of the cancellation of the contract. The letter does not contain a single word to the effect that Dexter & Carpenter believed themselves entitled to be indemnified by the Administration.

During the whole period from the cancellation of the contract till the presentation of the answer by Dexter & Carpenter, this firm did not in any way give any indication that they had any claim to indemnity on account of the cancellation of the contract. Only as a result of a mistake committed by the American lawyer in claiming, contrary to the actual facts, that G. & L. Beijer, when buying the coal shipped by the S/S *Alderman* had acted as an agent of the Administration and on their account, did Dexter & Carpenter, or rather their lawyers—profiting by this mistake—claim that the responsibility for the cancellation of the contract rested with the Administration.

The decision of the Administration to let Mr. Lange continue the action, instituted by him without authorization, is founded not on the approval or adoption by the Administration of the contract between G. & L. Beijer and Dexter & Carpenter, but on the fact that Mr. Lange—having been informed that the Administration had not commissioned G. & L. Beijer to buy coal on their behalf from Dexter & Carpenter and having accordingly amended his complaint—recommended the continuation of the proceedings on the new basis, in this connection particularly emphasizing, that a discontinuation of the Administration's action would not prevent the hearing of the counter-claim of Dexter & Carpenter.

The Administration did not give Mr. Lange any statement to the effect that the Administration were a corporation. It only transmitted to him a certificate to the effect that the Administration were entitled to institute and conduct proceedings in questions regarding the State Railways, independently and without previously submitting the case to the Government.

The Administration were not informed of the District Court's pronouncement with regard to the claim to immunity until April 29, 1929.

A CRITICISM OF THE EXPRESSIONS OF OPINION IN THE AMERICAN MINISTER'S NOTE OF MARCH 10, 1932¹²

After this supplementary account of the facts of the case I will proceed to a scrutiny, in the light of these facts, of certain observations in

¹² Not printed; for substance, see instruction No. 96, February 23, 1932, to the Minister in Sweden, *Foreign Relations*, 1932, vol. II, p. 582.

your note as to what appears from the files on the matter in the State Department.

1. As has previously been pointed out, Mr. Beijer's commission did not include any authority to buy coal on behalf of the Administration.

2. As has also previously been advanced the contract of January 16/17, 1920, was the final form of the agreement which was arrived at in virtue of G. & L. Beijer's offer made in the communication of October 30, 1919, and the Administration's acceptance of the same. The application to the Administration for licences for coal referred to the agreement in question, which G. & L. Beijer, according to what they have informed the Administration, intended to fulfill by means of deliveries from Dexter & Carpenter.

3. It is correct that the coal bought in virtue of the agreement between G. & L. Beijer and Dexter & Carpenter of December 4, 1919, was intended by G. & L. Beijer for delivery to the Administration—but not impossibly perhaps to others also—and also that the Administration were aware of this, but from this it naturally does not follow that the Administration bought coal from Dexter & Carpenter. As has previously been shown, on the contrary, the case was that G. & L. Beijer bought the coal from Dexter & Carpenter to effect with it the deliveries to the Administration which G. & L. Beijer had undertaken.

4. As stated above, it is correct that the coal bought by G. & L. Beijer from Dexter & Carpenter was intended for the use of the State Railways. Whether anything occurred during the preliminary negotiations between G. & L. Beijer and Dexter & Carpenter which would indicate that G. & L. Beijer bought coal on behalf of the Administration and as their agent, is a matter on which it is impossible for the Swedish Government and the Railway Administration to express an opinion. In any case, as has been previously advanced, the facts of the case are that the Administration did not give G. & L. Beijer any commission to close on behalf of the Administration any agreement for the purchase of coal either with Dexter & Carpenter or with any other party.

5. The circumstance that the Administration inspected and passed the cargoes which G. & L. Beijer notified that they intended to deliver to the Administration is quite natural, since the Administration were to receive the cargoes, and can obviously not afford the least support for the view that the cargoes in question were purchased by the Administration from Dexter & Carpenter.

6. It was not the Administration which paid for the coal in America. The Administration paid for the coal in Sweden by placing the due amount to the account of G. & L. Beijer at the Aktiebolaget Göteborgs Bank. This bank then transferred the amount in question to the

National City Bank, to be paid out against delivery of the shipping documents to G. & L. Beijer's sellers, Dexter & Carpenter.

7. By means of a careful scrutiny of the correspondence of the Administration on this matter—in which the Department of Foreign Affairs has had access both to the documents placed at their disposal by the Administration and to the files of the Consulate General in New York—the Department of Foreign Affairs have established that in none of the communications despatched by the Administration did they deal with the agreement between G. & L. Beijer and Dexter & Carpenter, as if the Administration and not G. & L. Beijer were the other party to the contract with Dexter & Carpenter. During the whole time the Administration have considered that they were in contractual relations only with G. & L. Beijer. In this respect I venture to refer you to the above-mentioned letters to G. & L. Beijer concerning the contract of January 16/17, 1920. It seems also difficult to understand why the Administration—if they had really been the other contracting party to the agreement of December 4, 1919—should have avoided appearing openly as the other contracting party with Dexter & Carpenter, but instead allowed G. & L. Beijer to appear as such.

8. It has never been claimed against the Administration by G. & L. Beijer that the Administration were bound by the agreement between G. & L. Beijer and Dexter & Carpenter of December 4, 1919; and Dexter & Carpenter made no assertion in the matter previous to the defence prepared by Dexter & Carpenter's lawyers. Not until the Administration were informed of this defence had they any reason to deny that the Administration were bound by or had anything to do with the agreement in question; and, as has been stated above, the Administration did at once, when it had received information on the matter, deny the assertion as to the responsibility of the Administration based on the agreement in question.

Neither in communications to Dexter & Carpenter nor to G. & L. Beijer have the Administration stated that they cancel any agreement with Dexter & Carpenter. On the other hand the Administration, on August 2, 1920, cancelled their contract with G. & L. Beijer, which the Administration undoubtedly had the right to do in virtue of the annulment clause contained in the contract.

In view of the observations contained in your note with regard to the argumentation advanced by the Swedish Government in Baron Ramel's note for rejecting the American Government's previous presentation of the matter I beg to adduce the following.

Concerning point 1.

Since what is advanced in your note on this point indicates that the

statement in Baron Ramel's note here referred to has not been rightly understood, I deem it desirable to set forth its purport more in detail.

In Baron Ramel's note it was set forth that from the point of view of international law, the Swedish Government are not under obligation to recognize the judgment of the American court against the Administration. The question has been regarded from two points of view: with reference to the right of immunity of the Administration, and with reference to prevailing principles regarding the recognition of foreign judgments against private persons and corporations which have not the right of immunity.

As regards the claim to immunity I would recall that during the proceedings the Administration made a motion to dismiss the counter-claim of Dexter & Carpenter because the Railways were an agency of the Government and the counter-claim was not maintainable against them without their consent. This motion was overruled. The mere allegation of agency, unsupported by any claim of immunity proceeding directly from the sovereign and unvouched for by the Government of the United States was held to be insufficient. Consequently, the Railway Administration, according to the American courts, have failed to file a proper plea of immunity from suit, answered the counter-claim and thus voluntarily consented to the exercise of the jurisdiction.

The Swedish Government cannot but regard this as an argumentation the tenability of which is very doubtful from the point of view of international law. I venture to point out that in most other countries the Administration's claim to immunity would have been allowed although not presented through diplomatic channels. Cfr the following pronouncement in the *American Journal of International Law* 1931 p. 83:

"To the ever-increasing confusion of doctrine which makes up the law of sovereign immunity, the courts of the United States have added procedural complications which, though not as weighty, are nevertheless as puzzling as any of the substantive rules. Of recent years the United States Supreme Court and the lower Federal courts have often had occasion to consider the method whereby the question of immunity was raised. The result has been the evolution of a set of rules so vaguely defined in the decisions as to offer little guidance to the bench and bar, and withal of interest to the scholar who finds that these rules exist in no other judicial system".

The other point of view from which Baron Ramel, in the note referred to, considered the matter was whether the Administration, apart from the principle of immunity, are under obligation to recognize an American judgment. On this point I venture to advance the following:

Swedish law, in principle, does not admit the right to recognition and enforcement of foreign judgments which direct a sum of money to the successful party. The Administration are—according to the rules of

Private International Law in force in Sweden—no more than any private person or private enterprise under obligation to recognize a foreign judgment as definitely decisive as regards the claim.

In Baron Ramel's note it was stated that the Administration based their opinion that they were prevented from carrying the judgment into effect, *inter alia* on the grounds now given, in that the Administration do not consider that, according to the regulations governing their activities, they can satisfy a claim which they do not find materially justified and which has not been submitted to a Swedish court of law.

With reference to this statement it is asserted in your note that the Swedish Government, as a reason for their refusal to respect their "obligation" to respond to the judgment of the American court, have referred to the regulations governing the activities of the Administration. But the line of thought in the Swedish note is that, from the standpoint of Swedish law, the foreign judgment is not satisfactory evidence of the existence of an obligation, in the same way as, in a similar matter, a Swedish judgment is not as a rule—from the standpoint of foreign countries—in itself proof of the existence of an obligation.

With regard to the principle of the recognition of foreign judgments I venture to advance further that States take very different standpoints in this matter (cfr. *The British Yearbook of International Law* 1932 p. 51). Some States refuse, in principle, to give any effect to a foreign judgment. Other countries, whilst admitting the right to recognition and enforcement, only do so in theory and virtually deny it in practice. A third group is composed of those which, in principle, recognize foreign judgments, but hedge the concession round with so many conditions and exceptions that recognition is only granted, in the absence of treaty rights, to the judgments of a very limited number of countries. In a fourth group of countries there is, theoretically, no definite recognition of foreign judgments, but in practice it is more easy than in countries, belonging to the preceding groups, to secure enforcement.

The conclusion of the author of the above-mentioned article is that "each country has its own views of the matter, which often amount, in practice, to a refusal to grant any recognition whatsoever to foreign judgments" (p. 65).

As this is the position, it cannot be maintained that the Administration—quite apart from their claim to immunity—is, according to any accepted universal principle in Private International Law, under obligation to respond to the American judgment. Under the circumstances the Swedish Government cannot recognize the American Government's view that the Swedish Government are legally and morally obliged to direct the Administration to respond to the judgment.

In view of the statement in the judgment of the Court of Appeals in the suit for attachment, that the claim to sovereign immunity had been made when a sufficient number of years had expired to make it possible to claim prescription as an objection to execution in Sweden, I venture to point out that, in view of the unambiguous manner in which Dexter & Carpenter have maintained their claim against the Administration, prescription of that claim cannot, according to Swedish law, be considered to have been established; furthermore, the Administration have declared to the Swedish Government that they do not consider themselves justified in raising—in any possible future action against the Administration in Sweden within 10 years from the latest time when Dexter & Carpenter's claim was made or reiterated—any objection to prescription, nor do they intend to do so.

Concerning point 2.

With regard to the statements in your note under this point, I consider that I may confine myself to a reference to the account given above of the course of events.

To the extent that the demand for the satisfaction of the present claim is based, as made in your last note, not only on the fact that a judgment exists, but also on an exposition of the material justification of the claim of the American firm, I would remark that in your note the presentation of the facts in this complicated matter are, as has been shown above, incomplete and misleading in important particulars.

I would further remark that one of the two juries before whom the matter was brought upheld Dexter & Carpenter's claim. But the other jury disallowed the claim and thus did not consider it justified. Under such circumstances it cannot therefore be a matter of surprise that the Administration insists on the matter being tried also by a Swedish court of law.

On this point you express the opinion that a State institution is not entitled, in the same manner as a private individual, to plead the rule that within the State territory foreign judgments are not valid and cannot be enforced. It is advanced as an argument that a State, in order to protect itself against executive measures in the territory of another State, is entitled to assert its right to sovereign immunity and therefore—this seems to be your line of thought—should be under obligation to submit unreservedly to a foreign judgment. Without entering upon a more detailed scrutiny of this argument, I venture to maintain that it does not give expression to general practice. Nor have, if I am correctly informed, e.g. the United States' Shipping Board considered themselves under obligation to recognize, without a new trial before an American court, the judgments of foreign courts as to their liabilities.

Concerning point 3.

I have difficulties in understanding how the American Government can categorically deny—and it appears that the opinion expressed under this point cannot be otherwise understood—that the question whether in reality a contract was at all concluded between the Administration and Dexter & Carpenter depends on the nature of the legal relations which existed between the Administration and G. & L. Beijer. The question on which the whole litigation turned was whether Mr. Beijer in closing the contract of December 4, 1919, acted as an agent for the Administration, or whether he acted on his own account. The American Government seems, moreover, to take another standpoint in this matter than the court which rendered judgment in the case. Thus it may be pointed out that the judge in his charge to the last jury declared, *inter alia* that the jury had to decide whether the contract of January 16/17, 1920, was an honest contract between the Administration and G. & L. Beijer as an independent party.

Manifestly the nature of this legal relationship, having arisen in Sweden between two Swedish parties, should not reasonably be judged otherwise than according to Swedish law. In view of the statement in your note under this point regarding the order in time between the agreement entered into between the Railway Administration and G. & L. Beijer and the contract of December 4, 1919, I would here interpose the remark that, as has previously been pointed out, the contract of January 16/17, 1920, was in all essentials only a confirmation of the agreement already entered into between the Railway Administration and G. & L. Beijer by the correspondence of October 30–November 6, 1919.

As regards the reason why the action was instituted against Dexter & Carpenter I venture to refer to the foregoing. As has previously been pointed out, it is, further, not correct that the action was started on the basis of the agreement between G. & L. Beijer and Dexter & Carpenter of December 4, 1919. In his complaint Mr. Lange did not refer to this agreement but stated that the coal shipped by the S/S *Alderman* had been bought on or about April 6, 1920. In this connection it might be pointed out, that the reasons why Mr. Lange found it expedient to institute proceedings against Dexter & Carpenter at the time, were, on the one hand, that he feared that the claims he considered he could make against them might become subject to prescription, and on the other that Dexter & Carpenter had rejected his proposal that, pending the outcome of his actions against Osborn & Co. and the insurance companies, they should admit that the claim be not considered as waived.

The Administration did not consider that they had any grounds for taking action against G. & L. Beijer until it had been established that insurances covering the cargo of the S/S *Alderman* had not been duly

taken. The reason which had led Mr. Lange to institute proceedings against Dexter & Carpenter, viz. the risk of prescription of a possible claim, did not exist in this case.

With regard to the assertion that the Administration had acted as though they were in contractual relations with Dexter & Carpenter, reference is made to the foregoing.

Concerning Point 4.

Obviously in Baron Ramel's note the presumption is that proceedings should be instituted against the Administration—what claims Dexter & Carpenter may deem expedient to make against G. & L. Beijer is a matter of no concern to the Swedish Government—and the question which it is presumed in Baron Ramel's note that Dexter & Carpenter should submit to a Swedish court, is evidently the question whether G. & L. Beijer acted as agents of the Administration, thus creating obligations for the Administration. The conclusion drawn in your note from the statement that a final judgment in such an action would be obligatory for the Administration, viz. that the Administration and G. & L. Beijer are, for the purposes of liability in this case, one and the same, is thus entirely incorrect, inasmuch as this very question would be the object of proceedings instituted in Sweden.

In this connection I consider that I ought also again to emphasize the fact that the Administration did not advance or claim any right against Dexter & Carpenter in virtue of the agreement between G. & L. Beijer and Dexter & Carpenter of December 4, 1919.

Concerning Point 5.

What was said in Baron Ramel's note in respect of the question here adverted to was of course not, in itself, intended to be an argument touching the material correctness of the American judgment pronounced in the case. The statement was only intended to point out that, even according to American conception of international law, an American court has not in principle been considered competent to deal with an action against a foreign state institution. This fact has constituted a further reason for the Swedish Government not to consider the judgment as definitely binding.

As a summary of what has been advanced above, I venture to state the following.

The Administration of the Swedish State Railways have given the most emphatic assurances that they did not empower or otherwise commission G. & L. Beijers Import & Export Aktiebolag to conclude agreements on their behalf for the purchase of coal with Dexter & Carpenter or with any other American firm.

Neither from what appears from the printed records of the proceedings, nor from anything else that has transpired in the matter, has the other party been able to show that the Administration gave G. & L. Beijer such a power of attorney, nor that the Administration have made any declaration or explanation in other form or acted in any way such as to show the existence of such a commission.

The only support whatever that it has been possible to advance for the existence of such a commission was, firstly, Mr. Lange's assertion to that effect in his original complaint, and secondly, certain statements in the correspondence between G. & L. Beijer and Dexter & Carpenter.

With regard to Mr. Lange's assertion, he himself declared under oath before the court that it was made as the result of a misapprehension on his part, and he at the same time gave an explanation of how it was possible for such misapprehension to arise.

As to the statements in the correspondence between G. & L. Beijer and Dexter & Carpenter, these can of course in no circumstances be binding on the Administration. As has been advanced before, these statements can, moreover, without difficulty be explained, without their being taken to imply that G. & L. Beijer were the agents of the Administration.

It will also be manifest that the Administration cannot be considered to have "adopted" or "ratified" the contract entered into between G. & L. Beijer and Dexter & Carpenter. If the Administration had done so, then evidently the contract made between the Administration and G. & L. Beijer could not have embodied clauses which are in direct conflict with the terms of the former contract. The whole of the correspondence produced in the matter shows, besides, that the Administration confined themselves entirely to their own contract with G. & L. Beijer; it is in accordance with this latter contract that the Administration insisted upon fulfilment of delivery, and it was with express reference to the terms of that contract that the contract of delivery was cancelled.

One of the two juries to which the matter was submitted, and which had in all essentials the same material to consider, found that the Administration were free of liability as regards the above-mentioned contract. It cannot be a matter of surprise that the second jury's verdict in a contrary sense could not be accepted by the Administration. The Administration have availed themselves of the same possibilities that are open to private Swedish parties, in referring to a Swedish court of law.

The reason why I have now dealt with this matter in great detail is that your note, both in respect of the facts of the case and as regards the Administration's motives for their actions, contains assertions which would be inexplicable if your Government had been in possession of complete and impartial information in the matter.

The Swedish Government have noted that, according to the view advanced in your note, the Swedish Government's reference to a submission of the case to a Swedish court is to say that the judgment of the court of the United States constitutes a denial of justice or that the Swedish Government refuses to comply with the legal and moral obligation resulting from that judgment. This statement involves an arbitrary and untenable construction of the Swedish Government's attitude, as will appear from the above explanatory statements as to the previous note of the Swedish Government. If, however, the United States Government are of the opinion that the standpoint of the Swedish Government, when referring the matter to a Swedish court, is in conflict with international law, then the Swedish Government are equally as willing as they are under obligation to allow this question to be decided by international arbitration.

The Swedish Government are, further, prepared to give earnest attention to any other proposal from the Government of the United States for a settlement of this question, provided that the points of view of the Swedish Government receive due and sufficient consideration.

Accept [etc.]

ÖSTEN UNDÉN

458.11 Dexter and Carpenter/163

The Secretary of State to the Chargé in Sweden (Crocker)

No. 180

[WASHINGTON,] April 18, 1933.

SIR: Referring to the correspondence heretofore exchanged between the Department and the Legation concerning the claim of Dexter and Carpenter, Incorporated, against the Government of Sweden, and especially to your despatch No. 677 [657] of February 17, 1933, you are now instructed to address a note to the Foreign Office which, after appropriate introductory remarks, should state:

"My Government has given very careful consideration to the note of February 9, 1933, from the Foreign Office regarding the claim in question and, while it appreciates fully the views set forth therein, in defense of the position of the Swedish Government, it cannot but experience a feeling of deep regret at the ultimate conclusions of the Swedish Government. These conclusions are made to rest, in substance, upon the hypothesis that the repeated, protracted and painstaking consideration given the controversy between Dexter and Carpenter, Incorporated, and the Swedish National Railways by the courts of the United States, upon the initiative of the Swedish National Railways, amounts, so far as concerns the substantial justice of the controversy, to a nullity, and that, from the standpoint of the Swedish Government, justice as between the contending parties can only flow from decisions of the Swedish courts after renewed litigation of an expensive and protracted nature.

"My Government also observes with regret and concern the inadequacy of the proposal of the Swedish Government that:

'If . . . the United States Government are of the opinion that the standpoint of the Swedish Government, when referring the matter to a Swedish court, is in conflict with international law, then the Swedish Government are equally as willing as they are under obligation, to allow this question to be decided by international arbitration.

"Such a proposal appears to subordinate the substance to the form—to subordinate entirely the matter of substantial justice in order to debate a technical question of procedure.

"In its simple elements, the present case is as follows:

"The Swedish National Railways engaged in certain purely business transactions in the United States. From those transactions differences developed as to the rights of the parties. The Swedish National Railways appealed to the courts of the United States for an adjudication of those rights. The defendants in answering the suit of the Swedish National Railways advanced certain counter claims. The resulting controversy progressed in a regular manner, and with the concurrence of all parties concerned, through many stages of litigation. The Swedish Government is not understood to have questioned the regularity of any of those proceedings or of the resulting judgments. It was only after the responsibility of the Swedish National Railways to the American defendants (counter-claimants) had been definitely and finally established that the Swedish Government through its Minister advanced the thesis that that judgment should not be carried into execution because of the fact that the Swedish National Railways was a branch of the Swedish National Government and, as such, exempt from such execution. That thesis of the Swedish Government was accepted by the Courts of the United States and execution of the judgment of the court was abated.

"In advancing that contention, the Swedish Government, however, did not challenge the regularity of the judgments of the courts of the United States. The only question now open to discussion is, therefore, that as to whether the final judgment of those courts is a judgment which should be respected, not that as to whether the parties litigant should be compelled to incur the expense and spend the time necessary to litigate the entire question anew in order to determine whether the Swedish courts might reach the same conclusions as the courts of the United States. For this reason my Government feels that, on further consideration of the case, the Government of Sweden will realize that an adjudication of the case in the Swedish Courts would not necessarily settle the issue.

"It will be readily apparent that if the Swedish Courts should reach conclusions different from those reached by the Courts in the United States, it would not necessarily follow that those conclusions were correct and there would still remain the question as to whether the judgments of the courts of the one or the other country should be respected. Justice unduly delayed is justice denied. The ultimate result of the proposal of the Swedish Government, if acted upon, would therefore appear to defeat, to a large extent, the ends of justice.

"In view of the fact, as above indicated, that there has been a complete adjudication of the issues involved in this case, in the forum chosen by the Swedish National Railways, and since execution of the final judgment rendered in that forum is in suspense on the request of the Swedish Government, simply on the ground that, if executed, it would directly affect the Swedish Government and therefore should not be so executed, the only question for consideration at this time is whether that judgment should be respected or rejected by the Swedish Government.

"The Swedish Government has indicated its willingness to arbitrate this case; also its readiness to give earnest attention to any other proposal from the Government of the United States for settlement of the controversy, provided the points of view of the Swedish Government receive due and sufficient consideration.

"The Government of the United States is prepared to go to arbitration. It is also prepared to enter into friendly discussions of the subject with the Government of Sweden with a view to arriving at a less formal solution of the question. This latter method would perhaps be more in accord with the cordial relations existing between our two Governments, and would at the same time avoid giving unpleasant notoriety to the controversy. If, therefore, it meets with the views of the Swedish Government, the Government of the United States would be prepared to enter at once upon oral discussions of the subject with a view to arriving at an adjustment of the claim that would be satisfactory to both parties.

"My Government would be pleased to be informed at the earliest practicable moment which of these lines of procedure would be more agreeable to the Swedish Government."

You will please supplement this communication by such oral representations as to you may seem appropriate and urge for an early acceptance of the Department's proposal, advising the Department by cable the substance of the reply of the Foreign Office.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

453.11 Dexter and Carpenter/165 : Telegram

The Chargé in Sweden (Crocker) to the Secretary of State

STOCKHOLM, May 15, 1933—3 p.m.

[Received May 17—6:35 a.m.]

15. Department's instruction 180, April 18, 1933. I have just been informed orally by the Foreign Office that the Swedish Government is prepared to enter into friendly discussion in the Dexter and Carpenter case, however, reserving the right to eventual arbitration if necessary.

CROCKER

458.11 Dexter and Carpenter/185

The Minister in Sweden (Steinhardt) to the Secretary of State

No. 22

STOCKHOLM, August 21, 1933.

[Received September 14.]

SIR: With reference to my despatch No. 21 of August 18, 1933,¹³ I have the honor to report that I had two further conferences on Friday, August 18, with Mr. Haight,¹⁴ the one in the morning and the other in the evening after dinner. The substance of these two conferences was a report by me to Mr. Haight of my talk with Mr. Undén. Mr. Haight was thoroughly discouraged and prepared to leave in the morning. He said that it was perfectly obvious to him from Mr. Undén's attitude that there was no hope of a settlement and asked me to arrange, if possible, for an arbitration at the earliest possible moment. He was quite frank in telling me that he had sensed Mr. Undén's hostility and that he was convinced that the Foreign Office would not offer more than \$30,000 to \$40,000 at the most. I told Mr. Haight that I did not agree with him and that I believed a settlement could be put through with patience and a reasonable position on his part and that of his clients. I asked him to tell me confidentially what the minimum amount was that his clients would accept and promised not to disclose that amount to the Foreign Office unless I was convinced that it could be achieved. Mr. Haight apparently had considerable mental reservations about telling me his irreducible minimum. We discussed figures at length in an attempt on my part to draw him out. I urged him to give me authority to settle for \$100,000. He said he did not have the remotest hope that I could obtain any such offer and then qualified this remark by saying that he could not authorize the acceptance of \$100,000 without the authority of his clients. I urged him to obtain such authority and he said he would endeavor to do so. Both he and I considered it inadvisable for him to cable from Stockholm as we feared that the answer might come to the attention of the Foreign Office and disclose his minimum figure. It was therefore agreed that Mr. Haight would cable his clients from Oslo and would telephone me this evening or tomorrow morning using a code agreed upon between us. At the conclusion of our last conference I had failed to obtain from Mr. Haight a flat statement that he would recommend or his clients accept \$100,000, but had the very definite impression that he intended to recommend that amount to his clients and if driven to it would accept while still hoping to obtain somewhat more.

The relations between Mr. Haight and myself have been extremely cordial and friendly throughout.

¹³ Not printed.¹⁴ Charles S. Haight, attorney for Dexter and Carpenter, Inc.

By appointment I conferred alone this morning at 10.30 a.m. with Mr. Undén. He told me that he had had a conference with the head of the State Railways. He said he was having great difficulty with the State Railways as they were adamant in their position and that the question of where to get the money with which to conclude a settlement was an extremely troublesome one in that it might be necessary to obtain a special appropriation from the Riksdag. I told him that I recognized this position and that I was most sympathetic towards their difficulties but that if the case went to arbitration and an award was made it would doubtless be for a much greater amount and that the same difficulties would then present themselves with the amount so much greater that its payment might cause a political upheaval whereas a settlement for a lesser amount would permit the Swedish Government to stress the saving from the judgment. Mr. Undén replied that he did not fear the outcome of an arbitration and that he believed the Railways would prevail, but was desirous of removing the only cause of controversy between the two Governments. We then discussed at length the desirability of a prompt settlement and I emphasized the necessity of prompt payment as a condition of any settlement. Mr. Undén then said that the State Railways proposed to pay not more than \$75,000 in full and final settlement of all claims by Dexter and Carpenter. I told him that this amount was, of course, unacceptable as it did not cover the Dexter and Carpenter out of pocket loss nor did it include the expenses and counsel fees which he had previously expressed himself as willing to take into consideration. I felt at this point that a reasonable initial offer having been made it was incumbent upon me to indicate that Dexter and Carpenter were likewise prepared to make concessions. I explained to Mr. Undén that I had as yet received no authority to mention an acceptable amount but that I was quite sure that \$200,000 would be accepted. These two figures having been mentioned afforded a basis for further discussion. I stressed the concession from the amount of the judgment and the inadequacy of the \$75,000. Mr. Undén then said that he believed he could persuade the State Railways to pay \$100,000. It was obvious to me that that was the maximum amount he and the head of the State Railways had agreed to pay. I then told him that I was prepared to exert the utmost persuasion with Mr. Haight to accept less than \$200,000 and that I expected to have a talk with him within the next 48 hours and would communicate with Mr. Undén at once thereafter. I asked him whether I must consider \$100,000 as the absolute limit to which the Foreign Office was prepared to go in bringing pressure to bear upon the State Railways. He replied very firmly that he doubted they would agree to any more but qualified his doubts by adding that the Foreign Office was greatly interested in the matter and

if necessary was in a position to force the State Railways to pay more. He added that the Railways' capacity to pay without a special appropriation of the Riksdag must be carefully considered.

Feeling that substantial progress had been made and that Mr. Undén was in no humor to be pressed further I took my departure. I am satisfied that further negotiations if kept alive from day to day and not allowed to lag will bring forth a final offer to pay \$150,000, the Foreign Office working out some method of apportioning the payment as between the State Railways and the Government. I am equally certain that \$150,000 is the absolute maximum and that an attempt to obtain more will provoke friction. I believe from an intensive study of the record of the case which I have made that \$150,000 is a fair, almost generous settlement having regard to the merits and without regard to the existence of a judgment for very considerably more. Taking into consideration that whatever payment is made is a voluntary one, and that the Foreign Office is at last giving evidence of its desire to indemnify Dexter and Carpenter without allowing them to collect prospective profits, I have no hesitancy in recommending a settlement for \$150,000 if it can be obtained and in saying to the Department that if that amount should prove unacceptable to Dexter and Carpenter they are not meeting the Swedish Government in the same spirit of conciliation evidenced today by the latter.

I have little doubt that after a brief discussion with Mr. Haight on the telephone tonight or tomorrow morning he will authorize me on behalf of his clients to accept \$150,000, in which event and should the Foreign Office agree to this amount, I shall cable the Department for authority to close the negotiations on that basis.

Respectfully yours,

LAURENCE A. STEINHARDT

458.11 Dexter and Carpenter/179 : Telegram

The Minister in Sweden (Steinhardt) to the Secretary of State

STOCKHOLM, August 29, 1933—noon.

[Received August 29—10:50 a.m.]

23. With reference to Department's telegram August 28, 4 p.m.,¹⁵ settlement agreed upon for \$150,000. Payment promised September 18th, in no event later than October 1st. Please advise Haight.

STEINHARDT

¹⁵ Not printed.

458.11 Dexter and Carpenter/194 : Telegram

The Minister in Sweden (Steinhardt) to the Secretary of State

STOCKHOLM, September 30, 1933—1 p.m.

[Received September 30—9:55 a.m.]

26. I have just received a check of the Swedish Riksbank drawn on National City Bank of New York City for \$150,000 payable to Haight, Smith, Griffen and Deming, attorneys for Dexter and Carpenter, Incorporated.

I am sending check to the Department by registered mail today via the steamship *Ile de France* due New York October 10th.

STEINHARDT

CONVENTION BETWEEN THE UNITED STATES AND SWEDEN FOR
THE EXEMPTION FROM MILITARY SERVICE OF PERSONS HAVING
DUAL NATIONALITY, SIGNED JANUARY 31, 1933

711.584/2

The Minister in Sweden (Morehead) to the Secretary of State

No. 283

STOCKHOLM, June 23, 1931.

[Received July 8.]

SIR: I have the honor to refer to the Department's instruction No. 86, dated December 1, 1928,¹⁶ addressed to my predecessor, directing him to bring the Joint Resolution of Congress, approved by the President May 28, 1928,¹⁷ to the attention of the Swedish Government with a view to the conclusion of a convention between the United States and Sweden, providing that persons born in the United States of Swedish parentage and nationalized American citizens shall not be held liable for military service or any other act of allegiance during a stay in the territory of Sweden while citizens of the United States of America under the laws thereof. At the same time my predecessor was directed to propose to the Swedish Government an agreement concerning the termination of dual nationality in respect of the nationals of both countries. As reported in Mr. Harrison's despatch No. 458, dated January 10, 1929,¹⁸ the proposals contained in the Department's instruction were presented to the Minister for Foreign Affairs who promised to reply as soon as possible.

I am now in receipt of a reply from the Minister for Foreign Affairs, dated June 10, 1931, a copy and translation of which are enclosed herewith,¹⁹ referring to Mr. Harrison's note of January 9, 1929. Attached

¹⁶ See instruction No. 167, December 1, 1928, to the Ambassador in Belgium, and footnote 51, *Foreign Relations*, 1928, vol. I, p. 497.

¹⁷ 45 Stat. 789.

¹⁸ *Foreign Relations*, 1929, vol. I, p. 485.

¹⁹ Not printed.

to the reply from the Minister for Foreign Affairs was an original and duplicate draft of a convention proposed by the Swedish Government. The original of the draft proposal, which contains the Swedish and English texts side by side, is enclosed herewith. . . .

Respectfully yours,

JOHN M. MOREHEAD

[Enclosure]

*Draft Convention Proposed by the Swedish Government*²⁰

ARTICLE 1

A person possessing from his birth the nationality of both the High Contracting Parties who has always resided in the territory of one of the Parties shall lose the nationality of the other Party on attaining the age of twenty-two years, unless he either upon his own application expressly has obtained the permission of that Party to remain its national or, although he has never had residence in its territory, nevertheless has sojourned there under circumstances indicating his community with the country in question.

The stipulation of this article shall, however, have no application to a woman who is or has been married.

ARTICLE 2

A person possessing the nationality of both the High Contracting Parties who habitually resides in the territory of one of them and who is in fact most closely connected with that Party shall be exempt from all military obligations in the territory of the other Party.

ARTICLE 3

The present agreement 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 Sweden by and with the consent of the Riksdag of Sweden and shall enter in effect three months after the exchange of ratifications at Washington and shall remain in force until the expiration of six months from the day on which one of the Parties shall have given notice to the other for its termination.

In witness whereof, the respective Plenipotentiaries have signed the present Treaty in duplicate in the English and Swedish languages and have thereunto affixed their seals.

Done at Stockholm . . .

²⁰ Preamble omitted.

711.584/3

The Acting Secretary of State to the Minister in Sweden (Morehead)

No. 73

WASHINGTON, September 2, 1931.

SIR: The Department has received your despatch No. 283 of June 23, 1931, concerning the proposed convention on nationality and military service between the United States and Sweden, which was the subject of the Department's instruction No. 86 of December 1, 1928, and the Legation's despatch No. 458 of January 10, 1929.

The draft convention submitted by the Swedish Minister for Foreign Affairs has been given careful consideration by the Department. In view of the conditions contained in Article 1, which relates to termination of dual nationality, it is not regarded as acceptable to this Government, and, as it does not seem likely that it would be possible to reach an agreement upon this subject which would be acceptable to both governments, the Department considers that it would be desirable to limit the convention to the subject matter of Article 2, which relates to military service in cases of dual nationality. The Department is prepared to accept the phraseology of Article 2 proposed by the Swedish Government, which is similar to the first paragraph of Article 1 of the multilateral "Protocol Relating to Military Obligations in Certain Cases of Double Nationality", adopted at the Hague Conference on Codification of International Law²¹ and subsequently signed by the United States and Sweden. In substance this draft appears to be similar to the draft proposed by the Department in its instruction of December 1, 1928, mentioned above, except that it is limited to exemption from "military obligations", while the Department's draft, based upon the Resolution of Congress of May 28, 1928, is somewhat broader, including not only "military service" but also "any other act of allegiance". It appears from the note of June 10, 1931, from the Ministry of Foreign Affairs, a copy of which accompanied your despatch, that Swedish authorities have found difficulty in "determining with precision the exact meaning to be given to the expression 'any other act of allegiance'". From your despatch it appears that the Swedish authorities have gotten the impression that the expression "any other act of allegiance" relates to the taking of an oath of allegiance. The Department, however, does not interpret the phrase in this way, but considers that it refers to any action required of an individual as an incident to his permanent allegiance, or nationality. Examples would be found in compulsory labor or the payment of a tax based upon the permanent allegiance or nationality of the individual. You may explain this point to the appropriate

²¹ Protocol concluded at The Hague, April 12, 1930, *Foreign Relations*, 1930, vol. I, p. 224.

authorities and suggest that the phrase "military obligations" in the Swedish draft be expanded to read "military or other obligations incident to permanent allegiance". However, if the Swedish authorities are unwilling to agree to this change, you are authorized to sign a convention containing, as Article 1, the phraseology of Article 2 of the Swedish draft. In this case, Article 3 of the Swedish draft would become Article 2.

If the suggestions made above are agreed to it would seem desirable to make certain slight changes in phraseology in lines 3 to 5 of the English text of the preamble. The words "being desirous of regulating the question of exemption from obligations of allegiance of persons" might be inserted in place of the corresponding words in the English text of the Swedish draft. Also, it might be desirable to use the word "convention" throughout in referring to the instrument which it is proposed to sign, instead of the words "agreement" and "treaty", which appear in the English translation of the Swedish draft.

Very truly yours,

W. R. CASTLE, JR.

711.584/5

The Minister in Sweden (Morehead) to the Secretary of State

No. 620

STOCKHOLM, December 6, 1932.

[Received December 23.]

SIR: In compliance with the Department's instruction No. 73, dated September 2, 1931, the Legation addressed a note to the Swedish Minister for Foreign Affairs, No. 128 of November 27, 1931,²² concerning the proposed convention on nationality and military service between the United States and Sweden, which was the subject of the Department's instruction No. 86 of December 1, 1928, and the Legation's despatch No. 458 of January 10, 1929, stating that in view of the conditions contained in Article 1, relating to termination of dual nationality, of the draft convention submitted by the Swedish Minister for Foreign Affairs and transmitted in the Legation's despatch under reference,²³ that article is not regarded as acceptable to the American Government, and suggesting certain changes in the phraseology of Articles 2 and 3 of the Swedish draft. A copy of the Legation's note under reference is transmitted herewith.

The Legation is now in receipt of a reply thereto from the Minister for Foreign Affairs, dated November 29, 1932, a copy and translation of which are also enclosed, in which the Swedish Government explains its inability to adopt the suggestions of the American Government to substitute for the phrase "military obligations" the phrase "military or

²² Not printed.

²³ Despatch No. 283, June 23, 1931, p. 758.

other obligations incident to permanent allegiance", and expressing the hope that the American Government will limit the purpose of the convention to the "single exemption from military obligations".

The suggestions concerning the preamble of the text of the proposed arrangement are acceptable to the Swedish Government.

Referring to the unwillingness of the Swedish Government to expand the phrase "military obligations" to "other obligations incident to permanent allegiance", I wish to state that this question has been the subject of several and rather lengthy informal conversations between Mr. Crocker²⁴ and the competent official in the Legal Section of the Foreign Office, but that in spite of every effort to explain the Department's interpretation of the phrase, the Foreign Office still adhered to its original feeling that the new phrase would unquestionably lead to many divergencies of opinion. In the hopes that the matter might be clarified, Mr. Crocker invited the attention of the Foreign Office to the fact that the unmodified phrase "any other act of allegiance" appeared in the similar treaty concluded with Norway in 1930²⁵ and suggested that possibly a translation of the Norwegian text of the pertinent article might be of assistance. This will explain the reference in the reply of the Foreign Office, dated November 29, 1932, to the Norwegian term "troskap", which appears in the treaty referred to.

Respectfully yours,

JOHN M. MOREHEAD

[Enclosure—Translation]

*The Swedish Minister for Foreign Affairs (Sandler) to the
American Minister (Morehead)*

STOCKHOLM, November 29, 1932.

MR. MINISTER: Referring to the letter which Mr. Crocker addressed to my predecessor dated November 27, 1931, concerning the proposed Convention relative to the exemption from military obligations, and so forth, in certain cases of double nationality, I have the honor to inform you as follows.

The Government of the King has submitted to a careful consideration the proposal of the American Government to substitute for the words "military obligations" in the English text and "militära förpliktelser" in the Swedish text the expression "military or other obligations incident to permanent allegiance" and an equivalent expression in Swedish; it has especially examined the possibility of using—as Mr. Crocker suggested—for the translation of the word "allegiance" a Swedish term corresponding to the Norwegian term "troskap". But it has arrived at

²⁴ Edward S. Crocker 2d, Second Secretary of Legation.

²⁵ Treaty between the United States and Norway, signed November 1, 1930, *Foreign Relations*, 1930, vol. III, p. 713; for Norwegian text, see 46 Stat. (pt. 2) 2904.

the conclusion that, even though one were successful in finding for the Swedish text an acceptable translation of the idea expressed by "allegiance"—which furthermore would not be the case in the use of the single word "troskap" or other similar synonym—the expression in mind would define the obligations in question in a too general manner and perhaps too vague also—by reason indeed of the absence in the terminology of Swedish law of an exactly equivalent term—to figure in a Convention of this nature. As a complete enumeration of the obligations deriving from "permanent allegiance" would scarcely be possible, in fact, the question of knowing whether the determined obligation should be considered or not as deriving from "permanent allegiance" would risk giving rise to divergencies of opinion.

The examination of the question of knowing what obligations—outside of military obligations—could, according to the regulations in force in Sweden, be brought into account has furthermore led the Government of the King to the conclusion that the insertion into the Convention of a provision of the suggested contents would be of little practicable value.

The Government of the King hopes consequently that the Government of the United States will see the possibility of limiting the purpose of the Convention to the single exemption from military obligations.

The suggestions formulated by Mr. Crocker concerning the preamble of the text of the proposed arrangement do not raise any objection on the part of the Government of the King.

Please accept [etc.]

RICKARD SANDLER

711.584/5 : Telegram

The Acting Secretary of State to the Minister in Sweden (Morehead)

WASHINGTON, January 7, 1933—11 a.m.

3. Your despatch 620, December 6, 1932. You are authorized to sign convention limited to military obligations. See page 3, lines 3 to 7, Department's instruction No. 73, September 2, 1931. Full powers by early pouch.

CASTLE

Treaty Series No. 890

*Convention Between the United States of America and Sweden,
Signed at Stockholm, January 31, 1933*²⁶

The President of the United States of America and His Majesty the King of Sweden, being desirous of regulating the question of exemption

²⁶ In English and Swedish; Swedish text not printed. Ratification advised by the Senate, February 6, 1935; ratified by the President, February 11, 1935; ratified by Sweden, June 2, 1933; ratifications exchanged at Washington, February 20, 1935; proclaimed by the President, May 20, 1935.

from military obligations of persons possessing the nationality of both the High Contracting Parties, have decided to enter into a Convention for that purpose, and have appointed as Their Plenipotentiaries:

The President of the United States of America:

The Honorable John Motley Morehead, Envoy Extraordinary and Minister Plenipotentiary of the United States of America at Stockholm;

His Majesty the King of Sweden:

Mr. Osten Undén, acting Chief of His Ministry for Foreign Affairs, Minister without portfolio;

who, having communicated their full powers found in good and due form, have agreed as follows:

ARTICLE 1

A person possessing the nationality of both the High Contracting Parties who habitually resides in the territory of one of them and who is in fact most closely connected with that Party shall be exempt from all military obligations in the territory of the other Party.

ARTICLE 2

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 Sweden with the consent of the Riksdag of Sweden and shall enter in effect three months after the exchange of ratifications at Washington and shall remain in force until the expiration of six months from the day on which one of the Parties shall have given notice to the other for its termination.

In witness whereof the respective Plenipotentiaries have signed the present Convention in duplicate in the English and Swedish languages and have thereunto affixed their seals.

Done at Stockholm the 31st day of January, 1933.

JOHN MOTLEY MOREHEAD

[SEAL]

ÖSTEN UNDÉN

[SEAL]

RECIPROCAL AIR NAVIGATION ARRANGEMENT BETWEEN THE
UNITED STATES AND SWEDEN, EFFECTED BY EXCHANGE OF
NOTES, SEPTEMBER 8 AND 9, 1933

Executive Agreement Series No. 47
711.5827/18

The Secretary of State to the Swedish Chargé (Beck-Friis) ²⁷

WASHINGTON, September 8, 1933.

SIR: Reference is made to the negotiations which have taken place between the Government of the United States of America and the Government of Sweden for the conclusion of a reciprocal air navigation arrangement between the United States of America and Sweden, governing the operation of civil aircraft of the one country in the other country.

It is my understanding that it has been agreed in the course of the negotiations, now terminated, that this arrangement shall be as follows:

ARRANGEMENT BETWEEN THE UNITED STATES OF AMERICA AND SWEDEN
CONCERNING THE OPERATION OF CIVIL AIRCRAFT OF THE ONE COUNTRY
IN THE TERRITORY OF THE OTHER COUNTRY.

ARTICLE 1

Pending the conclusion of a convention between the United States of America and Sweden on the subject of air navigation, the operation of civil aircraft of the one country in the other country shall be governed by the following provisions.

ARTICLE 2

The present arrangement shall apply to continental United States of America, exclusive of Alaska, and to Sweden, including the adjacent territorial waters of the two countries.

ARTICLE 3

The term aircraft with reference to one or the other party to this arrangement shall be understood to mean civil aircraft, including state aircraft used exclusively for commercial purposes, duly registered in the territory of such party.

ARTICLE 4

Each of the parties undertakes to grant liberty of passage above its territory in time of peace to the aircraft of the other party, provided that the conditions set forth in the present arrangement are observed.

It is, however, agreed that the establishment and operation of regular air routes by an air transport company of one of the parties within the territory of the other party or across the said territory, with or without intermediary landing, shall be subject to the prior consent of the other party given on the principle of reciprocity and at the request of the party whose nationality the air transport company possesses.

Each party to this arrangement agrees that its consent for operations

²⁷ The same note, *mutatis mutandis*, with the text of the agreement in Swedish, was sent by the Swedish Chargé to the Secretary of State, September 8 (711.5827/19).

over its territory by air transport companies of the other party may not be refused on unreasonable or arbitrary grounds. The consent may be made subject to special regulations relating to aerial safety and public order.

The parties to this arrangement agree that the period in which pilots may, while holding valid pilot licenses issued or rendered valid by either country, operate registered aircraft of that country in the other country for non-industrial or non-commercial purposes shall be limited to a period not exceeding six months from the time of entry for the purpose of operating aircraft, unless prior to the expiration of this period the pilots obtain from the Government of the country in which they are operating, pilot licenses authorizing them to operate aircraft for non-industrial or non-commercial purposes.

ARTICLE 5

The aircraft of each of the parties to this arrangement, their crews and passengers, shall, while within the territory of the other party, be subject to the general legislation in force in that territory as well as the regulations in force therein relating to air traffic in general, to the transport of passengers and goods and to public safety and order in so far as these regulations apply to all foreign aircraft, their crews and passengers.

Each of the parties to this arrangement shall permit the import or export of all merchandise which may be legally imported or exported and also the carriage of passengers, subject to any customs, immigration and quarantine restrictions, into or from their respective territories in the aircraft of the other party, and such aircraft, their passengers and cargoes, shall enjoy the same privileges as and shall not be subjected to any other or higher duties or charges than those which the aircraft of the country, imposing such duties or charges, engaged in international commerce, and their cargoes and passengers, or the aircraft of any foreign country likewise engaged, and their cargoes and passengers, enjoy or are subjected to.

Each of the parties to this arrangement may reserve to its own aircraft air commerce between any two points neither of which is in a foreign country. Nevertheless the aircraft of either party may proceed from any aerodrome in the territory of the other party which they are entitled to use to any other such aerodrome either for the purpose of landing the whole or part of their cargoes or passengers or of taking on board the whole or part of their cargoes or passengers, provided that such cargoes are covered by through bills of lading, and such passengers hold through tickets, issued respectively for a journey whose starting place and destination both are not points between which air commerce has been duly so reserved, and such aircraft, while proceeding as aforesaid, from one aerodrome to another, shall, notwithstanding that such aerodromes are points between which air commerce has been duly reserved, enjoy all the privileges of this arrangement.

ARTICLE 6

Each of the parties to this arrangement reserves the right to forbid flights over certain areas of its territory which are or may hereafter be designated as prohibited areas.

Each of the parties reserves the right under exceptional circumstances in time of peace and with immediate effect temporarily to limit

or prohibit air traffic above its territory on condition that in this respect no distinction is made between the aircraft of the other party and the aircraft of any foreign country.

ARTICLE 7

Any aircraft which finds itself over a prohibited area shall, as soon as it is aware of the fact, give the signal of distress prescribed in the Rules of the Air in force in the territory flown over and shall land as soon as possible at an aerodrome situated in such territory outside of but as near as possible to such prohibited area.

ARTICLE 8

All aircraft shall carry clear and visible nationality and registration marks whereby they may be recognized during flight. In addition, they must bear the name and address of the owner.

All aircraft shall be provided with certificates of registration and of airworthiness and with all the other documents prescribed for air traffic in the territory in which they are registered.

The members of the crew who perform, in an aircraft, duties for which a special permit is required in the territory in which such aircraft is registered, shall be provided with all documents and in particular with the certificates and licenses prescribed by the regulations in force in such territory.

The other members of the crew shall carry documents showing their duties in the aircraft, their profession, identity and nationality.

The certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one of the parties to this arrangement in respect of an aircraft registered in its territory or of the crew of such aircraft shall have the same validity in the territory of the other party as the corresponding documents issued or rendered valid by the latter.

Each of the parties reserves the right for the purpose of flight within its own territory to refuse to recognize certificates of competency and licenses issued to nationals of that party by the other party.

ARTICLE 9

Aircraft of either of the parties to this arrangement may carry wireless apparatus in the territory of the other party only if a license to install and work such apparatus shall have been issued by the competent authorities of the party in whose territory the aircraft is registered. The use of such apparatus shall be in accordance with the regulations on the subject issued by the competent authorities of the territory within whose air space the aircraft is navigating.

Such apparatus shall be used only by such members of the crew as are provided with a special license for the purpose issued by the Government of the territory in which the aircraft is registered.

The parties to this arrangement reserve respectively the right, for reasons of safety, to issue regulations relative to the obligatory equipment of aircraft with wireless apparatus.

ARTICLE 10

No arms of war, explosives of war, or munitions of war shall be carried by aircraft of either party above the territory of the other party or by the crew or passengers, except by permission of the competent authorities of the territory within whose air space the aircraft is navigating.

ARTICLE 11

Upon the departure or landing of any aircraft each party may within its own territory and through its competent authorities search the aircraft of the other party and examine the certificates and other documents prescribed.

ARTICLE 12

Aerodromes open to public air traffic in the territory of one of the parties to this arrangement shall in so far as they are under the control of the party in whose territory they are situated be open to all aircraft of the other party, which shall also be entitled to the assistance of the meteorological services, the wireless services, the lighting services and the day and night signalling services, in so far as the several classes of services are under the control of the party in whose territory they respectively are rendered. Any scale of charges made, namely, landing, accommodation or other charge, with respect to the aircraft of each party in the territory of the other party, shall in so far as such charges are under the control of the party in whose territory they are made be the same for the aircraft of both parties.

ARTICLE 13

All aircraft entering or leaving the territory of either of the parties to this arrangement shall land at or depart from an aerodrome open to public air traffic and classed as a customs aerodrome at which facilities exist for enforcement of immigration regulations and clearance of aircraft, and no intermediary landing shall be effected between the frontier and the aerodrome. In special cases the competent authorities may allow aircraft to land at or depart from other aerodromes, at which customs, immigration and clearance facilities have been arranged. The prohibition of any intermediary landing applies also in such cases.

In the event of a forced landing outside the aerodromes, referred to in the first paragraph of this article, the pilot of the aircraft, its crew and the passengers shall conform to the customs and immigration regulations in force in the territory in which the landing has been made.

Aircraft of each party to this arrangement are accorded the right to enter the territory of the other party subject to compliance with quarantine regulations in force therein.

The parties to this arrangement shall exchange lists of the aerodromes in their territories designated by them as ports of entry and departure.

ARTICLE 14

Each of the parties to this arrangement reserves the right to require that all aircraft crossing the frontiers of its territory shall do so either between certain points, or close by an aviation customs office in that territory, at such altitude that signals can be received, even though there should be no landing of the aircraft. The contracting parties shall inform each other of the points where the respective frontiers thus may be crossed.

It is understood that neither of the courses mentioned in the preceding paragraph exempts aircraft crossing the frontiers of either party from the obligation of landing at a regular airport of entry, as stipulated in Article 13.

ARTICLE 15

As ballast, only fine sand or water may be dropped from an aircraft.

ARTICLE 16

No article or substance, other than ballast, may be unloaded or otherwise discharged in the course of flight unless special permission for such purpose shall have been given by the authorities of the territory in which such unloading or discharge takes place.

ARTICLE 17

Whenever questions of nationality arise in carrying out the present arrangement, it is agreed that every aircraft shall be deemed to possess the nationality of the party in whose territory it is duly registered.

ARTICLE 18

The parties to this arrangement shall communicate to each other the regulations relative to air traffic in force in their respective territories.

ARTICLE 19

The present arrangement shall be subject to termination by either party upon sixty days' notice given to the other party or by the enactment by either party of legislation inconsistent therewith.

I shall be glad to have you inform me whether the text of the arrangement herein set forth is as agreed to by your Government. If so, it is suggested that it should be understood that the arrangement will become effective on October 9, 1933.

Accept [etc.]

CORDELL HULL

Executive Agreement Series No. 47
711.5827/17

*The Swedish Chargé (Beck-Friis) to the Secretary of State*²⁸

WASHINGTON, September 9, 1933.

SIR: I have the honour to acknowledge receipt of Your Excellency's communication of September 8, 1933, and to state that the text given therein of the arrangement between Sweden and the United States of America, governing the operation of civil aircraft of the one country in the other country, meets with the approval of the Swedish Government. There is agreement to the effect that the arrangement shall become effective on October 9, 1933.

With renewed assurances [etc.]

JOHAN BECK-FRIIS

²⁸ The same note, *mutatis mutandis*, was sent by the Secretary of State to the Swedish Chargé, September 9 (711.5827/8).

RECIPROCAL ARRANGEMENT BETWEEN THE UNITED STATES AND SWEDEN FOR THE ISSUANCE OF PILOT LICENSES TO OPERATE CIVIL AIRCRAFT, EFFECTED BY EXCHANGE OF NOTES, SEPTEMBER 8 AND 9, 1933

Executive Agreement Series No. 48
711.5827/14

The Secretary of State to the Swedish Chargé (Beck-Friis) ²⁹

WASHINGTON, September 8, 1933.

SIR: Reference is made to the negotiations which have taken place between the Government of the United States of America and the Government of Sweden for the conclusion of a reciprocal arrangement between the United States of America and Sweden providing for the issuance by the one country of licenses to nationals of the other country authorizing them to pilot civil aircraft.

It is my understanding that it has been agreed in the course of the negotiations, now terminated, that this arrangement shall be as follows:

ARRANGEMENT BETWEEN THE UNITED STATES OF AMERICA AND SWEDEN CONCERNING THE ISSUANCE BY THE ONE COUNTRY OF LICENSES TO NATIONALS OF THE OTHER COUNTRY AUTHORIZING THEM TO PILOT CIVIL AIRCRAFT.

ARTICLE 1

The present arrangement between the United States of America and Sweden relates to the issuance by each country of licenses to nationals of the other country for the piloting of civil aircraft. The term "civil aircraft" shall be understood to mean aircraft used for private, industrial, commercial or transport purposes.

ARTICLE 2

(a) The Office of Civil Aviation (Luftfartsmyndigheten) of Sweden will issue pilots' licenses to American nationals upon a showing that they are qualified under the regulations of that Office covering the licensing of pilots.

(b) The Department of Commerce of the United States of America will issue pilots' licenses to Swedish nationals upon a showing that they are qualified under the regulations of that Department covering the licensing of pilots.

ARTICLE 3

(a) Pilots' licenses issued by the Department of Commerce of the United States of America to Swedish nationals shall entitle them to the same privileges as are granted by pilots' licenses issued to American nationals.

(b) Pilots' licenses issued by the Office of Civil Aviation (Luftfartsmyndigheten) of Sweden to American nationals shall entitle them to the same privileges as are granted by pilots' licenses issued to Swedish nationals.

²⁹ The same note, *mutatis mutandis*, with the text of the agreement in Swedish, was sent by the Swedish Chargé to the Secretary of State, September 8 (711.5327/15).

ARTICLE 4

Pilots' licenses issued to nationals of the one country by the competent authority of the other country shall not be construed to accord to the licensees the right to register aircraft in such other country.

ARTICLE 5

Pilots' licenses issued to nationals of the one country by the competent authority of the other country shall not be construed to accord to the licensees the right to operate aircraft in air commerce wholly within territory of such other country reserved to national aircraft, unless the aircraft have been registered under the laws of the country issuing the pilots' licenses.

ARTICLE 6

(a) Swedish nationals shall while holding valid pilot licenses issued by the Office of Civil Aviation (Luftfartsmyndigheten) of Sweden be permitted to operate in Continental United States of America, exclusive of Alaska, for non-industrial or non-commercial purposes for a period not exceeding six months from the time of entering that country, any civil aircraft registered by the Office of Civil Aviation (Luftfartsmyndigheten) of Sweden, and/or any civil aircraft registered by the United States Department of Commerce. The period of validity of the licenses first mentioned in this paragraph shall, for the purpose of this paragraph, include any renewal of the license by the pilot's own government made after the pilot has entered Continental United States of America. No person to whom this provision applies shall be allowed to operate civil aircraft in Continental United States of America, exclusive of Alaska, for non-industrial or non-commercial purposes for a period of more than six months from the time of entering that country unless he shall, prior to the expiration of such period, have obtained a pilot license from the United States Department of Commerce in the manner provided for in this arrangement.

(b) American nationals shall while holding valid pilot licenses issued by the United States Department of Commerce be permitted to operate in Sweden for non-industrial or non-commercial purposes for a period not exceeding six months from the time of entering that country, any civil aircraft registered by the United States Department of Commerce, and/or any civil aircraft registered by the Office of Civil Aviation (Luftfartsmyndigheten) of Sweden. The period of validity of the licenses first mentioned in this paragraph shall, for the purpose of this paragraph, include any renewal of the license by the pilot's own government made after the pilot has entered Sweden. No person to whom this provision applies shall be allowed to operate civil aircraft in Sweden for non-industrial or non-commercial purposes for a period of more than six months from the time of entering that country unless he shall, prior to the expiration of such period, have obtained a pilot's license from the Office of Civil Aviation (Luftfartsmyndigheten) of Sweden in the manner provided for in this arrangement.

(c) The conditions under which pilots of the nationality of either country may operate aircraft of their country in the other country, as provided for in this article, shall be as stipulated in the air navigation arrangement in force between the parties to this arrangement for the

issuance of pilot licenses; and the conditions under which pilots of the nationality of either country may operate aircraft of the other country, as provided for in this article, shall be in accordance with the requirements of such other country.

ARTICLE 7

The present arrangement shall be subject to termination by either party upon sixty days' notice given to the other party or by the enactment by either party of legislation inconsistent therewith.

I shall be glad to have you inform me whether the text of the arrangement herein set forth is as agreed to by your Government. If so, it is suggested that it should be understood that the arrangement will become effective on October 9, 1933.

Accept [etc.]

CORDELL HULL

Executive Agreement Series No. 48
711.5827/13

*The Swedish Chargé (Beck-Friis) to the Secretary of State*³⁰

WASHINGTON, September 9, 1933.

SIR: I have the honour to acknowledge receipt of Your Excellency's communication of September 8, 1933, and to state that the text given therein of the arrangement between Sweden and the United States of America, providing for the issuance by the one country of licenses to nationals of the other country authorizing them to pilot civil aircraft, meets with the approval of the Swedish Government. There is agreement to the effect that the arrangement shall become effective on October 9, 1933.

With renewed assurances [etc.]

JOHAN BECK-FRIIS

**ARRANGEMENT BETWEEN THE UNITED STATES AND SWEDEN
PROVIDING FOR THE RECIPROCAL RECOGNITION OF CERTIFICATES
OF AIRWORTHINESS FOR IMPORTED AIRCRAFT, EFFECTED BY EX-
CHANGE OF NOTES, SEPTEMBER 8 AND 9, 1933**

Executive Agreement Series No. 49
711.5827/10

*The Secretary of State to the Swedish Chargé (Beck-Friis)*³¹

WASHINGTON, September 8, 1933.

SIR: Reference is made to the negotiations which have taken place between the Government of the United States of America and the Gov-

³⁰ The same note, *mutatis mutandis*, was sent by the Secretary of State to the Swedish Chargé, September 9 (711.5827/12).

³¹ The same note, *mutatis mutandis*, with the text of the agreement in Swedish, was sent by the Swedish Chargé to the Secretary of State, September 8 (711.5827/11).

ernment of Sweden for the conclusion of a reciprocal arrangement between the United States of America and Sweden providing for the acceptance by the one country of certificates of airworthiness for aircraft exported from the other country as merchandise.

It is my understanding that it has been agreed in the course of the negotiations, now terminated, that this arrangement shall be as follows:

**ARRANGEMENT BETWEEN THE UNITED STATES OF AMERICA AND SWEDEN
CONCERNING THE ACCEPTANCE BY THE ONE COUNTRY OF CERTIFICATES OF
AIRWORTHINESS FOR AIRCRAFT EXPORTED FROM THE OTHER COUNTRY AS
MERCHANDISE.**

ARTICLE 1

The present arrangement applies to civil aircraft constructed in continental United States of America, exclusive of Alaska, and exported to Sweden; and to civil aircraft constructed in Sweden and exported to continental United States of America, exclusive of Alaska.

ARTICLE 2

The same validity shall be conferred on certificates of airworthiness issued by the competent authorities of the Government of the United States in respect of aircraft subsequently registered in Sweden as if they had been issued under the regulations in force on the subject in Sweden provided that in each case a certificate of airworthiness for export has also been issued by the United States authorities in respect of the individual aircraft, and provided that certificates of airworthiness issued by the competent authorities of Sweden in respect of aircraft subsequently registered in the United States of America are similarly given the same validity as if they had been issued under the regulations in force on the subject in the United States.

ARTICLE 3

This arrangement will extend to civil aircraft of all categories, including those used for public transport and those used for private purposes, and to aircraft engines and spare parts of aircraft and engines.

ARTICLE 4

The present arrangement may be terminated by either Government on sixty days' notice given to the other Government. In the event, however, that either Government should be prevented by future action of its legislature from giving full effect to the provisions of this arrangement it shall automatically lapse.

I shall be glad to have you inform me whether the text of the arrangement herein set forth is as agreed to by your Government. If so, it is suggested that it should be understood that the arrangement will become effective on October 9, 1933.

Accept [etc.]

CORDELL HULL

Executive Agreement Series No. 49
711.5827/9

*The Swedish Chargé (Beck-Friis) to the Secretary of State*³²

WASHINGTON, September 9, 1933.

SIR: I have the honour to acknowledge receipt of Your Excellency's communication of September 8, 1933, and to state that the text given therein of the arrangement between Sweden and the United States of America, providing for the acceptance by the one country of certificates of airworthiness for aircraft exported from the other country as merchandise, meets with the approval of the Swedish Government. There is agreement to the effect that the arrangement shall become effective on October 9, 1933.

With renewed assurances [etc.]

JOHAN BECK-FRIIS

**RECIPROCAL EXTENSION BY THE UNITED STATES AND SWEDEN OF
FREE ENTRY PRIVILEGES FOR LEGATION EMPLOYEES**

658.11241/20

The Minister in Sweden (Morehead) to the Secretary of State

No. 630

STOCKHOLM, December 23, 1932.

[Received January 7, 1933.]

SIR: I have the honor to refer to the Department's telegraphic instruction No. 45 of December 16, 5 p.m.,³³ inquiring of the Legation whether clerks and other Legation employees of American nationality enjoy the privilege of importing articles for personal use free of duty as well as free entry on arrival and return from leave, and to confirm my telegraphic reply thereto, No. 56 of December 17 noon,³³ stating that clerks and other Legation employees not of Swedish nationality enjoy the above privileges.

Reverting to the Legation's despatch No. 37, dated July 5, 1927, enclosure No. 2,³³ the Department will no doubt have observed that under the terms of a Swedish decree which entered into force on July 1, 1927, "the chiefs of mission and every other person belonging to a foreign mission in Sweden will enjoy free entry for the effects which they import from abroad and which are entered [*intended?*] for the service of the Legation or for their personal use or that of their family". This privilege, however, is extended only to the non-Swedish personnel of the legations and on a basis of reciprocal treatment.

³² The same note, *mutatis mutandis*, was sent by the Secretary of State to the Swedish Chargé, September 9 (711.5827/8).

³³ Not printed.

While it does not appear, however, that the Foreign Office ever received assurances that the United States would accord reciprocal treatment in this respect, the Swedish authorities have apparently proceeded upon the assumption that reciprocal treatment was in effect and they have in fact extended the privileges enumerated in the decree as well as those set forth in the Department's telegraphic instruction under reference without question, that is, the privilege of free entry upon arrival and return from leave.

I believe it desirable to state for the Department's information and as a matter of record that during my incumbency at this post, the Swedish Foreign Office has shown every disposition to extend to all the members of the American Government officials and employees in Sweden the benefits of every courtesy permissible under the law.

Respectfully yours,

JOHN M. MOREHEAD

653.11241/19

The Secretary of State to the Swedish Minister (Boström)

WASHINGTON, January 5, 1933.

SIR: I have the honor to inform you that the Department has been advised by the American Minister at Stockholm that clerks and other Legation employees not of Swedish nationality enjoy the privilege of importing articles for their personal use free of duty, as well as free entry on arrival and return from leave. Upon receipt of this information, the Department communicated with the Treasury Department with a view to obtaining like privileges for the clerks and other employees of Swedish nationality at the Swedish Legation in Washington.

I have pleasure in informing you that the Department is now in receipt of a reply from the Treasury Department consenting to the extension of the above mentioned privilege to the clerks and other employees of your Legation who are Swedish nationals and not engaged in any private occupation for gain, on the understanding that no article the importation of which is prohibited by the laws of the United States shall be imported by them. The arrangement, which will be effective immediately, includes free entry on arrival and return to their posts after leave of absence spent abroad and free entry of articles imported by such employees for personal use at any time during their employment as above stated. Domestic servants employed by members of the Legation Staff will not be accorded the privilege of free importation of articles for their personal use subsequent to arrival.

Accept [etc.]

For the Secretary of State:
W. R. CASTLE, JR.

SWITZERLAND

EXEMPTION OF SWISS CONSULS IN THE UNITED STATES FROM VARIOUS EXCISE TAXES

702.5411/129

The Swiss Chargé (Michele) to the Secretary of State

The Chargé d'Affaires ad interim of Switzerland presents his compliments to His Excellency the Secretary of State and has the honor to acknowledge receipt of his note dated December 15th, No. 702.5411/121,¹ concerning the exemption of Consuls of Switzerland in the United States from various excise taxes provided for by the Revenue Act of 1932.² According to this communication, by virtue of the most favored nation clause contained in Article VII of the Convention of friendship, etc., between the Swiss Confederation and the United States, concluded on November 15 [25], 1850,³ Consuls and Vice-Consuls of Switzerland in the United States, in their official capacities, and whilst not engaged in private business, trade, manufacture or commerce, are entitled to exemption from the miscellaneous taxes imposed by the Revenue Act, 1932.

As regards the statement contained in the last paragraph of His Excellency's note of December 15th, it may be remembered that, as has been pointed out on former occasions, the Federal Political Department holds the application of the most favored nation clause contained in Article VII of the above mentioned treaty to be general and not dependent upon any condition of reciprocity.

Without going further into the question of principle, the Chargé d'Affaires begs leave to state, as a matter of fact, that the federal fiscal laws in force in Switzerland do not impose excise taxes on such objects as, for example, the use of telegraph, telephone, radio and cable facilities, passage tickets, checks, or electrical energy.

WASHINGTON, January 17, 1933.

¹ Not printed.

² 47 Stat. 169.

³ William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. II, p. 1763.

702.5411/129

The Secretary of State to the Swiss Chargé (Michele)

WASHINGTON, February 11, 1933.

The Secretary of State presents his compliments to the Chargé d'Affaires ad interim of Switzerland and acknowledges the receipt of his note dated January 17, 1933, concerning the exemption of Consuls of Switzerland in the United States from various excise taxes provided for by the Revenue Act of 1932. The Chargé d'Affaires ad interim states that the Federal fiscal laws in force in Switzerland do not impose excise taxes on such objects as the use of telegraph, telephone, radio and cable facilities, passage tickets, checks, or electrical energy.

In the circumstances, the Secretary of State considers that the exemption of Swiss consular officers in the United States from such taxes is in effect.

UNION OF SOVIET SOCIALIST REPUBLICS
RECOGNITION BY THE UNITED STATES OF THE SOVIET UNION,
NOVEMBER 16, 1933¹

861.01/1786

*The Secretary of State to Senator William E. Borah*²

WASHINGTON, September 8, 1932.

MY DEAR SENATOR: When your letter of August twenty-fifth³ arrived, I was away on a short vacation from which I have only just returned.

I am very much obliged to you for writing me on the subject you mention. It has already been giving me grave concern and I am now giving it close attention. When I returned from Geneva last spring, where the subject of recognition of Russia was brought up to me indirectly by conversations which had taken place between Russian representatives and some other members of the American Delegation, I requested the Far Eastern Division of the Department to make me a memorandum of the pros and cons of such a step as they saw it. I am sending you in confidence a copy of their memorandum.³ When you have read it, will you be good enough to return it to me? That memorandum, as you see, reached conclusions which were dependent upon the situation as it then existed.

My own conclusions at that time were roughly as follows:

In the Far Eastern situation the United States was making a fight of world-wide importance for the integrity of international obligations. We were trying to buttress the great peace treaties which had been negotiated since the end of the war by developing in behalf of them an international sentiment throughout the world in support of good faith and the sacredness of keeping international promises.⁴ We were doing this solely by pacific means, endeavoring to enlist behind our movement the support of a world opinion and avoiding anything which approached force or political alliances.

If under these circumstances and in this emergency we recognized Russia in disregard of her very bad reputation respecting international obligations and in disregard of our previous emphasis upon that aspect

¹ For correspondence concerning the refusal of the United States to recognize the Soviet regime in Russia, see *Foreign Relations*, 1923, vol. II, pp. 755 ff.

² Chairman of the Senate Committee on Foreign Relations.

³ Not printed.

⁴ Cf. Secretary Stimson's letter to Senator Borah quoted in telegram No. 50, February 24, 1932, 2 p.m., to the Consul General at Shanghai, *Foreign Relations*, Japan, 1931-1941, vol. I, p. 83.

of her history, the whole world, and particularly Japan, would jump to the conclusion that our action had been dictated solely by political expedience and as a maneuver to bring forceful pressure upon Japan. We should thereby lose the moral standing which we had theretofore held in the controversy with Japan. She would regard us as merely an opportunist nation, seeking to enforce a selfish anti-Japanese policy against her by the usual maneuvers of international policies. I felt that this loss of moral standing would be so important that we could not afford to take the risk of it. However innocent our own motives might be, they would certainly be misunderstood by the world at large and particularly by Japan, and that misunderstanding would destroy much of the influence of the moral pressure which we have been endeavoring to exert.

I have heard rumors much to the effect of those you mention in your letter as to possible negotiations between Japan and Russia. Very likely some temporary understanding is being attempted, but I believe it must be very transitory. The rivalry between those two nations in respect to Manchuria is so keen and the lack of confidence of each in the promises of the other so real, that it is very unlikely that they have entered into any substantial or permanent relation of mutual support and assistance. Their interests are too antagonistic for that.

The foregoing are the best conclusions that I can reach on the information at hand and under the present pressure. I should be very happy if you would give me your criticism of them in case you have any time to do so. You know with what respect I always receive your views.

May I say also that I have read recent press despatches with very great interest which indicate that you are going to continue your speeches of education in respect to the foreign debts. I believe you have already performed in that respect one of the greatest of your many great public services by the speech which you made here, and I shall look forward with great interest to any further steps which you may take in that direction.

With kindest personal regards to Mrs. Borah and yourself, I am,

Very sincerely yours,

HENRY L. STIMSON

861.01/1853

*The Military Attaché in Japan (McIlroy) to the Assistant Chief of Staff (Smith)*⁵

[Tokyo,] February 23, 1933.

1. Today at a luncheon given me by the dean of the Military Attachés, the Soviet Military Attaché sought me out and talked at length very frankly. The gist of his conversation was that:—

⁵ Copy transmitted to the Department by the War Department, March 21.

It is to the interest of both the United States and the USSR to come to some friendly understanding.

The Soviets would be glad to pay the small debts owed to America but that would necessitate the recognition of debts elsewhere, the total of which is very large.

That instead of recognizing those debts, the Soviets would be glad to arrange something else that would be the equivalent of paying the debts.

That the propaganda question is a difficult one for them to make any promises about, as it is difficult for them to control.

That two years ago, Japan could have taken the Maritime Province and Amur Province, but now he doubted very much their ability to do so. In this connection, he mentioned their superiority in tanks and their ability to produce many times the number of tanks that the Japanese can produce.

That the Japanese now have about 300 tanks.

J. G. McILROY
Lieut. Colonel, G.S.

661.1115/535

The Secretary of State to Mr. Fred L. Eberhardt ⁶

WASHINGTON, March 3, 1933.

SIR: Your letter of February 11, 1933 ⁷ has been received, and the constructive spirit in which you comment therein regarding the policies of this Government with respect to the present régime in Russia is appreciated.

The Department is not in a position at the present time, of course, to make any statement with respect to the attitude which will be taken towards the matters discussed by you by the administration which will come into office on March 4, 1933. I can assure you, however, that those who have participated in the formulation of the policies of this Government with respect to the Soviet régime have given much thought to the question of how trade relations between this country and Russia may be conducted most advantageously under present conditions, and that they have made decisions of policy with respect to Russia only after a careful consideration of the various factors involved, including the effect which such decisions might have upon the interests of American manufacturers and producers.

It would appear from your letter that you have already made some study of the reasons which have prompted this Government to refrain from according recognition to the present régime in Russia. For your further information in this connection, there is being enclosed certain

⁶ President of Gould & Eberhardt, manufacturers of machine tools, Newark (Irvington), N. J.

⁷ Not printed.

material,⁸ an examination of which will disclose the fact that this Government has taken the position that it would be unwise for it to enter into relations with the Soviet régime so long as the present rulers of Russia persist in aims and practices in the field of international relations which are inconsistent with international friendship.

It has been the desire of this Government to see established a sound foundation upon which trade and intercourse between the United States and Russia may develop and flourish to the benefit of the peoples of both countries. This Government has been of the opinion, however, that any real or lasting benefit to the people of the United States would not be attained by the establishment of relations with Russia until the present rulers of that country have given evidence that they are prepared to carry out in good faith the international obligations which experience has demonstrated are essential to the development of friendly intercourse and commerce between nations.

As you are aware, this Government, although not prepared to enter into diplomatic relations with the present régime in Russia, imposes no restrictions on trade with that country, nor has it objected to the financing incidental to ordinary current commercial intercourse between the two countries or to banking arrangements necessary to finance contracts for the sale of American goods on long term credits, providing such financing did not involve the sale of securities to the public. As is pointed out by Mr. Kellogg in a statement made when he was Secretary of State, a copy of which is enclosed,⁹ the Department has endeavored to reduce to a minimum the difficulties affecting commercial relations between the United States and Russia. During the years 1924-1931, inclusive, a substantial trade developed between the two countries in which your firm appears to have participated. The marked decrease in our exports to Russia which took place during the last year has not been due to the absence of diplomatic relations between the United States and Russia, but primarily to the decline of Russia's purchasing power and to the circumstance that credit terms more favorable than American exporters have been willing to grant have become available to Soviet purchasing agencies in various other countries, such as Germany, England, Italy, et cetera, as a result of the fact that the Governments of those countries have been underwriting credits extended by their nationals to such agencies.

It is not believed that the mere act of recognition of the Soviet régime would make it possible for the Soviet authorities appreciably to increase their purchases in the United States. There is no question that at the present time the rulers of Russia are desirous, in their own inter-

⁸ Only one of the enclosures is printed; see footnote 9 below.

⁹ The enclosure (an excerpt from a statement entitled "Foreign Relations") is printed in *Foreign Relations*, 1928, vol. III, p. 822.

ests, of purchasing more goods in this country. Their inability to increase their purchases appears to arise from the circumstance that they are unable either to pay in cash, or, as your letter suggests, to obtain credit terms acceptable to them.

In my opinion, recognition would not appreciably alter the factors responsible for the credit standing of the Soviet régime in this country, and therefore would not be likely to bring about any material improvement in the credit terms offered to that régime. You will find that recognition of the Soviet régime by the Governments of other countries has not resulted in any material change in the attitude of the business men of those countries with respect to the risks involved in granting credits to that régime. According to the Department's understanding, the discount rate of Russian trade acceptances which are not covered by governmental guarantees is practically the same in those countries as it is in countries the Governments of which have not recognized the Soviet régime. It is my belief, therefore, that the establishment of relations with Russia under present conditions would not appreciably alter the attitude of your banking connections with respect to Russian trade acceptances.

In concluding, I desire to emphasize that the American Government has not failed to realize the importance to American firms, during the present period of depression, of obtaining foreign orders, and that the present situation with respect to Russian-American trade has not developed as a result of the indifference of the Government to the interests of its nationals engaged in manufacture and commerce.

Very truly yours,

For the Secretary of State:
W. R. CASTLE, JR.
Under Secretary

711.61/287%

*Memorandum by the Chief of the Division of
Eastern European Affairs (Kelley)*¹⁰

[WASHINGTON, July 27, 1933.]

PROBLEMS PERTAINING TO RUSSIAN-AMERICAN RELATIONS WHICH, IN THE INTERESTS OF FRIENDLY RELATIONS BETWEEN THE UNITED STATES AND RUSSIA, SHOULD BE SETTLED PRIOR TO THE RECOGNITION OF THE SOVIET GOVERNMENT

In order that the United States may derive from the recognition of the Soviet government the benefits which normally follow the recognition of a foreign Government, the recognition of the Soviet govern-

¹⁰ Copy handed to President Roosevelt by the Acting Secretary of State, July 27.

ment should involve the establishment of relations with Russia on a basis which would render possible the maintenance of friendly cooperation between the Governments of the United States and Russia and the development of trade and intercourse between the two countries. The experience of countries which have extended recognition to the Soviet government has shown pretty conclusively, it is believed, that there are serious obstacles in the way of the establishment of relations with Russia on such a basis, and that so long as these obstacles remain, official relations, established as a result of recognition, tend to become, in view of the extraordinary nature of these obstacles, the source of friction and ill will rather than the mainspring of cooperation and good will. It would seem essential, therefore, that every endeavor should be made to remove these obstacles prior to the extension of recognition. Until a substantial basis of mutual understanding and common principles and purposes has been established, official intercourse, with its increased contacts, is bound to lead to friction and rancor. Formal diplomatic relations may be established, but the substance of a useful relationship will be lacking, as much for the Russians as for ourselves, unless and until we have cleared up the existing difficulties through mutual agreement and worked out a *modus vivendi* for the future.

PROBLEM OF COMMUNIST WORLD REVOLUTIONARY ACTIVITIES

The fundamental obstacle in the way of the establishment with Russia of the relations usual between nations in diplomatic intercourse is the world revolutionary aims and practices of the rulers of that country. It is obvious that, so long as the Communist regime continues to carry on in other countries activities designed to bring about ultimately the overthrow of the Government and institutions of these countries, the establishment of genuine friendly relations between Russia and those countries is out of the question. Even when these activities do not constitute a present menace to the established order, the systematic interference of a foreign power in the domestic affairs of a country constitutes *ipso facto* a source of deep resentment and unavoidable friction. The persistence of such interference after diplomatic relations have been established leads inevitably either to the rupture of relations—as has taken place in the case of England, China, and Mexico,—or to serious tension and the reduction of the existing diplomatic relations to a barren, meaningless relationship—as has taken place at times in the case of France, Germany, Poland, et cetera. It would seem, therefore, that an essential prerequisite to the establishment of harmonious and trustful relations with the Soviet government is the abandonment by the present rulers of Russia of their world revolutionary aims and the discontinuance of their activities designed to bring about the realization

of such aims. More specifically and with particular regard to the United States, this prerequisite involves the abandonment by Moscow of direction, supervision, control, financing, et cetera, through every agency utilized for the purpose, of communist and other related activities in the United States.

QUESTION OF REPUDIATED DEBTS AND CONFISCATED PROPERTY

Another serious difficulty in the way of the establishment of mutually advantageous relations with the Soviet government is the unwillingness of that government to observe certain generally accepted principles governing the conduct of nations towards each other. Among these principles is the duty of a State to respect the rights of citizens of other States which have been acquired within its jurisdiction in accordance with its laws, and the duty of a Government to honor the financial obligations contracted by a State under preceding Governments. The Soviet government has confiscated the property of foreign nationals in Russia and has repudiated the contractual obligations of Russia to foreign Governments and foreign nationals. It is to be noted that through these acts not only has damage been done to the interests of foreign States, but what is more important, the Soviet government has rejected international obligations which the experience of mankind has demonstrated are vital to the satisfactory development and maintenance of commerce and friendly intercourse between nations. These acts have severely handicapped the development of commercial relations between Russia and foreign countries, since they have practically destroyed the basis of ordinary credit to the Soviet government or Soviet organizations. Any substantial improvement of Russian credit would appear to be unlikely until a settlement has been reached with respect to repudiated bonds and confiscated property, and until Russia has furnished adequate evidence of its purpose to maintain its international relations in accordance with recognized standards.

Losses Suffered by the United States

The United States has suffered the following losses as the result of the Soviet policies of repudiation and confiscation:

(a) Repudiated Russian obligations held by the United States Government (principal only)	\$192,000,000
(b) Repudiated Russian obligations held by American citizens (principal only)	
(1) Floated in the United States	86,000,000
(2) Floated elsewhere	20,000,000
(c) Confiscated property rights and interests of American citizens in Russia	330,000,000

It is to the interest of the United States to obtain a settlement of the questions of repudiated bonds and confiscated property on the basis of accepted international practices, not only on account of the material losses involved, but especially in view of the fact, as indicated above, that the settlement of these matters is of great importance for the establishment of a sound basis for trade between the United States and Russia. Moreover, it is to be noted that the Government of the United States has a profound interest in the maintenance of the sanctity of international obligations, not only in view of the world-wide activities of its citizens, but even more in consequence of its earnest desire to see strengthened those forces making for the promotion of peace and international good will.

Settlement Desirable Prior to Recognition

It is to be especially emphasized that if the questions of repudiated debts and confiscated property are not settled prior to recognition, there is little likelihood that subsequent negotiations would result in a mutually satisfactory settlement. Evidence of this is to be found in the fruitlessness of the long-drawn-out negotiations in regard to these questions conducted by France and Great Britain subsequent to their recognition of the Soviet government.

Related Questions Requiring Consideration

In connection with the settlement of these questions, it is important that an agreement be reached with regard to the disposition made of Russian Government property and property rights in the United States in the period from November, 1917, to the date of recognition. Unless a complete agreement is reached with regard to outstanding questions, it would be desirable to obtain from the Soviet government an undertaking analogous to that incorporated in the Trade Agreement between Great Britain and Russia of March 17, 1921,¹¹ under which the Soviet authorities agreed to take no action with reference to funds or property of the Russian Government in Great Britain pending a settlement of the matter with the British Government.

Another question requiring careful consideration is that of the effect of recognition on property and property rights in the United States which have been determined by judicial decisions based on the circumstance of nonrecognition. Appropriate action should be taken so that recognition would not have any retroactive effect which would be prejudicial to American interests.

¹¹ Signed at London, March 16, 1921; League of Nations Treaty Series, vol. iv, p. 127.

PROBLEM OF BRIDGING THE DIFFERENCES BETWEEN THE ECONOMIC AND SOCIAL STRUCTURE OF THE UNITED STATES AND RUSSIA

A third major problem requiring solution in the interest of the establishment of harmonious and mutually beneficial relations between the United States and Russia is the difficulties arising out of the profound differences between the economic and social structure of the two countries. Reference is made here specially to the State monopoly of foreign trade in Russia and to the class character of the Soviet State.

Commercial relations between a country with a State monopoly of foreign trade and a country with its foreign trade carried on by private individuals cannot be conducted on the same basis as trade between two countries of the latter category. None of the accepted principles governing international commercial relations, such as most-favored-nation treatment, national treatment, et cetera, is applicable to trade between Russia and other countries. Those countries which have concluded trade agreements with Russia on a most-favored-nation basis, such as Germany, Great Britain, et cetera, have learned to their cost that the application of the most-favored-nation principle in treaties with Russia is, as the British Minister for Foreign Affairs recently said, "distorted and ridiculous." Furthermore, a government monopoly of foreign trade, in carrying on commerce with foreign countries, has a natural advantage over individual business concerns in such countries. In practically every country trading with Russia endeavors have been made, usually with little success, to find ways and means of putting trade relations on an equal footing and removing the disadvantages under which the individual business man labors in dealing with the Soviet monopoly of foreign trade. Finally, it is to be noted that the existence of this monopoly has given rise to difficulties and misunderstandings in the case of several countries that have recognized the Soviet government in connection with the determination of the status of Soviet Trade Delegations, the extent of the responsibility of the Soviet government for acts of Soviet commercial organizations, the right of Soviet organizations to participate in retail trade, et cetera.

Another question which has led to serious friction between Russia and foreign countries, especially Germany and Great Britain, is the treatment to which foreigners in Russia are subject under Soviet laws and practices. While it is a principle of international law that aliens are amenable to the laws of the country in which they are residing, the system of justice existing in Russia is so far removed from that maintained in the countries of Western Europe, and the Communist conception of justice is so alien to that held in such countries, that foreign countries have been obliged at times to take vigorous measures of reprisal in connection with the application to their nationals of Soviet

judicial procedure and certain Soviet criminal laws to which Soviet nationals are subjected. For example, the Soviet conception of espionage, especially economic espionage, is of such a broad nature that almost every foreigner in Russia commits acts which may readily be interpreted as violating the laws on this subject. Soviet practices with regard to arrest and incarceration of foreign nationals constantly lead to friction with foreign States. Matters such as these, involving the question of the protection of life and property of American citizens in Russia, should be settled by agreement in order to create a satisfactory basis for intercourse with Russia.

I. *Russian Government Obligations Held by Government of the United States*

A. Obligations of Provisional Government	
1. Obligations representing cash advanced under Liberty Loan Acts	\$187,729,750.00
B. Other Obligations	
1. Obligations received on account of sales of surplus war material	406,082.30
2. Obligations received on account of relief supplies furnished	4,465,465.07
Total	<u>\$192,601,297.37</u>

II. *Russian Government Obligations Held by American Nationals*

A. Loans floated in the United States	
1. Imperial Russian Government external loan (5 year) issued in the United States on November 18, 1916, by syndicate of New York banks	\$25,000,000.00
2. Imperial Russian Government 3 year credit granted by syndicate of New York banks; participation in credit offered to public on June 18, 1916	50,000,000.00
3. Russian Treasury notes purchased by National City Bank in April, 1916	11,000,000.00
Total	<u>\$86,000,000.00</u>
B. Loans floated elsewhere—chiefly domestic War Loans sold by Russian Government in the United States (estimate based on claims filed)	
1. Bonds of 5½% War loan of 1915-16	\$12,802,598.24
2. Bonds of Liberty Loan of 1917	5,138,016.31
3. Bonds of Loan of 1894	2,614,025.70
4. Miscellaneous issues of Russian bonds	329,517.50
Total	<u>\$20,884,157.75</u>

III. *Confiscated Property Rights and Interests of American Nationals*
(estimate based on claims filed)

A. Properties and assets of American concerns and real and personal property of individuals confiscated by Soviet authorities	\$115,141,931.03
B. Bank deposits confiscated	209,825,348.82
C. Debts of Russian Government to private concerns	2,667,281.14
D. Miscellaneous claims	9,057,210.04
Total	\$336,691,771.03

711.61/287%

The Assistant Chief of the Division of Eastern European Affairs
(Packer) to the Special Assistant to the Secretary of State (Bullitt)

[WASHINGTON,] August 31, 1933.

MR. BULLITT: In connection with our conversation of last evening, I am sending you herewith a copy of a memorandum¹² which Mr. Kelley prepared last July at Mr. Payer's¹³ request, entitled "Problems pertaining to Russian-American Relations which, in the Interest of Friendly Relations between the United States and Russia, should be settled Prior to the Recognition of the Soviet Government." A copy of this memorandum was handed by Mr. Phillips¹⁴ to the President on July 27, 1933.

With respect to the matter of American claims mentioned therein, it is of interest to note that the Department has been urged by committees claiming to represent "a large majority" of the holders of Imperial Russian Government bonds and credit certificates totalling \$75,000,000 not to recognize the Soviet regime unless it recognizes its obligations to pay such bonds and credit certificates. A substantially similar position has been taken by what appears to be an independent group of holders of such securities.

With respect to the intergovernmental debt, the attorneys for the National City Bank of New York, with which some of the funds loaned by this Government were deposited, have written the Department in order to urge that recognition, if it is accorded the Soviet regime, have no retroactive effect, so that the financial transactions of Ambassador Bakhmeteff with the Bank might not be invalidated thereby.

Particular attention is invited to the table of American claims against Russia appended to the attached memorandum.

I am not sending a copy of the attached memorandum to the Secretary as I assume you will bring it to his attention.

E. L. PACKER

¹² *Supra.*

¹³ Harry F. Payer, Assistant Secretary of State, June 13 to November 26, 1933.

¹⁴ William Phillips, Under Secretary of State.

861.01/1968a

The Secretary of State to President Roosevelt

WASHINGTON, September 21, 1933.

MY DEAR MR. PRESIDENT: In connection with the question of the extension of loans by agencies of the United States Government to facilitate Russian purchases in the United States, I would like to bring to your attention the following important considerations:

As you know, recognition of the present regime in Russia has been withheld by the Government of the United States on account of the failure of the Soviet government to carry out certain international obligations which are considered essential to the maintenance of friendly and mutually advantageous relations between the United States and Russia. The Soviet government, for instance, has repudiated Russian obligations held by the United States Government and by American citizens, and has confiscated the property of American citizens invested in Russia. More important still, the present regime in Russia has been unwilling up to this time to discontinue its interference in the internal affairs of the United States. Furthermore, there are a whole series of questions arising out of differences between the economic and social structure of the United States and Russia, especially the existence of a State monopoly of foreign trade in Russia, which require settlement by agreement. I think that there is no question that until these fundamental problems have been settled through agreement in a manner satisfactory to the United States, there will be lacking any sound basis for friendly cooperation between the Governments of Russia and the United States and for the development of mutually beneficial trade and intercourse between the two countries.

At the present moment the Soviet government is very eager to obtain two things from the Government of the United States: namely, credits or loans, and recognition.

With respect to the first, it may be pointed out that the foreign debt situation of the Soviet government presents at the present time great difficulties. The Soviet government, for instance, was unable to meet its obligation which fell due in Germany in February of this year, and the German Government was obliged to come to its financial assistance and arrange a bank credit of approximately \$50,000,000. It is generally believed in German Government circles that the Soviet government will be unable to meet its obligations falling due in Germany next year, and that a similar arrangement will have to be made. At the present moment the German Government, it is understood, is unwilling to increase the amount of Government-guaranteed credits now available to Russia in Germany.

With regard to the second, it is to be noted that recognition by the

United States is greatly desired by the Soviet authorities, since they are apparently convinced that recognition by the United States would be a factor in preventing a Japanese attack on the Maritime Provinces. The Soviet government also appears to believe that recognition by the United States would open the private banking resources of the United States to the Soviet government and facilitate the obtaining of credits in other countries. Finally, there is no question but that the Soviet authorities realize that recognition would strengthen the prestige of the Soviet government not only abroad, but also at home, where it is faced with tremendous difficulties in carrying out its industrial and agricultural programs.

Thus at the moment, the Government of the United States has two powerful weapons which can be used to bring about a favorable settlement of some, if not all, of our outstanding problems with the Soviet government. I am convinced, from the experience of other countries, that, unless we utilize every available means of exerting pressure on the Soviet government in order to obtain a settlement of outstanding problems, there is little likelihood that such problems can be satisfactorily solved. It is evident that if loans of any considerable amount should be extended to the Soviet government except as a part of an agreement involving a satisfactory settlement of such problems, one of our most effective weapons would be taken from our hands,—possibly the most effective,—since the Soviets, it is believed, prefer at the moment credits to recognition.

It would seem, therefore, highly undesirable that any loans should be extended to facilitate purchases by the Soviet government in the United States, except as part and parcel of a general settlement of our relations with Russia.

Faithfully yours,

CORDELL HULL

711.61/287%

*The Chief of the Division of Eastern European Affairs (Kelley)
to the Under Secretary of State (Phillips)*

[WASHINGTON,] September 25, 1933.

MR. PHILLIPS: In connection with the President's proposed message to the head of the Soviet State, I recommend that the Secretary bring to the President's attention, along the lines contained in the letter which it was proposed be sent to the President last week regarding loans and recognition,¹⁵ the desirability of retaining in our hands one of the most effective weapons we have to obtain from the Soviet Government some measure of conciliation in reaching a solution of outstanding problems,—

¹⁵ *Supra.*

namely Government financial assistance, in the form of loans or credits, to facilitate American exports to Russia. It would, I believe, be particularly unfortunate were any arrangement or agreement to be arrived at by our financial agencies which would take from our hands this weapon at the very time when consideration is being given to the question of entering into negotiations with the Soviet authorities for the purpose of reaching a settlement of existing difficulties. Judging from the experience of other countries, there is no doubt that unless we utilize every available means of exerting pressure on the Soviet Government in order to obtain a settlement of outstanding problems, there is little likelihood that such problems can be satisfactorily solved.

It therefore seems essential (1) that any pending discussions looking to our granting financial advances to Russia be held in abeyance until we have ascertained the willingness of the Soviet Government to reach a solution of outstanding problems, or (2) that, if it be deemed desirable to continue such discussions, it be immediately made clear to the Soviet authorities that the conclusion of any definite agreement is conditional upon the reaching of a general settlement of existing difficulties.

ROBERT F. KELLEY

711.61/2891½

The Secretary of State to President Roosevelt ^{15a}

WASHINGTON, October 5, 1933.

MY DEAR MR. PRESIDENT: I requested Judge Walton Moore and William Bullitt each to prepare a memorandum on the more important conditions and understandings that might be considered significant in connection with the development of plans for the recognition of the Russian Government. These two memoranda are attached hereto for whatever the information may be worth.

Faithfully yours,

CORDELL HULL

[Enclosure 1]

Memorandum by the Assistant Secretary of State (Moore)

[WASHINGTON,] October 4, 1933.

MR. SECRETARY: Impressions relative to the recognition of the Russian Government derived from the data furnished me by the Secretary and other data available at this moment:

^{15a} Photostatic copy obtained from the Franklin D. Roosevelt Library, Hyde Park, N. Y.

(1) It seems clear that there should and must be recognition eventually and without undue delay, provided there is assurance that the Russian Government will not directly or indirectly make any effort to affect the political institutions or integrity of the United States and that certain other major matters can be satisfactorily disposed of.

(2) According to the statements contained in Mr. Atherton's communication,^{15b} as illustrated by the experience of Great Britain, Russia is (a) inclined to a more reasonable attitude towards nations that have not accorded the recognition she seeks than towards those that have, and (b) after eagerly seeking and obtaining recognition she becomes more indifferent to her obligations than theretofore.

(3) If what is said in the last paragraph can be assumed as a correct premise, it may be thought best in advance of actual recognition to take the time necessary to explore the entire situation and endeavor to reach a full agreement between the two governments to be embodied in a treaty, pertaining to all or most of the very large number of important questions that sooner or later will call for consideration, e.g. as to the alleged desire of Russia to undermine our system of government; as to the personal, religious and property status and rights of our nationals in Russia and the ports of that country; as to the claims of Americans for the repayment of loans or for damages, and the claims that may be asserted against our Government by the Russian Government in its own behalf or in behalf of its subjects; as to the basis and character in various aspects of the commercial dealings between the two nations, etc., etc.

(4) An act of recognition is not revocable and it is certainly retroactive unless otherwise limited.* Should the President extend recognition without the situation being dealt with in advance as suggested, then for the purpose of eliminating disputable questions as far as possible it might be accompanied by such conditions as may be agreed upon. The general effect of conditions attached to recognition is stated as follows by a leading authority, it being noticed, however, that in cases where such conditions are violated there is really no practical method of enforcing their observance:

"Recognition will, as a rule, be given without any conditions whatever, provided the new State is safely and permanently established. Since, however, the granting of recognition is a matter of policy, and not of law, nothing prevents an old State from making the recognition of a new State dependent upon the latter fulfilling certain conditions. Thus the Powers assembled at the Berlin Congress in 1878 recognised Bulgaria, Montenegro, Serbia, and Roumania under the condition only that these States should not impose any religious disabilities on any of their sub-

^{15b} Ray Atherton, Counselor of Embassy at London. No such communication from him found in Department files.

* *Oetgen vs Central Leather Co.* 246 U. S. 297. [Footnote in the original.]

jects. The meaning of such conditional recognition is not that recognition can be withdrawn in case the condition is not complied with. The nature of the thing makes recognition, if once given, incapable of withdrawal. But conditional recognition, if accepted by the new State, imposes the internationally legal duty upon such State of complying with the condition; failing which a right of intervention is given to the other party for the purpose of making the recognised State comply with the imposed condition." (Oppenheim, *International Law*, page 136, Volume I)

A restricted representation of each country, in the other until otherwise mutually determined, might well be specified and in such manner as to encourage the performance of the conditions accompanying recognition.

(4) [(5)] It would seem that immediate and unconditional recognition would not be of any special moral or material advantage and, on the other hand, might be attended by very widespread adverse criticism

[Enclosure 2]

Memorandum by the Special Assistant to the Secretary of State (Bullitt) ^{15c}

DEAR MR. SECRETARY: Pursuant to our conversation of this afternoon:

Whatever method may be used to enter into negotiations with the Soviet Government, it seems essential that formal recognition should not be accorded except as the final act of an agreement covering a number of questions in dispute. Before recognition and before loans, we shall find the Soviet Government relatively amenable. After recognition or loans, we should find the Soviet Government adamant. Among the chief agreements which, in my opinion, must be reached before recognition are the following:

1. Prohibition of communist propaganda in the United States by the Soviet Government and by the Comintern.

2. Protection of the civil and religious rights of Americans in Russia which are inadequately protected under current Russian practice (e.g. "economic espionage").

3. Agreement by the Soviet Government that the act of recognition shall not be retroactive to the foundation of that government (which is the usual practice), but shall take effect only from the day on which it may be accorded. This is essential to protect both our Government and many citizens and corporations from suits for damages.

By negotiation before recognition, we should also attempt to obtain an agreement in regard to the repayment of the loans of the Government of the United States to the Kerensky Government, a waiver of

^{15c} Filed separately under 711.61/289%.

Russian counter claims based upon our Vladivostock, Archangel and Murmansk expeditions;^{15d} also some sort of provision for the settlement of claims of American nationals and corporations for property, goods and cash seized by the Soviet Government.

There are of course scores of other questions involved in resuming normal relations with Russia. Our position would be strongest, I believe, if all these questions, whether of a legal, economic or financial nature, should be handled as a unit in one global negotiation, the end of which would be signature of the agreements and simultaneous recognition.

Yours very respectfully,

WILLIAM C. BULLITT

[WASHINGTON,] October 4, 1933.

711.61/287a

*President Roosevelt to the President of the Soviet All-Union
Central Executive Committee (Kalinin)*

WASHINGTON, October 10, 1933.

MY DEAR MR. PRESIDENT: Since the beginning of my Administration, I have contemplated the desirability of an effort to end the present abnormal relations between the hundred and twenty-five million people of the United States and the hundred and sixty million people of Russia.

It is most regrettable that these great peoples, between whom a happy tradition of friendship existed for more than a century to their mutual advantage, should now be without a practical method of communicating directly with each other.

The difficulties that have created this anomalous situation are serious but not, in my opinion, insoluble; and difficulties between great nations can be removed only by frank, friendly conversations. If you are of similar mind, I should be glad to receive any representatives you may designate to explore with me personally all questions outstanding between our countries.

Participation in such a discussion would, of course, not commit either nation to any future course of action, but would indicate a sincere desire to reach a satisfactory solution of the problems involved. It is my hope that such conversations might result in good to the people of both our countries.

I am [etc.]

FRANKLIN D. ROOSEVELT

^{15d} For account of these American expeditions, see *Foreign Relations*, 1918, Russia, vol. II, pp. 1 ff.; *ibid.*, 1919, Russia, pp. 195 ff.

711.61/287½

*The President of the Soviet All-Union Central Executive Committee
(Kalinin) to President Roosevelt*¹⁶

Moscow, October 17, 1933.

MY DEAR MR. PRESIDENT: I have received your message of October tenth.

I have always considered most abnormal and regrettable a situation wherein, during the past sixteen years, two great republics—the United States of America and the Union of Soviet Socialist Republics—have lacked the usual methods of communication and have been deprived of the benefits which such communication could give. I am glad to note that you also reached the same conclusion.

There is no doubt that difficulties, present or arising, between two countries, can be solved only when direct relations exist between them; and that, on the other hand, they have no chance for solution in the absence of such relations. I shall take the liberty further to express the opinion that the abnormal situation, to which you correctly refer in your message, has an unfavorable effect not only on the interests of the two states concerned, but also on the general international situation, increasing the element of disquiet, complicating the process of consolidating world peace and encouraging forces tending to disturb that peace.

In accordance with the above, I gladly accept your proposal to send to the United States a representative of the Soviet Government to discuss with you the questions of interest to our countries. The Soviet Government will be represented by Mr. M. M. Litvinov,¹⁷ People's Commissar for Foreign Affairs, who will come to Washington at a time to be mutually agreed upon.

I am [etc.]

MIKHAIL KALININ

711.61/289a : Telegram

The Secretary of State to the Ambassador in Japan (Grew)

WASHINGTON, October 20, 1933—6 p.m.

99. For your information, the President made public this afternoon an exchange of messages between himself and the President of the All Union Executive Committee, Moscow, in consequence of which it is to be expected that the Russian Government will send to Washington

¹⁶ File copy bears the following notation: "Correct. Boris E. Skvirsky." Mr. Skvirsky was Soviet trade representative in the United States.

¹⁷ The forms "Litvinov" and "Litvinoff" were both in common use in the transliteration of this name into English. The latter was the spelling which the Soviet Foreign Commissar himself used as his signature. The two spellings as used in the documents have been retained by the editors.

Litvinoff, Commissar for Foreign Affairs, to discuss questions outstanding between the two countries. In commenting briefly to press correspondents upon this action, the President explained that this step does not constitute recognition.

Text is being sent by naval radio to Peiping for relay to you.

HULL

701.6111/767

*The Russian Financial Attaché (Ughet) to the Chief of the
Division of Eastern European Affairs (Kelley)*

NEW YORK, October 21, 1933.

DEAR MR. KELLEY: The correspondence between the President of the United States and Mr. Kalinin, President of the All Union Central Executive Committee, leads me to believe that conditions may arise in the near future, where no further useful purpose can be served by my continuing to exercise the duties with which I was vested under the exchange of notes between the Russian Ambassador and the Secretary of State of April 28 and 29, 1922.¹⁸

In consequence of this belief, may I not request that my present status be discontinued at the earliest convenience of the Department of State. As to certain matters of a continuing character requiring further attention, I would respectfully suggest that after the date of the discontinuance of my status they be considered as being temporarily taken under the care of the United States Government.

In terminating my official activities, I deem it a paramount duty to express my deep appreciation for the unfailing consideration with which I have been treated at the Department of State. Permit me also to say that if a moral satisfaction has been derived by me during the trying years of my service, it has been due mainly to the cognizance that I have enjoyed the confidence of the Government of the United States.

Very sincerely yours,

S. UGHET

711.61/290 : Telegram

The Ambassador in Japan (Grew) to the Secretary of State

TOKYO, October 23, 1933—noon.

[Received October 23—2:15 a.m.]

163. Department's 99 and 100¹⁹—proposed Soviet conversations. The publication of the exchange of notes between the President and

¹⁸ *Foreign Relations*, 1922, vol. II, pp. 875 and 876.

¹⁹ Latter not printed; it quoted the exchange of letters between President Roosevelt and M. Kalinin.

Kalinin has aroused little comment here. The Minister for Foreign Affairs is quoted in a press interview as follows:

"I understand President Franklin D. Roosevelt of America has invited Mr. Maxim Litvinov, Commissar of Foreign Affairs of the Soviet Union, to Washington. It is doubtful whether the matter will develop into American recognition of the Soviet Union. If those two countries continue in favorable relations for years to come, they will teach a lesson to the world that capitalism and communism can agree. And if that is realized, it will be unnecessary for Japan to fear communism. America's recognition of the Soviet Union is a great question mark in the history of humanity. If there is a man who observes that the possible American-Soviet agreement means pressure on Japan's position in the Far East, he knows nothing of the Far Eastern situation."

The Minister of War is stated to have said that he did not see how Japan was affected, that he considered that the motive was economic, and he supposed that the two nations would have to resume diplomatic relations at some time in any case. This point of view seems to be the general attitude of the Japanese public, which apparently regards the move as only remotely affecting Japan, and which was inevitable in one form or another.

Thus far there is no evidence to indicate that the Japanese believe that the action was in any way directed against Japan, an interpretation which seems to have been placed on the step in Paris and Berlin, according the [to] press reports in the papers this morning.

GREW

711.61/293 : Telegram

The Ambassador in Japan (Grew) to the Secretary of State

TOKYO, October 24, 1933—1 p.m.

[Received October 24—9:30 a.m.]

166. My 163, October 23, noon; and 164, October 23, 2 p.m.²⁰ In casual conversation with Neville²¹ today Kurusu, Chief of the Commercial Bureau of the Foreign Office, said that the Japanese felt that the initiation of negotiations between the United States and Soviet Russia was a natural step and to be expected. One point, however, was occasioning the Foreign Office some anxiety. Hirota²² had been successful to a considerable extent in divorcing foreign relations from the discussions of the army and navy budget. If American recognition of the Soviets were to lead to a belief on the part of the Russians that the United States would support them in their discussions with the Japanese or if the

²⁰ Latter not printed.

²¹ Edwin L. Neville, Counselor of Embassy in Japan.

²² Koki Hirota, Japanese Minister for Foreign Affairs.

Chinese were to believe that the United States would support Russia in the Far East, the Foreign Office felt that it might have its work with the military to do all over again. Thus far the press and public had remained quiet but there were elements in the country which would take advantage of any situation to stir up trouble. A false interpretation might be placed on the reference in the penultimate paragraph of Kalinin's letter to the "element of disquiet complicating the process of consolidating world peace and encouraging forces tending to disturb that peace" which the Chinese and Russians might apply to the Far Eastern situation. Kurusu said that the point of view of the military is that Japan faces a hostile world with possibilities of a combination of the United States, Great Britain, Russia and China against Japan, and that the Foreign Minister had had great trouble in convincing them that there was no likelihood of any such combination. If political discussions should enter publicly into the negotiations between the United States and Soviet Russia, affording grounds or suspicions for the foregoing belief, there might be outbursts which would lead the military to renewed activity nullifying the progress made by Hirota in the recent Cabinet discussions.

I report the foregoing merely as a first-hand indication of the thoughts of the Foreign Office on this general subject.

GREW

711.61/294 : Telegram

The Chargé in Latvia (Cole) to the Secretary of State

RIGA, October 24, 1933—3 p.m.

[Received October 24—2:50 p.m.]

41. *Izvestiya*,²³ October 21st, in a restrained editorial declares the President's message welcome to all desiring peace in both countries; many pacifist experiments, including League of Nations, have failed because of "groups of irresponsible adventurers"; in a number of unnamed countries the influence of "aggressive militarist groups" leading to "adventurous predatory plans" is growing.

"The position of the Soviet Union in regard to the questions interesting both countries is well known" which is assurance disputes will reach prompt satisfactory conclusions; the official newspaper wants to believe official contact first step to closer relations in the interest of peace.

This semi-official statement manifestly clear reference to Japan which, however, is not named originally in the final mention of peace. Trade relations opportunely mentioned. Disputes apparently refer to subversive propaganda, debts and claims.

²³ Official organ of the Central Executive Committee of the Soviet Union.

Pravda, party organ, is triumphant former abnormal relations America's fault and injured the international standing of the United States and its commerce; Soviet Union is a great country of both Europe and Asia which cannot be ignored without injury to oneself; the President's new policy should be unhesitatingly consistent; after referring to the Disarmament Conference collapse, party organ continues verbatim "an end has begun to be put to the London and Washington agreements" and "normal relations between the United States and the Soviet Union would create a correlation of forces with which adventurous groups would have to reckon."

Other newspapers cannot see necessity of negotiating recognition, declare that the United States took the initiative and directly mention American-Japanese rivalry in the Pacific and the Chinese Eastern Railway and that collaboration of the two countries necessary [since?] certain elements in the Far East play with fire.

All emphasize peace element in the President's message which appears to be their method of interpreting it as an offer of support against Japan.

COLE

711.61/292 : Telegram

The Secretary of State to the Chargé in France (Marriner)

WASHINGTON, October 24, 1933—5 p.m.

312. Your 478, October 23, 11 a.m.²⁴ Issue diplomatic visas to Litvinov and members of his party placing visas on Soviet passports without requiring personal appearance of applicants. For your confidential information this government does not consider the issue of diplomatic visas in these cases as a precedent nor does it consider such acts a recognition of the present regime in Russia. Cable when visas issued, name of ship, date and port of arrival and names of persons to whom visas granted.²⁵

HULL

²⁴ Not printed.

²⁵ In telegram No. 487, October 30, 6 p.m., the Chargé in France reported that visas had been issued that day to Litvinov and the following members of his party who were to sail on the *Berengaria*, November 1: Ivan Divilkovsky, Secretary General of the Soviet Foreign Office, and Constantin Oumansky, Director of the Press Bureau of the Soviet Foreign Office (711.61/302).

861.01/1968a

*Memorandum by the Chief of the Division of
Eastern European Affairs (Kelley)*

[WASHINGTON,] October 25, 1933.

RECOMMENDATIONS AND CONSIDERATIONS IN CONNECTION WITH QUESTION
OF RUSSIAN GOVERNMENTAL INDEBTEDNESS TO THE GOVERNMENT OF
THE UNITED STATES

1. It is recommended that the items of \$406,082.30 and \$4,465,465.07 listed by the Treasury Department as part of Russia's indebtedness to the Government of the United States be not presented to the Soviet government for payment.

These items represent obligations received on account of sales in 1919 of relief supplies and surplus war materials to representatives of the Kolchak²⁶ government, which was never recognized as the Government of Russia by the United States.

2. The Soviet government should be required to acknowledge liability on the debt, or, in view of the loss of territory, on an appropriate share of the debt, incurred by the Russian Provisional Government to the Government of the United States.

No principle is more firmly established in international law than the principle that a change in the internal constitution of a State does not affect the public debt of the State, and that a new Government succeeds to the financial obligations contracted by previous Governments.

In this connection it is to be noted that the United States as a great creditor nation and as a country whose citizens are engaged in world-wide financial activities has a profound interest in the maintenance and strengthening of the principle that a new Government is responsible for the financial obligations contracted by the State under preceding Governments.

3. Inasmuch as the Russian debt represents money advanced to Russia by the Government of the United States to aid in the prosecution of the war against Germany, the Russian debt should be treated on the same basis as the debts incurred by other countries under the same circumstances.

4. In arranging a settlement of the Russian debt, consideration should be given to the fact that there is in the United States Russian governmental property, comprising bank deposits and valid claims (excluding the Russian Embassy), to the value, including interest, of ten to twelve million dollars. While this amount may not be large enough to be considered as a possible lump sum settlement of the Russian debt, it might

²⁶ Admiral Alexander V. Kolchak headed a government in Siberia, 1918-20; he was executed early in 1920 after the collapse of his regime.

well be taken in part settlement. There should be obtained at the same time from the Soviet government its formal acceptance of the disposition which has been made in the period from 1917 to date of the property of the Russian Government in the United States at the time of the revolution.

If such an arrangement is not arrived at, it will be necessary to obtain from the Soviet government an understanding (1) not to make a claim to dispose in any way of the funds and other property of the former Imperial and Provisional Russian Governments in the United States pending a settlement of outstanding claims, and (2) not to question in any way the disposition which has been made from 1917 to date of Russian governmental property in the United States.

5. An interesting consideration to be borne in mind is the circumstance that the money loaned by the Government of the United States to the Russian Government was advanced to the Provisional Government of Russia, which was established following the abdication of the Tsar. Almost all, if not all, other indebtedness of the Russian Government to foreign Governments was incurred by the Imperial Russian Government. It has been suggested that the Soviet government could undertake to honor the indebtedness of the Russian Provisional Government without modifying any position it may have taken towards the indebtedness contracted by the Russian Imperial Government.

711.61/333

*The Chief of the Division of Far Eastern Affairs (Hornbeck)
to the Secretary of State*

[WASHINGTON,] October 28, 1933.

MR. SECRETARY: In the three telegrams here attached ²⁷ it is clearly indicated that, on the one hand, in Russia the effort is being made to cultivate the impression that the conversations between the President and Litvinoff will have an important bearing upon matters of Far Eastern policy; and, on the other hand, in Japan there is considerable uneasiness on the assumption that such will be the case.

Inasmuch as the Japanese Minister for Foreign Affairs appears to be endeavoring sincerely to cultivate among his own people friendliness toward and a feeling of confidence with regard to the United States, it is believed that consideration should be given to ways and means, if possible, of reassuring the Japanese, that is of definitely combating the growth of any impression that the forthcoming conversations between American and Russian representatives are in part motivated by and

²⁷ Telegrams Nos. 163, 166, and 41 of October 23 and 24, pp. 796, 797, and 798.

will in part relate to problems in the Far East which have arisen in consequence of Japanese policy and action.

S[TANLEY] K. H[ORNBECK]

711.61/331

*Joint Communiqué by the Secretary of State and the Soviet Commissar for Foreign Affairs (Litvinov), November 8, 1933*²⁸

There was a very friendly private discussion of some outstanding questions involved in the matter of relations between the United States and the Union of Soviet Socialist Republics. The conversation was entirely preliminary and detailed proposals were not discussed. The conversations will be resumed in the office of the Secretary of State this afternoon at four o'clock.²⁹

*Joint Statement by President Roosevelt and the Soviet Commissar for Foreign Affairs (Litvinov), November 10, 1933*³⁰

The President and Mr. Litvinoff reviewed the questions between the two countries which had previously been discussed between the Secretary of State and Mr. Litvinoff.

These conversations with the President and with the State Department will continue in normal course.

711.61/353a

*The Special Assistant to the Secretary of State (Bullitt) to President Roosevelt*³¹

WASHINGTON, November 15, 1933.

MY DEAR MR. PRESIDENT: Litvinov and I continued to argue for two hours on the subject of debts and claims. I finally managed to shake him a bit by telling him that the Johnson Bill,³² forbidding loans to countries in default on their indebtedness to the Government of the

²⁸ Issued by the Department as a press release at 1 p. m., November 8, 1933.

²⁹ A second joint communiqué was issued by the Department at 6 p. m., November 8: "The Secretary of State and Mr. Litvinoff continued their conversations this afternoon in the office of the Secretary of State. The conversations will be resumed at 11 o'clock tomorrow morning in the office of the Secretary of State."

³⁰ Issued by the White House as a press release, November 10; reprinted from Department of State, *Press Releases*, November 11, 1933, p. 263.

³¹ Photostatic copy obtained from the Franklin D. Roosevelt Library, Hyde Park, N. Y.

³² Approved April 13, 1934; 48 Stat. 574.

United States, was certain to be passed in January and that if the Soviet Government should make any absurd offer of settlement such an offer would surely be turned down by Congress and the Soviet Government would be unable to obtain one penny of credit from either the Government or any private corporation or individual in the United States, or their agencies abroad.

I urged Litvinov not to fix the lower figure at \$50,000,000, as his Government would surely insist that that should be accepted as the maximum figure once the sum had been stated. He finally asked, "What sum would you consider might be acceptable to Congress?" and added "You will, of course, say \$150,000,000." I replied, "No, I will say nothing. I cannot predict what Congress will do, but the President can predict very exactly what Congress will do, and you should address that question to him."

Litvinov proposes to ask you that question when you meet at 2 o'clock.

Litvinov added that he would say to you that he had entire confidence in your fair-mindedness, and he was sure that when you looked at the facts about our loan to the Kerensky³³ Government and found that the money had been spent for the most part by Bakhmetieff buying supplies for Kolchack's army, you would agree that the Soviet Government should not be obliged to assume liability for money used by its enemies.

The fact is that two-thirds of this Kerensky loan was telegraphed at once to Kerensky's Government and used fighting the Germans.

Litvinov added that the private claims had been so padded that \$50,000,000 he considered would be a fair settlement of all claims and debts. This is, of course, absurd, and I think you should endeavor forcibly to get him to fix at least \$100,000,000 as the lower limit.

I am delighted that you have appointed Henry Morgenthau³⁴ Acting Secretary of the Treasury, and I suggest that you might invite him to come in at two o'clock, since he will have to handle future negotiations on this matter.

I shall stop at your office at ten minutes before two, in case you should wish to draw up a final plan of campaign.

Yours devotedly,

WILLIAM C. BULLITT

P. S. I think we were a bit too gentle with him this morning. W. C. B.

³³ Alexander F. Kerensky, Minister of Justice in the Russian provisional government, March-May, 1917, Minister of War, May-September, and Prime Minister, July-November, immediately preceding the Bolshevik Revolution of November 1917.

³⁴ Henry Morgenthau, Jr., governor of the Farm Credit Administration, May 27-November 16, 1933; he became Acting and Under Secretary of the Treasury on November 17.

711.61/353½

*Memorandum by President Roosevelt and the Soviet Commissar for
Foreign Affairs (Litvinov)*

WASHINGTON, November 15, 1933—2:45 p.m.

Mr. Litvinov, at a meeting with the President, the Acting Secretary of the Treasury, and Mr. Bullitt, made a "gentleman's agreement" with the President that over and above all claims of the Soviet Government and its nationals against the Government of the United States and its nationals, the Soviet Government will pay to the Government of the United States on account of the Kerensky debt or otherwise a sum to be not less than \$75,000,000 in the form of a percentage above the ordinary rate of interest on a loan to be granted to it by the Government of the United States or its nationals, all other claims of the Government of the United States or its nationals and of the Government of the Union of Soviet Socialist Republics or its nationals to be regarded as eliminated.

The President said that he believed confidently that he could persuade Congress to accept a sum of \$150,000,000, but that he feared that Congress would not accept any smaller sum. Mr. Litvinov then said he could not on his own authority accept any such minimum, as his Government had already stated that it considered this sum excessive.

Mr. Litvinov said that he had entire confidence in the fair-mindedness of the President and felt sure that when the President had looked into the facts he would not feel that a sum greater than \$75,000,000 was justified. So far as he personally was concerned, and without making any commitment, he would be inclined to advise his Government to accept \$100,000,000 if the President should still consider such a sum fair.

Mr. Litvinov agreed to remain in Washington after resumption of relations and to discuss with Mr. Morgenthau and Mr. Bullitt the exact sum between the limits of \$75,000,000 and \$150,000,000 to be paid by the Soviet Government.

M[AXIM] L[ITVINOFF]

F[RANKLIN] D. R[OOSEVELT]

711.61/343a

*President Roosevelt to the Soviet Commissar for Foreign Affairs
(Litvinov)*

WASHINGTON, November 16, 1933.

MY DEAR MR. LITVINOV: I am very happy to inform you that as a result of our conversations the Government of the United States has decided to establish normal diplomatic relations with the Government of the Union of Soviet Socialist Republics and to exchange ambassadors.

I trust that the relations now established between our peoples may forever remain normal and friendly, and that our nations henceforth may cooperate for their mutual benefit and for the preservation of the peace of the world.

I am [etc.]

FRANKLIN D. ROOSEVELT

711.61/343b

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: I am very happy to inform you that the Government of the Union of Soviet Socialist Republics is glad to establish normal diplomatic relations with the Government of the United States and to exchange ambassadors.

I, too, share the hope that the relations now established between our peoples may forever remain normal and friendly, and that our nations henceforth may cooperate for their mutual benefit and for the preservation of the peace of the world.

I am [etc.]

MAXIM LITVINOFF

711.61/343c

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: I have the honor to inform you that coincident with the establishment of diplomatic relations between our two Governments it will be the fixed policy of the Government of the Union of Soviet Socialist Republics:

1. To respect scrupulously the indisputable right of the United States to order its own life within its own jurisdiction in its own way and to refrain from interfering in any manner in the internal affairs of the United States, its territories or possessions.

2. To refrain, and to restrain all persons in government service and all organizations of the Government or under its direct or indirect control, including the organizations in receipt of any financial assistance from it, from any act overt or covert liable in any way whatsoever to injure the tranquillity, prosperity, order, or security of the whole or any part of the United States, its territories or possessions, and in particular, from any act tending to incite or encourage armed intervention, or any agitation or propaganda having as an aim, the violation of the territorial integrity of the United States, its territories or possessions, or the bringing about by force of a change in the political or social order of the whole or any part of the United States, its territories or possessions.

3. Not to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which makes claim to be the Government of, or makes attempt upon the territorial integrity of, the United States, its territories or possessions; not to form, subsidize, support or permit on its territory military organizations or groups having the aim of armed struggle against the United States, its territories or possessions, and to prevent any recruiting on behalf of such organizations and groups.

4. Not to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which has as an aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in, the political or social order of the whole or any part of the United States, its territories or possessions.

I am [etc.]

MAXIM LITVINOFF

711.61/343½

*President Roosevelt to the Soviet Commissar for Foreign Affairs
(Litvinov)*

WASHINGTON, November 16, 1933.

MY DEAR MR. LITVINOV: I am glad to have received the assurance expressed in your note to me of this date that it will be the fixed policy of the Government of the Union of Soviet Socialist Republics:

[Here follows repetition of the four numbered paragraphs in Mr. Litvinov's note printed *supra*.]

It will be the fixed policy of the Executive of the United States within the limits of the powers conferred by the Constitution and the laws of the United States to adhere reciprocally to the engagements above expressed.

I am [etc.]

FRANKLIN D. ROOSEVELT

711.61/34376

A

*President Roosevelt to the Soviet Commissar for Foreign Affairs
(Litvinov)*

WASHINGTON, November 16, 1933.

MY DEAR MR. LITVINOV: As I have told you in our recent conversations, it is my expectation that after the establishment of normal relations between our two countries many Americans will wish to reside temporarily or permanently within the territory of the Union of Soviet Socialist Republics, and I am deeply concerned that they should enjoy in all respects the same freedom of conscience and religious liberty which they enjoy at home.

As you well know, the Government of the United States, since the foundation of the Republic, has always striven to protect its nationals, at home and abroad, in the free exercise of liberty of conscience and religious worship, and from all disability or persecution on account of their religious faith or worship. And I need scarcely point out that the rights enumerated below are those enjoyed in the United States by all citizens and foreign nationals and by American nationals in all the major countries of the world.

The Government of the United States, therefore, will expect that nationals of the United States of America within the territory of the Union of Soviet Socialist Republics will be allowed to conduct without annoyance or molestation of any kind religious services and rites of a ceremonial nature, including baptismal, confirmation, communion, marriage and burial rites, in the English language, or in any other language which is customarily used in the practice of the religious faith to which they belong, in churches, houses, or other buildings appropriate for such service, which they will be given the right and opportunity to lease, erect or maintain in convenient situations.

We will expect that nationals of the United States will have the right to collect from their co-religionists and to receive from abroad voluntary offerings for religious purposes; that they will be entitled without restriction to impart religious instruction to their children, either singly or in groups, or to have such instruction imparted by persons whom they may employ for such purpose; that they will be given and protected in the right to bury their dead according to their religious customs in suitable and convenient places established for that purpose, and given the right and opportunity to lease, lay out, occupy and maintain such burial grounds subject to reasonable sanitary laws and regulations.

We will expect that religious groups or congregations composed of nationals of the United States of America in the territory of the Union of Soviet Socialist Republics will be given the right to have their spiri-

tual needs ministered to by clergymen, priests, rabbis or other ecclesiastical functionaries who are nationals of the United States of America, and that such clergymen, priests, rabbis or other ecclesiastical functionaries will be protected from all disability or persecution and will not be denied entry into the territory of the Soviet Union because of their ecclesiastical status.

I am [etc.]

FRANKLIN D. ROOSEVELT

711.61/343%

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: In reply to your letter of November 16, 1933, I have the honor to inform you that the Government of the Union of Soviet Socialist Republics as a fixed policy accords the nationals of the United States within the territory of the Union of Soviet Socialist Republics the following rights referred to by you:

1. The right to "free exercise of liberty of conscience and religious worship" and protection "from all disability or persecution on account of their religious faith or worship".

This right is supported by the following laws and regulations existing in the various republics of the Union:

Every person may profess any religion or none. All restrictions of rights connected with the profession of any belief whatsoever, or with the non-profession of any belief, are annulled. (Decree of Jan. 23, 1918, art. 3.)

Within the confines of the Soviet Union it is prohibited to issue any local laws or regulations restricting or limiting freedom of conscience, or establishing privileges or preferential rights of any kind based upon the religious profession of any person. (Decree of Jan. 23, 1918, art. 2.)

2. The right to "conduct without annoyance or molestation of any kind religious services and rites of a ceremonial nature".

This right is supported by the following laws:

A free performance of religious rites is guaranteed as long as it does not interfere with public order and is not accompanied by interference with the rights of citizens of the Soviet Union. Local authorities possess the right in such cases to adopt all necessary measures to preserve public order and safety. (Decree of Jan. 23, 1918, art. 5.)

Interference with the performance of religious rites, in so far as they do not endanger public order and are not accompanied by infringements on the rights of others is punishable by compulsory labour for a period up to six months. (Criminal Code, art. 127.)

3. "The right and opportunity to lease, erect or maintain in con-

venient situations" churches, houses or other buildings appropriate for religious purposes.

This right is supported by the following laws and regulations:

Believers belonging to a religious society with the object of making provision for their requirements in the matter of religion may lease under contract, free of charge, from the Sub-District or District Executive Committee or from the Town Soviet, special buildings for the purpose of worship and objects intended exclusively for the purposes of their cult. (Decree of April 8, 1929, art. 10.)

Furthermore, believers who have formed a religious society or a group of believers may use for religious meetings other buildings which have been placed at their disposal on lease by private persons or by local Soviets and Executive Committees. All rules established for houses of worship are applicable to these buildings. Contracts for the use of such buildings shall be concluded by individual believers who will be held responsible for their execution. In addition, these buildings must comply with the sanitary and technical building regulations. (Decree of April 8, 1929, art. 10.)

The place of worship and religious property shall be handed over for the use of believers forming a religious society under a contract concluded in the name of the competent District Executive Committee or Town Soviet by the competent administrative department or branch, or directly by the Sub-District Executive Committee. (Decree of April 8, 1929, art. 15.)

The construction of new places of worship may take place at the desire of religious societies provided that the usual technical building regulations and the special regulations laid down by the People's Commissariat for Internal Affairs are observed. (Decree of April 8, 1929, art. 45.)

4. "The right to collect from their co-religionists . . .³⁵ voluntary offerings for religious purposes."

This right is supported by the following law:

Members of groups of believers and religious societies may raise subscriptions among themselves and collect voluntary offerings, both in the place of worship itself and outside it, but only amongst the members of the religious association concerned and only for purposes connected with the upkeep of the place of worship and the religious property, for the engagement of ministers of religion and for the expenses of their executive body. Any form of forced contribution in aid of religious associations is punishable under the Criminal Code. (Decree of April 8, 1929, art. 54.)

5. Right to "impart religious instruction to their children either singly or in groups or to have such instruction imparted by persons whom they may employ for such purpose."

This right is supported by the following law:

The school is separated from the Church. Instruction in religious doctrines is not permitted in any governmental and common schools, nor in private teaching institutions where general subjects are

³⁵ Omission indicated in the original.

taught. Persons may give or receive religious instruction in a private manner. (Decree of Jan. 23, 1918, art. 9.)

Furthermore, the Soviet Government is prepared to include in a consular convention to be negotiated immediately following the establishment of relations between our two countries provisions in which nationals of the United States shall be granted rights with reference to freedom of conscience and the free exercise of religion which shall not be less favorable than those enjoyed in the Union of Soviet Socialist Republics by nationals of the nation most favored in this respect. In this connection, I have the honor to call to your attention Article 9 of the Treaty between Germany and the Union of Soviet Socialist Republics, signed at Moscow October 12, 1925, which reads as follows:

Nationals of each of the Contracting Parties . . . ³⁶ shall be entitled to hold religious services in churches, houses or other buildings, rented, according to the laws of the country, in their national language or in any other language which is customary in their religion. They shall be entitled to bury their dead in accordance with their religious practice in burial-grounds established and maintained by them with the approval of the competent authorities, so long as they comply with the police regulations of the other Party in respect of buildings and public health.

Furthermore, I desire to state that the rights specified in the above paragraphs will be granted to American nationals immediately upon the establishment of relations between our two countries.

Finally, I have the honor to inform you that the Government of the Union of Soviet Socialist Republics, while reserving to itself the right of refusing visas to Americans desiring to enter the Union of Soviet Socialist Republics on personal grounds, does not intend to base such refusals on the fact of such persons having an ecclesiastical status.

I am [etc.]

MAXIM LITVINOFF

711.61/343½

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Soviet Government is prepared to include in a consular convention to be negotiated immediately following the establishment of relations between our two countries provisions in which nationals of the United States shall be granted rights with reference to legal protection which shall not be less favorable than those enjoyed in the Union of Soviet Socialist Republics by nationals of the nation most

³⁶ Omission indicated in the original letter.

avored in this respect. Furthermore, I desire to state that such rights will be granted to American nationals immediately upon the establishment of relations between our two countries.

In this connection I have the honor to call to your attention Article 11 and the Protocol to Article 11, of the Agreement Concerning Conditions of Residence and Business and Legal Protection in General concluded between Germany and the Union of Soviet Socialist Republics on October 12, 1925.

ARTICLE 11

Each of the Contracting Parties undertakes to adopt the necessary measures to inform the consul of the other Party as soon as possible whenever a national of the country which he represents is arrested in his district.

The same procedure shall apply if a prisoner is transferred from one place of detention to another.

FINAL PROTOCOL

Ad Article 11.

1. The consul shall be notified either by a communication from the person arrested or by the authorities themselves direct. Such communications shall be made within a period not exceeding seven times twenty-four hours, and in large towns, including capitals of districts, within a period not exceeding three times twenty-four hours.

2. In places of detention of all kinds, requests made by consular representatives to visit nationals of their country under arrest, or to have them visited by their representatives, shall be granted without delay. The consular representative shall not be entitled to require officials of the courts or prisons to withdraw during his interview with the person under arrest.

I am [etc.]

MAXIM LITVINOFF

711.61/343½

*President Roosevelt to the Soviet Commissar for Foreign Affairs
(Litvinov)*

WASHINGTON, November 16, 1933.

MY DEAR MR. LITVINOV: I thank you for your letter of November 16, 1933, informing me that the Soviet Government is prepared to grant to nationals of the United States rights with reference to legal protection not less favorable than those enjoyed in the Union of Soviet Socialist Republics by nationals of the nation most favored in this respect. I have noted the provisions of the treaty and protocol concluded between Germany and the Union of Soviet Socialist Republics on October 12, 1925.

I am glad that nationals of the United States will enjoy the protection afforded by these instruments immediately upon the establishment of

relations between our countries and I am fully prepared to negotiate a consular convention covering these subjects as soon as practicable. Let me add that American diplomatic and consular officers in the Soviet Union will be zealous in guarding the rights of American nationals, particularly the right to a fair, public and speedy trial and the right to be represented by counsel of their choice. We shall expect that the nearest American diplomatic or consular officer shall be notified immediately of any arrest or detention of an American national, and that he shall promptly be afforded the opportunity to communicate and converse with such national.

I am [etc.]

FRANKLIN D. ROOSEVELT

711.61/343%

Statement by the Soviet Commissar for Foreign Affairs (Litvinov)

[WASHINGTON, November 16, 1933.]

In reply to a question of the President in regard to prosecutions for economic espionage, Mr. Litvinov gave the following explanation:

"The widespread opinion that the dissemination of economic information from the Union of Soviet Socialist Republics is allowed only in so far as this information has been published in newspapers or magazines, is erroneous. The right to obtain economic information is limited in the Union of Soviet Socialist Republics, as in other countries, only in the case of business and production secrets and in the case of the employment of forbidden methods (bribery, theft, fraud, etc.) to obtain such information. The category of business and production secrets naturally includes the official economic plans, in so far as they have not been made public, but not individual reports concerning the production conditions and the general conditions of individual enterprises.

"The Union of Soviet Socialist Republics has also no reason to complicate or hinder the critical examination of its economic organization. It naturally follows from this that every one has the right to talk about economic matters or to receive information about such matters in the Union, in so far as the information for which he has asked or which has been imparted to him is not such as may not, on the basis of special regulations issued by responsible officials or by the appropriate state enterprises, be made known to outsiders. (This principle applies primarily to information concerning economic trends and tendencies.)"

711.61/343%

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist

Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claim with respect to:

- (a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,
- (b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am [etc.]

MAXIM LITVINOFF

711.61/34396

*President Roosevelt to the Soviet Commissar for Foreign Affairs
(Litvinov)*

WASHINGTON, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

[Here follows quotation of statement made by Mr. Litvinov in his note printed *supra*.]

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics,

and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am [etc.]

FRANKLIN D. ROOSEVELT

711.61/343%

*The Soviet Commissar for Foreign Affairs (Litvinov) to
President Roosevelt*

WASHINGTON, November 16, 1933.

MY DEAR MR. PRESIDENT: I have the honor to inform you that, following our conversations and following my examination of certain documents of the years 1918 to 1921 relating to the attitude of the American Government toward the expedition into Siberia, the operations there of foreign military forces and the inviolability of the territory of the Union of Soviet Socialist Republics, the Government of the Union of Soviet Socialist Republics agrees that it will waive any and all claims of whatsoever character arising out of activities of military forces of the United States in Siberia, or assistance to military forces in Siberia subsequent to January 1, 1918, and that such claims shall be regarded as finally settled and disposed of by this agreement.

I am [etc.]

MAXIM LITVINOFF

711.61/360

*Joint Statement by President Roosevelt and the Soviet Commissar for
Foreign Affairs (Litvinov), November 16, 1933*³⁷

In addition to the agreements which we have signed today, there has taken place an exchange of views with regard to methods of settling all outstanding questions of indebtedness and claims that permits us to hope for a speedy and satisfactory solution of these questions which both our Governments desire to have out of the way as soon as possible.

Mr. Litvinov will remain in Washington for several days for further discussions.

701.6111/729a

The Acting Secretary of State to Mr. Serge Ughet

WASHINGTON, November 16, 1933.

MY DEAR MR. UGHET: I desire to refer to your letter of October 21, 1933, in which you expressed the belief that conditions would arise in the near future when no further useful purpose would be served by your

³⁷ Issued by the White House as a press release, November 17, 1933.

continuing to exercise the duties with which you were charged under the exchange of notes between the Russian Ambassador and the Secretary of State of April 28-29, 1922,³⁸ and requested that your present status be discontinued at the earliest convenience of the Department of State.

In view of the recognition of the Union of Soviet Socialist Republics by the Government of the United States, I have to inform you that upon this date the Government of the United States ceases to recognize you as Russian Financial Attaché.

The Department is deeply appreciative of the able manner in which you have discharged the duties which devolved upon you under the exchange of notes referred to above and of the friendly spirit with which you have for so many years cooperated with this Government.

I should like to take the occasion to extend to you personally my cordial good wishes for your future happiness and success.

Very sincerely yours,

WILLIAM PHILLIPS

701.6111/730

The Chief of the Division of Eastern European Affairs (Kelley) to the Acting Secretary of State

[WASHINGTON,] November 17, 1933.

MR. PHILLIPS: Mr. Boris Bakhmeteff was received in July 1917 as Ambassador of the Provisional Government of Russia by this Government, which continued to recognize him in that capacity until June 30, 1922. After that date, when Mr. Bakhmeteff retired as Ambassador, the custody of the property of the State of Russia in this country, including the Russian Embassy building, was considered to vest in Mr. Serge Ughet, Russian Financial Attaché, whose diplomatic status with this Government was not altered. Several months ago Mr. Ughet notified the Department that he was unable longer to continue the upkeep of the Embassy building and requested the Department to assume custody thereof. Shortly thereafter the Department took over custody of the building.

Yesterday, some of the records which had been stored in the Embassy building were moved to a more convenient place where they could be consulted by representatives of the Soviet Government and officials of the Government of the United States in connection with discussions which are now taking place between the two Governments. The transfer of the records in question was made with the full knowledge of Mr. Litvinov.

R[OBERT] F. K[ELLEY]

³⁸ *Foreign Relations*, 1922, vol. II, pp. 875-877.

702.6111/232 : Telegram

*The Acting Secretary of State to the Russian Consul at Boston (Conry)*³⁹

WASHINGTON, November 17, 1933.

In view of the recognition of the Union of Soviet Socialist Republics by the Government of the United States, you are informed that the exequatur issued on September 20, 1912, recognizing you as Consul of Russia at Boston, is revoked, effective as of November 16, 1933, and that consequently your status as Russian Consul is considered terminated as of that date.

WILLIAM PHILLIPS

711.61/365a : Circular telegram

The Acting Secretary of State to All Diplomatic Missions Abroad

WASHINGTON, November 17, 1933—4 p.m.

Following an exchange of communications between the President and the Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, covering outstanding questions in the relations between the United States and the Soviet Union and the arrival at an understanding with respect to methods of settling the question of debts and claims, the President communicated to Mr. Litvinov in a note dated November 16, 1933, the decision of the Government of the United States to establish diplomatic relations with the Soviet Union.

In view of the recognition thus accorded by the Government of the United States to the Union of Soviet Socialist Republics, you should enter into cordial official and social relations with your Soviet colleague in accordance with the established practice of the post at which you are stationed.

Soviet passports should be treated henceforth as passports of other recognized Governments.

Inform Consuls.

PHILLIPS

³⁹ The same telegram, *mutatis mutandis*, was sent to the Russian Consuls General at Chicago and Seattle (702.6111/231, 233). An acknowledgment, dated November 18 (702.6111/234), was received from Mr. Volkoff, Russian Consul General at Chicago.

711.61/357 : Telegram

*The Secretary of State*⁴⁰ to the Acting Secretary of State

S.S. "AMERICAN LEGION," November 18, 1933—1 a.m.

[Received 3:43 a.m.]

5. Your number 8, November 17, noon.⁴¹ I have just issued the following statement to the correspondents aboard ship:

"I am gratified to learn that the peoples of the United States and Russia, after a frank exchange of views at Washington, have resumed normal relations and that the preliminary basis agreed upon is substantially that indicated before I left Washington. The badly confused world situation will be improved by this natural and timely step which is proof of the marked progress possible in all international dealings when there exists such splendid initiative as that displayed by the President and the mutual disposition and will to approach serious world problems in a friendly and fearless spirit."

HULL

811.841 Russia/50

The Acting Secretary of State to the Soviet Chargé (Skvirsky)

WASHINGTON, November 20, 1933.

SIR: Referring to your recent conversations with the Chief of the Division of Eastern European Affairs with regard to the question of the removal of the discriminating tonnage duties now imposed on American vessels in ports of the Union of Soviet Socialist Republics and on vessels of the Soviet Union in American ports, I am enclosing for your information copies of proclamations issued by the President of the United States of America discontinuing discriminating tonnage duties and imposts in respect to Finnish, German, and Hungarian vessels and the produce, manufactures, and merchandise imported in such vessels.⁴²

The Department of State will recommend to the President the issue of a similar proclamation suspending and discontinuing discriminating tonnage duties and imposts within the United States in respect to vessels of the Soviet Union or the produce, manufactures, or merchandise imported therein upon receiving satisfactory proof that no discriminating duties of tonnage or imposts are levied in the waters of the Soviet Union on American vessels or produce, manufactures, or merchandise imported therein. The Department would consider as satisfactory proof of the abolition of the discriminating tonnage duties now levied on American

⁴⁰ En route to Montevideo to attend the Seventh International Conference of American States.

⁴¹ Not printed.

⁴² These proclamations were dated February 19, 1926; March 22, 1922; and January 15, 1923. See, respectively, 44 Stat. (pt. 3) 2601; 42 Stat. (pt. 2) 2267 and 2293

vessels in ports of the Soviet Union the communication to this Government of orders or regulations issued by your Government discontinuing the levy of discriminating tonnage duties on American vessels in the waters of the Soviet Union.

I may add that the suspension of the discriminating tonnage duties and imposts in respect to Soviet vessels and the cargoes imported therein will be made effective from the date of the receipt of satisfactory proof that discriminating tonnage duties and imposts are not imposed by the Soviet Union on American vessels, or upon the produce, manufactures, or merchandise imported therein from the United States or from any foreign country.

Accept [etc.]

WILLIAM PHILLIPS

811.841 Russia/51

The Soviet Chargé (Skvirsky) to the Acting Secretary of State

[WASHINGTON,] November 21, 1933.

SIR: Referring to your note of November 20, 1933, I wish to inform you that in accordance with the Soviet Statute on Port Duties of February 19, 1926, there are two categories of tonnage duties in ports of the U.S.S.R.—ordinary and preferential. The preferential duties are levied on ships of countries having special agreements with the U.S.S.R. The People's Commissariat for Water Transport, by agreement with the People's Commissariat for Foreign Affairs and the People's Commissariat for Foreign Trade, may apply the preferential rate to countries having normal diplomatic relations with the U.S.S.R. In accordance with this statute the People's Commissariat for Water Transport has issued Order No. 427, effective this day, November 21, 1933, which reads as follows:

"On the basis of Article 2 of the Statute on Port Duties, a tonnage duty of 10 kopeks per registered ton of net capacity is established, on a reciprocal basis, for vessels flying the flag of the United States of America."

This duty of 10 kopeks constitutes the preferential rate. Thus beginning November 21, 1933, the vessels flying the flag of the United States of America have been accorded the preferential rate of tonnage duty. It may be added that no discriminating duties are levied in ports of the Soviet Union on produce, manufactures or merchandise imported in American vessels.⁴³

Accept [etc.]

B. SKVIRSKY

⁴³ The Department, in its reply of January 29, 1934, informed the Soviet Ambassador of the reciprocal proclamation signed January 16, 1934, effective as of November 21, 1933 (811.841 Russia/59); for text of proclamation, see 48 Stat. (pt. 2) 1729.

711.61/377a : Telegram

The Acting Secretary of State to the Secretary of State

WASHINGTON, November 22, 1933—noon.

12. . . .

Litvinov is planning to sail from New York on Saturday. I am giving out a statement referring to debts and claims to the effect that, since the exchange of notes on November 16th, further discussions have taken place, but owing to intricacy of questions it has been impossible to reach definite conclusions before Litvinov's departure; discussions will be continued by responsible officers of both governments; conversations to date disclose a desire on both sides to reach a speedy solution of the remaining questions.

PHILLIPS

711.61/378½

The Soviet Commissar for Foreign Affairs (Litvinov) to President Roosevelt

WASHINGTON, November 22, 1933.

MY DEAR MR. PRESIDENT: On leaving the United States I feel it a great pleasure respectfully to convey to you my feelings of high esteem as well as gratitude for the many tokens of attention and friendship you have been good enough to show me during my stay in Washington.

I also wish hereby to thank the whole Executive and its various organs for their courtesies and cares.

I avail myself of this opportunity to express once more my firm conviction that the official linking of our two countries by the exchange of notes between you, Mr. President, and myself will be of great benefit to our two countries and will also be conducive to the strengthening and preservation of peace between nations toward which our countries are sincerely striving. I believe that their joint efforts will add a creative factor in international affairs which will be beneficial to mankind.

Believe me to be, my dear Mr. President, with the best wishes for the well being of yourself, your family and of your great country,

Yours very sincerely,

MAXIM LITVINOFF

711.61/406

Extract From a Radio Address on November 22 by the Assistant Secretary of State (Moore) ⁴⁴

The negotiations were carried on under the supervision of Secretary Hull before his departure for South America and after that under the

⁴⁴ Complete text of the address is printed in Department of State, *Press Releases*, November 25, 1933, p. 285.

supervision of Acting Secretary Phillips. There were three days of conference between officials of the State Department and Mr. Litvinoff and there were vastly more important and pivotal conversations between Mr. Litvinoff and President Roosevelt at The White House. There were no stenographers present and no reports made and thus, so far as the conferences are concerned, there will be a bare outline and not a full picture exposed to the eye of the future historian. But after all, to repeat the legend on the coat of arms of the Washington family, "It is the result that proves the work". Within less than twenty-four hours after the President had accorded recognition the result of the work which had been devoted to a subject of great magnitude was announced to the public at The White House on the afternoon of November 17th. The announcement was made by the President and, before the sun sank behind the Blue Ridge Mountains West of this City there had been communicated to the American public the final texts of the agreements obtained by the President in the form of exchange of notes.

711.61/378½

*President Roosevelt to the Soviet Commissar for Foreign Affairs
(Litvinov)*

WARM SPRINGS, GA., November 23, 1933.

MY DEAR MR. LITVINOV: I thank you for your most courteous letter of November 22nd, 1933. It has been a great personal pleasure to me to meet you and I trust that some day I shall again have the pleasure of welcoming you in America. On your return to your country I hope that you will convey to President Kalinin my greetings and best wishes.

I am profoundly gratified that our conversations should have resulted in the restoration of normal relations between our peoples and I trust that these relations will grow closer and more intimate with each passing year. The cooperation of our governments in the great work of preserving peace should be the corner stone of an enduring friendship.

I am sorry that owing to my absence from Washington I am unable in person to say good-bye to you and to wish you a safe and pleasant journey; but I assure you that you carry with you my warmest personal regards.

Yours very sincerely,

FRANKLIN D. ROOSEVELT

711.61/416

The Chargé in Latvia (Cole) to the Acting Secretary of State

No. 1716

RIGA, November 23, 1933.

[Received December 5.]

SIR: I have the honor to enclose a translation in full⁴⁵ of the leading editorial in the Moscow *Izvestiya*, organ of the Central Executive Committee of the Union of the Soviet Socialist Republics, No. 282, of November 20, 1933, concerning the recognition of the Union by the United States. This editorial comment appeared somewhat later than might have been expected. The recognition, it is understood, was definitely settled in Washington, just before midnight on Thursday the 16th of November, which was already the early morning of Friday the 17th in Moscow. Consequently the first Moscow papers to carry the news were those of Saturday the 18th. The *Izvestiya* did not appear on Sunday the 19th, and consequently the Monday newspaper was the first in which the recognition could be commented upon after Saturday. The comment of the *Pravda* and other Soviet organs will be sent in a later despatch.⁴⁵

The editorial is entitled, "An Act of the Greatest International Importance," and opens with a statement to that effect. The exchange of letters between the President and Mr. Litvinov closes a long period in which the Soviet Union has fought for normal diplomatic relations with the capitalist world surrounding it. The United States, the greatest capitalist power in the world, has at last been "compelled" to establish normal diplomatic relations. Despite the differences in principle between the social structure of the U.S.S.R. and that in capitalist countries there were fewer contradictions between the United States and the U.S.S.R. than in other capitalist powers. "Precisely because the United States is the greatest capitalist power it has emphasized most sharply the differences between the two social systems and attempted to act as the representative of capitalist interests in general. It was helped in this by its territorial vastness and its considerable relative importance in the world, all of which enabled it to nurse the hope that it could manage to get along without the establishment of normal relations with the U.S.S.R." This reinforced its belief that "it did not need to cooperate with the U.S.S.R. and that the lack of normal relations with it could not cause any serious injury to this great trans-Atlantic power." The European nations needed the Soviet Union and its markets. "The European powers came into contact daily with us in deciding European and Near Eastern questions." They could not get along without normal diplomatic relations. The ideas of the leaders of American capitalism that they could carry on a policy based on a refusal to maintain normal

⁴⁵ Not printed.

diplomatic relations with the U.S.S.R. were "purely imaginary." The economic crisis has so shaken the whole world that not even the strongest capitalist power can solve its economic problems in isolation. The extraordinary growth of the productive powers of the U.S.S.R. has "compelled" even the most stubborn representatives of capitalism to wonder whether they could get along without economic relations with such a great and growing economic power as the Land of the Soviets. The crisis in the United States has created a wide and deep mental ferment in that country. Great interest in the "Soviet experiment," attempts to introduce planned economy, and to regulate the contradictions of monopolistic capital now going on in the United States, have all been a factor in "that complex which has compelled the White House to remove the juridical barrier between the United States and the U.S.S.R."

In his first press interview Mr. Litvinov correctly pointed out that non-recognition of the U.S.S.R. did not destroy the fact that very close economic, cultural, and political connections have already been established between the United States and the U.S.S.R. "Similarly, the expectation that the United States could avoid contact with the U.S.S.R. in the sphere of political relationships has likewise turned out to be an illusion." Referring to the "Conference on Disarmament," the editorial states that "Naval and land armaments are bound up with each other in the most intimate manner. The problem of European debts due to the United States is bound up with the question of armaments. And that question cannot be settled without the U.S.S.R. The United States had to cooperate at the Disarmament Conferences with the Soviet Union, which it did not recognize."

The editorial then states that "the U.S.S.R. is not only a great European, but also a great Asiatic power." As a Pacific power, the United States is a partner [with the U.S.S.R.]⁴⁷ in all Asiatic questions and is interested in maintaining peace in Asia. "The United States could not continue its former policy of a refusal to establish normal relations with the U.S.S.R. without causing the greatest injury to itself and to the cause of peace."

Recognition, the editorial continues, is thus an act of "greatest historical importance" and is the end of the struggle of the capitalist world to ignore the fact that the world at present consists of two systems, the capitalist and the socialist, and that the socialist system is on a legal equality with the capitalist.

A legal basis for economic relations has been established and for the further development of these relations. A diplomatic instrument has also been established for exchange of opinions, for co-ordinated action in all political questions in which both countries are interested. An under-

⁴⁷ Brackets appear in the original.

standing of mutual interests was the stimulus which prompted the American Government to overcome not only the traditional objections to recognition, but also difficulties arising out of a certain number of unsettled questions.

"The decision of the President of the United States, Franklin Roosevelt, is by no means a White House improvisation. It has been the result of the development of relations between the two countries and of that long drawn out struggle which the progressive elements of the American *bourgeoisie* had been carrying on for the recognition of the U.S.S.R., not to speak at all of those sections of the American people who sympathize with us in principle." Soviet public opinion strove in every manner to come closer to the United States. This arose from the Soviet struggle to maintain peace. The establishment of normal diplomatic relations is "the greatest victory of our peace policy." Soviet public opinion expects business relations between the two countries to increase. American "efficiency" according to Stalin ⁴⁸ in 1924, is an antidote to revolutionary inconstancy and fantastic inventiveness. Stalin, however, pointed out the danger of American efficiency degenerating into unprincipled money-making, and advocated that American efficiency should be united with the Russian revolutionary enthusiasm.

The President and Mr. Litvinov have accomplished a work which will undoubtedly strengthen peace and may decide more than one problem which has become impossible to postpone. Mutual relations between the two countries will develop on the basis of mutual respect and without interference by either country in the affairs of the other and on the basis of independent policy of both countries. There is one good side to the fact that the struggle for normal diplomatic relations lasted so long: "It has taught American public opinion to understand that it is not a question of the United States 'helping' the U.S.S.R. but of mutual benefit for two equal parties who have many interests in common and who, notwithstanding the different social systems, can cooperate with each other."

The editorial thus turns on two principal ideas and one subsidiary. First, the growth of the Union's economic and political importance "compelled" the United States to recognize it. This has as a corollary the statement that recognition does not indicate that the United States is extending a helping hand to the Union but that two equal partners will cooperate. Second, the idea of the importance of recognition in regard to Far Eastern affairs is mentioned, although only in passing. Emphasis of this point would seem to have been almost studiously avoided although a hint of what may have been in the writer's mind concerning these matters is to be found in the statement that recognition

⁴⁸ Josef V. Stalin, Secretary General of the Central Committee of the Soviet All-Union Communist Party.

will assist in the settlement of "more than one problem that can no longer be postponed."

Respectfully yours,

FELIX COLE

702.6111/236

*The Russian Consulate General at New York to the
Acting Secretary of State*

NEW YORK, November 25, 1933

SIR: The Russian Consulate General at New York, which has enjoyed full recognition from the Department of State in the past, respectfully requests an official ruling as to its present status.

The work of the consulate has been the issuing of passports, birth certificates and similar official documents, and has been carried on by the undersigned, as Secretary, and the other members of the staff since July 19, 1929; at which time the Consul General, M. Oustinoff, notified the Department of State of his departure for Europe, and his appointment of the present staff, which notification was acknowledged in your letter of August 14, 1929 (CC 702.6111/213 [214]).⁴⁹

Will you kindly advise if this work shall be continued by this Consulate until such a time as consular treaties are concluded between the United States of America and the Union of Soviet Socialist Republics, and a Soviet Consulate established in New York, or shall this Consulate cease functioning immediately.

Awaiting your decision in this matter [etc.]

For the Russian Consulate General:

A. R. FELIX
Secretary

701.6111/740

Memorandum by the Acting Secretary of State

[WASHINGTON,] November 29, 1933.

Mr. Skvirsky, the Soviet Chargé, raised an exceedingly interesting question. He said that his Government would like to appoint a trade commissioner to reside in New York, that he would be appointed to the Embassy and, therefore, would have diplomatic status. I replied that I could not give him an immediate answer inasmuch as this was a matter that would require some consideration. I explained that various countries had asked to have commercial representatives in New York given diplomatic status and the Department had declined to do so and

⁴⁹ Not printed.

that, therefore, to make an exception in favor of the Soviet Government might be embarrassing. Skvirsky argued the point by saying that, inasmuch as trade matters were wholly under the control of the Soviet Government, the Russian case was a proper exception. My recollection is that Japan has refused to give the Soviet Trade Commissioner diplomatic rank, but that many other countries have been forced to do so. It is a matter on which I shall have to consult the President.

W[ILLIAM] P[HILLIPS]

800.51W89 U.S.S.R./16 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, December 8, 1933—4 p.m.

Please give Bullitt⁵⁰ following message from Moore⁵¹ and keep no copy for Embassy files:

"It would be helpful to our work if you could ascertain whether Soviet obligations falling due in Germany are payable in marks or in other foreign currency and what types of paper can be utilized by the Soviet Government without German consent in meeting these obligations. It is suggested that a discussion with the Soviet trade representative in Berlin upon your return from Moscow might yield some information which would be of assistance.

For your information Field⁵² has presented the following propositions with regard to the sale of the remaining \$2,200,000 of the Lee Higginson credit held by the Bank of Manhattan Company. He believes that the other holders of the \$50,000,000 held by large banks in the East would agree to these terms. First proposal is direct purchase with gold of participation certificates at 80 (last recorded sale was at 67). A thousand ounces of gold would purchase \$41,250 in participation certificates which would yield 173,250 Reichsmarks, whereas the same amount of gold if used directly to purchase marks in Germany would yield only 86,594. Second proposal involves the sale at 90 of participation certificates for Soviet obligations payable in 2½ years with interest at 5 percent and amortization in semiannual payments. Third proposal is sale at par against five year Soviet obligations on similar terms. Field stated that in the case of the second and third proposals the banks would desire to have Soviet obligations secured either by gold or by goods of some sort and believes banks would be unwilling to accept longer than five year obligations. Field also stated that similar arrangements might be worked out for German industrial credits of which about \$100,000,000 are now outstanding in the United States.

We feel that Field's proposals represent only starting point for subsequent bargaining. However, they are not encouraging from point of

⁵⁰ William Christian Bullitt, appointed Ambassador to the Soviet Union November 17, 1933; en route to his post.

⁵¹ R. Walton Moore, Assistant Secretary of State.

⁵² Franklin Field, vice president of the Bank of Manhattan Company, New York City.

view of long term operations. We are therefore considering possibility of setting up financial institution with combined public and private capital which could purchase American owned German obligations in the open market and accept long term Soviet obligations therefor.

Hancock⁵³ of Lehman Brothers is looking into various possibilities particularly the question of the utilization of short term debts covered by the standstill agreement.⁵⁴ An expert of the Federal Trade Commission is also conducting an investigation to ascertain whether we could make use of coupons of German dollar bonds. Approximately \$37,000,000 remain unpaid at the present time and \$75,000,000 become due next year. We are also looking into the possibility of utilizing the obligations of the German Government to the Government of the United States, \$30,000,000 of which fall due early next year, in the event that the German Government should be unwilling or unable to pay them."

PHILLIPS

702.6111/236

The Acting Secretary of State to Mr. A. R. Feil

WASHINGTON, December 12, 1933.

SIR: In reply to your letter of November 25, 1933, requesting an official ruling with respect to the present status of the former Russian Consulate General at New York, you are advised that on November 17, 1933, the Department informed by telegraph the Russian Consuls General and Consuls recognized by this Government that in view of the recognition of the Union of Soviet Socialist Republics by the Government of the United States, their exequaturs had been revoked effective as of November 16, 1933, and that consequently their status as Russian consular officials was considered as terminated on that date.

Such a telegram was not sent to Mr. Oustinoff, formerly Russian Consul General at New York, who has been abroad since July 1929, since he had already been dropped earlier in the present year by the Department from the list of foreign consular officers recognized by this Government, following the receipt of information to the effect that he was not expected to return to the United States in the near future.

In view of the foregoing and of the fact that this Government has recognized the Government of the Union of Soviet Socialist Republics, your office should not hold itself out to be a Russian Consulate General and should not undertake to perform consular functions.

Very truly yours,

For the Acting Secretary of State:

R. WALTON MOORE

Assistant Secretary

⁵³ John M. Hancock, partner, Lehman Brothers, New York City.

⁵⁴ See section entitled "Postponement of German payments under the German-American debt agreement of June 23, 1930," *Foreign Relations*, 1932, vol. II, pp. 323 ff.

123 Bullitt, William C/31

*Remarks of the American Ambassador in the Soviet Union (Bullitt) Upon the Presentation of His Letters of Credence to the President of the Soviet All-Union Central Executive Committee (Kalinin), at Moscow, December 13, 1933*⁵⁵

MR. PRESIDENT: I have the honor to place in your hands the letters which accredit me as the first Ambassador of the United States of America to the Government of the Union of Soviet Socialist Republics. I am charged by the President at the same time to convey to you his cordial and friendly greetings as well as his earnest hope for the welfare and prosperity of your great country.

I do not come to your country as a stranger. My profound interest in it has existed for many years and I come with a deep conviction of the importance and historic significance of my mission.

That mission, Mr. President, is to create not merely normal but genuinely friendly relations between our two great peoples who for so many years were bound to each other by a tradition of friendship. The firm establishment of world peace is the deep desire of both our peoples and the close collaboration of our Governments in the task of preserving peace will draw our peoples together. Bound by the tie of their mutual desire for peace, our peoples will find many other fields for fruitful cooperation. Today each of our nations in its own manner is seeking with the same indomitable will and limitless energy, but by different methods, to promote the welfare of its people. This simultaneous effort, rather than a source of conflict, offers an opportunity for creative collaboration. Finally, our peoples are surely bound by the bond of a common youthful energy, a readiness to seek new ways to solve new problems and a courage to face the future unafraid.

Mr. President, in entering upon my mission, I wish to associate myself with the personal wishes I expressed to you on behalf of the President of the United States as well as with his wishes for the welfare and prosperity of the Union of Soviet Socialist Republics. I pledge you every effort within my powers to forge strong and enduring ties between our countries.

⁵⁵ Copy transmitted to the Department by the Ambassador in his despatch No. 1, December 14, 1933; received January 9, 1934.

123 Bullitt, William C/31

*Reply of the President of the Soviet All-Union Central Executive Committee (Kalinin) to the American Ambassador in the Soviet Union (Bullitt), at Moscow, December 13, 1933*⁵⁶

MR. AMBASSADOR: I have the honor to receive from you the letters which accredit you as Ambassador of the United States of America to the Government of the Union of Soviet Socialist Republics. I am sincerely moved by the cordial and friendly greetings which you have conveyed to me from the President. And on my part I beg you to convey my sincerest and most friendly greetings and wishes for the happiness and prosperity of your great country.

The outstanding role which you personally, Mr. Ambassador, have played in the matter of mutual *rapprochement* of our two countries is well known to the wide public in the Union of Soviet Socialist Republics, and the very fact, therefore, that it was precisely you who were chosen by the President of the United States as the first Ambassador in the USSR, in itself is considered by us as an act of friendship.

I was always deeply convinced that as soon as the artificial barriers in the way of establishing cooperation between the peoples of the USSR and the American people were removed, such cooperation would assume the widest and most varied forms, and that with good will and mutual respect on both sides, the difference in socio-political systems existing in the two countries need not at all be an obstacle thereto.

I fully share your conviction that between the peoples of the USSR and the American people there can and should exist not only normal but genuinely friendly relations. I wish to assure you that on its part the Soviet Government is filled with the firm determination to help develop and strengthen precisely such relations. The best foundation for such sincerely friendly relations and for their all-sided development is the unswerving will for the maintaining and consolidation of peace which inspires both the peoples of the Soviet Union and the American people.

I thank you, Mr. Ambassador, for the cordial wishes expressed by you to the Union of Soviet Socialist Republics and to me personally. I assure you that in the realization of those high tasks in which you rightly see the important historic significance of your mission, you will always meet with the fullest and most active cooperation on my part and on the part of the Government of the Soviet Socialist Republics.

⁵⁶ Copy transmitted to the Department by the Ambassador in his despatch No. 1, December 14, 1933; received January 9, 1934.

701.6111/744

The Department of State to the Soviet Embassy

MEMORANDUM

The Government of the United States has no objection to the appointment by the Soviet Government of a Commercial Attaché or Commercial Counselor to the Embassy of the Union of Soviet Socialist Republics in Washington who will perform the functions usually devolving upon a Commercial Attaché or Counselor, that is, the collection of economic and commercial information, the study of market conditions, the promotion and facilitation of trade relations, and other analogous activities.

The Government of the United States desires to have it clearly understood, however, that such an officer shall not engage in trade or commercial transactions of any sort, that is, shall not enter into business dealings or sign contracts with American firms, participate in buying or selling operations, et cetera.

The Government of the United States would have no objection to the maintenance by a Commercial Counselor or Attaché to the Embassy of the Union of Soviet Socialist Republics of an office and residence in New York City. It should be pointed out, however, that the New York City residential addresses of Commercial Counselors or Attachés to diplomatic missions at Washington are not printed in the Diplomatic List.

WASHINGTON, December 20, 1933.

800.51W89 U.S.S.R./16 : Telegram

The Acting Secretary of State to the Ambassador in Germany (Dodd)

WASHINGTON, December 21, 1933—5 p.m.

Please give Bullitt following message from Moore and keep no copy in Embassy's files.

Study and investigation since my telegram of December 8 have convinced us that the transfer to the Russians of American-owned German obligations can only be effected through the intermediary of a financial institution. However, we fear that funds under the National Industrial Recovery Act,⁵⁷ the Reconstruction Finance Act,⁵⁸ et cetera, even though available for the purpose of founding an Edge plan bank, could not be properly employed by it without Congressional sanction for the acquisition on Soviet account of German obligations held in the United States. If further examination confirms this, would you be in favor of recommending to the President that authority be requested of Congress to set up an Edge plan or other bank with Government funds and a

⁵⁷ Approved June 16, 1933; 48 Stat. 195.

⁵⁸ Approved January 22, 1932; 47 Stat. 5.

charter sufficiently broad to effect the German-Soviet transaction and the financing of trade with the Soviet Union.

We are particularly anxious to be informed by telegraph with regard to the nature, amounts and dates of Soviet maturities in Germany also conditions of payment. We understand that the Soviet trade delegations in both Berlin and Paris have already considered the possibility of using American credits in Germany to meet Soviet maturities. It would be helpful to learn what credits they consider they could successfully employ to this end and names of holders in Germany of Soviet obligations.

PHILLIPS

800.51W89 U.S.S.R./18 : Telegram

The Ambassador in Germany (Dodd) to the Acting Secretary of State

BERLIN, December 23, 1933—4 p.m.
[Received December 23—12:40 p.m.]

214. For Moore from Bullitt. Your December 21. Consigned list of Soviet Russia obligations could not be completed before my departure from Moscow. Litvinov promised to telegraph it to Skvirsky for communication to Department as soon as possible.

If no other method should be practicable I should favor setting up bank.

Shall cable at length tomorrow from Paris. [Bullitt.]

DODD

500.C001/895 : Telegram

The Chargé in France (Marriner) to the Acting Secretary of State

PARIS, December 24, 1933—7 p.m.
[Received December 25—12:25 p.m.]

576. For the President, the Acting Secretary and Assistant Secretary Moore from Bullitt.

Owing to lack of codes in Moscow and the undesirability of sending this message from Berlin I have felt obliged to delay transmission until today.

Litvinov on Thursday, December 21, asked me to convey to you in strictest confidence the following information.

He said that his Government was "under great pressure" from France to join the League of Nations and asked me if the Government of the United States would have any objection. I replied that as I had no codes I could not consult my Government in regard to this matter but that I had no hesitation in saying on my own behalf that I believed the Government of the United States would have no objection.

I then asked Litvinov to tell me the reason for this possible reversal of Soviet policy. He replied that the French had asked the Soviet Government to make a "regional agreement" for defense against attack by Germany, each party to declare war on Germany if Germany should declare war upon the other. He said that the Soviet Union considered an attack by Japan this spring so probable that it felt it must secure its western frontier in every way; that he did not fear an immediate attack by either Poland or Germany but that if the probable war with Japan should drag on for two years he anticipated a joint attack by Poland and Germany, acting in concert with Japan. He added that he knew preliminary conversations looking forward [to] this eventuality had already taken place between Japan, Germany and Poland. Therefore the Soviet Government, although still wishing to keep its hands free and not to join the League of Nations, felt that it must pay this price if necessary to obtain the agreement from France.

I asked Litvinov why the French insisted on the Soviet Government's joining the League of Nations as a part of this particular agreement. He replied that the French insisted in order to evade the difficulty created by the Locarno agreements.⁵⁹ He said that the agreement between France and the Russian Soviet Government would be introduced to the League as a "regional understanding." I told him that there seemed to me to be a considerable region between France and the Soviet Union. He replied that the proximity of both to Germany was sufficient excuse. Litvinov insisted that this agreement with France had not yet been signed and that the conversations thus far were merely preliminary but he left me under the impression that a definite binding contract might be expected shortly. Litvinov added that the entire agreement might fall through as Daladier⁶⁰ was opposed to it and the British were opposed but that Herriot⁶¹ and the majority of the French Government were in favor of it.

Attack by Japan upon the Soviet Union is regarded as certain by all members of the Government and Communist Party with whom I talked with [*sic*] in Moscow. Stalin introduced the Chief of Staff Egorov⁶² to me as "the man who will lead our army victoriously against the Japanese when they attack us" and asked me to try to see to it that the Soviet Union should obtain in the immediate future 250,000 tons of old rectified rails from the American railroads which are engaged in carrying out re-equipment programs, the rails to be delivered at Vladivostok to complete the double tracking of the Trans-Siberian Railway. He

⁵⁹ Treaties of October 16, 1925, League of Nations Treaty Series, vol. LIV, pp. 289-363; for collective note to Germany of December 1, see *ibid.*, p. 299.

⁶⁰ Edouard Daladier, President of the French Council of Ministers (Premier), January-October 1933.

⁶¹ Edouard Herriot, former President of the French Council of Ministers.

⁶² A. I. Egorov (Yegorov), Red Army Chief of Staff.

added: "Without the rails we shall win that war but it will be easier with them."

I repeatedly emphasized to all with whom I talked that the United States had no intention whatsoever of getting into war with Japan but that our participation in any Far Eastern difficulties would be confined to the use of our moral influence to maintain peace. Nevertheless the Soviet Union is so anxious to have peace that it is obvious that even our moral influence is valued very highly by the Soviet Government. It is difficult to exaggerate the cordiality with which I was received by all members of the Government including Kalinin, Molotov,⁶³ Voroshilov⁶⁴ and Stalin. Especially noteworthy is the fact that Stalin, who until my arrival had never received any ambassador, said to me "at any moment, day or night, if you wish to see me you have only to ask and I will see you at once."

[Bullitt]

MARRINER

800.51W89 U.S.S.R./19 : Telegram

The Chargé in France (Marriner) to the Acting Secretary of State

PARIS, December 27, 1933—11 a.m.

[Received 1:20 p.m.⁶⁵]

578. For the Acting Secretary and Assistant Secretary Moore only from Bullitt. Soviet Commercial Attaché, Paris, handed me last night list obligations in reichsmarks of the S.S.S.R.⁶⁶ falling due in the year 1934. He did not give me list of obligations in dollars falling due in Germany for the same period but promised to telegraph to Berlin at once for it. To cable this list in confidential code is impossible without breaking the code since the Soviet Government has the list and Marriner and I have agreed that the best method of transmission is the following:

[Here follows instruction as to method of transmitting the information to the Department.⁶⁷]

[Bullitt]

MARRINER

⁶³ Viacheslav Mikhailovich Molotov, President of the Soviet Council of People's Commissars.

⁶⁴ Klimenti Efremovich Voroshilov, Soviet Commissar for Military and Naval Affairs.

⁶⁵ Telegram in two sections.

⁶⁶ Soyuz Sotsialisticheskikh Sovetskikh Respublik.

⁶⁷ The information was duly sent in telegram No. 579, December 28, 11 a.m. (800.51W89 U.S.S.R./20).

123 Bullitt, Wm. C./32

*The Ambassador in the Soviet Union (Bullitt) to the
Acting Secretary of State*

No. 2 ON BOARD STEAMSHIP "WASHINGTON," January 4, 1934.
[Received January 9.]

SIR: I have the honor to report to you the details of my visit to the Soviet Union December 10-22, 1933.

We reached Moscow on Monday, December 11. Troyanovsky,⁶⁸ Divilkovsky, Florinsky and a number of other officials met us at the railway station. We were taken to the Hotel National, where the American flag was suspended over the entrance. The apartment reserved for me was, curiously enough, the same which I was occupying when Austria sent her ultimatum to Serbia.⁶⁹ It had been beautifully re-furnished and was most comfortable. The hotel was adequately heated and the food and service were good.

I was received at once by Litvinov at the Commissariat for Foreign Affairs and had a brief, friendly conversation in the course of which I asked him to obtain as quickly as possible the data on payments due by the Union of Soviet Socialist Republics to Germany during the year 1934, in accordance with the telegram of the Department received by me in Berlin.

On Tuesday, December 12, which was a Soviet holiday, I called on the leading officials of the Foreign Office: Krestinsky, Karakhan, Sokolnikoff, Stomoniakoff, and Roubinin who is in charge of the American Section.

I then lunched en famille with Litvinov. I had left the remarks which I proposed to make on presenting my credentials⁷⁰ with Litvinov, and after luncheon he told me that he was delighted by them and that Kalinin was also, and that as a special politeness, contrary to diplomatic precedent, he would like to give me an advance copy of the reply which Kalinin would make.⁷¹ He did so.

December 13, at noon, I presented my credentials to Kalinin in the reception room of the large palace of the Kremlin. Mr. Flack⁷² and Mr. Kennan⁷³ accompanied me. President Kalinin was accompanied

⁶⁸ Alexander Antonovich Troyanovsky, Soviet Ambassador in Japan, 1927-33; Ambassador to the United States, January 1934 to June 1939.

⁶⁹ Cf. note of July 24, 1914, from the Austro-Hungarian Ambassador, *Foreign Relations*, 1914, Supplement, p. 17.

⁷⁰ *Ante*, p. 827.

⁷¹ *Ante*, p. 828.

⁷² Joseph Flack, First Secretary of Embassy in Germany.

⁷³ George Frost Kennan, Third Secretary of Legation in Latvia.

by Mr. Litvinov, Mr. Krestinsky, and Mr. Yenukedze.⁷⁴ My remarks on this occasion and Kalinin's reply are contained in my Despatch No. 1, dated December 14, 1933.⁷⁵

After I had presented my letters, Kalinin invited me to accompany him to an adjoining room and we had a delightful conversation of a half hour. I had never met Kalinin and had thought from what I had read and heard of him that he was a simple-minded old peasant. I was surprised to find that he is far from simple-minded. He has a delightful shrewdness and sense of humor and had evidently followed with considerable attention the development of the President's program in America. He requested me to say to the President that he and everyone else in Russia considered the President completely out of the class of the leaders of capitalist states; that it was clear to them all that the President really cared about the welfare of the laboring men and the farmers and that he was not engaged in protecting the vested rights of property.

Kalinin said that he hoped that I would travel in every part of the Union of Soviet Socialist Republics, and I told him that I should be delighted to do so, but that the Union of Soviet Socialist Republics was a continent rather than a country and that I feared I should be restricted to Moscow and Leningrad unless I could cover it by airplane. He told me that I could go any place I might wish in the entire Union by plane. I replied that I should perhaps be able to arrange to have a plane of my own in Moscow for trips if he would permit me to use it without restrictions. He answered that there would be no restrictions whatever on my movements.

Kalinin was very agreeable to me personally, saying that Lenin⁷⁶ had talked to him about me on several occasions, and that he felt as if he were welcoming someone he had known for a long time.

The afternoon of December 13 I received the Press and gave them my remarks and Kalinin's reply. The entire press of the Soviet Union published articles on my arrival and on this exchange of remarks which were not only enthusiastic but undeservedly complimentary.

On Friday, December 15, I had a long talk with Mr. Rosenholz, People's Commissar for Foreign Trade. He impressed me as a highly intelligent and likeable person. We talked for the most part in generalities, but I asked him how much manganese the Soviet Government could furnish to the United States per annum in addition to the amounts already contracted for by other countries. He replied that in his opinion not more than 300,000 tons per annum could be furnished.

⁷⁴ A. S. Yenukedze, Secretary of the Presidium of the Soviet All-Union Central Executive Committee.

⁷⁵ Despatch not printed.

⁷⁶ V. I. Lenin, leader of the Red Revolution of November 1917, and President of the Soviet Council of People's Commissars until his death on January 21, 1924.

That afternoon I had a long talk with Molotov and found that I had underrated him as I had underrated Kalinin. He has a magnificent forehead and the general aspect of a first-rate French scientist, great poise, kindness and intelligence. He talked freely about the difficulties of the Soviet Union in the Far East, saying that the primary desire of the entire Soviet Government was to avoid war and to obtain time to work out the domestic reconstruction which had scarcely been begun. He said that he feared greatly that Japan would attack this spring; that he considered an eventual attack inevitable and 1935 as the probable limit of peace.

That evening, December 15, Litvinov gave a formal dinner in my honor at which Molotov and nearly all the Commissars were present. It was a superb banquet and many toasts were drunk to President Roosevelt, to myself and to the United States. After dinner I talked for two hours with Molotov, Voroshilov, Kouibychev and Litvinov.

The following day I began to exchange calls with the various Ambassadors and Ministers in Moscow, and before my departure had some forty conversations with these colleagues. I was particularly impressed by the French Ambassador, Alphand, an intelligent, charming old gentleman who for many years was assistant to Delcassé.⁷⁷ The Polish Minister, Mr. Juljusz Lukasiewicz, is young and vigorous and seems highly intelligent.

I had a long talk with Karl Radek,⁷⁸ who does not believe that Japan will attack this spring, contrary to the belief of the members of the Government.

That evening I was Litvinov's guest at the Ballet, which was as excellent as ever.

On December 19 I had a talk with Mr. Osinski, Chief of the Central Administration of Economic and Social Statistics, who promised me that he would place at the disposal of the staff of the Embassy and Consulate all the statistics available in his department as well as the complete library of his department.

I also had a long talk with Grinko, People's Commissar for Finance, and discussed the problem of obtaining roubles at prices satisfactory to us. I am absolutely opposed to the smuggling of roubles in our diplomatic pouch, or to the purchase of roubles in the Black Bourse in Moscow. I am convinced that we can handle this matter of rouble exchange in an honorable and above-board manner and that we can make a satisfactory arrangement with Grinko. Grinko promised me that the cost of supplies at Torgsin would be reduced and would be collated with the cost of living index of the leading countries of Europe and the United States. He furthermore promised me that he would make a private

⁷⁷ Théophile Delcassé, French Minister for Foreign Affairs, 1898-1905, 1914-15.

⁷⁸ Soviet publicist.

arrangement with me for members of the American diplomatic and consular staffs in Moscow to obtain through me an adequate number of roubles for minor expenses at a fair rate. I told Grinko that we should probably wish to charge consular fees in roubles at a rate to be fixed by ourselves and to use the roubles thus acquired for minor living expenses. He said that he had no objection.

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The same morning, December 20, I had a long talk with Mejlaouk,⁷⁹ who told me that the tempo of light industry producing consumer's goods would be raised in the new Five Year Plan to the same tempo as that of heavy industry and that a great effort would be made to raise the standard of living of the population during the next five years. I asked him what articles he considered the Soviet Union would need to import from the United States in large quantities during the coming years. He replied that machine tools of all sorts would be the chief articles of import. I asked him about railroad building in Siberia. He said that the line to the Lena gold field region had not been begun, but that 100 kilometers of the line running around the north end of Lake Baikal had already been completed. I asked him how much of the Trans-Siberian still needed to be double-tracked. He said about 2,000 kilometers. I checked this statement from a number of other sources later and found a considerable discrepancy in the statements probably due to the vagueness of the word "completed". As nearly as I can discover, about 1,500 kilometers are still untouched, but material is on hand for the building of 500 kilometers. This leaves 1,000 kilometers entirely untouched with no material whatever for completion.

I had a long talk with Voroshilov the same morning, December 20. He discussed frankly the situation in the Far East and expressed the opinion that a Japanese attack was imminent. He also expressed confidence that if such an attack were made the Japanese would be defeated. Voroshilov said that he was especially anxious to have a full equipment of American military, naval and air attachés in Moscow. I replied that it was not our custom to have air attachés. He then asked if it might not be possible to have as Assistant Military Attaché and Assistant Naval Attaché men who were experts of the first water in aviation, as he hoped that he could obtain much good advice from our representatives. He also asked that these men, if possible, should speak Russian, as he speaks no other language, and he would like to be able to confer with our representatives personally in private. I told Voroshilov that I would bring this matter to the attention of our Government when I reached Washington. He made it clear that, if our Government desires,

⁷⁹ V. I. Mejlaouk (Mezhlaouk), Soviet First Vice President of the State Planning Commission.

our military and naval men can have a relationship of the utmost intimacy with the military authorities of the Soviet Government.

That evening, Wednesday, December 20, I dined with Voroshilov at his apartment in the Kremlin. In addition to Voroshilov and his wife the following were present: Stalin, Kalinin, Molotov, Litvinov, Egorov, Mejlaouk, Piatakov, Kouibychev, Kaganovitch, Ordjonikidze, Krestinski, Karakhan, Sokolnikoff, Troyanovsky and Dovgalevsky. Litvinov remarked to me that the persons present constituted the "inside directorate". The dinner was an extremely friendly one with continual toasts, the first of which was offered by Stalin who proposed a toast "To President Roosevelt, who in spite of the mute growls of the Fishes, dared to recognize the Soviet Union." His reference to Hamilton Fish created considerable laughter. I then proposed the health of President Kalinin and thereupon Molotov raised his glass to me and proposed "The health of one who comes to us as a new Ambassador but an old friend."

After dinner I had a long talk with Stalin. He regards an attack by Japan this spring as certain and on introducing Egorov, the Chief of Staff, to me said, "This is the man who will lead our Army victoriously against Japan when Japan attacks." Stalin then referred to the matter in regard to which I telegraphed the Department from Paris on December 25,⁸⁰ saying, "There is one thing I want to ask of you. The second line of our railroad to Vladivostock is not completed. To complete it quickly we need 250,000 tons of steel rails at once. They need not be new rails. Your rails are so much heavier than ours that the rails you discard are good enough for us. Your railways, I understand, are re-equipping themselves and will have many old rails to dispose of immediately. Cannot you arrange for us to purchase the old rails? I do not ask that they should be given to us, but only that our purchase of them should be facilitated." I replied that I should be glad to do anything I could in the matter and asked where the rails should be delivered, to which Stalin replied, "Vladivostock." I then asked who in America would make the arrangements for their purchase and he replied, "Bogdanov."⁸¹ Stalin then said, "Without those rails we shall beat the Japanese, but if we have the rails it will be easier."

Stalin had evidently followed the development of the President's program with close attention and expressed an admiration for the President which seemed to be genuine, saying finally, "President Roosevelt is today, in spite of being the leader of a capitalist nation, one of the most popular men in the Soviet Union."

Before I left Stalin said to me, "I want you to understand that if you want to see me at any time, day or night, you have only to let me know

⁸⁰ See telegram No. 576, December 24, 7 p.m., p. 830.

⁸¹ Peter A. Bogdanov, chairman of the Soviet Amtorg Trading Corporation.

and I will see you at once." This was a somewhat extraordinary gesture on his part, as he has hitherto refused to see any Ambassador at any time.

In order to avoid the jealousy of my colleagues, I said to Litvinov that it seemed to me desirable that it should be made known to the Press merely that I had been at Voroshilov's and that Stalin had dropped in, and that I had had a talk with him. It was so arranged. It is valuable to have the inside track, but it seems to me not desirable to emphasize the fact to the world.

After I had said good-bye to Voroshilov and the others, Stalin went to the door of the apartment with me and said, "Is there anything at all in the Soviet Union that you want?" I told him that I should be glad to know that the property on the bluff overlooking the Moscow River might be given to the American Government as a site for an Embassy. Stalin replied, "You shall have it." The next day Litvinov told me that Stalin had given orders to the Moscow Soviet that the property in the park should be ours if we wished to have it.

I had a long and important conversation with Litvinov on that morning, December 21, in regard to which I cabled to you briefly on my arrival in Paris, December 25.

Litvinov began by saying that he wanted to have a serious talk with me and asked me whether the Government of the United States would have any objection to the Soviet Government joining the League of Nations. I replied that as I had no codes I could not communicate with my Government, but speaking for myself I could say without hesitation that the Government of the United States would have no objection.

I then asked Litvinov why the Soviet Government was considering such a reversal of its established policy. He said that the Soviet Government was under great pressure from France to join the League, that he and all other members of the Soviet Government considered an attack by Japan in the spring so probable that everything possible must be done to secure the western frontier of the Soviet Union from attack; that he did not fear an immediate attack by Germany or Poland or both combined, but that he knew that conversations had taken place between Germany and Poland looking toward an eventual attack on the Soviet Union if the Soviet Union should become embroiled in a long war with Japan; that he feared that a war with Japan might drag on for years and that after a couple of years Germany and Poland combined might attack the Soviet Union, Poland with the hope of annexing the Ukraine and parts of Lithuania and Germany with the hope of annexing the remainder of Lithuania as well as Latvia and Estonia. France had offered to make a defensive alliance with the Soviet Union providing that if either party were attacked by Germany the other party should at once declare war on Germany, but France felt that this could be done only

within the framework of the League of Nations because of the difficulties caused by the Locarno agreements, and that in order to obtain this defensive alliance with France it would be necessary for the Soviet Union to enter the League.

I asked Litvinov how an alliance of this sort could be reconciled with the Covenant of the League and he said that it would be brought before the League as a "regional understanding." I told him that there seemed to me to be a considerable region separating France and Russia and he said that the proximity of both to Germany was a sufficient excuse. I pointed out that Russia had no common border with Germany, but he said with a laugh that Germany was quite close enough to make an agreement a "regional understanding." I asked him if he considered it probable that the Red Army would march against Germany to support France. He said he considered that it would be easy compared with the difficulty of getting the French Army to march against Germany to support the Soviet Union.

We had a long discussion of the situation in the Far East and he expressed the opinion that no one could say, not even in Japan, whether or not an attack by Japan would be made this spring; that the issue would depend on very personal factors; that the civil government had today no power whatever and that if General Araki⁸² should reach the position of Dictator, which was probable, an attack on the Soviet Union this spring would be certain.

We discussed ways and means of preventing such an attack. Litvinov suggested that in addition to the supplying of the steel rails, of which Stalin had spoken to me the previous evening, the most effective means of forestalling an attack would be the institution by the United States of proposals for non-aggression pacts between the United States, the Soviet Union, China and Japan. I explained to him the difficulties in the way of any such proposal. He then said that he felt that anything that could be done to make the Japanese believe that the United States was ready to cooperate with Russia, even though there might be no basis for the belief, would be valuable. He asked whether it might not be possible for an American squadron or an individual warship to pay a visit during the spring to Vladivostock or to Leningrad. I said that I could not answer that question, but would submit it to my Government.

Litvinov also said that it would be very important if it should be possible to obtain assurances from France and Great Britain and the United States that loans or credits would not be given to the Japanese Government for war purposes.

I again attempted to obtain from Litvinov the figures which were wanted by the Department in regard to Soviet obligations in Germany.

⁸² Gen. Sadao Araki, Japanese Minister of War.

Litvinov replied that the figures were not available in Moscow but only in Berlin; that he had telegraphed to Berlin for them and that he would telegraph them to Skvirsky to communicate to the Department of State as soon as they were available.

Certain of these figures were handed to me in Paris by the Soviet Commercial Attaché there and I telegraphed them to the Department.⁸³

We then talked about general commercial policy and Litvinov expressed the opinion that the United States could not take more than \$60,000,000 worth of goods from the Soviet Union in any one year, and that if we wanted an export trade with the Soviet Union of more than this amount we would have to extend long-term credits. He said that the Soviet Union was not interested in developing a large export and import trade, but hoped to make itself as nearly self-sufficient as possible. On the other hand, if considerable credits could be obtained, the Soviet Union would be glad to continue to buy from the United States considerable quantities of imports of all kinds. I queried him in regard to payments and he replied that his idea was that the United States should take from the Soviet Union each year sufficient imports to cover interest payments and amortization on long-term loans.

Litvinov gave a tremendous reception for me on the next afternoon, December 21, and that evening we left for Paris, crossing the Russian border at noon, December 22.

Respectfully yours,

WILLIAM C. BULLITT

⁸³ See footnote 67, p. 832.

THE NEAR EAST AND AFRICA

EGYPT

FAILURE OF THE UNITED STATES TO CONCLUDE A TREATY OF EXTRADITION WITH EGYPT

283.11/17

The Secretary of State to the Minister in Egypt (Jardine)

No. 61

WASHINGTON, June 4, 1931.

SIR: With a view to the conclusion of a comprehensive extradition treaty between the United States and Egypt the Department encloses a draft of such a treaty¹ which it desires you to present to the Egyptian Foreign Office with the request that consideration be given to its conclusion at an early date.

It will be observed that the draft treaty provides that upon its coming into force the Convention of August 11, 1874, between the United States and the Ottoman Empire,² shall cease to be in force so far as Egypt is concerned, except as to the crimes therein enumerated and committed prior to the date of the taking effect of the suggested treaty.

Very truly yours,

For the Secretary of State:
W. R. CASTLE, JR.

283.11/19

Memorandum Prepared in the Division of Near Eastern Affairs

[WASHINGTON,] June 19, 1931.

PROPOSED EXTRADITION TREATY BETWEEN THE UNITED STATES AND EGYPT

The United States has always maintained that the Extradition Treaty of 1874 between the United States and the Ottoman Empire, a copy of which is attached, applied to Egypt. Prior to the World War the Egyptian authorities were inclined to the opinion that the treaty did not apply to Egypt since they had never been informed thereof by the Ottoman Porte. Since the War there has been no real test of the question, but it is probable that the Egyptians have not changed the opinion

¹ Not printed.

² William M. Malloy (ed.), *Treaties, Conventions, etc., Between the United States of America and Other Powers, 1776-1909* (Washington, Government Printing Office, 1910), vol. II, p. 1341.

which they held previously. In any event the treaty of 1874 with the Ottoman Empire is obsolete and covers only a limited number of offenses and crimes.

Since Egypt is an extraterritorial country, it might be thought that an extradition treaty is unnecessary, but it has not been the practice of this Government, with two notable exceptions during and immediately after the Civil War, to seize its nationals in extraterritorial countries without extradition formalities and return them to the United States for trial or sentence.

The United States exercises extraterritorial jurisdiction in Egypt through the minister and consuls of the United States. In connection with the question of whether or not it is necessary to proceed, in countries where extraterritorial jurisdiction is exercised, under the terms of an extradition treaty in order to return fugitives from justice to the United States, the following statements from Moore on Extradition, Volume I, pages 100-103,³ may be cited:

“Where by treaty or by custom foreign nations exercise in a particular country extraterritorial jurisdiction through their minister or consuls, it is the rule to regard the recovery of their fugitive subjects, charged with ordinary crimes, as an incident of such jurisdiction. Such has been the case with respect to the dominions of the Ottoman Porte, China, Japan, and other countries where extraterritorial jurisdiction is exercised. The United States, however, has not generally sought to enjoy this privilege, but has, on the other hand, in two cases, those of the Ottoman Empire in 1874, and Japan in 1886,⁴ entered into treaties of extradition with the governments of countries in which citizens of the United States are entitled to extraterritoriality.”

This statement regarding the practice of the United States is correct and so far as the Department is aware there have been but two exceptions to this rule of practice. One exception was the case of John H. Surratt, who was arrested at Alexandria, Egypt, in 1866, and sent to the United States on an American man-of-war by Mr. Hale, the United States Consul at that port. Surratt was accused of complicity in the assassination of President Lincoln and this may well account for the departure in this case from the practice of this Government. It may be noted that this occurred eight years before our Extradition Treaty of 1874 with the Ottoman Empire.

The other exception is that of the case of Messrs. Myers and Tunstall, two American citizens who were members of the crew of the Confederate steamer, *Sumter*, and who in February, 1862, were arrested by the United States Consul in Tangier, Morocco, and placed on board an American man-of-war for transportation to the United States. (Moore's

³ John Bassett Moore, *A Treatise on Extradition and Interstate Rendition* (Boston, 1891).

⁴ Malloy, *Treaties, 1776-1909*, vol. I, p. 1025.

International Law Digest, Volume II, page 663 [633].) The existence at that time of a state of civil war in this country may well account for the departure in this case from the usual practice.

The fact that an extradition treaty with the Ottoman Empire was negotiated as long ago as 1874, when the capitulations were in full force in Turkey, is evidence that the Department considered an extradition treaty with extraterritorial countries necessary.

With a view to the conclusion of a comprehensive extradition treaty between the United States and Egypt, the Department instructed the Minister at Cairo, Egypt, under date of June 4, 1931, to present to the Egyptian Foreign Office a draft of such a treaty with a request that consideration be given to its conclusion at an early date.

It may be pointed out that if and when the proposed treaty comes into effect the Department may find that it will be possible to extradite from Egypt only American nationals and the nationals of non-capitulatory Powers, since Article VIII provides that neither party shall be obliged to surrender its own nationals (consequently we shall not be able in practice to obtain the extradition of Egyptian nationals) and since there is little doubt that the Egyptian Government is not competent to seize and turn over to us the nationals of capitulatory Powers.

The new treaty will be advantageous to us in that it will definitely establish the basis for extradition from Egypt and will increase considerably the list of offenses for which we can request extradition from that country.

263.11/29

The Secretary of State to the Minister in Egypt (Jardine)

No. 215

WASHINGTON, May 8, 1933.

SIR: The Department refers to your despatch No. 604 of November 22, 1932,⁵ with which you enclosed copy in translation of the reply by the Egyptian Foreign Office⁵ to the proposal of the United States that an extradition treaty be concluded as between the two countries. It appears from this reply that the Egyptian Government takes the position that it would be unable to grant the extradition of persons not amenable to the criminal jurisdiction of Egypt. Since this position, if maintained, would exclude the possibility of extraditing from Egypt American citizens as well as citizens of other capitulatory powers, there would be little advantage to the United States in the concluding of an extradition treaty with Egypt on this basis. However, you suggest a formula for possible insertion in the proposed treaty by which its provisions would

⁵ Not printed.

be made applicable in Egypt only to persons who are subject to the full criminal jurisdiction of an Egyptian court or an American consular court, or would be so subject if they were found in Egypt.

The Department does not doubt that a formula might be found which should be satisfactory to the Egyptian Government as amounting to a waiver by the United States of its capitulatory rights to the extent indicated, whereby American citizens could be extradited from Egypt. However, it is observed that you are of the opinion that such a waiver by the United States and the resultant hearing by Egyptian courts of extradition cases involving American citizens would establish a dangerous departure from capitulatory practice and be calculated to impair the rights commonly possessed by the capitulatory powers. Accordingly, you recommend that negotiations to conclude an extradition treaty be terminated.

Relying upon your judgment as to the effect which would follow the conclusion of an extradition treaty with Egypt containing provisions giving jurisdiction to the Egyptian courts in cases of American citizens, the Department authorizes you to inform the Egyptian Government that the United States is not disposed to continue its negotiations for the conclusion of an extradition treaty.

As a substitute for extradition process in cases involving American citizens, you point out that there would be no objection, so far as the Egyptian Government is concerned, to action by American consular courts by way of extraditing fugitives from the justice of the United States.

There is no present authority of law under which American consular officers in Egypt would be justified in extraditing American citizens to the United States or elsewhere. However, the Department has requested the Chairman of the Foreign Affairs Committee of the House of Representatives to introduce a bill providing in Section 1 for the return as between the United States, its territories, districts and possessions on one hand and the jurisdiction of officers or representatives of the United States vested with judicial authority in the countries where the United States exercises extraterritorial jurisdiction of American citizens or nationals who are charged with crimes against the United States and providing in Section 2 for the return to a State, territory, district or possession of the United States from a jurisdiction exercised by the United States abroad of fugitives charged with a crime against the laws of such State, territory, district or possession.⁶

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

⁶ Bill approved March 22, 1934; 48 Stat. 454.

DISCRIMINATION IN FAVOR OF BRITISH FIRMS IN AWARDING CONTRACTS FOR THE BUILDING OF IRRIGATION WORKS IN THE ANGLO-EGYPTIAN SUDAN

888.6113/72

The Minister in Egypt (Jardine) to the Secretary of State

[Extract]

No. 599

CAIRO, November 19, 1932.

[Received December 14.]

SIR: I have the honor to refer to my previous despatches on the subject of the approval by the Egyptian Government of the construction of the Gebel Awlia Dam in the Sudan and to transmit herewith the translation of an article appearing in *Al Ahram* (independent) ⁷ according to which the Egyptian Government had agreed in 1925 to grant the contract for the construction of the Dam to a British company.

According to the same article, in 1929, nine British companies were chosen to make tenders eventually for the contract and these companies were invited by the Egyptian Government at that time to send representatives to the Sudan to study the proposal.

I have had confirmed to me by a high Egyptian Government official the foregoing statements. It appears that in 1925 the Cabinet which consented to the request of the Sudan Government that the work of construction of the Dam be confined to a British company was that of Ziwar Pasha, while in 1929 the Liberal-Constitutional Cabinet of Mohamed Mahmoud Pasha, who at that time favored the project, consented to the arrangement for the limitation of consideration of tenders for the construction of the Dam to nine British companies, of which only seven have decided to submit bids.

There is enclosed a copy of a confidential decision of the Egyptian Council of Ministers of June 22, 1932,⁷ from which it appears that on that date the Council of Ministers formally approved the previous decision taken in 1929 to limit the adjudication for the Dam to seven of the British firms who had been commissioned by the Government to send representatives to the Sudan to examine the project. It will be observed that the names of the seven British firms are specifically mentioned in the enclosed decision.

Despite the discrimination made by the Egyptian Government in the present case in favor of British firms I am by no means of the opinion that such action warrants a protest on our part. British firms by long tradition have undertaken practically all recent major irrigation works in Egypt and the Sudan and the Egyptian Government may well

⁷ Not printed.

claim legitimately that the special experience and knowledge gained by such firms should entitle them to special consideration, even in the absence of the special position held politically by Great Britain in Egypt and the Sudan and the peculiar and as yet undefined relations existing between the Sudan and Egypt.

It is only by reason of special and adventitious circumstances that American firms may hope to participate at any time in major irrigation construction works in Egypt and the Sudan and a particularly promising opportunity to that end was lost in 1930. In that year, following the suicide of Sir John Griffiths and the failure of his firm to fulfill the contract awarded it for the second heightening of the Assuan Dam strenuous efforts were put forward by the Commercial Attaché to interest American firms in participating in the new tenders called for by the Government. One American firm, Ulen and Company, went so far as to send a representative to Egypt but declined to make a bid for the reason that there was no financing involved on which the firm might have derived the substantial share of profits it is understood to obtain generally from public works enterprises, as also by reason of the refusal of the Government to consider a contract on a cost-plus basis. At that time, in view of the failure of Sir John Griffiths to fulfill his contract, there was a conjunction of circumstances which favored American participation in the work. In view of the special circumstances attending the present contemplated award (see in particular my despatches Nos. 398 and 505 of February 9 and June 7, 1932, respectively ⁹) I cannot feel that any useful purpose would be served by any exception which we might feel inclined to take to the evident intention of the Egyptian Government to give the contract for the construction of the Gebel Awlia Dam to a British firm.

Respectfully yours,

W. M. JARDINE

833.6113/72

The Secretary of State to the Minister in Egypt (Jardine)

No. 197

WASHINGTON, January 17, 1933.

SIR: Reference is made to your despatch No. 599 dated November 19, 1932, in which you reported that by a confidential decision of the Egyptian Council of Ministers of June 22, 1932, the acceptance of bids for the construction of a dam at Gebel Awlia, in the Sudan, is limited to those which may be tendered by seven specified British firms and such others as the Ministry of Public Works may approve.

⁹ Neither printed.

The Department concurs in your opinion that no useful purpose would be served by making formal protest against this clear discrimination in favor of British as compared with American construction firms. The Department is moved to this conclusion by the considerations outlined in your despatch as well as by the fact that there has been brought to its attention no indication of any desire on the part of any American construction firm to submit a bid on this project.

It is considered important, however, that the Egyptian Government should be left with no reason to believe that its discriminatory action has escaped the Department's attention or that such discrimination can be viewed by this Government otherwise than with disapproval. Accordingly, unless you perceive objection, you should at some convenient opportunity point out to the appropriate Egyptian authorities in an informal manner that, while your Government does not intend to make any formal protest in the present instance, it wishes the Egyptian Government to understand clearly that it can only look with disfavor upon arrangements which prevent American interests from enjoying opportunities in Egypt equal to those accorded to other foreign interests.

Very truly yours,

For the Secretary of State:

W. R. CASTLE, JR.

883.6113/76

The Minister in Egypt (Jardine) to the Secretary of State

No. 702

CAIRO, April 12, 1933.

[Received May 2.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 197 of January 17, 1933, directing me at some convenient opportunity to point out to the appropriate Egyptian authorities in an informal manner that, while my Government does not intend to make any formal protest in the matter of the limitation of bids for the construction of a dam at Gebel Awlia, in the Sudan, to seven specified British firms and such others as the Ministry of Public Works may approve, my Government wishes the Egyptian Government to understand clearly that it can only look with disfavor upon arrangements which prevent American interests from enjoying opportunities in Egypt equal to those accorded to other foreign interests.

On the occasion of a call which I made at the Foreign Office on April 11, 1933, I took advantage of the opportunity, after the discussion of a number of other matters, to inform His Excellency Mohamed Helmy Issa Pasha, Acting Minister for Foreign Affairs, that I had been instructed to discuss in an informal manner the decision of the Egyptian Government to limit the acceptance of bids for the construction of a

dam at Gebel Awlia, in the Sudan, to those tendered by seven specified British firms and such others as the Ministry of Public Works may approve.

I added that I had been instructed by my Government to point out informally to the Royal Egyptian Government that, while the Government of the United States did not intend to make any formal protest in the present instance, it desired the Royal Egyptian Government to be clearly apprised of the fact that the American Government could only look with disfavor upon arrangements which prevent American interests from enjoying economic opportunities in Egypt equal to those accorded to other foreign countries.

His Excellency stated that the Egyptian Government did not consider the present agreement between Egypt and Great Britain, with respect to awarding the contract for the construction of the Gebel Awlia Dam, as falling within the same category as other contracts, in as much as the work is to be carried out in the Sudan where the British are in control, adding that his Government fully recognizes the equality of all foreign economic interests in Egypt and has no intention of making any arrangements which might prevent American interests from enjoying opportunities in Egypt equal to those accorded to other foreign countries.

Respectfully yours,

W. M. JARDINE

**SUSPENSION OF THE EGYPTIAN GOVERNMENT'S ATTEMPT TO
REGULATE AUTOMOTIVE TRAFFIC BY DECREE**¹⁰

883.512 Motor Vehicles/45

The Minister in Egypt (Jardine) to the Secretary of State

[Extract]

No. 694

CAIRO, March 30, 1933.

[Received April 19.]

SIR: I have the honor to refer to my despatch No. 646 of January 21, 1933,¹¹ and to report that as a result of the strong and unyielding position taken by the capitulatory Powers the Egyptian Government has at length abandoned the collection of the illegal taxes imposed for some time by the Roads and Bridges Department of the Ministry of Communications and has suspended or substantially modified the restrictions imposed upon commercial motor traffic.

Since both the taxes imposed, as well as the restrictions introduced, have been contrary to existing legislation, notice of the action taken by the Government has been limited to a notice issued to the press by the Ministry of Communications reading as follows in translation:

¹⁰ For previous correspondence concerning Egyptian decrees regulating automotive traffic, see *Foreign Relations*, 1932, vol. II, pp. 640 ff.

¹¹ Not printed.

Certain measures, prescribed on the occasion of the examination by the Automobile Commission, organized by the decision of the Council of Ministers on December 31, 1931, of applications for licenses or permits and applications for renewals, have given rise to difficulties which it is expedient to suspend in the interest of the mission which was entrusted to it by the decision of the Council of Ministers of February 23, 1932, and for the regulation of various questions which have arisen because of the automobile traffic.

The Minister of Communications, upon the recommendation of the said Commission, has decided to suspend the said measures until further notice.*

Respectfully yours,

W. M. JARDINE

883.512 Motor Vehicles/47

The Minister in Egypt (Jardine) to the Acting Secretary of State

[Extract]

No. 782

CAIRO, August 4, 1933.
[Received September 7.]

SIR:

On July 19, 1933, in reporting that a new draft law regarding motor car taxation was under consideration by the Egyptian Government, the *Egyptian Gazette* announced also:

"We recently stated that the Motor Cars Committee considered it advisable not to hold meetings until such time as a definite opinion had been formed regarding the annual tax to be imposed on motor cars."

Upon inquiry of dealers, including a representative of General Motors Near East, it was ascertained that the Central Licensing Committee in question to which all applications for the operation of trucks and auto-buses are required to be referred had not had a sitting for some weeks and that applications for the operation of trucks to the estimated number of some five hundred were pending without any action having been taken thereon.

Upon being apprised of these facts, Mr. Childs, the Secretary of the Legation, communicated by telephone with the Acting Commercial Secretary of the Residency at Alexandria on the same day, July 19th. In inviting his attention to the report in the *Gazette* quoted above, and in reporting the facts as they had been disclosed regarding the accumulation of applications, Mr. Childs stated that he thought it extraordinary that the Egyptian Government should even give the appearance of

*From *La Bourse Egyptienne* of February 20, 1933. [Footnote in the original.]

attempting, through an enforced inactivity of the Licensing Committee, to bring pressure to bear upon the capitulatory Powers to accept the new motor tax proposals. Apparently as a result of these representations and action taken by Mr. Larkins, the Acting Commercial Secretary, presumably through Mr. Keown-Boyd, a member of the Committee, a meeting of the Committee was held on the following day at which it is understood that all pending applications for permits for the operation of trucks were approved without exception.

While the Committee is understood to have taken no action on applications for the operation of autobuses it is considered doubtful if, under the provisions of Article 35 of the Automobile Regulations of July 16, 1913, exception may properly be taken to the withholding of permits for the operation of autobuses.

Although the situation is admittedly improved since the Roads and Bridges Department has ceased from February, 1933, the illegal collection of taxes on trucks and autobuses, American motor car interests complain that since the meeting of the Motor Licensing Committee on July 20th it has been reported that no further meeting will be held for another two months or until the return of Mr. Keown-Boyd, Director General of the European Department of the Ministry of the Interior, from leave, during which time dealers are left without any possibility of disposing of trucks in view of the impossibility of obtaining licenses for them.¹²

Respectfully yours,

W. M. JARDINE

¹² All U. S. objections to the draft law on automobile taxation were met by the Egyptian Government in their notes dated June 13 and June 23, 1934, transmitted to the Department by the Minister in Egypt with his despatch No. 97, June 25, 1934 (883.512 Motor Vehicles/68). The automobile tax went into effect as law No. 44 with its publication in the *Official Gazette*, July 2, 1934.

ETHIOPIA

COOPERATION BY THE UNITED STATES IN EFFORTS TO EFFECT A REFORM OF THE SPECIAL COURT AT ADDIS ABABA ¹

884.05/34

The Minister in Ethiopia (Southard) to the Secretary of State

No. 1164

ADDIS ABABA, April 1, 1933.

[Received May 2.]

SIR: I have the honor to refer to the Legation's No. 1092 of December 3, 1932,^{1a} forwarding copy of a Note dated November 26, 1932, addressed by the Diplomatic Corps to the Ethiopian Minister of Foreign Affairs² and in which were made further proposals aimed at bringing about the long delayed reform and reorganization in the Special Tribunal (Special Court).

After a delay of more than four months the Ethiopian Government, having in the meanwhile been at various times pressed for action by the Dean of the Diplomatic Corps, has sent a written reply which makes no important commitments but which is considered by the Corps as perhaps sufficient to keep open the negotiations with a view to eventual reform. This latest Ethiopian Note, dated March 31, 1933, is herewith enclosed in the French translation from the original Amharic as prepared in the French Legation. It is accompanied by an English translation made in this office from the French.

This note has been to date only superficially considered by the Diplomatic Corps and further study will be necessary before it makes final decision as to the next step to be taken. The first impression of the Corps is disappointment that the Ethiopians accept the formation at this time of only one commission in place of the two proposed and considered essential by it in its Note of November 26th, 1932. My colleagues also interpret the last line of the attached Note as aimed at creating further breaches in cooperation between the various Consuls exercising judicial functions because it would encourage a different procedure for the treatment of each case. My colleagues have considered that the best chances for success in the reform move would be to hold their Consuls to a uniform attitude and course of procedure in their attendance and functioning at the Special Tribunal. If in each instance

¹ Continued from *Foreign Relations*, 1932, vol. II, pp. 659-671.

^{1a} Not printed.

² *Foreign Relations*, 1932, vol. II, p. 670.

there is to be a special accord between the Judge of the Special Tribunal and the Consul there will naturally develop opportunity for the Ethiopians to play one Consul against the other, and break down unity and harmony of action, in the rules and regulations to be followed in the conduct of mixed cases. . . .

Respectfully yours,

ADDISON E. SOUTHARD

[Enclosure—Translation ³]

The Ethiopian Imperial Government to the Diplomatic Corps at Addis Ababa

MARCH 31, 1933.

The Imperial Government has the honor to acknowledge receipt of the Diplomatic Corps' note of November 26th, 1932, and is inclined to believe that the Special Tribunal may immediately resume its regular activity.

The Imperial Government is gratified by the acceptance which the Diplomatic Corps was good enough to accord to its decision to designate a special official to execute the judgments already rendered.

All steps will be taken toward giving complete satisfaction as soon as possible, but it can be readily understood that no formal engagement can be given that all hitherto unexecuted judgments can certainly be executed within the period of six months to which the note of last November 26th refers.

In the event of divergent views, the Ministry of Justice in those cases involving an execution against an Ethiopian debtor, or the Foreign Office in those involving execution against a foreign debtor, can be charged with the matter.

The Imperial Government itself has taken the initiative in proposing, as an exceptional measure, the formation of a Mixed Commission to study the laws of procedure. The formation of this Commission and the beginning of its work should not be made to wait upon the creation of another commission. As soon as the Commission to study laws of procedure reaches a successful conclusion of its work, the possibility of forming a new commission can be contemplated.

During the work of the Commission to consider a draft law of procedure and pending the termination of its work, questions relative to:

1) Execution of judgments rendered since the resumption of the Special Tribunal's functions (paragraph 6 of the note of November 26, 1932)

³ File translation revised by the editors.

- 2) The form of hearings (paragraphs 9 and 10 of the same note)
- 3) The provisional application of the settlements contemplated in the note of August 25th, 1932 (last paragraph of the note of November 26, 1932)

will be considered and adjusted in practice by mutual agreement between the judge and the consul in each specific case.

884.05/35

The Minister in Ethiopia (Southard) to the Secretary of State

No. 1177

ADDIS ABABA, April 24, 1933.

[Received May 20.]

SIR: I have the honor to refer to the Legation's No. 1164 of April 1, 1933, enclosing copy of the Ethiopian Foreign Office Note of March 31, 1933, to the local Diplomatic Corps, on the subject of the reform and reorganization of the Special Tribunal (Mixed Court).

The Corps has authorized the French Minister, its Dean, to discuss with the Minister of Foreign Affairs and the Chief Judge of the Special Tribunal for purposes of interpretation and clarification the Note of March 31st. On the basis of these discussions the attached Note has now been written and sent by the Dean on behalf of his colleagues.

The Diplomatic Commission for the study of a Code of Procedure is expected soon to be appointed and will probably be headed by Dr. Martino Mario Moreno, Oriental Secretary of the Italian Legation, whose general knowledge of law and experience in Consular or Mixed Court jurisdiction is of high quality. My colleagues have proposed as the two other members a junior officer of the French Legation and a junior officer of the American Legation and Consulate General. Definite naming of the members of the Diplomatic Corps Commission will presumably await the nomination of the Ethiopian Commission which we expect soon.

The Corps understands that the terms of the attached Note have already been orally proposed by the Dean to the Minister of Foreign Affairs and the Chief Judge of the Special Tribunal and orally accepted by them. It may, therefore, be assumed that the activities outlined in this Note will proceed without delay. In such event it seems probable that the foreign Consular officers here who have for a long while been on a "strike" against the Court will resume participation in its functions within the next two or three months.

In the fourth paragraph of the attached Note is mentioned the procedure to be followed by the Ethiopian official to be appointed to execute judgments formerly given. It is provided that in judgments against

foreigners he must work through the Ministry of Foreign Affairs which means, in effect, that he will work through the foreign Legation concerned and will have no direct power over foreign nationals against whom judgments are to be executed. The actual execution will be effected by the Consul of the national concerned. This method will, our French colleague understands from his oral negotiations, be accepted by the Ethiopians. It eliminates for the time being at least the danger which the Corps saw in the setting up of an Ethiopian Bureau of Execution (of judgments), with direct authority over all delayed judgment executions, which the Ethiopian Government has advocated.

On the whole there appears to have been some definite progress made in this difficult question of Special Tribunal reform and reorganization . . .

Respectfully yours,

ADDISON E. SOUTHARD

[Enclosure—Translation ⁴]

The Dean of the Diplomatic Corps at Addis Ababa to the Ethiopian Minister for Foreign Affairs

As Dean of the Diplomatic Corps, the French Minister has the honor to acknowledge receipt from His Excellency the Minister of Foreign Affairs of his note of March 31, 1933 (Megabit 22, 1925).

The Diplomatic Corps is pleased to observe that, thanks to the spirit of conciliation shown by both parties, the question in point can now be considered as settled.

As regards the six-month period for execution of judgments handed down but not yet executed, it is understood that this period will be observed in principle, but that if certain specific cases are not adjusted within this period, they will require new consideration and the determination of a new period.

The Diplomatic Corps agrees that the Imperial Government appoint a special official to execute the judgments already handed down, instead of placing this execution in the hands of the Commission designated to study a code of procedure. This official will remain in contact with the interested consul. In case of divergence of opinion, recourse will be had through the usual channels, i.e., to the Ministry of Justice, in the case of an Ethiopian debtor, or to the Ministry of Foreign Affairs, in the case of a foreign debtor.

It is understood that the Commission designated to reform the Special Tribunal will be appointed within the month following the termination of study on the code of procedure.

The Diplomatic Corps accepts the suggestions set forth in the March

⁴ File translation revised by the editors.

31st note as far as concerns the procedure to be followed after the reopening of the Special Tribunal, and pending the termination of the work of the Commission studying the law of procedure.

The Diplomatic Corps will appoint its own representatives on this Commission as soon as the Imperial Government has indicated its assent to the present proposals.

ADDIS ABABA, April 19, 1933.

884.05/26

The Minister in Ethiopia (Southard) to the Secretary of State

No. 1181

ADDIS ABABA, May 1, 1933.

[Received June 2.]

SIR: I have the honor to refer to the Legation's No. 1177 of April 24, 1933, enclosing in French and English a copy of the Diplomatic Corps Note addressed under date of April 19, 1933, to the Ethiopian Foreign Office on the subject of reform and reorganization of the Special tribunal (Mixed Court).

The Minister of Foreign Affairs has taken exception to the phrase "accepte que"⁵ which appears at the beginning (fourth and fifth words) of Paragraph four of the Diplomatic Corps Note of April nineteenth and demands that there be substituted the phrase "prend acte que". To avoid, if possible, further delay and quibbling the Diplomatic Corps has consented to the indicated alteration in its Note. . . .

Respectfully yours,

ADDISON E. SOUTHARD

884.05/28

The Minister in Ethiopia (Southard) to the Acting Secretary of State

No. 1211

ADDIS ABABA, July 3, 1933.

[Received August 8.]

SIR: I have the honor to refer to the Legation's No. 1177 of April 24, 1933, reporting the imminence of the designation of an Ethiopian committee to meet with a junior committee of the Diplomatic Corps to study a law or code of procedure for the better operation of the Special Tribunal (Mixed Court).

As indicated in our No. 1177 the Diplomatic Corps has designated as its committee Mr. Baelen, Counselor of the French Legation and at present Chargé d'Affaires; Doctor Moreno, Counselor of the Italian Legation; and Mr. Park of the American Legation. The Ethiopian

⁵ Rendered "agrees that" in the English translation.

Government has now officially notified the Corps that its committee is composed of Belatta Ayela Gabré, Judge of the Special Tribunal; Mr. Auberson, Legal Adviser to the Special Tribunal; and Mr. Colson, Adviser to the Ministry of Finance; in the order or rank given. At least four members of the two committees, Messrs. Baelen, Moreno, Auberson, and Colson, are understood to be qualified by formal legal education for this work. Doctor Moreno, the Italian, is understood to be particularly well equipped on the basis of previous experience.

The Diplomatic Committee will first meet with and ascertain the views of the Egyptian and Greek career Consuls and of those local honorary Consuls who may be interested. It will then indicate its readiness to meet with the Ethiopian committee. We do not anticipate that the negotiations will have a rapid progress because the question is in general a difficult one and there appear to be many points of divergence in the views of the Ethiopian Government and of the Diplomatic Corps respectively.

Further report will be made as promptly as there shall be developments to justify it.

Respectfully yours,

ADDISON E. SOUTHARD

884.05/40

The Minister in Ethiopia (Southard) to the Acting Secretary of State

No. 1224

ADDIS ABABA, July 26, 1933.

[Received August 23.]

SIR: I have the honor to refer to the Legation's No. 1211 of July 5 [3], 1933, reporting names of the committees appointed by the Ethiopian Government and the local Diplomatic Corps, respectively, to study a law of procedure for the Special Tribunal (Mixed Court).

The committees have now actually begun their meetings and will, it is understood, meet on an average of about twice a week to carry on what will probably be a lengthy and tedious bit of work. The Ethiopian Committee has offered as a basis for the joint commission's studies the "Auberson Projet" of which copy was enclosed with the Legation's No. 1103 of December 24, 1932,⁶ and which had been previously considered by the Diplomatic Corps as too long and cumbersome for practical application.

Respectfully yours,

ADDISON E. SOUTHARD

⁶ Not printed.

884.05/44

The Minister in Ethiopia (Southard) to the Secretary of State

No. 1264

ADDIS ABABA, October 17, 1933.

[Received November 15.]

SIR: I have the honor to refer to the Legation's Nos. 1258 and 1261 of October 5 and 12, 1933,⁷ respectively, with which were submitted draft civil and criminal codes proposed for use in the Special Tribunal (Mixed Court) in Ethiopia. These codes represent the deliberation of a joint Ethiopian and Diplomatic Corps commission, and have been submitted by my colleagues to their respective Governments for comment or approval.

A third project, for the reform or reorganization of the Special Tribunal, has now been taken up by the Diplomatic Corps. The Corps proposes to designate a commission, composed of its junior officers qualified for such work, to meet with an Ethiopian commission to consider a reform or reorganization of the Tribunal. The instructions which the Corps proposes to give its commission as a basis for negotiation with the Ethiopian representatives have been prepared in memorandum form. Before proceeding to the appointment of its commission the members of the Corps are referring the memorandum of proposed instructions for the approval or comment of their respective Governments.

There is enclosed herewith in the original French, with free translation into English, a copy of the Diplomatic Corps memorandum. The instructions of the Department are respectfully requested as to whether this Legation may join with the other foreign Legations here, on the basis of this statement, for the negotiation of a reform or reorganization of the Special Tribunal. The specific designation in the Paragraph 4 of this memorandum of the countries from which the proposed foreign judges may be appointed has been made with a view to avoiding, for obvious reasons, the selection or appointment of a foreign judge of the nationality of any of the Legations represented here. The provision in Paragraphs 8, 15 and 20 for a salary in "gold" is to protect the appointees from exchange fluctuations which could cause them considerable hardship.

The Diplomatic Corps finds itself in doubt as to what authority should have jurisdiction over a foreign judge of the Special Tribunal who might be accused of a crime or an offense, but is definitely of the opinion that such judge should in no circumstance be submitted to a Consular Court for trial or judgment. We have each agreed to request the views

⁷ Neither printed.

of our respective governments on this point, and I have therefore the honor to request the Department's views.

Respectfully yours,

ADDISON E. SOUTHARD

[Enclosure—Translation ⁸]

MEMORANDUM

The Chiefs of the Diplomatic Missions established at Addis Ababa: Believing that experience has sufficiently demonstrated the impossibility of obtaining satisfactory justice in mixed cases through the present institutions;

Observing that the work undertaken by the Mixed Commission for the reform of procedure in the Special Court will soon be finished;

Remembering that by virtue of the agreement made in April, 1933, between the Diplomatic Corps and the Ethiopian Government a second mixed commission will immediately begin the study of the reform of the Special Court itself;

Convinced that this second negotiation can succeed only by prior agreement between the interested powers;

Persuaded that the scheme of reform drawn up in 1929 by the Diplomatic Corps must undergo some modifications in view of the recent changes proposed in the laws of procedure as well as in view of the fact, now known, that certain points of this plan would meet firm opposition on the part of the Ethiopian Government;

Hereby decide to refer to their respective governments for approval the following suggestions which can serve as instructions for all the delegates whom the Diplomatic Corps will appoint to sit on the Mixed Commission for the reform of the Special Court:

The delegates of the Diplomatic Corps will point out at the beginning of the negotiation that the interested powers presented, in 1929, a plan for the reform of mixed jurisdiction, which did not meet with the assent of the Ethiopian Government.

They will, moreover, call attention to the fact that on April 12, 1932 (Miazia 4, 1924),⁹ the Ethiopian Government expressed the desire that deliberative sessions be begun between the members of the Special Court, and also that rules of procedure be defined in a code.

The delegates of the Diplomatic Corps will emphasize the fact that the Ethiopian Government has just received full satisfaction on both of these points.

They will also make plain that they are in agreement with the terms of the above-mentioned note, dated April 12, 1932, in considering that new reforms are indispensable.

⁸ File translation revised by the editors.

⁹ Note not printed.

They can then ask the Ethiopian delegates how His Majesty's Government now regards these reforms.

During the discussion to follow the delegates will endeavor to accomplish the establishment of a mixed jurisdiction according to the suggestions in the following summary.

1. For a period of five years, renewable by tacit consent, the Ethiopian Government and the governments represented at Addis Ababa will adopt the system outlined in the following paragraphs for the adjudication of mixed cases in Ethiopia.

2. In Ethiopia all civil, commercial or criminal matters, between foreigners (whether nationals or protected subjects, and including legal persons) and Ethiopians (subjects or legal persons under either private or public law) shall be brought before a tribunal, to be called a Mixed Court of First Instance; exception being made, however, of cases of personal status, inheritance, and bankruptcy.

3. This Court at Addis Ababa will consist of three judges: an Ethiopian magistrate, a delegate of the interested legation or consulate, and a foreign career magistrate, who will preside in the Mixed Court of First Instance, and whose voice will be decisive in case of disagreement.

4. This president will be a magistrate belonging to one of the five following countries: Austria, Denmark, Netherlands, Switzerland, Czechoslovakia.

5. He will be nominated by his government and will enter the Ethiopian Government's service for five years. His contract will be renewable.

6. This contract cannot be broken during its term except for duly established reasons of health, or by agreement between the Diplomatic Corps and the Ethiopian Government. In the second case, an indemnity equal to two months' salary will be awarded by the Ethiopian Government to the departing magistrate.

7. The president of the Mixed Court of First Instance must know the French language fluently, and he will draft his decisions in that language.

8. His salary will be 100 gold pounds sterling per month.

9. He will be entitled to three months' leave at the end of two and one-half years of residence, such leave not including time for the journey going and coming by direct route. His travel expenses from Addis Ababa to the capital of his country of origin will be paid him by the Ethiopian Government. He will retain his salary during the period of leave.

10. He will also be entitled each year, excepting the year of long leave, to a leave of one and one-half months with full salary, during court vacation.

11. When the contract is first made and at the expiration of each contract period the Ethiopian Government will bear the expenses of the magistrate's journey going and coming, as well as those of his family.

12. Judgments of first instance can be appealed, under the reservations stated in paragraph 22, to a court of appeal called the Mixed Court of Appeal.

The Mixed Court of Appeal will sit at Addis Ababa and will consist of three judges: an Ethiopian magistrate, a delegate of the interested legation or consulate who must not have participated in the trial of first instance, and a president, who will be a foreign career magistrate, and whose voice will be decisive in case of disagreement.

13. The president of the Mixed Court of Appeal will belong to the High Magistracy of one of the countries listed in paragraph 4, but he may not be of the same nationality as the president of the Mixed Court of First Instance at Addis Ababa.

14. He will be appointed in the manner indicated in paragraph 5. He will be bound by the conditions in paragraphs 6, 7, 9, 10, and 11.

15. His salary will be 150 gold pounds sterling per month.

16. The Ethiopian Government will also engage a judge of first instance, on the terms indicated in paragraphs 4 and 5 who will normally preside in the Mixed Court of First Instance at Diré-Daoua or Harrar, and who will ensure replacement of the president of the Mixed Court of First Instance at Addis Ababa when the latter is on leave or absent for important reasons.

17. This magistrate will be bound by the conditions in paragraphs 6, 7, 9, 10, and 11. He may not be of the same nationality as the president of the Mixed Court of Appeal.

18. His salary will be 100 gold pounds sterling per month. He will not receive additional compensation for filling a vacancy as provided in paragraph 16.

19. The presidents of the Mixed Courts of First Instance or of Appeal will always be assisted by an Ethiopian interpreter who speaks French fluently.

20. The Addis Ababa Mixed Court will have a clerk of court belonging to the judiciary of one of the countries enumerated in paragraph 4, appointed by the Ethiopian Government, on nomination by his own government. This clerk of court will be engaged for three years and his contract may be renewed. His salary will be at least 60 gold pounds sterling per month. His travel expenses at the time of engagement and on expiration of his contract, for himself and family, will be paid by the Ethiopian Government. In case of renewal of engagement, he will be entitled to four months' leave with full salary and travel expenses for himself and family.

21. This clerk of court must know French fluently.

22. There will be no appeal in civil matters when the amount concerned does not exceed 500 thalers. In criminal matters there will be

no appeal when the sentence does not involve more than 600 thalers fine or one month's imprisonment.

23. In trials of first instance, as also in appeal, the Court will be duly constituted even if the interested legation or consulate fails to send its delegate. The same will hold in the absence of the Ethiopian magistrate.

24. In criminal matters, the president of the Court may demand the services of the foreign officers employed by the Ethiopian Government, in order to carry out investigations.

25. Likewise in criminal matters the duty of Attorney for the State may be entrusted by decision of the president of the Court to one of the lawyers admitted to practice before the Court. This lawyer will be compensated.

26. Pending the drafting of Mixed Codes, the Court will try cases according to the fundamental law of the defendant.

27. The laws of procedure drafted by the Mixed Committee in July, August and September, 1933, will be adapted without delay and by mutual agreement to the new organization of the Court.

28. (Omitted.)

29. The Mixed Court of First Instance functioning at Diré-Daoua and at Harrar will consist of the foreign magistrate contemplated in article 16, the representative of the Ethiopian Government, and the consul or his delegate.

30. Pending the establishment of courts identical with those whose organization is provided above, a Mixed Court will function in all localities of the Ethiopian Empire where there is a permanent representative of a foreign power, this Court to consist of an Ethiopian judge and the said representative. This Court will have cognizance of all cases contemplated in paragraph 2.

31. Judgments rendered by the Court of First Instance at Diré-Daoua or at Harrar may be appealed to the Mixed Court of Appeal at Addis Ababa.

32. When the Ethiopian judge and the foreign representative cannot come to agreement on cases referred to them under the terms of article 30, the Mixed Court of First Instance at Addis Ababa will take cognizance of such matters in the first instance.

33. It remains understood that all the clauses of the Klobukowsky Treaty¹⁰ not in direct contradiction to the amendment to be made regarding judicial reform retain full force.

¹⁰ Treaty of friendship and commerce between Ethiopia and France, signed at Addis Ababa, January 10, 1908, *British and Foreign State Papers*, vol. CI, p. 997.

884.05/46

The Minister in Ethiopia (Southard) to the Secretary of State

No. 1272

ADDIS ABABA, October 26, 1933.

[Received November 22.]

SIR: I have the honor to refer to the Legation's No. 1264 of October 17, 1933, forwarding a draft of the Diplomatic Corps proposal for reorganization and reform of the Special Tribunal (Mixed Court).

As stated in our No. 1264 each local Legation sent this proposal to its Government for approval or instruction. My British colleague has obtained by telegraph his Government's approval and comment, which he outlines in a letter of October 19, 1933, to each local Legation. A copy of the letter is herewith enclosed for the information of the Department.

Respectfully yours,

ADDISON E. SOUTHARD

[Enclosure—Translation ¹¹]*The British Minister in Ethiopia (Broadmead) to the American Minister (Southard)*

(88/18/33)

ADDIS ABABA, October 19, 1933.

MONSIEUR LE MINISTRE: I have the honor to inform Your Excellency that I have received a telegram from my Government advising me that it approves the proposals drawn up for the reform of the Special Tribunal, including the proposal that salaries be paid in gold pounds.

At the same time the Foreign Office asks whether it would not be desirable to make provision to have the clerk of the Court take the place of a judge who for any reason must be absent from court and at the same time appoint a deputy clerk.

As for the question of the jurisdiction to which a foreign judge would be subject, the Foreign Office proposes as a possible solution that there be formed a tribunal *ad hoc* composed of the Ethiopian judge and of the two other foreign judges, to whom it would be well to add, for example, three consuls general, namely, of France, of Italy and of His Britannic Majesty or of the United States.

I am sending a copy of this letter to each interested Legation.

Accept [etc.]

P. M. BROADMEAD

¹¹ Original letter in French; translation has been supplied by the editors.

PROJECT FOR CONSTRUCTION OF A DAM AT LAKE TSANA ¹²

884.6461 Tsana Dam/76a : Telegram

The Acting Secretary of State to the Minister in Ethiopia (Southard)

WASHINGTON, March 16, 1929—6 p.m.

10. As a result of special efforts to meet King Tafari's ¹³ wishes White Engineering Corporation is able to send to Ethiopia its Vice President who has been in its employ for many years and is exceptionally well qualified to handle Tsana Dam negotiations.

In behalf of the Corporation please inform His Majesty King Tafari that Mr. Henry A. Lardner, Vice President of J. G. White Engineering Corporation and a special representative of its President, with full powers, is leaving New York on March 29 on the S.S. *Berengaria*. He will sail from Marseille on April 11 on the S.S. *Explorateur Grandidier* and is due to arrive at Djibouti on April 22.

CLARK

884.6461 Tsana Dam/92 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

ADDIS ABABA, June 21, 1929—10 p.m.

[Received June 23—9:40 a.m.]

18. The King has today signed and sealed in the form of a letter an agreement to give to the White Company construction entirely for the Tsana Dam. In this letter the Government of Ethiopia undertakes also to inform the British Government of its agreement with the White Company and of its consent to discuss proposals for a water contract. A representative of the White Company is invited to participate in the negotiations with the British Government. Under the difficult local circumstances I consider this letter a satisfactory completion of the first of three steps. The second step will be negotiation of the water contract with the British Government and the third step completion of the Ethiopian engagement to sign construction contract [with] the White Company.

SOUTHARD

¹² Continued from *Foreign Relations*, 1928, vol. II, pp. 786-799.

¹³ King Regent, October 7, 1928; crowned Emperor Haile Selassie, November 2, 1930.

884.6461 Tsana Dam/102 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

ADDIS ABABA, August 9, 1929—5 p.m.

[Received August 10—4:42 p.m.]

24. The King yesterday afternoon discussed Tsana with the British Minister. His Majesty stated that he could proceed no further with the White Company until he knew how much water the British wanted and what they would pay for it. In my opinion the King knows that these two questions can not be answered without a full conference of the parties concerned and has asked them as his own peculiar way of giving the British an opening for proposal of the general conference for which we have been striving. My colleague informs me that he has cabled the questions to London with recommendations for proposal of a conference. He also informs me that if a conference is held the King is now inclined to insist that it be at this capital. In my opinion this is not objectionable as, if the general conference is successful, the White representative may while on the ground proceed at once to negotiate construction contract.

SOUTHARD

884.6461 Tsana Dam/114 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

ADDIS ABABA, September 19, 1929—9 p.m.

[Received September 20—1:45 p.m.]

29. The King has just informed me of his definite decision to have here about December first an Anglo-American conference to complete details of Tsana project and hereby invites the White Corporation to send its representative. I shall cable exact date after seeing the King again tomorrow.

SOUTHARD

884.6461 Tsana Dam/115 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

ADDIS ABABA, September 21, 1929—6 p.m.

[Received September 21—8:20 a.m.]

30. Referring to my cable September 19, 9 p.m. The King has now informed me that the White Corporation representative to the conference should arrive here at any time during the last 10 days of December. I am informed by the British Minister that the King has not yet notified

him of the acceptance of the British proposal for a conference but I anticipate that such action will occur within a few days¹⁴ and that the delay has no special significance.

SOUTHARD

884.6461 Tsana Dam/115 : Telegram

The Secretary of State to the Minister in Ethiopia (Southard)

WASHINGTON, October 4, 1929—3 p.m.

42. Your 30, September 21, 6 p.m. and 29, September 19, 9 p.m. In answer to the invitation contained in your telegram No. 29 please convey the following to King Tafari from the White Corporation:

“The White Corporation is in receipt of His Majesty’s invitation to a tripartite conference at Addis Ababa and has the honor to accept it. They will accordingly send their Vice President, Mr. Lardner, to confer with King Tafari’s representative and the representatives of the British Government. Mr. Lardner will arrive at Addis Ababa during the last 10 days of the month of December as His Majesty has requested.”

STIMSON

884.6461 Tsana Dam/141 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

ADDIS ABABA, February 28, 1930—10 a.m.

[Received March 1—9:05 a.m.]

3. Lake Tsana Dam Conference has now ended with the exception of a few details to be completed informally. The result is in summary an order by the Ethiopians to the White Corporation to proceed this fall with a survey for a road from Addis Ababa to the lake and a resurvey of the dam site. As soon as figures are available from these surveys final financial and construction contracts will be decided upon.

SOUTHARD

884.6461 Tsana Dam/266

The Minister in Ethiopia (Southard) to the Secretary of State

No. 681

ADDIS ABABA, April 2, 1931.

[Received April 29.]

SIR: I have the honor to report that I had yesterday afternoon an audience with His Imperial Majesty, the Emperor, for the purpose of discussing the present status of the Tsana Dam and highway project.

¹⁴ In telegram No. 32, September 25, 6 p.m., the Minister in Ethiopia reported that notification of the King’s acceptance was given on September 24 (884.6461 Tsana Dam/118).

I informed His Majesty that the Roberts¹⁵ Survey was nearing an end and that the reports should be in shape for discussion by September or October of this year. My suggestion to His Majesty was that a conference be called in September or October between himself and the British and American interests for the purpose of considering the survey report and for deciding upon a final construction contract. He indicated that he would have his Minister of Foreign Affairs promptly ascertain the views of the British interests and if they agreed to a conference he would call one during the months indicated.

His Majesty intimated to me that perhaps the British would not wish to have a conference so soon. He did not elaborate his thoughts in this connection but I suspect that some of the whispers previously reported from the Legation, as to British reluctance to proceed promptly with the project, have reached His Majesty's ears. The Legation will informally press the Ministry of Foreign Affairs to obtain as soon as possible an indication of British views.

Nothing has lately been heard from the Roberts Survey party, but according to its plans it should now be approaching half way on the return trip from Lake Tsana to Addis Ababa. Upon arrival of the party here I shall present Major Roberts to the Emperor in order that the latter may ask any questions he has in mind. That should not take long and the Legation assumes that Major Roberts will leave Addis Ababa for New York promptly—probably around May 1st, 1931.

Respectfully yours,

ADDISON E. SOUTHARD

884.6461 Tsana Dam/264 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

ADDIS ABABA, April 27, 1931—4 p.m.

[Received April 27—2 p.m.]

8. The Emperor invites representatives of the White Corporation to arrive here end of November for presentation and discussion Tsana survey report. The British will be invited when they ask Ethiopian Foreign Office and I have intimated such to the local British Legation which is telegraphing London for authorization to proceed accordingly.

SOUTHARD

¹⁵ L. B. Roberts, engineer for the J. G. White Corporation.

884.6461 Tsana Dam/268 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

ADDIS ABABA, May 6, 1931—4 p.m.

[Received May 7—8:15 a.m.]

9. Referring to my cable of April 27, 4 p.m., British Chargé d'Affaires has had a reply from London informing him that the Sudan Government considers it premature to press at this time for a conference. Chargé d'Affaires does not intend to say anything to the Ethiopians unless further instructed. In connection with this delay please see my despatch No. 657 of March 7th¹⁶ and related despatches.

SOUTHARD

884.6461 Tsana Dam/302

The Minister in Ethiopia (Southard) to the Acting Secretary of State

No. 785

ADDIS ABABA, August 11, 1931.

[Received September 10, 1931.]

SIR: I have the honor to acknowledge receipt of the Department's telegram No. 17 of August 5th, 1931,¹⁶ stating that unless I cable an adverse opinion the J. G. White Engineering Corporation proposes to ask informally through the Italian Embassy at Washington for estimates on the cost of stone masons and other artisans for classes of work on the Tsana Dam for which the Ethiopians are not equipped.¹⁷

While this step on the part of the Corporation impresses the Legation as perhaps having elements of danger our opinion is not sufficiently well formed along those lines to justify an adverse cable, especially as Mr. Henry A. Lardner, Vice President, is personally familiar with the local political situation and can visualize fairly accurately what might happen should the Italians here start boasting in Ethiopian hearing that they have been asked to "participate" with the American company in the construction of the Tsana dam. I assume that the Italians will not do that prematurely, and I also assume that Mr. Lardner has asked the Italian Embassy in Washington to consider the matter most confidential.

The Italians are secretly feared by the Ethiopians and there will for many years remain the suspicion that our Roman friends might at any time decide to slice off still a bit more Ethiopian territory to add to their colonies on one side or the other. But Mr. Lardner knows all of this, and the Legation must assume that there is accordingly a very impor-

¹⁶ Not printed.¹⁷ In an undated telegram, No. 17, received August 20, 2 p.m., the Minister in Ethiopia stated that he considered the proposed action inadvisable (884.6461 Tsana Dam/298).

tant reason for his proposed move in asking quotations on Italian skilled labor. After mature consideration of these various points the Legation has concluded that there does not exist sufficient basis for an adverse cable opinion on its part. The Legation does not, for reasons above intimated, look upon the move with unqualified approval, and hopes that the White Corporation will have taken the necessary precautions to prevent any premature discussion in Addis Ababa.

The Italian policy here is becoming more and more active. The Governor of Eritrea is due in Addis Ababa within a few days on a state visit to discuss with the Emperor various matters of Italian ambition towards Ethiopia. One important point will be the question of Italian highway building from Eritrea on the north either to Gondar or to Dessie. Should these matters all go well it will indicate a better Ethiopian feeling towards the Italians, and will by that much lessen any prejudice arising from possible local gossip in connection with the White Corporation's proposals through the Italian Embassy in Washington. Further report on this visit of the Governor of Eritrea will shortly be made.

Respectfully yours,

ADDISON E. SOUTHARD

884.6461 Tsana Dam/332

The Minister in Ethiopia (Southard) to the Secretary of State

No. 929

ADDIS ABABA, April 5, 1932.

[Received May 2.]

SIR: I have the honor to refer to the Legation's No. 897 of February 11th, 1932,¹⁹ reporting that we had procured issuance by the Ethiopian Government to the local British Legation of a definite invitation to the British to come to Addis Ababa with the representative of the White Engineering Corporation to present the report of the Tsana dam and road survey completed last winter.

My British colleague telegraphed this invitation to London and Khartoum, mentioning April as the probable time for the conference. He has now been instructed that April is too early; that the Sudan Government is negotiating with the Egyptian Government with a view to participation by the latter in the cost of the Tsana dam and that these negotiations are not likely to be completed for some months. My colleague has been instructed so to inform the Ethiopian Government, and to ask in addition that the Ethiopians authorize the White Corporation to provide Khartoum in advance with a copy of the complete survey report. The Ethiopian Minister of Foreign Affairs has promised my colleague to consider the latter request and to telegraph the White Corporation accordingly.

¹⁹ Not printed.

I assume that the Minister of Foreign Affairs will consult this Legation in connection with the request that the White Corporation provide an advance copy of the survey report to Khartoum, but to date he has not mentioned the matter.

My British colleague said that he had mentioned October to the Minister of Foreign Affairs as a tentative date for the Tsana conference but that he could not, of course, state definitely when the Sudan Government would be ready.

Inclusion of the Egyptian Government as a party to the Tsana negotiations would seem desirable rather than otherwise. The Ethiopians have been and are suspicious of the British motives in the Tsana project. They do not regard the Egyptians with any definite suspicion and are inclined to feel that the latter would not join the British in any enterprise inimical to Ethiopian interests. The Ethiopians are also inclined, as much as they are ever inclined in such direction, to regard Egyptian ambitions with favor on the basis of ancient historical relations and on religious relations (the head of the Ethiopian church being always an Egyptian Copt) which continue to the present day. The Ethiopians are inclined to patronize the Egyptians but on the other hand are more likely to favor Egyptian than British ambitions in the direction of a realization of the Tsana project. Egyptian participation in the negotiations may therefore have the advantage of diluting present Ethiopian suspicion of the British in relation at least to this particular project.

Respectfully yours,

ADDISON E. SOUTHARD

884.6461 Tsana Dam/367

The Minister in Ethiopia (Southard) to the Secretary of State

No. 1085

ADDIS ABABA, November 24, 1932.

[Received December 21.]

SIR: I have the honor hereby to confirm the Legation's telegraphic Despatch of November 23rd, 1932,²⁰ conveying an invitation from the Ethiopian Government to the White Engineering Corporation, 43 Exchange Place, New York City, to participate in a conference on the Tsana Dam project, to be held in Addis Ababa the latter half of January, in which are expected also to take part representatives of the Anglo-Sudanese and Egyptian Governments.

This telegram was sent on the basis of an oral request of that date to me by the Ethiopian Minister of Foreign Affairs who thought it well thus to prepare the White Corporation for the formal invitation by letter which he expects to have ready for mailing within a few days. The exact date in the latter half of January for convening the conference is

²⁰ Not printed.

yet to be fixed, and will be telegraphed as soon as known. The original idea of the Ethiopians was to fix the conference for January first but my British colleague and I have pointed out that because of the usually leisurely Ethiopian Christmas festivities the conference could do little, if any, work during the first half of January. We therefore proposed January fifteenth or later in the month for beginning the conference.

The introduction of an Egyptian delegate is, the Legation understands, by request of the local British Legation, and is expected to facilitate arriving not only at a definite arrangement for getting on with the Tsana work but to facilitate the heretofore difficult financial arrangements—difficult mainly because of alleged poverty of the Sudan in official income.

The first attitude of the Ethiopians towards having an Egyptian representative is commented upon in the Legation's No. 1083 of November 22nd, 1932.²¹ Since the date of that despatch the Ethiopian Minister of Foreign Affairs has paid me an informal visit to ask, on behalf of the Emperor, my opinion as to the desirability of including an Egyptian representative as desired by the British. I informally replied that I thought such would be an excellent idea, that the Egyptians would eventually and rightfully be interested in the water to be impounded at Tsana, and that they would undoubtedly be able to assist importantly in the guarantees necessary for the financing of the project which the Sudan Government might not be prepared to take entirely on itself. The Minister then said that he agreed, and that an Egyptian representative would be invited. He asked my further opinion as to whether he should transmit the invitation directly to the Ministry of Foreign Affairs in Cairo or through the local Egyptian Consul. I could see no objection to the latter course and informally so opined. Presumably the invitation to the Egyptians will shortly go forward.

In view of the incomplete results of the last two conferences to which the White Engineering Corporation has sent a delegate here the American firm may be somewhat doubtful as to the practical value of participating in a further conference. There is no way in which the Legation can procure assurance from the Ethiopians that definite results will be arrived at, because the British hold the key to the situation in that respect and it is to them that the American firm must look should it require assurance of the kind. We believe that if the British and Egyptians negotiate reasonably the Ethiopians will consent to an arrangement for definite progress. The Legation has, after much strategy and maneuvering to conciliate the differences in ideas of procedure arising from what we might term Ethiopian and British distrust one of the other, succeeded in having a conference definitely called.

²¹ Not printed.

We think that we also have the Ethiopians in a more receptive state of mind than heretofore as to the desirability for definite arrangements. On this basis we feel that the coming conference may reasonably be expected to produce results satisfactory to the American firm, but we naturally are not able to give any assurances to that effect because of our inability to know definitely in what manner and intention the representatives of the Sudan and Egypt may enter the negotiations.

Respectfully yours,

ADDISON E. SOUTHARD

884.6461 Tsana Dam/369 : Telegram

The Secretary of State to the Minister in Ethiopia (Southard)

WASHINGTON, December 22, 1932—noon.

23. Following from White Engineering Corporation:

"Please accept Emperor's invitation. Lardner will arrive Addis Ababa January 27th."

STIMSON

884.6461 Tsana Dam/377 : Telegram

The Minister in Egypt (Jardine) to the Secretary of State

CAIRO, January 21, 1933—11 a.m.

[Received January 21—6:30 a.m.]

3. Following telegram has been sent by me to Southard.

"British plan to have Egyptians pay the entire cost Tsana initially has raised storm of protest following public disclosures regarding plans and these have now been abandoned in favor of a request to the Emperor for permission for a further survey and report by the White Company. Lardner agreeable to this and is bringing under seal for your information copy of a detailed despatch to Department²² regarding latest developments. Am repeating to the Department."

JARDINE

884.6461 Tsana Dam/378

*The President of the J. G. White Engineering Corporation (Gano Dunn)
to the Chief of the Division of Near Eastern Affairs (Murray)*

NEW YORK, January 26, 1933.

DEAR MR. MURRAY: I want to acknowledge and thank you for your letter of January 21st, containing paraphrase of telegram from Mr. Jardine in Cairo to Mr. Southard.

²² Presumably despatch No. 645 of January 20, 1933, from the Minister in Egypt; not printed.

About the same time we received similar information from Mr. Lardner in Cairo.

According to our understanding the British Government never attempted to have the Egyptian Government pay the whole cost of the Tsana construction but only to pay such share of the cost as was represented by the ratio in which the water benefits would be divided between Egypt and the Sudan.

A situation which the Egyptians may be losing sight of is the long standing disinclination of the Emperor to permit the Lake Tsana waters to be used at all. If thru other channels he should get his road from Addis Ababa to the Lake, both the Egyptians and the British might have to wait another long period of years before the Emperor and his officers might be willing to encounter the anti-British and anti-foreign prejudice against operations at the Lake.

The survey contained in our report was a reconnaissance survey and of course not adequate for construction, and the move to start final surveys would undoubtedly have as its result a holding of the *status quo* in respect to the Emperor's present willingness until the project as a whole could be put thru.

Again we greatly appreciate your good offices.

Sincerely yours,

GANO DUNN

884.6461 Tsana Dam/386

The Minister in Ethiopia (Southard) to the Secretary of State

[Extract]

No. 1125

ADDIS ABABA, January 26, 1933.

[Received March 1.]

SIR: I have the honor to report that the Legation received on January 22nd, 1933, from the American Legation in Cairo, a telegram which we interpreted to state that the Anglo-Egyptian arrangements whereby the Egyptian Government would do the initial financing of the Tsana Dam construction in Ethiopia had been upset by newspaper publicity, and that the Egyptians had accordingly withdrawn from the arrangement whereby they had agreed to put up the money to enable early construction on the dam to begin.

The above telegram further indicated that the coming conference here would now, on the basis of the development in Cairo, be restricted to asking permission for a further survey of the dam project and could not, under the circumstances, proceed with concluding with the Ethiopians final arrangements for the actual construction of the dam as had been originally planned for this meeting.

My colleague at Cairo indicated that he was both cabling and writing to the Department on this subject.

On January twenty-second my British colleague came to see me to ask what I had heard from Cairo and to inform me that he had a long cable from the British Residency at Cairo on the subject of the change of plan as to Egyptian financing of the dam. His telegram was on the same general topics of the above indicated message which this Legation had from our Legation in Cairo, but was much more elaborate and detailed. From his recital to me of its contents I understood, in brief, that the Sudan Government had arranged that the Egyptian Government would finance the Tsana Dam and would receive back a share of the investment from the Sudan Government when the latter began to receive water and should be in a better position to make payments. Upon conclusion of this arrangement it appears that the Egyptian officials concerned decided to issue a news bulletin to the public press. The resulting publicity brought, I understand, a storm of protest from a section of the Egyptian public motivated, presumably, more by political antagonism than by other reasons. In the face of this protest, my British colleague stated, the Anglo-Egyptian financial arrangement was called off by the Egyptians.

This development will, he states, prevent the British and Egyptian representatives to the conference here from proposing a final construction contract to the Ethiopians, there being for the present no way of financing the work. My British colleague stated, however, that the British and Egyptian delegates would be authorized to ask Ethiopian permission to have a further survey carried out by the White Engineering Corporation, the Egyptian Government to meet the estimated cost of US\$130,000.00. Request for such permission will, we assume, be the main item of business for the conference which we expect to convene sometime during the first part of February and for which the American, British and Egyptian representatives are expected to arrive here within the next ten days.

Respectfully yours,

ADDISON E. SOUTHARD

884.6461 Tsana Dam/388

The Minister in Ethiopia (Southard) to the Secretary of State

[Extract]

No. 1138

ADDIS ABABA, February 14, 1933.

[Received March 14.]

SIR: I have the honor to refer to the Legation's No. 1133 of February 8th, 1933,²³ reporting the arrival in Addis Ababa of the American,

²³ Not printed.

British, and Egyptian delegates for a conference with the Ethiopians on the Tsana Dam project, and recording their formal reception by the Minister of Foreign Affairs.

The Emperor returned to Addis Ababa on the evening of February 9th, 1933, from his sojourn in the Somalilands and Aden. At 10:00 A.M. on February 11th, 1933, he received in formal audience the three delegates. At four o'clock of the same day he sent for Mr. Lardner, the American delegate, to come to the Palace to confer with him on how to open and proceed with the conference. The Emperor asked my presence at this meeting and while I think it best usually to avoid attending any of the actual business meetings about Tsana I could not decline such an invitation from the Emperor. He wished my advice as to whether the Ethiopian Government and the White Engineering Corporation should work out a proposal to give to the British and Egyptian delegates, or ask them to submit their proposals first. For obvious reasons of bargaining strategy I favored the latter procedure and Mr. Lardner, the American delegate, concurred.

The Emperor two days later, on February thirteenth, notified Mr. Lardner through the Minister of Foreign Affairs that he had arranged that the British and Egyptian delegates be asked to submit their proposal to a commission made up of the Minister of Foreign Affairs,²⁴ Doctor W. C. Martin,²⁵ Fitaurari Tafessa (Minister of Public Works), and Belaten Gheta Wolde Mariam of the Ministry of the Interior as members, with Mr. H. A. Lardner, Mr. E. A. Colson (American Financial Adviser), Dr. Johannes Kolmodin (Swedish Political Adviser in the Foreign Office), and Mr. Jacques Auberson (Swiss Legal Adviser to the Special Tribunal, etc.) as advisers. The conference will, the Legation thinks, be dominated or finally influenced in its deliberations by the Fitaurari Tafessa and the Belaten Gheta Wolde Mariam. . . .

The next step will be the submission to the above commission of the Anglo-Egyptian proposals, which will be communicated to the Department in an early despatch.

Respectfully yours,

ADDISON E. SOUTHARD

²⁴ Belaten Gheta Herouy Wolde Selassie.

²⁵ Ethiopian adviser to the Emperor.

884.6461 Tsana Dam/390

The Minister in Ethiopia (Southard) to the Secretary of State

No. 1143

ADDIS ABABA, February 22, 1933.

[Received March 23.]

SIR: I have the honor to refer to the Legation's No. 1139 of February 16th, 1933,²⁶ enclosing copy of the Anglo-Egyptian proposal to the Ethiopian Government for an additional survey of the Tsana dam and road project.

This proposal greatly disappointed the Emperor (he expected an actual construction proposal) who sent his Minister of Foreign Affairs to the Legation to ask informally what we thought the Ethiopian Government should do about it. I knew from conversations with Mr. H. A. Lardner of the White Corporation that nothing more could be expected from the British and Egyptians at this time. I also knew that Mr. Lardner much desired the approval of this new survey arrangement in order to keep his company in touch with the situation and in order to keep the project alive until there shall have been arrived at some practical plan for financing. We therefore informally advised the Minister of Foreign Affairs of our opinion that the Anglo-Egyptian proposal should be accepted.

The proposal was thereupon given into the hands of the commission named in our No. 1138 of February 14th, 1933, and this commission after less than a week of deliberation, and presumably as influenced by the Emperor, recommended acceptance. The Legation understands that two members of the commission, Doctor W. C. Martin and the Fitaurari Tafessa, held out for compelling the British to provide funds at once for a beginning of the construction or at the least to pay the Ethiopian Government a substantial cash inducement to keep the project open by authorizing another survey. Doctor Martin attended only the first meeting of the commission; or so he personally told me. He allegedly refused to attend subsequent meetings because of disgust that the actual construction was to be further delayed, and because the delay proposed would in his opinion merely play into British hands and perhaps eventually make possible the placing of the actual construction with British interests. The Fitaurari Tafessa, who is understood lately to have become somewhat of an Anglophobe, agreed with Doctor Martin, but is alleged to have gone further and charged in the secret meetings of the commission that the American company was playing the British game and keeping the Ethiopian Government from realizing immediate cash payments in the way of "indemnities or royalties." These two gentlemen were overruled by the other members, and a memorandum

²⁶ Not printed.

of acceptance of the Anglo-Egyptian proposal was drafted as per enclosed translation.²⁷

This memorandum was delivered two days ago to the British and Egyptian delegates and they announce their entire satisfaction with it. Naturally, under the circumstances, Mr. Lardner concurs. By influence of the Minister of Foreign Affairs the memorandum continues the specific mention of the White Engineering Corporation as initiated in previous documents on the Tsana negotiations. The Legation understands that the next step is to arrange for the issuance by the Egyptian Government of a cheque in the amount of US\$130,000.00 to be sent to the Ethiopian Government for transfer to the White Engineering Corporation. We understand that the British, Egyptian, and American delegates to the conference will leave in about ten days for Cairo to conclude this bit of the business. Presumably the American survey party will begin work at the beginning of next dry season in September or October. There is now not sufficient time to organize and begin caravan travel before the annual summer rains arrive.

The final construction contract originally planned for this conference has, for reasons known to the Department, to be delayed for another year or so at the earliest. The fault is mainly with British and Egyptian inability to provide the financial guarantees required. The Ethiopian and American parties to the negotiations have been quite ready to get on with serious and final construction contract and work. In consideration of all the circumstances, however, the conference just closed appears to have been a successful one.

Respectfully yours,

ADDISON E. SOUTHARD

884.6461 Tsana Dam/402 : Telegram

The Acting Secretary of State to the Minister in Egypt (Jardine)

WASHINGTON, June 1, 1933—5 p.m.

12. White Engineering Corporation requests you cable status Tsana proposal.

PHILLIPS

²⁷ Not printed.

884.6461 Tsana Dam/403 : Telegram

The Minister in Egypt (Jardine) to the Acting Secretary of State

CAIRO, June 3, 1933—11 a.m.
[Received June 3—6:25 a.m.]

12. Department's telegram of June 1, 5 p.m. Chamber of Deputies scheduled to take Tsana vote on June 5th after which it is hoped that it will pass through Finance Committee of the Senate and the Senate before Parliament is prorogued on June 20th. Minister of Public Works who is Acting Prime Minister seems confident that there will be no difficulties, a confidence shared by British advisers.

JARDINE

884.6461 Tsana Dam/408 : Telegram

The Minister in Egypt (Jardine) to the Acting Secretary of State

CAIRO, June 23, 1933—11 a.m.
[Received June 23—6:04 a.m.]

13. Following for White Engineering Corporation:

Credit approved by Senate signed by Ministers and has gone to King for signature. You will be notified immediately thereafter.

JARDINE

884.6461 Tsana Dam/434 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

ADDIS ABABA, August 19, 1933—11 a.m.
[Received August 20—7:40 a.m.]

Please inform White Engineering Corporation that I just now have possession of the Egyptian check for \$159,153 endorsed to them and will mail at once.

SOUTHARD

LIBERIA

CONTINUED EFFORTS TO OBTAIN COOPERATION BETWEEN THE LIBERIAN GOVERNMENT AND THE FIRESTONE INTERESTS IN THE ADMINISTRATIVE AND FISCAL REORGANIZATION OF LIBERIA AS PROPOSED BY THE LEAGUE OF NATIONS PLAN OF ASSISTANCE ¹

382.01 Foreign Control/450 : Telegram

The Ambassador in France (Edge) to the Secretary of State

[PARIS,] January 13, 1933—1 p.m.

[Received January 13—9:40 a.m.]

16. The Liberian Minister in Paris called on Marriner ² this morning under instructions of his Government to say that the refusal of the American Minister in Liberia to receive the note of the secretary to President Barclay ³ in reply to the Minister's protest ⁴ against the Joint Resolution to suspend the payment of interest and amortization of the 1926 loan ⁵ had made it impossible for Liberia to find a channel for communicating with the United States, as it had no representative in America. Baron Bogaerde ⁶ produced a copy of the Joint Resolution and after looking at it Marriner told him that it was easy to understand the necessity for an American protest for a law which accomplished the unilateral nullification of the provisions of an international arrangement. The Minister said that his Government was not unaware of that aspect of the matter but that the situation had become envenomed by the personal difficulties of finding a means of communication on this subject in Liberia.

Marriner told him that it seemed extremely difficult to deal with this matter in Paris but agreed to call the attention of the Department of State to the Minister's representations.

EDGE

¹ For previous correspondence, see *Foreign Relations*, 1932, vol. II, pp. 686 ff.

² Counselor of Embassy at Paris.

³ See telegram No. 118, December 30, 1932, from the Minister in Liberia and telegram No. 1, January 3, 1933, from the Secretary of State to the Consul at Geneva, *Foreign Relations*, 1932, vol. II, pp. 791 and 792.

⁴ See telegram No. 79, December 23, 1932, to the Minister in Liberia, *ibid.*, p. 788.

⁵ See telegram No. 109, December 16, 1932, from the Minister in Liberia, *ibid.*, p. 786.

⁶ Othon de Bogaerde, Liberian Minister in France.

882.01 Foreign Control/459 : Telegram

The Secretary of State to the Ambassador in France (Edge)

WASHINGTON, January 13, 1933—4 p.m.

9. Your telegram No. 16, January 13, 1 p.m. We perceive no difficulty whatever regarding communication. The American Minister at Monrovia (having been unable for obvious reasons to accept a letter to him from Barclay's secretary) is awaiting a reply by Mr. Barclay to his urgent communication of December 23, protesting against the action of Liberia in violation of the 1926 loan. You may inform Bogaerde of the foregoing.

Please also inform Reber⁷ of your telegram and Department's reply.

STIMSON

882.01 Foreign Control/461a : Telegram

The Secretary of State to the Minister in Liberia (Mitchell)

WASHINGTON, January 17, 1933—6 p.m.

3. Department understands that an effort is being made in Monrovia to promote the rumor that the Department has advised Firestone interests and fiscal officers to accept Liberian violation of the Finance Corporation loan. This is not true, the American Government having in no degree modified its position as set forth in your letter of December 23 to Barclay. You may so inform inquirers.

STIMSON

882.01 Foreign Control/461b : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, January 17, 1933—6 p.m.

5. For Reber. The preliminary step to further participation by the Firestone interests is the repeal of the joint resolution of December 17 enacted December 23 and other legislation and governmental orders which contravene the loan agreement of September 1, 1926. The support of the League Committee on Liberia against such unilateral action on Liberia's part is assumed and we feel that circumstances have reached a point where the Committee should so inform the Liberian Government. The time element enters into this picture as the Liberian legislature will probably adjourn toward the end of January. You may therefore inform the League Secretariat or the League Committee that representa-

⁷Samuel Reber, American representative on the International Committee on Liberia of the Council of the League of Nations.

tive of Finance Corporation cannot attend a meeting of the Committee until this repeal has taken place, and that this Government has advised the company that it would be useless for it to pursue negotiations with a Government which has repudiated its contractual obligations.

STIMSON

882.01 Foreign Control/466 : Telegram

The Ambassador in France (Edge) to the Secretary of State

PARIS, January 20, 1933—6 p.m.

[Received 7:45 p.m.]

27. Department's 9, January 13, 4 p.m. The Liberian Minister called again this morning and said that he had transmitted to his Government the information with respect to the Department's attitude on the present situation in Liberia and the means of communication between the two Governments there. He said that in reply his Government still maintained its position that as the American Minister there was not accredited to Liberia⁸ and as there were personal difficulties between him and the President there was no appropriate means of communication between the two Governments, especially as Liberia had no representation in the United States at present. Therefore, his Government had instructed him to present a memorandum which he submitted to Marriner, who received him, in reply to the considerations set forth by Mr. Mitchell in his last note.

Marriner told the Minister that he was completely unfamiliar with the details of the present controversy but that he was sure of one thing, namely: that if the Liberian Government was raising the question as to the means of transmission of its views it would seem evident that the American Government might likewise question the propriety of communicating through the missions in Paris and therefore he would not be able to accept the note from the Liberian Government here without express authority from Washington, which he did not expect to be able to obtain. The Minister then asked if the Embassy could not receive the contents of the note merely as information representing the views of the Liberian Government which had been transmitted to him and which they were at present unwilling to develop elsewhere. I saw no objection to this course and this morning I received a communication from Liberian Minister summing up the point of view of the Liberian Government. The text of the note is as follows:

"The Liberian Government has given most careful consideration to the representations of the Government of the United States of America

⁸ The Minister in Liberia (Charles E. Mitchell) had had no official relations with the Liberian Government since his arrival in Monrovia in February 1931.

with respect to the Joint Resolution of the Legislature of Liberia authorizing the suspension of payments on the Gold Loan of 1926.

The Liberian Government desires to make it clear to the Government of the United States of America that it was not until they had considered without success the possibility of following every other legitimate avenue which could lead to the liquidation of the situation in agreement with all the parties to the loan that they were compelled to have recourse to the policy of suspension of payments which the resolution expresses. The Liberian Government wishes to emphasize as strongly as possible their continued acceptance of obligations under the terms of the loan and their desire and determination to meet payments thereon whenever this can be done without adversely affecting the normal carrying-on of the Government.

In the face, however, of adverse trade conditions, the continuous fall in the revenues and the inadequacy of the revenues, it becomes impossible to meet simultaneously the payment of the loan charges and the administration expenses of the Government; in consequence of wide economic distress and the consistent refusal of the Finance Corporation of America to give assistance or advice, if the Government is to be maintained (which is, of course, the primary consideration even for the security of the loan) it is impossible to meet these charges at present.

The Liberian Government notes with surprise the suggestion from the United States of America that the representative of the Finance Corporation of America, sent to Monrovia in December,⁹ is authorized to suggest a solution to the problem and to integrate this with the plan of assistance of the League of Nations, this having been intimated to the Liberian Government neither by advice from the Finance Corporation of America nor by their representative himself when he was in contact with the President of Liberia. Nor is this suggestion borne out by the declaration made in Geneva by the representative of the United States of America on the Committee of the Council of the League when he intimated why the Finance Corporation of America would not enter into the negotiations scheduled for the 15th of November, 1932.

The coincidence of Mr. Lyle's interview with the President of Liberia and the passage of the resolution is wholly fortuitous. The policy pursued by the Liberian Government in the present instance is emphatically dictated by the budget situation. In the opinion of the Liberian Government the budget cannot be balanced without the enforcement of the law which is protested against.

The Liberian Government is still open to receive any proposals relevant to this situation. But considering the delay which has already been caused by the attitude of the Finance Corporation of America and in view of the urgent necessity of providing for the payment of the expenses of the Government and of relieving the general economic distress and the unsatisfactory position of the public employees who, with regard to the payment of salaries, have been discriminated against to the advantage of the Finance Corporation of America and the fiscal regime, the Government finds itself unable to suspend the execution of the law unless and until some solution appropriate to the social facts,

⁹ L. T. Lyle, vice president of the Finance Corporation of America.

and not based merely upon theoretic rights, be forthcoming from the parties interested in the question.

The Liberian Government submits this reply through the Liberian Minister in Paris as there is no accredited United States Minister to Liberia and as the attitude of Mr. Mitchell appears to the Liberian Government as needlessly discourteous."

Copy mailed to Reber.

EDGE

882.01 Foreign Control/469a : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, January 22, 1933—7 p.m.

7. For Reber. Since sending you our telegram 5, of January 17, 6 p.m., the situation in Liberia has grown steadily more serious. Information reaching us from Monrovia is to the effect that all fiscal officers on duty have received letters formally requesting their resignation; that the Supervisor of Internal Revenue has been officially discharged and notice given to all revenue collectors not to pay over moneys to him; that the Liberian Collector of Customs has been ordered not to deposit further collections; and that arrangements have been made to change the depositary without the approval of the fiscal agent.

Such measures are destructive of the very basis of the Loan Agreement. They are more than legislation passed in contravention to a signed agreement. In effect they amount to confiscation of moneys due to an American corporation and to destruction of the security on which funds were advanced.

I wish you would bring the foregoing to the attention of the President of the Liberian Committee, and if practicable to the members of the Committee individually. I am particularly anxious to avoid, if possible, taking independent measures in support of the rights and interests of an American corporation, and to continue unimpaired our cooperation with the Liberian Committee in seeking a solution of Liberia's difficulties by international action. For these reasons, and as the situation is rapidly growing more critical, I am compelled to ask the immediate assistance of the Committee in bringing pressure on Liberia to respect its engagements without delay.

For your personal information I am submitting a memorandum¹⁰ in this sense to the British Ambassador here and am sending a further personal message to Lord Cecil. I am further considering the advisability of discussing the situation with the local diplomatic agents of the Governments represented on the Liberian Committee.

STIMSON

¹⁰ Not printed.

882.01 Foreign Control/472a : Telegram

The Secretary of State to the Ambassador in Great Britain (Mellon)

WASHINGTON, January 22, 1933—7 p.m.

17. Please send to Viscount Cecil, President of the International Committee on Liberia, the following message from me:

"You will recall that last September we exchanged personal messages regarding the best means for correcting the deplorable conditions in Liberia by international cooperation.¹¹ I explained to you the situation as I saw it with respect to the status of the Firestone interests and you replied setting forth the picture as you saw it from the point of view of the League of Nations. While our analyses did not entirely coincide we agreed fully that it would be unfortunate if American collaboration with the Committee were in any way weakened.

"Since this exchange of telegrams the situation has rapidly altered. In September the question we talked over dealt with the formulation of the League plan for the rehabilitation of Liberia. Since then the plan has been evolved and has been endorsed by this Government to the Firestone interests as a basis for direct negotiations with Liberia. Before, however, these negotiations have even begun the Liberian Government has not only passed legislation in contravention to the existing Loan Agreement but has in the past few days taken a series of measures which can only be characterized as destructive of the very basis of the Agreement. They amount in effect to the confiscation of moneys due to an American corporation and to destruction of the security on which funds were advanced.

"I am instructing Mr. Reber to present the situation in some detail to you and the members of the Liberian Committee and to urge affirmative action in the form of international pressure on the Liberian Government to restore the situation by respecting its contractual undertakings until modified by mutual consent. I am, however, sending you this additional personal message to point out the critical character of the situation and the difficult problem with which we are faced of continuing cooperation with the Committee and of adequately protecting American interests at one and the same time. I cannot help suggesting that our path would be made much easier if any misapprehension under which the Liberian Government may be laboring to the effect that the International Committee sympathized with its recent actions were promptly and explicitly corrected.

"I am likewise expressing my concern to the British Ambassador here."

Please repeat to American Consul Geneva for Reber's information.

STIMSON

¹¹ See telegram No. 3, September 25, 1932, to the Acting Chairman of the American delegation at the General Disarmament Conference, and the despatch dated September 29, 1932, from the American representative on the International Committee on Liberia, *Foreign Relations*, 1932, vol. II, pp. 758-765.

882.01 Foreign Control/463 : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, January 23, 1933—4 p.m.

8. For Reber. Department's telegram No. 7, January 22, 7 p.m. Mitchell was authorized by telegraph last night to send the following further communication to Barclay.

"My dear Mr. Barclay: Pursuant to my letter of December 24, 1932,¹² (to which I have not as yet had the courtesy of a reply), I am directed to protest against a series of actions taken by your government in violation of the contractual obligations entered into with an American corporation, and to inform you that the continued cooperation of the American Government with the Liberian Committee of the League of Nations in seeking a solution of Liberian difficulties by international action does not preclude it individually from holding Liberia responsible for the effects of these acts."

Unless you perceive some particularly important reason for so doing, (in which case please consult the Department) I do not believe it would be desirable to make this text available in Geneva at this juncture.

STIMSON

882.01 Foreign Control/476 : Telegram

The Ambassador in Great Britain (Mellon) to the Secretary of State

LONDON, January 25, 1933—6 p.m.

[Received January 25—3:20 p.m.]

17. Lord Cecil sends following message in reply to your telegram 17, January 22, 7 p.m.:

"Thank you very much indeed for your telegram of the 22nd. My opinion has not altered as to the great desirability of American collaboration. With regard to the difficulties which have now arisen, I shall be anxious to do anything I can to help but the situation for the League Committee has been rendered very difficult by the attitude which the Firestone interests have adopted towards it. I cannot help saying that they have treated it with grave discourtesy and have left it entirely in the dark as to what is their real attitude towards the League attempt to come to the assistance of Liberia and prevent the recurrence of the terrible scandals which existed under the administration of ex-President King, who is, I understand, now one of the advisers of the Firestone Corporation. Not once nor twice have hopes been held out to the Committee that the Firestone Corporation would come and assist it with information and advice, and then, when it came to the point, they have declined to be present, even though we were credibly informed that important representatives of the corporation were actually in Paris. I am afraid that several members of the Committee have arrived at the

¹² For text, see telegram No. 79, December 23, 1932, to the Minister in Liberia, *Foreign Relations*, 1932, vol. II, p. 788.

conclusion that the object of the Firestone Corporation was, by insisting on the rigid execution of what was, after all, a very onerous agreement, to drive the Liberian Government into such straits that they would be at the mercy of the corporation. It is difficult to state fully the case as I see it in a telegram but if you will allow me to do so I will write to you. I feel as strongly as you can possibly do the great importance of avoiding anything like a misunderstanding between the American Government and the League Committee. Cecil."

Copy to Reber by mail.

MELLON

882.01 Foreign Control/477 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, January 25, 1933—6 p.m.

[Received January 25—5:40 p.m.]

20. From Reber. Consulate's telegram No. 14, January 23, 7 p.m.¹³ Cecil has agreed to call a meeting of the Liberian Committee on January 31st "to consider the situation in the light of recent developments". As he will probably confine his opening remarks to a statement that he has received a note from the American Government explaining the breakdown in financial negotiations and call upon me for further elucidation, I shall appreciate receiving instructions as to the particular attitude to be adopted.

It is felt here that the Committee may be more disposed to recommend restoration of the loan contract provisions if it can receive definite assurance that the Finance Corporation is prepared to grant some measures of financial amelioration. While condemning the recent unilateral action the Committee will, however, probably be sympathetic toward the idea of a temporary moratorium if one can be agreed upon. The nature of the Committee's recommendations to Liberia will undoubtedly be strengthened if it can receive any concrete indications of what the Finance Corporation is prepared to do since the Committee can not, it is considered here, intervene in a dispute between the Finance Corporation and Liberia save in so far as it affects the execution of the international plan of assistance.

I am informed that Sottile¹⁴ will endeavor to prove that the Firestone interests have been intriguing against the present administration in Monrovia. [Reber.]

GILBERT

¹³ Not printed.

¹⁴ Antoine Sottile, permanent Liberian delegate to the League of Nations.

882.01 Foreign Control/487

*Memorandum by the Chief of the Division of Western European Affairs (Moffat) of a Conversation Between the Secretary of State and Mr. Everett Sanders*¹⁵

[WASHINGTON,] January 26, 1933.

The Secretary told Mr. Sanders that he was very much disturbed by a message he had received from Lord Cecil in reply to one he had sent him last Sunday. From this message, it appears that Lord Cecil feels that the Firestones have treated the League Committee with grave discourtesy and lack of cooperation. He read him most of Lord Cecil's telegram. The Secretary explained that he had relied to such an extent on the good record of the Firestones that he had spoken out very strongly on their behalf. Now on examining the record, he had reached the conclusion that the Firestone interests had not in fact been "playing ball" with the League Committee, whose interest on their behalf they were now only too ready to enlist.

As a result, the Secretary wished definitely to assure himself that if and when the legislation in contravention to the contract were withdrawn, then the Firestones would definitely send a representative to Geneva for negotiation. Mr. Sanders replied that he could not imagine that his principal would object to that and would promptly call the Secretary's request to his attention.

In the meanwhile, the situation was, in the opinion of Mr. Firestone and Mr. Sanders, growing so much worse in Monrovia that they felt that the United States Government should send a ship. The Secretary replied with considerable firmness that he considered sending a ship would be misunderstood from one end of the country to the other and that it would reflect on no one more than on President Hoover. As he saw it, the problem was one which should be handled by international cooperation and not singly. International cooperation had been jeopardized by the League Committee's feeling toward the Firestones. The first step was for the Firestones to make their peace with the League Committee and he thought this could be facilitated by authorizing us to send them a definite assurance that as soon as the legislation had been repealed, the Firestones would send a negotiator.

Mr. Sanders agreed to transmit this information at once to Akron by telephone.

PIERREPONT MOFFAT

¹⁵ Senior member of law firm of Sanders, Childs, Bobb & Wescott.

882.01 Foreign Control/485a : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, January 28, 1933—5 p.m.

11. For Reber. The following developments on Monrovia are reported for your information and discretionary use:

On January 24, Mitchell telegraphed that he had delivered the communication (quoted to you in the Department's telegram No. 8, January 23, 4 p.m.) that morning, but that it had been returned unopened to the Legation 15 minutes later. The Minister was instructed on January 25, to make no further move pending the receipt of instructions, which have not yet been sent. Mitchell was authorized, however, to discuss the general situation with his colleagues and to acquaint them with the contents of his undelivered letter.

Your telegram 20, January 25, 6 p.m.: I agree that it would be exceedingly difficult, if not impossible, for you to obtain affirmative action from the Committee with respect to Liberia's violations of the loan contract, without prior definite assurance from the Firestone interests that if and when the status shall have been returned to that prevailing before December 17, they will immediately send a representative to Geneva to begin direct negotiations with Liberia. The following letter, dated January 28, has finally been obtained from the Finance Corporation:

"We wish to advise that we continue to stand ready to send a representative to Geneva to cooperate with Mr. Reber, and to participate in discussion of Liberian problems with the Liberian Committee of the League of Nations and League officials when notified by you that the Government of Liberia has repealed the joint resolution of the Liberian Legislature, dated December 17, 1932, and other legislation and governmental orders in contravention of the Loan Agreement of 1926.

Yours very truly,

Finance Corporation of America,
William P. Belden, President."

We have also discussed at length with the Firestones the difficult situation which has arisen in their relations with the International Committee (see Cecil's message, sent you by mail by the Embassy in London on January 25). We have obtained their assent to the following additional statement which you are authorized at the appropriate moment to convey to the Committee on their behalf:

"The Firestone interests regret that a misunderstanding appears to have developed concerning their statement of October 11.¹⁶ The Finance Corporation, not unappreciative of the present fiscal difficulties of Liberia irrespective of their origin, would be prepared (in the event that the legislation and subsequent actions referred to in their letter quoted

¹⁶ See telegram No. 157, October 11, 1932, to the Consul at Geneva, *Foreign Relations*, 1932, vol. II, p. 773.

above, had been withdrawn) to recognize the *de facto* existence of a moratorium for such time, not to exceed 2 months from the date of the anticipated Liberian withdrawal, as might be required for the inauguration of their direct negotiations with Liberia at Geneva."

A lengthy press release on the present situation and its background¹⁷ was given out today for the newspapers of January 29. It contains a statement of the successive events in Monrovia from December 17 to the present, mentions our talks with the British Ambassador, and your conversation with Cecil on December 30 (but not the exchange of personal messages between me and Cecil), and describes Mitchell's letter of December 23 to Barclay. With respect to the forthcoming meeting at Geneva it states:

"Mr. Reber has reported to the Department that arrangements are being made to call a special meeting of the International Committee on Liberia during the next few days. The Committee will be urged by the American Government to bring pressure to bear upon Liberia to withdraw its actions in contravention of the Loan Agreement and to reinstate the fiscal officials, in order that the situation can revert to the status prior to December 17, and the way be cleared, if possible, for the inauguration at Geneva of direct negotiations between Liberia and the Finance Corporation concerning the modifications in the Loan Agreement necessary to the establishment of the League plan of assistance."

STIMSON

882.01 Foreign Control/481

The Secretary of State to the President of the Finance Corporation of America (William P. Belden)

WASHINGTON, January 28, 1933.

SIR: I have your letter of January 17, 1933,¹⁸ in which, in reply to the inquiry by the Department, dated January 13, 1933,¹⁸ as to whether a representative of Finance Corporation would proceed to Geneva as soon as possible to cooperate with Mr. Reber and to participate in discussions with the Committee and League officials, you stated that you would be prepared to send such a representative to Geneva on the following conditions:

(1) that the Liberian legislation and orders in contravention of the Loan Agreement of 1926 had previously been repealed, the Department having notified you to this effect;

(2) that the Department would give you an assurance in advance that the American Government was agreeable to various changes which you desire in the "General Principles of the Plan of Assistance to Liberia" and also to certain modifications in the Loan Agreement of 1926 between Finance Corporation and Liberia;

¹⁷ Department of State, *Press Releases*, February 4, 1933, pp. 75-80.

¹⁸ Not printed.

(3) that you received a general assurance that your right of appeal to the American Government for the protection of your rights and interests would not be limited or modified because of negotiations on your part in Geneva.

As to point one, I am in entire sympathy with your position. Following Mr. Firestone's interview with me on January 17, Mr. Reber was instructed by telegraph¹⁹ to inform appropriate officials in Geneva that "the preliminary step to further participation by the Firestone interests is the repeal of the Joint Resolution of December 17 and other legislation and governmental orders which contravene the Loan Agreement of September 1, 1926." I added that I assumed that the League Liberian Committee would support the American Government against these unilateral actions on the part of Liberia, and that I felt that the time had come when the Committee should so inform Liberia.

As to point three, the American Government maintains the position that its citizens cannot deprive themselves of their right to be heard on matters affecting their legitimate interests abroad. The fact of your having entered into negotiations at Geneva would not modify this position.

Point two requires discussion and clarification. You will recall that when the Department had satisfied itself that the "General Principles" contained an adequate delegation of authority by Liberia, this document was endorsed to you on October 5, 1932, "as a basis for the further development of the Liberian problem through direct negotiations between the Finance Corporation and Liberia".²⁰

You replied on October 11, 1932, that you were "willing to send a representative to Geneva to explore in negotiations the possibility of agreement on a plan mutually acceptable and that will be of practical benefit to Liberia and her people". I transmitted this message to the League.²¹ The League anticipates, as I anticipate, that if and when the present situation has been settled by the withdrawal by Liberia of the present legislation and other actions in contravention of your rights under the Loan Agreement, you will promptly embark on such negotiations.

The American Government will not participate directly therein, nor be a party to any discussions looking toward modification of your private contract with Liberia. On the other hand, the American Government presumably would have no objection to such modifications or amendments to the Loan Agreement as might be mutually agreed upon between the Finance Corporation and Liberia.

¹⁹ *Ante*, p. 879.

²⁰ For text of the Department's letter of October 5, 1932, see Department of State, *Press Releases*, October 15, 1932. p. 239.

²¹ See telegram No. 157, October 11, 1932, 4 p.m., to the Consul at Geneva, *Foreign Relations*, 1932, vol. II, p. 773.

The situation is different with respect to revision of the "General Principles" (as distinct from modification of the Loan Agreement), for as you are aware the American Government is interested in the establishment of an arrangement for the administrative reorganization of Liberia under international auspices and responsibility. The American Government would observe your negotiations concerning the "General Principles of the Plan of Assistance" and would accord you all proper support. In general it may be said that I should be pleased to see any additions incorporated in the International Committee text of the "General Principles" which insure yet more effectively the discharge of the responsibilities of the Chief Adviser and his staff. While it is understood that the negotiations will be your own, I certainly shall not oppose such additions.

With respect, however, to your tentative redraft of Chapter IV,²² more specific comment is required, since this involves questions of the nationality and of the appointment of the Chief Adviser.

Concerning nationality, Mr. Firestone will recall that I discussed the attitude of this Government with him at Woodley last September. I subsequently sent a personal telegram to Viscount Cecil, President of the International Committee on Liberia, informing him that if this question were raised the American Government "would not insist upon the appointment of a Chief Adviser of any given nationality".²³ I pointed out to Viscount Cecil that once the American Government had endorsed the League plan to the Firestone interests it would require the modification of the Loan Agreement to become effective, and that the Firestones, whose assent and sacrifice were thus necessary to the consummation of the plan, strongly desired an American Chief Adviser. I added that while the American Government would not urge this course upon the International Committee, I should not be willing to urge a

²² The letter of January 17, 1933, from the President of the Finance Corporation was accompanied by a new draft of the "General Principles of the Plan of Assistance" (not here printed), which embodied the views of the Finance Corporation. Paragraph 1 of article I, chapter IV was redrafted as follows:

"The Chief Adviser, who shall be a citizen of the United States of America, shall be nominated by the President of the United States of America, and, if approved by the Council of the League of Nations, shall be appointed by the Council of the League of Nations with the acceptance (agrément) of the President of the Republic of Liberia. The Chief Adviser shall continue in office until his tenure shall have been terminated by the President of the United States of America, or, by the operation of the approval of the President of the United States of America of a request for such termination made by the Council of the League of Nations or the President of the Republic of Liberia, for cause or causes stated. He shall be attached to the Central Government in order to give it the benefit of his advice, to coordinate and administer the work of the Foreign Experts engaged pursuant to Chapters I and II hereof, and to carry out the execution of the Scheme of Assistance."

²³ See telegram No. 3, September 25, 1932, to the Acting Chairman of the American delegation at the General Disarmament Conference, *Foreign Relations*, 1932, vol. II, p. 758.

contrary decision upon the Firestone interests in a matter directly concerning their legitimate contractual rights. These views were repeated to Mr. Firestone during his call at the Department on January 17.

In his reply ²⁴ to my communication, Viscount Cecil stressed the view that in an international arrangement such as that proposed for Liberia the principal official should be a "neutral",—i.e., the citizen of a country not specifically interested in Liberian products nor having territory contiguous to Liberia. He made clear that since the United States emphasized the international character of the assistance to be rendered Liberia, as well as the international responsibility involved in the problem itself, and since American citizens would continue to occupy the fiscal positions under a modified Loan Agreement, he did not believe that the Chief Adviser should also be an American citizen. This has apparently been the view of the majority of the members of the Liberian Committee, who likewise believe that the international aspects of the proposed "plan of assistance" would in themselves prove a source of protection to your interests.

Nevertheless, in the event that I were requested to do so by the League, I should be prepared to give my personal attention to the selection of an American for the position of Chief Adviser and to the choice of a man of such integrity that there could be no suspicion of his backing any form of political or commercial imperialism. This is in accordance with the views of the President made available to you in a memorandum to Mr. Howe on January 11, 1932, as follows:

"Inasmuch as the Liberian question is at present being handled by the League of Nations, the President would be unwilling to accept responsibility in the matter except upon request of the League of Nations.

"However, the Liberian question is essentially a matter of international concern and consequently, while should the League so request the President might name a Commissioner General to exercise supervisory functions during a period of rehabilitation, he believes that jurisdiction during this time should be exercised by the League through an international committee on which the United States would be represented, and that the American member of this committee might refer any major actions to this Government."

In the light of the foregoing I do not see how the American Government could endorse a provision (such as contained in the first sentence of paragraph one of Chapter IV of your redraft of the "General Principles") calling for nomination by the President subject to confirmation by the Council of the League.

Very truly yours,

HENRY L. STIMSON

²⁴ See Lord Cecil's letter of September 27, 1932, to the American Minister in Switzerland, *Foreign Relations*, 1932, vol. II, p. 764.

882.01 Foreign Control/476 : Telegram

*The Secretary of State to the Minister in Switzerland (Wilson),
at Geneva*

WASHINGTON, January 31, 1933—4 p.m.

61. Please deliver the following personal message from me to Viscount Cecil:

"I appreciate your frank and helpful message of January 25 from London. I only recently became aware of an apparent misunderstanding between the Liberian Committee and the Firestone interests, and I have discussed the matter very thoroughly and completely with the latter in recent days. I do not minimize the differences of opinion between the Firestones and certain positions held by the League Committee, but from my personal examination of the case I believe them to be the honest views of men who have embarked on an important and creditable enterprise in a very difficult country and I think it would be quite unfair to attribute to them the oppressive intentions towards the Liberian Government which you describe as being the view of some of the League Committee. On this point the favorable report²⁵ as to the humanitarian record of the Firestones made by the slavery investigation seems pertinent. I have obtained from them a clarification of their position which should I think satisfactorily clear up the situation and reassure the Committee that once the current difficulty in Monrovia has been liquidated by the withdrawal of Liberia's illegal actions, actual negotiations at Geneva between the Firestones and Liberia can promptly begin. I have already communicated with Mr. Reber in this connection.

However, to bring about this withdrawal by Liberia, I think it will be necessary for the Committee to take a strong affirmative position. I think you will agree that the recent actions of Liberia are clearly indefensible and that if the Barclay administration is permitted to persist therein it might end in undoing all the work which we have accomplished to date with regard to the international plan of assistance.

Another matter which is a source of no little apprehension to American interests is the so-called 'Dan-Lib concession'²⁶ being considered by the Liberian legislature and which, if made effective, would apparently violate not only certain provisions of the Loan Agreement but also the Firestone plantation contract. I do not know whether there is as yet sufficient connection between the proposed concession and the League plan of assistance for the Committee to take official cognizance, although I should think that the Committee might at this time request information from Liberia with a view to determining whether such a monopoly would not in fact jeopardize the successful execution of the League plan.

I feel that we both entertain fundamentally the same view of the nature of the Liberian problem as well as the desirability of continuing

²⁵ See Department of State, *Report of the International Commission of Inquiry into the Existence of Slavery and Forced Labor in the Republic of Liberia, Monrovia, Liberia, September 8, 1930* (Washington, Government Printing Office, 1931).

²⁶ The Danish-Liberian concession of September 15, 1932, granting road building, mining, and other privileges to a Danish syndicate.

international efforts for its solution. I have recently spoken with equal frankness to Sir Ronald²⁷ about the Liberian situation."

Please furnish Reber with a copy.

STIMSON

882.01 Foreign Control/488 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, January 31, 1933—6 p.m.
[Received January 31—5:40 p.m.]

32. From Reber. The Liberian Committee met this afternoon. In a preliminary explanation Cecil pointed out that while the Council Committee must refrain from expressing under these circumstances any opinion with regard to the dispute between the Finance Corporation and the Government of Liberia it must consider that such action as that taken by the Liberian Government was inconsistent with the provisions of the scheme of assistance which envisaged an agreement between the Finance Corporation and Liberia. He added that he did not see how financial negotiations could continue as long as the suspension of payments remains in force.

I thereupon explained the American position and urged the Committee to impress upon the Liberian Government the necessity for withdrawing its actions in contravention of the loan agreement and of reverting to the status prior to December 17. Mentioning the Finance Corporation's expressed willingness to send a representative to Geneva when the Joint Resolution, et cetera, has been repealed, I then read the statement quoted in the fifth paragraph of the Department's 11, January 28, 5 p.m.

The Committee then empowered Lord Cecil to draft, in conjunction with the American and Liberian representatives, a telegram from the President of the Committee to the President of Liberia embodying the results of the Committee's discussions.

The German representative in the name of his Government wished to announce that it had lent no support whatsoever to any attempt by Liberia to devise a scheme of financial or administrative changes not in accordance with the Committee's plan of assistance which envisaged agreement between the Liberian Government and the American financial groups. Cecil, in behalf of the members of the Committee, made a similar declaration.

The telegram to Barclay as drafted reads as follows:

"Your telegram January 28th states that Liberian Government is prepared to give sympathetic consideration to any proposals appropriate to present economic and financial situation of Liberia.

"Committee has taken note of it and conveys to you following state-

²⁷ Sir Ronald Lindsay, British Ambassador at Washington.

ment made by the American representative on behalf of the Finance Corporation:

The Finance Corporation, not unappreciative of the present fiscal difficulties of Liberia, irrespective of their origin, would be prepared (in the event that the legislation of December 17, 1932, and subsequent orders and actions relating thereto have been withdrawn) to recognize the "de facto" existence of a moratorium for such time, not to exceed 2 months from the date of the anticipated Liberian withdrawal, as might be required for the inauguration of their direct negotiations with Liberia at Geneva and for such further time not exceeding 6 months as may be reasonably required for the conclusion of such negotiations. The Corporation will take all measures necessary, including the sending of representatives to Geneva, to enable the negotiations to begin as soon as possible after the date of the anticipated withdrawal and in any case within the said period of 2 months.

"Committee hopes that in view of the new situation thus created Liberian Government will feel able to suspend the operation of the measures referred to in the declaration of the Finance Corporation as suggested in your government's telegram to Liberian Legation, Paris, on January 16th."²⁸

It will be noted that the statement of the Finance Corporation has been amended, at Cecil's request, to suggest the extension of a moratorium during the period of the negotiations and to provide for the sending of financial representatives to Geneva to begin the negotiations when the objectionable legislation has been withdrawn. The suggestions referred to in the last paragraph of the draft telegram are contained in the memorandum submitted by Bogaerde (Paris Embassy's 27, January 20, 7 [6] p.m.).

Prior to sending this telegram to Barclay, Cecil has asked for the assent of the Finance Corporation to the new wording and would appreciate if possible a reply prior to his departure from Geneva on February 3rd. [Reber.]

GILBERT

852.01 Foreign Control/488 : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, February 1, 1933—4 p.m.

14. For Reber. Your telegram No. 32 is very disappointing. It shows an approach to the problem so different from our own that we are very seriously concerned as to its effects upon future cooperation. Liberia has passed and carried into effect legislation which amounts to a unilateral denunciation of a legitimate contract with the Firestone interests. The feeling has been reported from Monrovia that Liberia took this action in the belief, which we have refused to credit, that the League Committee would condone such a course. Nevertheless the proposed message, to which I must assume you have given no indication of ap-

²⁸ The Liberian Government's telegram of January 16 to its Legation in Paris is largely quoted in telegram No. 27, January 20, 6 p.m., from the Ambassador in France, p. 880

proval, not only would lend color to these claims allegedly advanced in Monrovia that Liberia could repudiate its American obligations and obtain "protection" in Geneva, but it also seems to deflect the situation from its essentials.

The Committee is apparently endeavoring on the one hand to avoid an expression of disapproval of Liberia's actions, and on the other to convert a Firestone statement which was intended to define to the Committee the Company's position after the withdrawal of the objectionable Liberian legislation, into an offer to Liberia of a Firestone concession in exchange for Liberian withdrawal of illegal actions. Moreover, the last paragraph of the proposed draft is almost equally objectionable. There is no "new situation" whatever, except as induced by illegal Liberian acts, and this Government does not seek "suspension" of these acts, but their removal. We do not request the cancellation of these confiscatory steps taken by the Liberian Government as a favor or as a bargain; we demand it as a juridical right based upon the general principles of equity and justice prevailing among nations, and unless the Committee of the League approaches the problem from this fundamental viewpoint we frankly cannot look forward to future cooperation with them with much hopefulness.

This is not a question of a dispute in which the American Government is jockeying for position. It is a far more serious problem, wherein the American Government, while fully protecting American interests, is endeavoring to maintain cooperation with the International Committee by persuading it to join in bringing pressure to bear on Liberia to respect her signed obligations as a necessary preliminary to further progress. Until this is done and Liberia has retraced her steps to the position before December 17, the Firestone interests cannot enter into negotiations. In this they are supported by the American Government. I am therefore unwilling to submit to the Finance Corporation the draft contained in your telegram No. 32, or to ask them to make any further concessions than those they have already agreed to with me which were designed solely to convince Cecil and the Committee of the *bona fides* of their cooperation.

You may if necessary explain the foregoing with entire frankness to Cecil or use it as a basis for a formal statement to be made to the Committee. This message taken in connection with my personal telegram to Cecil yesterday²⁹ should make my position clear to you.

I suggest that you talk over with Wilson the procedure best calculated to persuade the Committee to approach the problem from a point of view based on the sanctity of contracts and the realities of international cooperation.

STIMSON

²⁹ See telegram No. 61, January 31, 4 p.m., to the Minister in Switzerland, p. 892.

882.01 Foreign Control/504 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, February 3, 1933—7 p.m.

[Received February 3—3:54 p.m.]

39. From Reber. Your telegram number 14, February 1, 4 p.m. Have consulted the Minister.

While members of the Committee fully appreciate the position of the American Government concerning the breach of Liberia's contract with the Finance Corporation, they are of the opinion that there may be a certain misapprehension as to the functions of the Committee. In their opinion and in the opinion of the Secretariat this body was formed under terms of reference from the Council to establish reforms in Liberia. Under the terms of reference members of the Committee consider that they have no power to express opinions concerning the breach of the contract except insofar as the latter affects the realization of the scheme of assistance. Thus it may state that Liberia's attitude is not consistent with the application of the scheme of assistance and if Liberia persists therein the Committee cannot aid it, but it cannot pass judgment upon the merits of the case. To do more than to express this measure of disapproval the Committee would be required to adjudicate the dispute which would of course involve a hearing for both parties and would in effect constitute the Committee as an arbiter between a private company and a member state. Under League procedure the Council and Assembly are the tribunals competent to pass judgment on a member state.

It was not the idea of the Committee to express in its resolution the thought of a bargain between the Finance Corporation and Liberia. It suggested "suspension" of the objectionable legislation rather than "repeal" in order that it might not be necessary to recall the Liberian Legislature into session which would incur further delay. If the direct negotiations in Geneva should succeed the legislation would by its own terms *ipso facto* be repealed.

Save for a possible extension of the moratorium during the negotiations no concession is being requested from the Firestones. The Committee understands their position but their failure up to the present to send a representative to Geneva is considered one of the important factors in the case.

Lord Cecil who has read your message delivered by the Minister has given me the following memorandum which he has asked me to transmit in explanation of the Committee's views. He has also wished me to state that within this conception he is prepared without reconvening the Committee to redraft the telegram insofar as it may be possible to accord these differences. He hopes to leave Geneva Monday at the latest if it

is not necessary to call another meeting and would appreciate having your views.

"I cannot help feeling there is a little misapprehension as to the functions of the League Committee. It was brought into existence solely in order to assist Liberia in establishing such reforms as are necessary for preventing the renewal of the slavery scandals . . . It has no power to go beyond this or to express any opinion on the controversy which has arisen between the Finance Corporation and the Government of Liberia except so far as that controversy affects the establishment of those reforms. Accordingly it welcomed the suggestion of the Finance Corporation that if the moratorium was removed in Liberia they would not object to its continuance in practice so as to enable the negotiations of the Corporation with the Liberian Government as to the financing of those reforms to be begun. That was the idea endeavored to be expressed in the resolution with the added suggestion that if the negotiations were begun the moratorium might be continued until they were concluded. That seems to me a reasonable practical suggestion for getting rid of the obscurity to the reforms which has arisen. It does not deal with the dispute in any way. If the American Government desires the League to take that up an application would have to be made to the Council. I shall add that the President on behalf of the Committee made an express statement that no member of the Committee had any knowledge of Liberian action which had been taken on the sole responsibility of the Liberian Government."

[Reber]
GILBERT

882.01 Foreign Control/504 : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, February 4, 1933—9 p.m.

17. For Reber. Your telegram No. 39, February 3, 7 p.m. If the attitude of the Committee remains as you reported, the prospect of the usefulness of future attempts to seek a solution of the Liberian problem by international action seems frankly discouraging. I feel that the time has come when we must make our point of view a matter of record: you should accordingly write a letter to Viscount Cecil, in reply to his *aide-mémoire* of yesterday, along the following lines:

"1. It is difficult for the American Government to see how the Committee can view the situation brought about by Liberia's unilateral destruction of the Finance Corporation contract as representing merely a dispute between Liberia and the Firestone interests, or as having only a remote connection with the realization of the plan of assistance.

"2. While the Committee must obviously be the judge of its own terms of reference, the invitation addressed to the American Government by the Acting Secretary General of the League on January 30, 1931, contained the following sentence: "The Committee might among other

matters examine the question of administrative assistance necessary for giving effect to the social reforms suggested by the Commission of Inquiry and also the question of financial and public health assistance with a view to the carrying out of these reforms.'³⁰ 'Financial assistance' from the Firestone interests has repeatedly been stressed by the Committee as one of the essentials precedent to the execution of its plan: in fact, as the American Government views the record, it is essential in the eyes of the Committee.

"3. The Committee's plan as drafted, as accepted by the American Government as a basis for direct negotiations between the Firestone interests and Liberia, as endorsed on that basis by the American Government to the Finance Corporation, and as accepted by the Finance Corporation, envisages modification on terms mutually to be agreed upon of the Corporation's contractual rights and advance by the Corporation to Liberia of not insignificant further funds. Action such as Liberia's unilateral destruction of the Corporation's existing contract obviously precludes either direct negotiations or further advance of funds until the action has been withdrawn, and thus automatically creates a condition in which the entire scheme must fail of realization.

"4. If there is any 'dispute' between the Finance Corporation and Liberia, it can be brought up during the direct negotiations which the Corporation informed the Committee it would attend promptly after the condition referred to above had been removed.

"5. The suggestion considered by the Committee that Liberia should be invited to 'suspend the operation of the measures' does not seem to the American Government to be equivalent to 'withdrawal', since the former not only implies recognition of an illegal act but implies also that if the negotiations did not result in agreement, the 'suspension' itself would lapse. Moreover, whatever the theory envisaged by the Committee in the suggestion that Liberia should 'suspend', the fact (in contrast to the theory) is that unless Liberia's illegal actions are withdrawn, direct negotiations between the Finance Corporation and Liberia under the terms of the League plan can not take place. In this the Firestone interests can count upon the absolute support of the American Government.

"6. The American Government has cooperated sincerely and disinterestedly in the work of the Committee and it still hopes to be able to continue to do so, in pursuance of its policy of seeking to promote a solution of the Liberian problem by international cooperation. Nevertheless, the American Government cannot divest itself of the duty of protecting the legitimately acquired interests of its citizens, and unless the Committee is prepared to impress upon Liberia that its actions in connection with the League plan must be based on good faith and the sanctity of contracts, it is difficult to see how future cooperation can be real or effective.

"7. Bearing these factors in mind, the American Government is confident that it can count upon the support of the Committee. Unless and until Liberia's illegal actions have been withdrawn, it is obvious that no progress can be made, and in the opinion of the American Government

³⁰ See telegram No. 18, January 31, 1931, from the Minister in Switzerland, *Foreign Relations*, 1931, vol. II, p. 669.

the onus for failure of the plan of assistance will rest squarely upon Liberia."

For your own information: in connection with paragraph 5 above, it may be that the desired object of withdrawal might be obtained by nullification of the illegal Liberian legislation by the Liberian court. However, it seems to me that the manner in which the withdrawal is made is Liberia's concern.

STIMSON

882.01 Foreign Control/508 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, February 7, 1933—6 p.m.

[Received February 7—2:35 p.m.]

43. From Reber. Department's 17, February 4, 9 p.m. I delivered the Department's reply to Cecil yesterday. He has redrafted the telegram to Barclay pointing out that the Committee considers the recent action of Liberia inconsistent with the scheme of assistance and urges withdrawal. In order to avoid the necessity of reconvening the Committee, which had, however, opposed no objections to similar portion of another draft originally suggested but withdrawn for other reasons, the telegram is being sent in Cecil's name and that of the Secretary General as a summary of the Committee's discussions.

Prior to his departure for London last night Cecil showed [me?] the new draft. He wished me to explain to you that he has done his utmost to meet your views and hopes that it may be possible to urge upon the Finance Corporation importance of avoiding further delay after the withdrawal has taken place.

Cecil has pointed out to the Liberian representative that no negotiations are possible until a repeal of this legislation has taken place and is sending this telegram in the modified form without attaining further assent to its provisions from either party but hopes that it will be satisfactory to the American Government.

The text of the telegram follows:

"In response to your telegram January 28 I should like [to] convey to you summary results of Committee's discussions on January 31st.

1. Committee has considered in the light of recent developments situation which has arisen regarding realization of its scheme assistance.

2. It desires to point out that plan suggested by Committee and accepted by Liberian Government was based on a solution of financial questions involved by agreement between Liberian Government and American groups concerned. It consequently considers that such action as that taken by the Liberian Government is inconsistent with vital provisions of scheme assistance to be given by League of Nations to Liberia

and that so long as measures taken by Liberian Government are in force scheme cannot be effective.

3. As regards attitude of Finance Corporation, Committee notes following statement made behalf of corporation by American representative (here was inserted the statement as authorized by the Finance Corporation³¹).

4. The Committee therefore urges Liberian Government so far to abandon its present attitude as to make [it] possible for financial negotiations to be forthwith begun in Geneva.

I venture to add on my own behalf my very strong hope that in circumstances Liberian Government will see their way to withdraw recent legislation, orders and actions relating thereto."

[Reber.]
GILBERT

882.01 Foreign Control/532

*The President of the International Committee on Liberia (Cecil)
to the Secretary of State*

LONDON, February 8, 1933.

[Received February 20.]

MY DEAR MR. STIMSON: From the latest telegram which Mr. Reber has been good enough to show me, there seems still to be misunderstanding between the American Government and the Liberian Committee of the League.

May I venture to remind you of the history of the matter.

When, in consequence of the reports of two American travellers, charges were made that slavery and slave trading were prevalent in Liberia, the Liberian Government gave a strenuous denial in public during the meeting of the Assembly at Geneva and demanded that the charges should be investigated. That was done by the Christie Commission which, in substance found that the charges were perfectly accurate . . . The British Government in concert with that of the United States thereupon made strong representations to Liberia on the subject. I believe I am right in saying that the American Government was at this time cordially in favour of action through the League of Nations and even went so far as to suggest that Liberia should be put under a mandate or something of that kind. That of course could only have been done with the consent of Liberia—which was not in the least likely to be given.

Meanwhile the Liberian Government . . . had expressed very great anxiety to carry out effective reforms, but pointed out that they could not do that without financial assistance. The League explained that it

³¹ See telegram No. 11 of January 28, to the Consul at Geneva, p. 887.

was not in a position to give any financial assistance, but that it was prepared to draw up the necessary scheme of reforms and help to put it in operation. Accordingly the matter was referred to a Committee of the Council of the League to which the United States of America sent a representative which recommended the sending out of a commission, presided over by Mr. Brunot, to draw up a definite scheme of reforms. There was some little opposition on the part of certain South American countries to this action, as being inconsistent with the sovereignty and independence of Liberia; but this difficulty was got over by explaining that the Commission would have no power to enforce anything, but merely to make recommendations.

When the Commission came back with a complete scheme of reforms, the next thing was to induce the Liberian Government to accept them. It then became necessary to find out how money could be found to finance the reforms, and it very soon became clear that the only probable means of obtaining any financial assistance was through the Firestone interests, which had already sunk considerable capital in Liberia and had obtained a contract with Liberia which practically handed over the control of all the finances of Liberia to the Finance Corporation. The contract was examined by the financial authorities of the League, who were rather astonished at the severity of its terms, and both they and the financial member of the Brunot Commission commented on the gross waste of money that had taken place as a result of the loan advanced by the Finance Corporation as part of this contract. For that waste, no doubt the Liberian Government were primarily responsible, but since they could not make any expenditure without the consent of the Finance Corporation, I do not see how the latter can escape a measure of responsibility also. Other criticisms were also made of the Finance Corporation's operations, and some members of the Committee were inclined to take the view that it was wrong for a trading company to have so great powers in such a State as Liberia and might lead to great abuse. However the majority of the Committee pointed out that if the reforms were to be carried out it must be done with the assistance of the Finance Corporation, and that there was every reason to believe that they were likely to take a serious and generous view of their responsibilities in the matter. The majority of the Committee were greatly helped in coming to this conclusion by intimations which were conveyed to them from the Firestone interests that they would be very ready to consider assistance to Liberia if they were satisfied with the terms of the reforms.

At the next session of the Committee the reforms were again examined, and in view of certain observations made by members of the Committee they were strengthened in some respects, and the amount of money to be spent on them was reduced.

That was in May of last year. The Committee had hoped that they would have had the assistance of the Finance Corporation in drafting the scheme so as to be satisfactory to them from a business point of view, but the Finance Corporation declined to put in any appearance. This put the Committee in some difficulty and ultimately they decided to adopt provisionally the scheme and to send it forward with the suggested measure of assistance which their financial advisers had drawn up for the consideration both of the Liberian Government and of the Finance Corporation. They expressed very strongly the hope that the Finance Corporation and the Liberian Government would come back in August with a definite answer as to what they could or could not do with regard to the scheme.

When the Committee came back again in August the Finance Corporation sent a message saying that until the scheme was definitely settled, they could not make any proposals. The Committee were much disappointed, but they went over parts of the scheme and arrived at a definite agreement with the Liberian Government in every respect except in regard to the financial provisions which were left for direct negotiation between the Finance Corporation and the Liberian Government. The scheme was approved by the American member of the Committee, subject of course to a satisfactory arrangement being made with the Finance Corporation.

Again and again urgent messages were sent to the Finance Corporation asking them to let us know their decision as soon as possible, but for one reason or another the answer was continually put off. Whether that had anything to do with the political and economic situation in America, I do not know.

Meanwhile—and quite unknown to the Committee—the Liberian Government were making urgent appeals to the Finance Corporation to assist them in their immediate and pressing budget difficulties. The Committee had nothing whatever to do with these appeals except that when they heard of them they thought it possible that the Liberian Government had abandoned the idea of any assistance from the League and was going to attempt an entirely new policy. On enquiry they were assured that was not so. Except for the fact that at intervals the members of the Committee were told that negotiations with the Finance Corporation about the reform scheme had made no definite progress, that was all that was heard of the matter, until quite suddenly came the announcement of the difficulties caused by the action of the Liberian Government on December 17th.

It is quite true that the Committee, or some members of it, had heard from time to time about negotiations going on with a syndicate called Dan-Lib, and I remember I once met two gentlemen who seemed to be

connected with that syndicate in one of the lobbies of the League Secretariat. I gathered from them that they were not at all keen on the concession, and certainly would not consider it unless the League scheme of reforms went through. That was the only communication I ever had with Dan-Lib: nor do I in the least know who they were or where their money, if they have any, comes from.

I received, however, a message from a friend of mine who takes an interest in native affairs, stating that the agreement with Dan-Lib was from that point of view of an undesirable character, and accordingly I thought it right to enquire from one of the Liberian representatives what their agreement with Dan-Lib really was. He showed me three draft agreements, none of which—as I understood him—had actually been concluded. None of them—if I remember rightly—provided for any direct payment by Dan-Lib, their nature being that Dan-Lib should make roads in various directions in Liberia, for which they should be entitled to charge anyone who made use of them. There were also, I believe, some extensive but rather vaguely worded mining and timber concessions.

The final draft did not seem to me seriously objectionable to native interests, and I took no further action in the matter. I did not even consider—for it was no part of my duty to do so—whether the concession was or was not consistent with the Firestone concession already existing.

I ought to add that the Brunot Commission brought back a most deplorable account of the finances of Liberia, and there can be no question that for months past there has been no adequate payment of the officials in Liberia, and that in consequence the whole administration of the country is in a deplorable condition. The revenue is certainly diminishing and has for many months past not been sufficient to pay both the Firestone charges and the cost of administration.

In these circumstances it seems to me impossible that the payments by the Liberian Government under the contract with the Finance Corporation can be made, but that does not justify the unilateral repudiation of them. Why that repudiation was suddenly made in the way it was made, I have no knowledge at all. It was certainly a foolish and reprehensible proceeding. On the other hand I am sure that in the interests not only of Liberia but of the Finance Corporation itself, it is essential that some practical measure should be adopted for lessening the payments to be made by Liberia. To all intents and purposes Liberia is insolvent.

That, as I understand it, is a short history of the matter. I have no idea whether any money can possibly be found to make the reforms in Liberia possible, except from the Finance Corporation. If I knew of any such source, I should certainly be very glad, because not only is the Corporation unlikely to desire to sink further money in Liberia but also it is contrary to sound principles of administration that a country like

Liberia should be financially at the mercy of one trading Corporation. But I know of no such source, and the financial advisers of the League have repeatedly and publicly stated that they think it most improbable that any means of financing the reforms can be found except through the Finance Corporation.

I am therefore most anxious to see a reasonable and proper arrangement made between the Liberian Government and the Corporation which will enable the reforms to be carried out to the advantage, not only of what are called the American Liberians, but of the two million or more natives in the Hinterland, and will at the same time restore some prospect to the Finance Corporation of being able to carry on their enterprise in Liberia with commercial success.

May I repeat that unless the Liberian Government is reformed, the Finance Corporation will suffer in common with all those who have any interest in Liberia—native or foreign—and that the reforms are unlikely to be carried through except with some financial assistance on the part of the Finance Corporation.

Yours very sincerely,

CECIL

882.01 Winship Mission/20 : Telegram

The Secretary of State to the Minister in Liberia (Mitchell)

WASHINGTON, February 27, 1933—6 p.m.

14. Department's telegram 13, February 21, 2 p.m.³² After consultation with the incoming administration concerning the situation which has arisen in Liberia, the President has designated Major General Blanton Winship, United States Army, at present in Washington, to be Representative of the President of the United States on Special Mission to Liberia, and Mr. Ellis O. Briggs, a diplomatic officer at present on duty in the Department, to accompany him. They will sail via England on March 1 and should reach Monrovia about March 27.³³

We are informing the Liberian Consul General in Baltimore and requesting him to communicate the above information by telegraph to Monrovia. The information is not confidential and a press release concerning the matter is being issued tomorrow.³⁴

An instruction follows concerning your departure.

STIMSON

³² Not printed.

³³ The Special Commissioner and Mr. Briggs arrived in Monrovia on March 28.

³⁴ Department of State, *Press Releases*, March 4, 1933, p. 150.

882.01 Winship Mission/46 : Telegram

*The Special Commissioner for Liberia (Winship) to the
Secretary of State*

MONROVIA, April 8, 1933—10 p.m.
[Received April 10—11:40 p.m.³⁵]

35. I saw Barclay Friday afternoon, Briggs accompanying me, and the Secretary of State and the Secretary of the Treasury and Treasurer also being present. I explained in a friendly way the purpose of my mission, stating that the President was greatly concerned over the general situation and its international aspect, and that he had sent me in an endeavor to obtain a solution mutually satisfactory to Liberia and the American interests which would in turn make possible Geneva negotiations looking toward the establishment of the League plan of assistance, now blocked by Liberia's illegal actions. I added that because of the disturbed conditions prevailing here I feel that early solution was essential.

Barclay replied that Liberia's actions subsequent to December 17 last had been dictated by "necessity," but that he was desirous of liquidating the resulting situation with the Finance Corporation. Nevertheless, he said that the only basis on which the Joint Resolution and other actions "affecting" the loan agreement could be withdrawn would be in the event that an arrangement "providing financial relief" were worked out in advance and then substituted therefor. (My own view of the causes of Liberia's present financial difficulties coincides in general with that of the Finance Corporation: that these difficulties are primarily due to the administration's corruption and its persistent refusal over the past 3 years to act upon the competent advice of the American Fiscal Agent officials.)

I informed Barclay merely that I would immediately inquire whether Lyle was in a position in these circumstances to submit proposals.

On my return to the Legation I summoned Lyle who states that he has specific instructions not to enter into any discussion whatever with the Liberian Government unless and until the illegal actions contravening the loan agreement have been withdrawn; he added that he had just received renewed orders to this effect.

This is virtually the position as it existed prior to my departure from the United States. . . .

³⁵ Telegram in two sections.

882.01 Winship Mission/48 : Telegram

*The Secretary of State to the Special Commissioner for Liberia
(Winship)*

WASHINGTON, April 11, 1933—6 p.m.

23. Your 35, April 8, 10 p.m., received this morning. We have been in touch with the Firestones at Akron and have urged upon them the advisability of modifying their position to the extent of authorizing Lyle to discuss modification of the Loan Agreement if and when you have obtained from Barclay a promise to take no further action to aggravate the situation pending such discussions.

Harvey Firestone, Jr., has just telephoned that they are sending a telegram to Lyle this evening authorizing the initiation of such discussions. Lyle, however, is to assure himself first that you plan to remain in Monrovia until the success or failure of the negotiations is definite. They seem apprehensive that you may decide to leave Monrovia as soon as they have begun the discussions of the modification of the Loan Contract and before Barclay has committed himself as to the withdrawal of the confiscatory legislation and thus leave Lyle in an untenable position. The Department replied that it had from the first given you complete discretion in meeting the situation but that there was nothing apparent in your telegrams to justify the impression that you were planning to leave during the course of negotiations.

HULL

882.01 Winship Mission/49 : Telegram

*The Special Commissioner for Liberia (Winship) to the
Secretary of State*

MONROVIA, April 12, 1933—4 p.m.

[Received 9:37 p.m.]

37. Your telegram No. 23, April 11, 6 p.m. Saw Barclay this afternoon and arranged for him to receive Lyle tomorrow for commencement of negotiations, with full assurance that nothing would arise in the meantime to aggravate the present situation.

WINSHIP

882.01 Winship Mission/55 : Telegram

*The Special Commissioner for Liberia (Winship) to the
Secretary of State*

MONROVIA, April 19, 1933—6 p.m.

[Received April 20—12:43 a.m.]

38. My telegram No. 37, April 12, 4 p.m. Lyle saw Barclay on April 13 giving him the Finance Corporation proposals. He returned on April 17 and received Liberian "counterproposals", which are little more than a restatement of the Liberian unilateral actions taken since last December.

I called on Barclay today and informed him that I did not consider these counterproposals as being in any way satisfactory, and I inquired whether he desired me to understand that they were final. He replied that they were intended to represent a point of departure for further discussions with Lyle which he urged be held without delay.

Lyle himself was to have conferred with Barclay again today, but was prevented by instructions from his principals. If these discussions are to be either productive or expeditious it is essential that Lyle have sufficient latitude so that he himself can be the judge of when he should talk with the administration. Moreover, I believe that a definite development one way or the other can quickly be obtained in this manner and that Firestone interests can best be served.

I should appreciate it if you would inform Firestones to this effect adding that I feel that several days are being lost by this useless maneuver.

I shall report again when Lyle's discussions here have reached a definite point.

WINSHIP

882.01 Winship Mission/56 : Telegram

*The Secretary of State to the Special Commissioner for Liberia
(Winship)*

WASHINGTON, April 20, 1933—1 p.m.

24. Your telegram No. 38, April 19, 6 p.m. Your message has been communicated to Firestone Junior who states that instructions will be sent to Lyle tonight giving him requisite latitude to continue negotiations. Firestone wishes you to know that previous instruction to Lyle was the result of a misunderstanding as he did not then know you had obtained from Barclay the statement that Liberian counter proposals were point of departure for further discussions.

HULL

882.01 Winship Mission/58 : Telegram

*The Special Commissioner for Liberia (Winship) to the
Secretary of State*

MONROVIA, April 26, 1933—3 p.m.

[Received 4:48 p.m.]

39. Since my telegram No. 38, April 19, 6 p.m., I have had a number of interviews with Barclay, between which Lyle has carried on his discussions. Barclay has abandoned the unreasonable position represented by his counterproposals of April 17, and now offers to pay 7 percent through 1932, and thereafter to be obligated for 5 percent; to restore the authority of the fiscal officers, and to restore priority of assigned revenues. (Lyle cabled complete proposal to his principals last night.)

In general I consider it equitable as a basis for a solution, and I recommend that the Firestones accept it promptly, contingent upon my obtaining from Barclay his agreement to the reestablishment of the depositary agreement, and the reinstatement of Travell.³⁹ The latter would mean a fiscal staff of four which should be sufficient for the present.

The Firestones have desired the appointment of a Frontier Force adviser who should command. No provision for command appears in the loan agreement and a modification to include this can not, I am positive, be obtained from the Liberian Government. I do not consider this point of paramount importance and I recommend that the Firestones abandon it pending Geneva negotiations, since the League plan is much more adequate in respect to potential control over the Frontier Force than the loan agreement.

Regarding the proposed internal bond issue, now that Barclay has agreed that the interest of the 1926 loan shall have priority over interest on the proposed internal bonds, the menace of the latter largely evaporates. (In fact I doubt whether the internal bonds would be acceptable to commercial creditors and the whole scheme may fall of its own weight without forcing an issue on a point which has become minor.)

Barclay offers to put the arrangement into effect at once as a *modus vivendi* subject to approval in Geneva which I think can readily be obtained.

The position with respect to the League is as follows:

1. Barclay admits the binding character of the Liberian commitment to the administrative features of the League plan. Following negotiation in Geneva of the further modification of the loan agreement necessary for the establishment of the plan, he would anticipate that a new loan

³⁹ W. A. Travell, Supervisor of Internal Revenue in Liberia; appointed under provisions of the Loan Agreement of 1926, and summarily dismissed in January 1933.

agreement (embodying his agreement with Lyle, plus the further modifications) would be drawn up.

2. Negotiations in Geneva should take place as soon as possible, that is, next month. (Cecil informed me in London [that] a meeting of the Liberian Committee could be called on short notice.)

3. An acceptance by the Firestone interests of Barclay's proposal will in my opinion place them in a most favorable position as having made a fair and generous settlement which cannot fail either to appeal strongly to the League, or to be well received at home.

4. Should you so desire I should of course be willing to proceed to Geneva and endeavor to push the negotiations to a final conclusion there. . . .

I plan to sail from here on May 5th, and this will require prompt decision on the part of Firestone interests. I should like to emphasize that I regard Barclay's present proposal as reasonable in all the circumstances, and that there is real need for obtaining a definitive settlement of the entire problem without delay.

WINSHIP

882.01 Winship Mission/64

*Memorandum by the Chief of the Division of Western
European Affairs (Moffat)*

[WASHINGTON,] April 29, 1933.

I called up Mr. Harvey Firestone, Jr., by telephone to ask him what decision he had been able to make with respect to the Barclay proposal, in order that we might so inform General Winship.

He told me that the Barclay plan had not been made in the form of a text, but consisted in a series of telegrams from Lyle. They had last night sent off to Lyle detailed instructions as to just what they were prepared to accept. These proposals included the liquidation of past interest due as of January 1, 1933, amounting to some \$133,000.00, by the issuance of new 1926 Liberian bonds. They likewise agreed to a reduction of interest for the rest of the loan from seven to five per cent. They agreed to the reduction in wages and numbers of the fiscal officers. They set up a very liberal sinking fund arrangement, dependent on the state of Liberian revenues. They still asked for an official to command the Frontier Force, but were not prepared to insist on this point. They agreed to the further issuance of an internal loan under specified conditions. The whole arrangement was to be made contingent on (1) the withdrawal by Barclay of all executive acts in contra-distinction [*sic*] to the original agreement, (2) the reinstatement of the depositary, (3) the reinstatement of Travell, (4) withdrawal by the Legislature next

October of the repudiationist legislation, and (5) an understanding that if this were not withdrawn, the whole modification agreement would lapse. Lyle was to get in touch with General Winship and he hoped that they would continue to work closely together.

I pointed out the urgency of getting further orders to General Winship so that he could attend a meeting of the Commission at Geneva, which would have to be held some time in May, and asked the Firestones if they could get their man over that early. Harvey, Jr., to my intense surprise, said that that was a matter that they would wish to talk about with us further. I replied that this was a matter of great surprise to me, that it had been distinctly understood by Mr. Firestone, with Mr. Stimson and Mr. Castle, that if they got the situation cleaned up in Monrovia, the Firestones would definitely send a man to Geneva. He replied that (1) this promise had been made if the legislation were actually withdrawn, and said (2) the appointment of General Winship came to them as a bolt from the blue. I replied, with some heat, that I could not credit this, that (1) the withdrawal of the legislation or a contingent agreement to accomplish the same purpose seemed to me a very fine distinction, and (2) that they had asked this Government to send a Commissioner to Liberia. He said, however, that we were rushing them, and that his father would like to come down and talk things over with us. I replied that this was all very well, but that we had come to a distinct and definite understanding as to just what would be the role of the Government, of the Firestones, etc., in such a meeting at Geneva, but that leaving aside the question of commitment, it struck me that from their own interests, they would have a far better chance to handle their case properly if the meeting were held right away when General Winship, with all the authority not only of his personal position but of having come from Liberia, were present, than later on when we would merely be able to send an ordinary functionary.

He hesitated for a while, complained of the heat, and finally said half grudgingly that he thought we were right, but that he would telephone us on Monday. I suspect we shall see him in person.

PIERREPONT MOFFAT

Harvey Firestone jr telephoned me at my house Sunday morning April 30th that if the Dept still felt they should send a representative to Geneva for the next meeting of the Liberian Committee, they would do so. I thanked him. P.M.

882.01 Winship Mission/59 : Telegram

*The Secretary of State to the Special Commissioner for
Liberia (Winship)*

WASHINGTON, April 29, 1933—1 p.m.

25. The Department promptly communicated to Firestone the recommendations contained in your No. 39 of April 26, 3 p.m., and strongly urged compliance therewith. Firestone Junior has just telephoned that final instructions were sent to Lyle last night and that the latter would at once get in touch with you and explain any outstanding differences. We wish to express our pleasure at the progress you have made and trust that it may be possible for Barclay and Lyle to conclude the *modus vivendi* before your projected departure.

If everything goes through as planned and a meeting of the Liberian Committee is held in Geneva between May 20 and 30, we would like to appoint you American member of the Committee, to be assisted by Briggs and, if he is available, by Reber. Orders would be sent subsequently.

HULL

882.01 Winship Mission/67 : Telegram

*The Special Commissioner for Liberia (Winship) to the
Secretary of State*

MONROVIA, May 7, 1933—6 p.m.

[Received May 8—8:05 a.m.]

41. During lengthy conferences with Barclay yesterday important progress was made. The paramount question of the responsibility of the fiscal officers to the Financial Adviser was definitely and satisfactorily settled, as were a number of minor modifications to the loan agreement desired by the Finance Corporation. Three large items remain:

1. Liberia desires to use the first \$375,000 collected in any one year for the operation of the Government (including the cost of the American fiscal officers) but not to be obligated to make any cash payment for interest from this amount. It is obvious that the first [thing] is to operate the Government, and after careful study in cooperation with the acting Financial Adviser, I consider that this amount is reasonable. It would not be wise to restrict the Government to so small an amount that new difficulties would arise almost before the proposed supplementary agreement had been completed. Lyle is communicating with Akron tonight on the subject.

2. The reestablishment of the depository agreement. I expect to see Barclay on this again tomorrow.

3. The desire of the company that there be a Frontier Force adviser who shall command. I recommend that the command feature be withdrawn. See my despatch No. 39, April 26, 3 p.m.

We sail May 12, steamship *Canada*, due Marseille May 26. Lyle should be instructed to accompany us and Firestone, Jr. should be present in Geneva or else give sufficient authority to Lyle to decide questions as they arise. I intend that a Liberian representative shall likewise accompany us.

WINSHIP

882.01 Winship Mission/68 : Telegram

*The Special Commissioner for Liberia (Winship) to the
Secretary of State*

MONROVIA, May 10, 1933—noon.

[Received 3:27 p.m.]

42. My telegram No. 41, May 7, 6 p.m. I have had two further interviews with Barclay between which he has held important Cabinet meetings. Barclay now agrees to reestablish the depository agreement as soon as certain formalities regarding transfer of funds can be completed.

It may not be possible to obtain a completed agreement before sailing but I do not now consider this essential in the light of anticipated developments in Geneva. The Firestone position should now be susceptible of effective support.

I propose to consolidate the progress already made by the issue with Barclay of a joint communiqué. I shall telegraph the text before our departure since it might be useful should you contemplate a press release on the forthcoming meeting of the International Committee.

Grimes ⁴⁰ will again represent Liberia and will sail with us.

WINSHIP

882.01 Winship Mission/75 : Telegram

*The Special Commissioner for Liberia (Winship) to the
Secretary of State*

MONROVIA, May 12, 1933—6 p.m.

[Received May 15—3:15 p.m.]

44. Your 27, May 10, 6 p.m.⁴¹ Barclay and I today issued the following statements:

“As a result of conferences held during the past 5 weeks between His Excellency the President of Liberia and Major General Winship, Representative of President Roosevelt on Special Mission to Liberia, substantial progress has been made toward settling on a basis of mutual accommodation the differences between the Government of Liberia and the Finance Corporation of America.

⁴⁰ Louis A. Grimes, Liberian Secretary of State.

⁴¹ Not printed.

Mr. Lyle, vice president of the Finance Corporation, has made certain offers on behalf of his company which include anticipated reduction in the interest charges on the 1926 loan, provision for regularizing the status of past due interest and amortization, and revision of salaries of the American fiscal officers. Should these proposals become effective a saving to the Government of Liberia of approximately 50,000 gold dollars per annum for the duration of the loan is contemplated, as well as special provision for meeting revised interest charges during the period of business depression and curtailed government revenues.

The concessions offered to the Government by the Finance Corporation in the above respects are conditioned upon the prior agreement of the Government to the reestablishment of the depository agreement with the United States Trading Company—banking department, the reestablishment in full authority of the American fiscal officers, and the acceptance by the Government of various modifications in the loan agreement of 1926 designed to clarify the status of the fiscal officers, facilitate the efficient functioning of the financial advisership, and settle a number of questions of interpretation which have caused friction in the past.

Final agreement on the points still outstanding will be sought in Geneva, where a meeting of the International Committee on Liberia of the Council of the League of Nations will be held as soon as the Liberian representative and General Winship have reached Switzerland. The Honorable the Secretary of State, Mr. Louis A. Grimes, and General Winship and suite, will sail from Monrovia on the steamer *Canada* for Marseille on May 13, 1933. Mr. Lyle will sail at the same time.["]

WINSHIP

882.01 Foreign Control/562a : Telegram

The Secretary of State to the Chargé in Great Britain (Atherton)

WASHINGTON, May 15, 1933—6 p.m.

113. Please inform Lord Cecil that General Winship has now completed his mission to Liberia and has sailed for Marseilles where he expects to arrive May 26. He will proceed at once to Geneva and this Government accordingly suggests the advisability of an early meeting of the Liberian Committee to be called by Lord Cecil for a date shortly after his arrival, preferably around May 30. You may add that it is our purpose to designate General Winship as the American member of the Liberian Committee with Reber and Briggs as his assistants. According to our information Grimes is sailing on the same ship as General Winship and a representative of the Firestone interests will likewise be present in Geneva for such a meeting. If, as we assume, this course commends itself to Lord Cecil, we hope that he will take any necessary steps through the League Secretariat.

HULL

882.01 Foreign Control/565 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, May 29, 1933—7 p.m.

[Received May 29—4:15 p.m.]

145. From Winship. The Liberia Committee met this afternoon and at Cecil's [request?] I outlined in general terms the position reached before my departure from Monrovia stating that agreement between the Finance Corporation and Liberia concerning loan difficulties had already been reached on a number of points while several remained unsettled. I said that the Liberian Government was anxious before the final adjustment of the loan difficulties to have the benefit of the financial experts of the League and that the Firestone interests now took the same view. I, therefore, suggested that the Committee call upon the Finance Section of the Secretariat for a study of the position with a view to ratifying to the Committee the points already agreed upon and of formulating recommendations with respect to the others.

Grimes stated that his Government particularly desired to have the benefit of Lighthart's⁴³ advice and practically asked for postponement until June 6 when he would be available. After some discussion it was decided:

(1) That a representative of the Financial Section should meet tomorrow with Grimes, Firestone, Lyle and me to go into the subject;

(2) That the result of these deliberations be submitted to Lighthart for his recommendations;

(3) That the result then be submitted to a second meeting of the Liberian Committee which would be called as soon after June 6 as possible, at London because of Cecil's inability to return to Geneva and the presence in London of the financial experts.

Cecil asked me whether I felt it would be desirable to have a further meeting of the Committee to discuss the League plan of assistance prior to a final adjustment of the loan contract. I shall inform him tomorrow that I believed the League plan of assistance should not be discussed by the Committee or the Finance Section until the present financial difficulties have been ironed out. My opinion is that an adjustment of the difficulties which concern only Liberia and the Finance Corporation (but whose existence at present constitutes an obstacle to the League plan) should first be obtained. Thus any satisfactory settlement reached would have the advantage of having had League scrutiny and approval (a consideration which should appeal to the Firestones) and of constituting a basis for operation of the loan in case the League plan should not go through. [Winship.]

GILBERT

⁴³ Thomas Lighthart, member of the Brunot Mission to Liberia in 1931 and Financial Adviser to the Committee on Liberia.

882.01 Foreign Control/573

*The Special Commissioner for Liberia (Winship) to the
Acting Secretary of State*

[Extract]

LONDON, June 9, 1933.

[Received June (16?), 1933.]

DEAR MR. SECRETARY: We reached Geneva on May 27, followed almost immediately by Mr. Firestone, Jr. and Mr. Lyle, and by Mr. West⁴⁴ of the Colonization Society, and Dr. Jones⁴⁵ of the Advisory Committee. As you know, the conversations regarding Liberia were transferred to London a week later, and we have been occupied with an almost constant series of interviews, negotiations and meetings, over which the question of the nationality of the Chief Adviser has remained suspended as a sort of bomb, seen by everyone, and likely to explode at any moment. I was particularly grateful therefore to receive your letter of May 18,⁴⁶ in which you informed me that, before any change of policy would be decided upon, you wished to have an opportunity to study the situation in detail, and to learn my views.

As soon as financial negotiations have been concluded, and possibly earlier, discussion will begin relative to the League Plan. The nationality question is the most important single point, and the one on which the success or failure of the whole scheme may depend. I had hoped to keep this out of even private discussions with League officials until the appropriate time, but unfortunately West circulated copies of his pamphlet, "The Liberian Crisis", and Firestone several days ago informed a League official that "his interests would not advance money to support any plan unless the Chief Adviser were an American." The latter part of West's pamphlet emphasizes too strongly the Firestone side of the question and has laid it subject to the criticism in some quarters that it is Firestone inspired propaganda; while Firestone's unwise statement into which he was baited, precipitated immediate private discussion.

It was accordingly necessary for me to see Cecil and to discuss the nationality question frankly and at length with him, together with the modifications in the League Plan desired by the Firestones. These modifications are essentially those transmitted with their letter of January 17, 1933,⁴⁶ including paragraph one, Article One, of Chapter Four, to which the Department took exception in its reply of January 28.⁴⁷ West and Jones joined Firestone in endorsing this redraft on behalf

⁴⁴ Henry L. West, president of the American Colonization Society.

⁴⁵ Thomas Jesse Jones, educational director of the Phelps-Stokes Fund.

⁴⁶ Not printed.

⁴⁷ *Ante*, p. 888.

of their respective organizations, and it was presented to me under a joint covering letter.

I told Cecil that I should personally be very glad to see an American Chief Adviser, on grounds of traditional American interest and sentiment, and the fact that this would draw funds from America for religious, educational and medical purposes that would not otherwise be forthcoming from this source. I spoke of the strong pressure in favor of it from influential groups in the United States. I made it clear that I was speaking without instructions, and stated that I thought that the Chief Adviser should serve within the framework of international cooperation, (that is, be appointed by, responsible to and removable by the League Council.)

Cecil replied by outlining the League position regarding the desirability of a "neutral", citing reasons with which the Department is already familiar. He said he was not personally opposed to an American, but he made no commitment indicating that should I officially promote an American before the Committee I could either count upon his active support, or that the Committee would accept it. He was not entirely discouraging and, if Liberia requested it, I feel rather sure that, with concessions that we could make on other reserved points, this can be accomplished.

Briggs, Reber and Gilbert predict that the Committee would decline to accept an American, unless perhaps Liberia requested it. . . .

Grimes invited me to a private conference with him yesterday and incidentally the nationality question came up. I told him that I had heard that he was objecting to an American and was very much surprised as Barclay had assured me on different occasions in my conferences with him that he and all Americo-Liberians considered the United States as their foster parent, to whom they were attached on many scores and would always turn in case of trouble. I further told Grimes that I thought his present attitude hardly reflected the sentiments expressed by Barclay and would probably be construed as a lack of confidence in Americans that could not be understood in the United States.

Grimes of course strongly denied that the Barclay administration was anti-American, or that he was, but claimed that some recent American representatives had been "unfriendly" to the administration. There is a possibility that he may be brought around, and I shall talk with him again on this subject in due course.

I am convinced that there is slight prospect of a change in the attitude of the Firestones, as they regard this point as the *sine qua non* governing their relations with the League. On the other hand, I know they would be prepared to make substantial concessions to obtain an American. Harvey Firestone Jr. has told me in different conferences that his company was only interested in its Liberian activities as an "American

undertaking", that otherwise they were prepared to discontinue them, and that their attitude was almost wholly based on traditional and sentimental reasons. In other respects than regarding the nationality question, Harvey has been reasonable, conciliatory and generous.

Unless you object I propose to continue, in private discussions in advance of the meeting of the Committee at which the League Plan will be considered, to explore the possibility of reaching some sort of compromise. But if it becomes apparent that no such solution can be obtained, and that insistence on an American would destroy international cooperation, I recommend that I be authorized to assent to the appointment of a neutral, making at the same time a statement describing our preference and its advantages and explaining that the American Government, which does not consider this point of paramount importance, therefore would decline to accept the responsibility for destroying the League Plan on that.

Sincerely yours,

BLANTON WINSHIP

882.01 Foreign Control/573 : Telegram

*The Acting Secretary of State to the Ambassador in
Great Britain (Bingham)*

WASHINGTON, June 19, 1933—5 p.m.

164. For General Winship. Your letter June 9. I see little hope of the Firestones changing their insistence on an American as Chief Adviser, and without their approval the League Plan cannot go into effect. Please try, therefore, in every way to effect a compromise whereby other concessions are offered by the Firestones in return for the one requisite they consider essential. If this fails our position remains as set forth in Mr. Stimson's message of September 25 to Lord Cecil,⁴⁹ namely that we will not insist on the appointment of an Adviser of any given nationality, but on the other hand will not put pressure on the Firestones. In other words, we seem committed to adopt a more neutral attitude in the dispute than the one you have recommended, and should abstain from voting on this point. . . .

PHILLIPS

⁴⁹ See telegram No. 3, September 25, 1932, to the Acting Chairman of the American delegation at the General Disarmament Conference, *Foreign Relations*, 1932, vol. II, p. 758.

882.01 Foreign Control/574 : Telegram

*The Ambassador in Great Britain (Bingham) to the
Acting Secretary of State*

LONDON, June 24, 1933—1 p.m.

[Received June 24—9:50 a.m.]

193. From General Winship. During the past 2 weeks we have had constant discussions with financial experts and Firestone, and private meetings on other matters.

The International Committee met yesterday and spent entire day going over Lighthart's report⁵⁰ and the minor changes in the plan of assistance desired by Firestone and the experts. Firestone and Lyle attended the meeting. With no important exceptions the modifications were provisionally accepted and final vote is anticipated at the next meeting on June 27th.

With regard to the amended loan contract I again emphasized to the Committee that as no plan of assistance could be obtained except after solution of loan difficulties, the Committee must take the latter into consideration. I pointed out that scrutiny by Lighthart and the League financial experts had been made in response to Liberia's request and that the Finance Corporation, which seeks a fair and reasonable solution, had been entirely willing to have its proposals examined. At the next meeting I hope the Committee will consider the amended contract and endorse it.

(Grimes opposes most of Lighthart's recommendations but is in a weak position, having requested his assistance.)

I have urged that after the anticipated adoption of the revised League plan by the Committee, the Council should promptly meet and take very definite action in recommending it to Liberia. (The original schedule contemplated was to have the plan sent by the Committee to Liberia with the request that the latter signify whether it would accept it and report to the September meeting of the Council.) Cecil seems to think favorably of my proposal and I believe it will be done; a Council meeting for this purpose is tentatively scheduled for July 3. The Liberian Legislature should as soon thereafter as possible be called in special session, and I am going to urge that the League send a special representative to Liberia to be present during legislative consideration in Monrovia.

The nationality question did not arise yesterday. In consequence of private meetings with Cecil I believe he has arranged so that an American can be appointed, under the terms of chapter IV, article I, paragraph 1 as it stands, Firestone having accepted the principle that he shall be appointed by, responsible to, and removable by, the League. [Winship.]

BINGHAM

⁵⁰ Report of June 23, 1933; for substance of report, see p. 952.

882.01 Foreign Control/576 : Telegram

*The Ambassador in Great Britain (Bingham) to the
Acting Secretary of State*

LONDON, June 28, 1933—9 a.m.

[Received June 28—8:08 a.m.]

194. From General Winship. My telegram 193, June 24, 1 p.m. Cecil asked me to call on him Monday evening and told me that after further exploration of the nationality question he was now forced to withdraw the assurance previously given me that an American would be appointed. He said he could not speak for the ultimate decision of the Council in the matter.

I pointed out that this left Firestone in a very difficult position, especially since at the request of the experts Firestone had already submitted for incorporation in Lighthart's report a memorandum indicating the specific conditions on which his interests would be prepared to underwrite the League plan, and that Firestone had omitted the nationality of the Chief Adviser on my own recommendation, after I had explained to him that Cecil had apparently arranged the matter. I said that obviously this point must now be covered.

It was decided after discussion between Cecil, Firestone and me before the final meeting of the International Committee yesterday morning that Firestone should make an oral statement, which he did. He concluded by stating that his interests were entirely willing for the American Chief Adviser to be chosen by, responsible to, and removable by, the Council of the League.

Grimes immediately objected to an American, saying that as the Chief Adviser might be called upon to make decisions in cases involving the Financial Adviser and the Firestone interests, he believed that the Chief Adviser should be of a different nationality. The representatives of Italy, France and Poland reserved the positions of their respective governments. The Committee accepted without vote Cecil suggestion that no reference to nationality be included in the written "report by the Committee to the Council" (although of course it will appear in the minutes of the meeting), but that Firestone's views should be communicated to the Council by the *rapporteur* (the representative of Poland) at the proper time. I made no statement during this discussion.

The Committee then proceeded to adopt the revised text of the plan of assistance, together with Lighthart's annexed report, both of which will be transmitted to Liberia under cover of a strongly worded "Report by the Committee to the Council" which summarizes the results of the recent negotiations and makes most favorable reference to the Finance

Corporation financial proposals in connection with the plan.⁵¹ It concludes as follows:

"The Committee now submits to the Council the plan of assistance in the form of a protocol to be accepted by the Council and by the Liberian Government. Certain modifications have been introduced in the original plan in order to provide further for its effective working.

"The Liberian representative has promised to refer the protocol to his Government, and the Finance Corporation only has provisionally accepted the arrangements provided for in this document.

"The plan as it stands appears to the Committee, with the exception of the Liberian representative, to be fair and practical and in fact to constitute the only way in which to comply with the request for assistance of the Liberian Government. Consequently the Committee strongly recommends it to the Council and to the Liberian Government. The Committee emphasizes the necessity of the acceptance by the Liberian Government of the plan as a whole if it desires the assistance of the League. Finally the Committee would draw attention to the danger of further procrastination. The Committee has had the question under consideration for over 2 years, and in these circumstances has asked the Liberian Government to reach a decision before the meeting of the Council in September 1933. The Committee is informed that for this purpose it will be necessary for a special session of the Legislature of Liberia to be called."

Grimes objects to several of the modifications incorporated in the plan of assistance, and also to Lighthart's report. At Grimes' request a long memorandum outlining his views will be annexed to the documents already mentioned.

I referred to the seriousness of general conditions in Liberia, and urged that Liberia act favorably without delay upon the League plan and the amended loan agreement.

The Committee as such would not consider the loan agreement. Lighthart went over it at length with Firestone, Lyle and Grimes, and certain changes were made at Lighthart's suggestion. Lighthart has promised to supplement his oral endorsement of the financial provisions by a letter to Grimes.

Favorable action was taken by the Committee on my suggestions that League representatives' letter [be] despatched to Liberia (see penultimate paragraph of my telegram 193⁵²) and Mackenzie will probably be sent.

It was found impracticable to convene the Council in special session.
[Winship.]

BINGHAM

⁵¹ For text of the Committee's report to the Council, June 27, 1933, see League of Nations document C.421.M.214.1933.VII (1933.VII.5).

⁵² June 24, 1 p.m., p. 918.

882.01 Foreign Control/577 : Telegram

*The Ambassador in Great Britain (Bingham) to the
Acting Secretary of State*

LONDON, June 28, 1933—noon.
[Received June 28—11:45 a.m.]

195. From General Winship. My telegram No. 194, June 28, 9 a.m. I estimate the present situation as follows:

1. The proposed amended loan agreement is in a very strong position. Liberia asked for and has received expert disinterested financial advice. The contract was carefully scrutinized at many discussions during the past 3 weeks, participated in by the League Finance Section experts as well as by Lighthart, and several modifications favorable to Liberia were accepted by Firestone. As the document stands I consider that it represents a fair and workable basis for the permanent operation of the loan and in particular the amplification and clarification of the authority of the Financial Adviser should greatly facilitate administration. I think we can in due course make representations demanding that in view of the foregoing and especially the very great consideration which has been shown, Liberia should forthwith take steps to regularize the situation and meet her obligations.

2. The plan of assistance will be accepted by Liberia only if it becomes apparent that there is no alternative. If acceptance is to be brought about it will require sustained pressure exerted by other governments, particularly those represented at Monrovia (British, French, German and American). Although I have discussed this here I think it could be definitely promoted from Washington for the purpose of arranging joint representations to Barclay, as was done in January 1931.⁵³ Our task in obtaining the support of other governments has been rendered more difficult by yesterday's developments regarding the nationality of the Chief Adviser.

3. My opinion is that the Council would agree to appoint an American Chief Adviser only in the event that this should be requested by Liberia; perhaps then only on condition that for the period of the League plan the Financial Adviser and/or Frontier Force officer should not be Americans. This has been suggested to Firestone but to date he has declined to agree.

4. Following adjournment of the Committee Briggs and I had a private meeting with Cecil, Mackenzie and Firestone at which Cecil agreed to supplement the official report of the Committee by a personal telegram to Barclay urging that the legislature be at once summoned to

⁵³ In January 1931, after concerted American, British, and German representations at Monrovia, the Liberian Government requested the assistance of the League of Nations; see *Foreign Relations, 1931*, vol. II, pp. 659 ff.

take favorable action (it apparently takes from 2 to 4 weeks to convene a session; Grimes and Mackenzie will probably sail July 12, due Monrovia July 23). [Winship.]

BINGHAM

882.01 Foreign Control/577 : Telegram

*The Acting Secretary of State to the Ambassador in
Great Britain (Bingham)*

WASHINGTON, June 28, 1933—6 p.m.

176. For General Winship. Your 194 and 195, June 28. I appreciate the valuable progress you have made in the recent negotiations at London and for the first time feel that we are within appreciable distance of success. I am particularly encouraged by the fact that the Firestone interests here now seem thoroughly in favor of the plan of assistance and are pressing for its acceptance by Liberia. With the progress thus made, I am anxious to do everything possible to push matters to an ultimate conclusion.

Firestone Junior telegraphed last night to Akron that Cecil had requested you "to accompany Mackenzie to aid in securing adoption of plan. Winship is cabling American State Department for instructions." He continues "We feel very strongly that Winship should be instructed to return to Liberia as important to successful outcome and also to keep our Government in position of actively supporting and working for this program". I should appreciate your advice and recommendations as to the advisability of your returning for a month with Grimes and Mackenzie and remaining until a decision has been reached in Liberia prior to the meeting of the Council in September. I personally took up the matter with General MacArthur,⁵⁴ who says that he has no objection to your return to Liberia under the conditions outlined and leaves the matter to your best judgment.

PHILLIPS

882.01 Foreign Control/579 : Telegram

*The Ambassador in Great Britain (Bingham) to the
Acting Secretary of State*

LONDON, June 29, 1933—11 a.m.

[Received June 29—8:45 a.m.]

196. From General Winship. My telegram No. 195, June 28, noon. Cecil, Firestone and the League officials have strongly urged me to return to Liberia accompanying Mackenzie.

⁵⁴ General Douglas MacArthur, Chief of Staff, United States Army.

I gave it very careful consideration and reached the conclusion that it would be far more useful at this juncture for me to proceed to Washington to discuss the various implications of our present policy and the probable future developments. We shall be occupied here for several days with further private meetings, and unless instructed to the contrary we plan to sail for New York July 6 steamship *Manhattan*.

I accordingly told Mackenzie yesterday that I should be unable to accompany him on July 12. After some discussion it was provisionally arranged to recommend to Liberia that the special session be convened about August 25. Thus should you desire me to return to Monrovia it would be possible to get back and sail with Mackenzie from Liverpool on August 9.

To assist in your consideration of this matter I should like to state that, in view of the difficulty of the position, I think my prospects of securing the desired results from another trip to Liberia (assuming you wished me to go and I found it possible to do so) would be too severely handicapped unless there had previously been obtained from Firestone his agreement to accept whatever solution I might be able to evolve concerning several controversial points, other than the nationality of the Chief Adviser. These would specifically include the extent of the authority of the Frontier Force officer, and (for the period of the League plan) ascertain his nationality and that of the Financial Adviser.

The above message was prepared last night. Your telegram 165 [176], June 28, 6 p.m., just received and greatly appreciated. I shall shortly telegraph further. [Winship.]

BINGHAM

882.01 Foreign Control/627

The British Embassy to the Department of State

AIDE-MÉMOIRE

With regard to the situation in Liberia, the United States Government will already be aware that the Liberian Committee of the League of Nations have, with the exception of the Liberian representative, adopted a complete plan of assistance to Liberia, to which the Finance Corporation of America have provisionally agreed: that the Liberian representative on the Committee has made a number of reservations to the proposed plan but has finally agreed to submit it to his Government: that the President of Liberia has been requested to summon a special session of the legislature to consider the plan; and that Dr. Mackenzie, who carried out on behalf of the League of Nations the pacification of the Kru Coast in 1932, will leave with General Winship in the early part of August to urge the acceptance of the plan upon the Liberian Government.

His Majesty's Government are impressed by the fact that the solution of the Liberian problem appears to be dependent upon the measure of success achieved by the mission of General Winship and Dr. Mackenzie. With a view to facilitating their task His Majesty's Government are therefore considering the possibility of letting the Liberian Government know that, in the opinion of His Majesty's Government in the United Kingdom, it is essential that they should reach an agreement, and that, provided they do so, the present Liberian administration will be recognised by His Majesty's Government. Recognition would, however, also be subject to the grant of a political amnesty by the Liberian Government, and in this connection there is some ground for belief that the Liberian Government are once more imprisoning and maltreating their political opponents on the ground that they have preached sedition.

Before giving any such assurance to the Liberian Government, however, His Majesty's Government desire to learn whether the United States Government perceive any objection to the course proposed, and, further, whether they are prepared to take similar action at Monrovia.

WASHINGTON, July 26, 1933.

882.01 Foreign Control/620a

The Under Secretary of State (Phillips) to President Roosevelt

WASHINGTON, August 16, 1933.

MY DEAR MR. PRESIDENT: The Secretary has asked me to take up with you our policy towards Liberia and to ascertain whether it meets with your renewed approval. I hesitate to bother you with a long letter on the subject, but inasmuch as there are various points involved, it seems better to give them to you in writing for your consideration.

There is a division of opinion as to the attitude which should be adopted by this Government in its present relations with Liberia. The Department is being criticized by one group on the ground that we are selling out Liberia for the benefit of the Firestone interests. These critics include a number of aggressive negroes, including Dr. Dubois, the Editor of the *Crisis*, the National Association for the Advancement of Colored People, Mr. Murphy, the Editor of the *Afro-American*, as well as certain groups such as the Women's International League for Peace and Freedom and the Foreign Policy Association.

On the other hand, our policy has the present strong backing of the Advisory Committee on Education in Liberia, a group which spends \$250,000 annually in Liberia and contains the Colonization Society, the Phelps-Stokes Fund, and the Boards of Foreign Missions of the Episcopal, Methodist, Lutheran and Baptist Churches. It also has the approval of the more conservative negro elements, such as Dr. Moulton,

President of Tuskegee, Mr. Schuyler, a negro journalist writing for the *Pittsburgh Courier* . . . and several other prominent negroes, such as Dr. Johnson of Fisk University, and Mr. Walton.⁵⁵

We seem faced with three general alternatives:

(a) To assume a preponderant control over Liberia. This would probably involve us more deeply than is desirable in African affairs. It has been advocated by the Firestones, who have pressed us for years to send a warship. We have consistently declined.

(b) To let Liberia severely alone. This would be violently criticized as a betrayal of our historic interest in the country. General Winship reports that conditions in the country are deplorable, that the present Government is oppressing the great majority of natives, that sanitation, education, et cetera, are sliding back and might become a menace to the neighboring countries. If the United States withdrew all interests in Liberia, it might well be that the country would be absorbed by its two neighbors, France and Great Britain. . . .

(c) The third alternative, which the Department has been following for some years, is to take part in a cooperative movement with the League of Nations whereby the League, with our cooperation, would agree to supervise the rehabilitation of the country. The help of the League was requested by Liberia following the slavery investigation in 1929.

A plan has now been worked out and unanimously accepted by the League Committee, which has not, however, as yet received the approval of Liberia. General Winship, to whose appointment as Representative of the President on Special Mission to Liberia you agreed prior to your inauguration, following his visit in Monrovia, went to Geneva and played an active role in the negotiations. The League has informed Liberia that it is now a "take it or leave it" proposition and has implied that if Liberia does not accept the League plan, it will disinterest itself from the problem. General Winship is now on his way back to Monrovia, together with a representative of the League of Nations, in an endeavor to persuade the Liberians to accept the League plan. We have also been told privately that unless Liberia accepts this plan the missionary organizations are seriously considering withdrawal from the country. The missionaries on the spot, as opposed to the more theoretical elements in the United States, are convinced that it is the only practical solution of the question.

It is not necessary to go into the details of the plan. They involve (a) a question of the use of revenues with priorities between running expenses, payment for the Advisers, interest to the Firestones, beneficiary advantages to Liberia, et cetera, and (b) the appointment of a Chief Adviser and several assistants to run the country. Our experience with

⁵⁵ Lester Aglar Walton, newspaper editor and correspondent at sessions of the International Liberian Committee at Geneva.

Advisers has been that unless their authority is adequate, it is vain to send them to a backward country.

This scheme involves (a) a slight readjustment downward of the Firestone contract, and (b) the advance of new money by the Firestone interests. No money was found available from any other source, either here or in Europe. An appeal was, therefore, made by the League Committee to the Firestones to finance the plan as proposed by the League. This gives our critics one of their chief grounds of complaint. In return for the modification of the contract and the advance of this money the Firestones have demanded that the Chief Adviser be an American, although they agree that he shall be appointed by the League and responsible to it alone. There has been opposition both in the League Committee and outside League circles to the appointment of an American, a citizen of a country having no interests in Liberia or contiguous territory being preferred. Our critics allege that an American will be a tool of the Firestones; our supporters say that only in this way can American rights be preserved and a fair deal be secured. Mr. Stimson's position on this matter was that while he would not insist on an American, none the less he could not ask the Firestones to modify a contract legitimately entered into and to advance new funds unless they were satisfied that their interests were being protected.

Would you be so good as to indicate whether the policy which the Department has been and is pursuing meets with your approval. This policy is for General Winship to continue to urge that Liberia accept the League plan, (in return for which we are prepared, jointly with the British, to recognize the Barclay regime), and to continue our co-operation with the League in order that there may be a joint responsibility for Liberia rather than that the United States should assume exclusive responsibility.

Personally, I am strongly of the belief that a radical change in our present policy would be interpreted as an abandonment by the United States of cooperation in an international attempt to rehabilitate Liberia and would be considered as a "let down" by the League Committee, with which the Department has worked for the past two years.

Perhaps I should also add that the Liberian plantation, which is from all accounts one of the best rubber producing units in existence, is our only major source of rubber independent of the Far East and hence a very important consideration in our national defense.

Faithfully yours,

WILLIAM PHILLIPS

882.01 Foreign Control/621 : Telegram

The Chargé in Liberia (Werlich) to the Secretary of State

MONROVIA, August 18, 1933—11 a.m.

[Received 2:35 p.m.]

68. Referring to telegram 195, June 28, noon, paragraph 2, sent Department from the American Embassy, London, at the request of General Winship.

1. French Chargé d'Affaires here tells me he has received no instructions or communications whatever from his Government in respect to June 27 recommendations of the League of Nations experts.

2. British Chargé d'Affaires says the same, adding that he is surprised that British Government has not directed him to join with representatives here of other governments in exerting pressure on Liberia for acceptance of revised plan of assistance.

WERLICH

882.01 Foreign Control/627

The Department of State to the British Embassy

MEMORANDUM

WASHINGTON, August 19, 1933.

The United States Government is in entire accord with the views set forth in the *aide-mémoire* left at the Department of State by His Excellency the British Ambassador on July 27 concerning the acceptance by the Liberian Government of the Plan of Assistance prepared by the Committee of the League of Nations. Major General Winship has been instructed to consult the British Chargé d'Affaires in Monrovia and at such time as they may deem appropriate to inform President Barclay that in the opinion of this Government it is desirable that an agreement be reached on this Plan and that provided it is accepted the present Liberian administration will be recognized by the Government of the United States. Recognition, however, would also be subject to the grant of political amnesty by the Liberian Government to all political prisoners who have recently been arrested or maltreated on the ground that they have preached sedition. It is suggested that similar instructions be sent as soon as possible by the British Government to its representative in Monrovia in order that this announcement may be made to President Barclay either jointly or simultaneously.

882.01 Foreign Control/625a : Telegram

The Acting Secretary of State to the Chargé in Liberia (Werlich)

WASHINGTON, August 22, 1933—1 p.m.

42. For General Winship. Our Liberian policy has been subject to severe criticism in certain sections of the press on the ground that we have been losing sight of the welfare of Liberia in an endeavor to protect the interests of the Firestones. At the instance of the Secretary our whole policy has been laid before the President to ascertain whether it met with his renewed approval.⁵⁶ In particular we asked him to indicate whether he desired you to continue to urge that Liberia accept the League Plan (in return for which we are prepared jointly with the British to recognize the Barclay regime) and to continue our cooperation with the League in order that there might be joint responsibility for Liberia rather than that the United States should assume exclusive responsibility. The President has now replied as follows:

"I think we should continue the present policy with, however, the clear understanding that we are not guaranteeing moneys due the Firestones or making our continued interest depend on Firestone's financial interest.

"At all times we should remember that Firestone went into Liberia at his own financial risk and it is not the business of the State Department to pull his financial chestnuts out of the fire except as a friend of the Liberian people."⁵⁷

PHILLIPS

882.01 Foreign Control/626 : Telegram

The Chargé in Liberia (Werlich) to the Secretary of State

[Extract]

MONROVIA, August 24, 1933—5 p.m.

[Received August 25—10:35 a.m.]

71. From Winship.

1. I have had a lengthy conversation with Barclay, and Mackenzie subsequently discussed the situation fully with him. We hope to have a statement by Saturday regarding his attitude toward the League plan, whether he will immediately summon the Legislature, endorsing the plan to it, et cetera.

⁵⁶ See letter of August 16, from the Under Secretary of State to President Roosevelt, p. 924.

⁵⁷ Quoted from a memorandum by President Roosevelt for the Under Secretary of State, dated August 19; not printed.

2. Instructions to Routh⁵⁸ to cooperate with me were received yesterday. We are calling on Barclay tomorrow morning and will present the following statement:

“His Britannic Majesty’s Government and the Government of the United States of America are convinced that the present plan of assistance provides an opportunity which they are informed is not likely to recur for Liberia to obtain the assistance which she has requested from the League of Nations. They consider that the present proposals will provide a solution of the problems confronting Liberia.

Upon the acceptance by Liberia of these proposals and the extension when the plan becomes operative of an amnesty to all political prisoners detained, His Britannic Majesty’s Government and the Government of the United States of America will be prepared to recognize and to enter into full diplomatic relations with the existing Liberian administration.”

3. Mackenzie has already seen the French and German representatives, urging [them] to seek authorization by telegraph to make representations to Barclay on the League plan. Routh and I will call on them tomorrow for the same purpose and will leave copies of the above statement.

[Winship]
WERLICH

882.01 Foreign Control/633 : Telegram

The Chargé in Liberia (Werlich) to the Secretary of State

MONROVIA, September 1, 1933—3 p.m.

[Received September 2—9:10 a.m.]

74. From General Winship. My No. 72, August 25, 2 p.m.⁵⁹ An acknowledgment of the joint statement delivered by Routh and me has been received. It makes no reference to the question of amnesty but states that the local study of the plan of assistance will be completed in time for “whatever conclusions reached to be laid before the ensuing session of the Council”.

Barclay has declined to summon the Legislature before the regular session beginning October 8. He had apparently intended to return the plan to Geneva, requesting the Council to accept certain Liberian modifications on the basis of which he would then, if satisfied, endorse it to the Liberian Legislature. Mackenzie told him that in this case the Council would either merely refer the matter to the International Committee, which had already taken action, or that the League might flatly

⁵⁸ A. C. Routh, British Chargé in Liberia.

⁵⁹ Not printed.

refuse to go on with the matter at this evidence of further Liberian procrastination. I saw Barclay separately and spoke very plainly to him, pointing out that the purpose of the plan was to assist Liberia to remedy a number of conditions whose existence the world would no longer tolerate. I referred to the disintegration of administration here and the general dissatisfaction of the people. I denied the validity of his complaint that acceptance of the plan would mean the "abdication of the government" or place its officials in an "embarrassing and humiliating position", but I told him that in the event of Liberian refusal of this plan, I thought he would be faced with a far more serious situation in which specific demands might be made by the foreign countries most affected by present Liberian conditions. At length Barclay agreed to an immediate study here of the plan, the amended loan contract and supporting documents, none of the details of which appears to be properly understood . . .

[Winship]
WERLICH

882.01 Foreign Control/634 : Telegram

The Chargé in Liberia (Werlich) to the Secretary of State

MONROVIA, September 2, 1933—2 p.m.

[Received 5:10 p.m.]

77. From General Winship. Your telegram No. 44, August 26.⁶⁰ I learn from the German representative that his Government has communicated with the British on the subject of associating itself with the British Government and ourselves in urging acceptance of the League plan.

2. The French Chargé d'Affaires has received telegram from his Government characterizing the Anglo-American representations as too strong and intimating that France would have no objection to Liberia's referring its objections or reservations on the plan to the Council. Yesterday, however, British Chargé d'Affaires was informed telegraphically by the Foreign Office of instructions sent to the British Ambassador in Paris with a view to persuading the French to urge Liberian acceptance. British Chargé d'Affaires accordingly saw the French Chargé d'Affaires and requested him to take no action pending receipt of further instructions from Paris. [Winship.]

WERLICH

⁶⁰ Not printed.

882.01 Foreign Control/643 : Telegram

The Chargé in Liberia (Werlich) to the Secretary of State

[Extract]

MONROVIA, September 8, 1933—1 p.m.

[Received September 9—2:40 a.m.]

78. From General Winship.

1. No developments have occurred in connection with the matters mentioned in my telegram No. 77, September 2, 2 p.m.

2. I saw Barclay yesterday. I referred to an unsolicited call upon me 10 days ago by three members of the Cabinet who had seemed not unfriendly to the general purposes of the League plan and whose specific objections I had suggested they take up in detail with Mackenzie. I said they had done so but pointed out that no definitive turn seemed to have been reached. I then referred to the delays Mackenzie had experienced in Monrovia, an interview with Secretary of the Treasury Dennis to discuss the Lighthart recommendations . . .

I then recalled to Barclay a conversation between us shortly after my arrival when he had assured me that he desired the assistance of the League and had said that, if an arrangement satisfactory to him were formulated by the League of Nations, he would be prepared to indorse it to the Liberian Legislature and to resign the Presidency if it were not accepted. Barclay confirmed this, but reiterated that he objected to certain features in the present proposals and desired to send them to the League Council for the purpose of obtaining modifications.

Grimes is accordingly sailing for Europe today. Barclay emphasized that Grimes will have full power to accept a modified plan on behalf of the Liberian Government, [subject?] of course to subsequent ratification by the legislature.

.

3. In the Liberian opposition to the present plan I believe French encouragement and that derived from certain groups in the United States have been the decisive factors, together with the Liberian assumption that in the absence of some overt act against Americans here, our actions will be confined to remonstrances and note sending.

4. The principal Liberian objections appear to be as follows:

- (a) In reference to the League plan and Lighthart report:
- (1st) Too wide authority for League officials, which would result in "virtually destroying the sovereignty of the Republic."
 - (2d) An American, the Chief Adviser.
 - (3d) Increase in debt to Firestone interests represented by issue of \$150,000 Finance Corporation bonds to provide working capital fund.

- (4th) Alleged excessive cost of plan, coupled with reduction to \$300,000 (recommended by Lighthart) of the budget for annual ordinary operating expenses of the Government.
- (b) In reference to the proposed supplementary loan agreement:
- (1st) The \$300,000 budget mentioned above.
- (2d) Provision that command of Frontier Force should be given to a foreign official.

Other difficulties regarding Finance Corporation interests that remain unliquidated are the depository agreement, and the proposed internal bond issue. The latter would be contrary to the existing loan agreement and also against specific recommendations of Lighthart. I reminded Barclay of this yesterday and also of the assurance (see telegram number 37, April 12, 4 p.m.) that pending negotiations nothing would arise to aggravate the situation. Barclay finally agreed to withhold action on the bond issue until after a decision has been reached on the League plan.

6. There is obviously nothing further to be accomplished here at present. Mackenzie, Briggs, Gallant and I are sailing tomorrow steamship *Jamaïque* for Bordeaux due there September 21st. A call is scheduled at Teneriffe on the 16th. Mackenzie is informing League and hopes it will be possible for consideration to be given to the Liberian problem immediately upon arrival at Geneva. Promptness is very important in view of the assembly of the Liberian Legislature October 8th.

7. In order to assist you in deciding what policy to adopt in the event that it should prove impossible to obtain sufficient pressure from the League to induce Liberia to accept the present plan (in which connection the circumstances mentioned in paragraph 3 and the possibility that further support for the Liberian contentions may develop at Geneva should be borne in mind) I am submitting the following observations.

In this case I would foresee two alternatives:

(1st) To concede the defeat of our [efforts?] directed toward a solution on the basis of a League plan. (Mackenzie gives the impression that the League might not be averse to abandoning its effort in view of Liberia's reluctance to accept assistance.) Practically nothing would then have been accomplished; neither termination of the unfair practices against the natives nor of the injustices arising from application of provisions of act, nor a remedy of the dangerous health situation, nor a settlement of the Finance Corporation difficulties.

Left alone I predict the eventual disintegration of Americo-Liberian administration through decay and incompetence. But I do not believe Liberia would be left to work out her own destruction or salvation. The British, who have, I think, supported us to the limit on this matter since the last Liberian Committee meeting, might find themselves in a very difficult position here, particularly in comparison with the French who might not delay in pressing for the special favors which France desires. Hence I think that following League withdrawal, if that occurred, might

come a British request to us to remedy the situation accompanied by a citation of conditions the existence of which we ourselves had admitted. This could only be done by the use of force; it would be fruitless, in my estimation, for the American Government alone to accept the responsibility of sending further "advisers" without sanctions to this country. But if we decline to accede to the British request, the British Government might then say that since we recognized that conditions here were disgraceful, and since we refused to remedy them, we should interpose no objection to their remedying them, possibly in concert with the French. (The health menace alone would provide ample occasion for such inspectorship.)

I do not believe the American Government should allow itself to drift into this position which would be untenable unless we were prepared either to take over the country and reorganize it, or else not to object to this being done by others who are more immediately affected if less traditionally concerned with Liberia than we are.

(2d) To make the strongest possible further efforts to prevent the failure of international cooperation under the League. This might entail our proposing as a last resort a redrafted League plan on a smaller scale, meeting practically all the Liberian objections; that is, a neutral Chief Adviser with not exceeding three assistants, et cetera, at a reduced initial cost if possible to be defrayed from Liberian revenues, thus freeing the plan from the necessity of obtaining Firestone agreement.

8. I should deeply appreciate receiving your views and would suggest that they be sent to Paris where we shall proceed immediately from Bordeaux. [Winship.]

WERLICH

882.01 Foreign Control/656a

*The Secretary of State to President Roosevelt*⁶¹

WASHINGTON, September 21, 1933.

MY DEAR MR. PRESIDENT: Since my memorandum to you of August 15⁶² on our Liberian policy, some changes have taken place in the situation there. General Winship returned to Monrovia, accompanied by Doctor Mackenzie representing the League of Nations, in the hope that jointly they might persuade Barclay to accept the plan of assistance as prepared on June 27, and to call a special session of the Legislature for its ratification. This he has declined to do as he considers certain of the features objectionable. He has been supported and encouraged in this position by the more aggressive groups in the United States opposing the plan. He has, therefore, returned the plan to Geneva for discussion before the Council of the League, giving his representative there full

⁶¹ A photostatic copy of this letter (filed under 882.01 Foreign Control/668) was returned by the White House with the notation: "Sec. State—I entirely approve. FDR."

⁶² See letter of August 16 from the Under Secretary of State to President Roosevelt, p. 924.

power to accept provided the objectionable features are removed or materially modified. General Winship informs me that the principal Liberian objections are:

(First) Too wide authority for League officials, which would result in "virtually destroying the sovereignty of the Republic."

(Second) An American, the chief adviser.

(Third) Increase in debt to Firestone interests represented by issue of \$150,000 Finance Corporation bonds to provide working capital fund.

(Fourth) Alleged excessive cost of plan, coupled with reduction to \$300,000 (recommended by Ligthart) of the budget for annual ordinary operating expenses of the government.

We are still convinced that from our point of view some form of international cooperation is the best solution of this problem and we believe that there are certain modifications in the plan which we can accept and still retain its general form. General Winship is en route to Geneva, and while events there may alter the situation considerably, we should like your approval in principle to the following line of action: To instruct General Winship

(1) To oppose modification of the powers granted the Chief Adviser since any weakening of these will destroy the effectiveness of the plan. (The fact that the Chief Adviser will be responsible to the League and that the term of the proposed plan is five years would seem to dispose of the sovereignty objection.)

(2) To acquiesce on behalf of the United States Government in the appointment of a neutral adviser, i.e., one from a nation not having special interests in Liberia or territory contiguous thereto.

(3) To support a larger budget estimate for Liberia with a clearly specified sum for education.

I am [etc.]

CORDELL HULL

832.01 Foreign Control/657

Mr. Harvey S. Firestone to the Secretary of State

WASHINGTON, September 22, 1933.

[Received September 26.]

MY DEAR MR. SECRETARY: In 1922 when the British Government restricted the production and exportation of rubber to artificially raise the price to the United States which consumed about seventy percent of the world's output, I presented the situation to our Government officials who could readily appreciate its seriousness. While our Government could not make a formal protest, it did make an indirect protest when Congress appropriated,⁶³ without a dissenting vote, \$500,000.00 for the

⁶³ 42 Stat. 1536.

investigation of new places where Americans could develop a source of rubber supply independent of the foreign monopoly.

The Firestone Company, realizing the importance to America and the need of quick action, made an independent survey and investigation and came to the conclusion that Liberia was the best place in which to create an independent source of supply of rubber for the United States. This decision was based chiefly on the fact that for more than one hundred years Liberia had been what might be termed a "moral protectorate" of the United States and because of the special interest which the United States had always taken in Liberia due to the peculiar circumstances upon which that country was founded.

In view of the importance to this country of an independent rubber supply, our Government felt it proper and was willing to take an unusual interest in our rubber-growing undertaking. American capital could not be secured to go into a foreign country for the development of rubber for the United States without the protection of our Government. Consequently, before entering into an arrangement with the Liberian Government for the lease of lands on which to grow rubber, it was necessary to have the full knowledge and sanction of our Government and I submitted the proposed contracts to our State Department. From that time we have endeavored to cooperate with our State Department and carry out its wishes. We understand that it is the desire of the State Department to maintain, if possible, international participation in the solution of Liberian problems and that to this end it now believes that it would be helpful if we should withdraw the premise upon which we agreed to lend financial support to the League Plan of Assistance for Liberia, namely, that the Chief Adviser under this Plan shall be an American citizen. We understand this question comes up because of a recent communication of the Liberian Government to the League of Nations stating in effect that it does not want an American as Chief Adviser. We believe that this Memorandum is only an excuse to avoid the League Plan of Assistance and that if the reservation concerning an American Chief Adviser should be withdrawn, other objections will be brought forward in an attempt to defeat the Plan.

The real protection of Liberia as an independent state has always come from this country and we have felt that it was of paramount importance to both Liberia and ourselves that some vestige of the traditional American atmosphere and spirit shall be preserved in Liberia through the appointment by the League of an American as Chief Adviser under its Plan of Assistance. However, we wish to continue to meet the wishes of the American State Department, and, consequently, if it is the desire of the State Department, we are willing to underwrite the cost of the Plan of Assistance without the condition that the Chief Adviser **must**

necessarily be an American citizen provided the Plan is accepted in the form recommended by the League Liberian Committee on June 27, 1933 and becomes effective.

Yours very truly,

HARVEY S. FIRESTONE

882.01 Foreign Control/668a : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, October 5, 1933—6 p.m.

98. For General Winship. In elaboration of the Department's 92, September 23, 3 p.m.,⁶⁴ I am now able to authorize you, with the President's approval, to acquiesce on behalf of the United States Government at an opportune moment in the appointment of a neutral adviser, i.e., one from a nation not having special interests in Liberia or territory contiguous thereto. The Firestones likewise will be willing "to underwrite the cost of the plan of assistance without the condition that the Chief Adviser must necessarily be an American citizen provided the plan is accepted in the form recommended by the League Liberian Committee on June 27, 1933,⁶⁵ and becomes effective". We give you this information now but anticipate that you will continue to hold it in reserve until it becomes apparent whether on the basis of this concession the plan would be accepted without renegotiation as set forth in our 92.

It remains the policy of this Government unreservedly to oppose modification of the powers granted the Chief Adviser since any weakening of these will destroy the effectiveness of the plan. The fact that the Chief Adviser will be responsible to the League and that the term of the proposed plan is five years would seem to dispose of the sovereignty objection.

Firestone Junior is unable for personal reasons to go to Europe at present. Hines⁶⁶ however is due to arrive in Europe shortly from Monrovia and will be instructed to proceed at once to Geneva where he will put himself in touch with you.

HULL

⁶⁴ Not printed.

⁶⁵ League of Nations document C.421.M.214.1933.VII (1933.VII.5).

⁶⁶ W. D. Hines, representative of the Firestone Plantations Co.

882.01 Foreign Control/669 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 6, 1933—2 p.m.
[Received October 6—12:20 p.m.]

220. From General Winship. My telegram No. 210⁶⁷ and your No. 98. I have talked to Cecil by telephone and he will reach Geneva tomorrow. I hope to be able to summarize the existing position for you tomorrow night.

Grimes has just submitted his statement. He asks that the plan as revised last June be reexamined in the light of Liberia's having made its request for assistance "within the Covenant of the League and not in derogation of the Constitution of the Republic," adding that Liberia has nevertheless endorsed the plan with the following reservations:

(1) Chief Adviser not to be a national either of a country to whose citizens Liberia is indebted, or with contiguous territory.

(2) There should be provision for education in proposed budget for running expenses of the government.

(3) Liberia does not wish to concede any limitation on its "constitutional power to grant concessions"; agrees to submit any proposals to the Chief Adviser for consideration but not to be bound to accept his advice. (Lighthart made a specific recommendation on this in June. See item 17 of his report.)⁶⁸

(4) Lengthy controversial statement regarding financing of plan the substance of which is that the cost should involve no increase in Liberia's capital indebtedness but should be "within the actual financial capacity of the Government," that is financed out of revenues.

I suggest this summary be regarded as confidential for the present.
[Winship.]

GILBERT

882.01 Foreign Control/672 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 7, 1933—9 p.m.
[Received October 7—8:20 p.m.]

224. From General Winship. My telegram No. 220, October 6, 2 p.m. I had separate conference today with Cecil and French representative, Panafieu. Both believe main difficulty in the situation has been insistence on American Chief Adviser and that with an agreement on one from a "noninterested country" adjustments could be made not materially modifying plan of last June.

Cecil states that after consideration a definite plan should be sub-

⁶⁷ Not printed.

⁶⁸ For substance of the Lighthart report, see p. 952.

mitted to the Council and by the Council direct to Barclay, notwithstanding Grimes' objections if these are unreasonable.

Panafieu agreed that the situation in Liberia demands immediate settlement by the League but that Grimes should be given an opportunity to be heard. Both Panafieu and Cecil agreed the Chief Adviser should have adequate authority.

Cecil is of the opinion that the amount to be allowed for the operating expenses of the Government should be left to the Chief Adviser in consultation with the Financial Adviser, subject however to a limit of 25 or \$50,000 over the 300,000 recommended by Lighthart last June. Cecil thinks however that the Advisers might recommend less than 300,000.

Hines arrives tomorrow. [Winship.]

GILBERT

882.01 Foreign Control/673 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 8, 1933—9 p.m.

[Received October 8—6:42 p.m.]

225. From General Winship. My telegram No. 224, October 7, 9 p.m. Tomorrow's meeting will probably be public. To forestall an attack by Grimes on the nationality question, which would receive considerable support by other members of the Committee, I am making the following statement:

"The American Government has not heretofore expressed itself before the Committee on the question of the nationality of the Chief Adviser to Liberia under the proposed League plan of assistance. It has been the personal view of the American representative that what was needed was a man of outstanding character, competence and ability, irrespective of his nationality, but that a Chief Adviser of American nationality might be especially desirable from the point of view of Liberia, in that his presence might promote an increase in contributions by various interested organization[s] in the United States for educational, religious and medical purposes.

The American Government is aware that there have been objections in certain quarters to an American Chief Adviser. It believes that it is of vital importance to Liberia that a plan of assistance should be established without delay. The American Government does not maintain that the Chief Adviser should be of American nationality."

I believe a statement in the above form is more desirable than one listing what we would "endorse". Cecil's letter of September 27th, 1932, to Wilson⁶⁹ precludes British, French or Dutch.

⁶⁹ *Foreign Relations, 1932, vol. II, p. 764.*

Hines will make a statement to Cecil similar to that of his principals quoted in your telegram No. 98, October 5, 6 p.m.

My telegram No. 220, October 6, 2 p.m. I should appreciate it if you would now inform Hines' principals of the contents of Grimes' memorandum. [Winship.]

GILBERT

882.01 Foreign Control/674 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 9, 1933—4 p.m.

[Received October 9—3:40 p.m.]

226. From General Winship. My telegram No. 225, October 8, 9 p.m. The meeting opened with Grimes reading his document referred to in my No. 220, October 6, 2 p.m.

I then stated that before consideration was given to the present position I desired to submit a detailed statement with reference to various incorrect statements made by Grimes in previous documents communicated to the Committee. I read a summary which follows (via London part air).⁷⁰

Thereafter I delivered the statement quoted in my No. 225.

Cecil summarized developments since the inauguration of the 1930 inquiry recalling that it was at the instance of Liberia in 1931 that the present request for assistance had come before the League. He mentioned the very great patience and effort which had been given the matter and then made it clear that so far as the League was concerned Liberia was at liberty to accept or reject the plan but that if it chose the latter it should be in full realization of the effect. He said the Committee would be willing to reopen the negotiations or to reconsider the entire text of the plan of assistance but that if Liberia had objections they must be put in specific form; that is, Grimes must definitely state which paragraphs were acceptable and submit alternative drafts of the others. The Committee would then consider whether these alternatives could be adopted. In conclusion he referred to reports received by the British Government regarding renewal of native disturbances in Liberia on a serious scale, and he emphasized that the Committee must conclude its work during this session and that Liberia must then say yes or no to final proposals. Cecil inquired whether the above represented the views of his colleagues, which it did. He called upon Grimes to have his material ready for consideration by the Committee tomorrow.

Hines at my suggestion did not submit proposed statement, but will discuss his company's position privately with Cecil before tomorrow.

The meeting was public. [Winship.]

GILBERT

⁷⁰ See *infra*.

882.01 Foreign Control/678 : Telegram (part air)

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 9, 1933—5 p.m.

[Received October 11—8:30 a.m.]

227. From General Winship. My telegram No. 226, October 9, 4 p.m. The summary of my detailed statement is as follows:

[“]On February 7, 1933, the Liberian Secretary of State submitted a lengthy memorandum (League document C/Liberia/34, February 28, 1933) making certain allegations with respect to the establishment and operation of the Finance Corporation of America loan of 1926. The following June, Mr. Grimes submitted a further document consisting of a letter prepared by K. Jeffries Adorkor, Junior, a Liberian in the Bureau of Audit, concerning the expenditure of approximately \$156,000 of the proceeds of the Finance Corporation loan. Following the adopting on June 27, 1933, by the Council Committee on Liberia of the revised League plan of assistance and Mr. Lighthart’s report, Mr. Grimes submitted a third statement (included in the League document number C.421.M.214/1933 VII).⁷¹

Aside from certain statements in the document last mentioned, which relate exclusively to his opposition to the revised League plan, Mr. Grimes’ main contentions are as follows:

(1) That in 1926 Liberia ‘did not desire a loan, either for financial or economic rehabilitation, or any other exigency’ (document of February 7, 1933) but that its ‘reluctant’ acceptance was forced on Liberia by Firestone interests.

(2) That ‘a large proportion of the amount of the Loan was misspent and even thrown away, without any benefit to Liberia . . .’⁷² (paragraph 3 memorandum annexed to revised League plan dated June 27, 1933).

(3) That the present economic condition of Liberia is due to the existence of the Finance Corporation loan of 1926 and to the bad judgment or incompetence of the advisership officials appointed thereunder.

The American representative has carefully examined the statements made or sponsored by Mr. Grimes, and in many instances he has been able to check his allegations with the original records. The American representative finds Mr. Grimes’ statements inaccurate and misleading, and his conclusions without foundation. A detailed statement in connection with Mr. Grimes’ contentions is being submitted for the information of the Committee. It is shown therein:

(1) That Liberia sought the Finance Corporation loan for the following reasons:

(a) In order to liquidate the internal and floating debts, which had risen to over \$600,000, and

⁷¹ None of Mr. Grimes’ statements is reprinted.

⁷² Omission indicated in the original telegram.

- (b) In order to relieve Liberia of the customs receivership established under the 1912 loan.⁷³

Both of these objectives were realized under the Finance Corporation loan agreement.

The American Government concerned itself in the loan to the extent of extending good offices during preliminary discussions, and of intimating that, should Liberia so request, the American Government would be willing to assume certain clearly defined functions with respect to arbitration and the designation of loan officials. The American Government did not induce American capital to invest in the loan, nor did it assume responsibility for its security.

(2) Over 90% of the proceeds of the bonds issued under the Finance Corporation loan went to retire prior obligations of Liberia. That less than 10% was utilized for other purposes was due to Liberia's early violations of the loan agreement and to the refusal of the Liberian Government satisfactorily to settle these matters. Had they been settled, further funds would have been made available for general purposes. Mr. de la Rue, first Financial Adviser under the loan, had to do with the expenditure of only approximately \$50,000 from loan funds, and not \$156,000 as alleged in a Liberian statement. The question of Mr. de la Rue's judgment in this matter is one of opinion.

(3) The foreign officials serving Liberia under the Finance Corporation loan agreement have been men of character, experience and proven ability. They have given the Liberian Government constructive advice on repeated occasions. Among other matters, they have advised the Liberian Government regarding:

Waste of public funds in the maintenance of overstuffed or unnecessary institutions and bureaus; failure of the Government to enforce the payment of delinquent taxes; failure of the Government to prosecute Liberian officials for embezzlement, or to take action against them under their bonds; failure of the Government to enforce the payment into the treasury of consular and other fees; failure of the Government to foster or encourage commerce, or to open the hinterland to trade; failure of the Government to interest itself in the condition of the million and a half native people, or to utilize the taxes collected from the natives for their benefit.

The advice and recommendations of the foreign officials appointed under the Finance Corporation loan agreement have been met with opposition or indifference on the part of the Liberian Government. The failure of the Government to act is responsible for the conditions which exist in Liberia at present. The unwillingness of the Liberian Government to accept competent advice has not been confined to the relations of the Government with the various American advisers appointed under the loan agreement, or previously. The majority of the recommendations of the 1930 Commission of Inquiry do not appear to have been put into effect, and the recommendations made to Liberia by the experts appointed under the auspices of the League of Nations since 1931 have been opposed."

Among enclosures submitted with the detailed statement are a list of

⁷³ For correspondence relating to the refunding loan of 1912, see *Foreign Relations, 1912*, pp. 667 ff.

31 separate recommendations made to the Liberian Government by the Financial Adviser, and a list of 15 recent incorrect statements by Grimes, together with corrections. [Winship.]

GILBERT

882.01 Foreign Control/676 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 10, 1933—4 p.m.

[Received October 10—1:40 p.m.]

233. From General Winship. My telegram No. 226, October 9, 4 p.m. Today Grimes read a long new statement objecting to the League plan in principle and in detail. He claimed the London text exceeded the terms of reference and called for a reopening of the whole question from the beginning.

Cecil in very forceful terms declined to accept this as a basis for discussion. He informed Grimes that the London text did not go beyond the terms of reference (see original Liberian request to the League) and reminded him of his acceptance on September 27, 1932, of "general principles" which do not differ from the London text in any essential particulars. Cecil laid particular emphasis on the fact that Grimes' acceptance last year had been binding on the Liberian Government. He concluded by calling on Grimes to cease wasting the Committee's time and to return with the material called for yesterday. After some argument Grimes agreed to do so for the next meeting tomorrow afternoon.

Unless otherwise noted all meetings are public. Today's was attended by a number of American correspondents here and Walton who just arrived from Liberia. I suggest the statements quoted in my No. 225, October 8, 9 p.m., and No. 227, October 9, 5 p.m., be released in Washington.

[Winship]

GILBERT

882.01 Foreign Control/682 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 13, 1933—noon.

[Received October 13—10:25 a.m.]

250. From General Winship. My telegram No. 248, October 13, 10 a.m.⁷⁴ I consider that the changes in the London text do not modify this

⁷⁴ Not printed.

document in any essential degree and I urge that the Firestone interests immediately signify their endorsement. The Council will probably deal with the matter tomorrow afternoon and it would obviously be exceedingly desirable for the reply of the company to be received in time for the *rapporteur* to make a statement then on their behalf.

A very lengthy "report to the Council" is being prepared by the Committee. It will probably include in addition to an outline of the relevant material from the report of last June, a detailed consideration of each of the present Liberian contentions accompanied by an explanation describing why the Committee found it impossible to accept them. I consider that this will be very useful in connection with consideration of the plan by the Liberian Government.

The Committee reaffirmed the conclusions reached in Lighthart's report, and explanations regarding these will probably also be included in the report of the Council.

With respect to the amount necessary for the operating expenses of the Government, the figure of \$300,000 was retained with the understanding that this could be revised up or down by the Chief Adviser in consultation with the Financial Adviser and the Liberian Government in accordance with the financial condition of the country. I have asked Hines to communicate with Mr. Firestone on my behalf informing him that I thought that notwithstanding the action by the Committee it would have a splendid effect if he were to authorize a statement that his interests would be willing to accept a figure of \$325,000 or perhaps \$350,000 provided such appreciable amount as might be agreed upon by the Financial Adviser and the Chief Adviser should be devoted specifically to education. I hope that a favorable reply may be received in time for it to be communicated to the Council tomorrow.

With reference to the question of the nationality of the Adviser, it was determined that while a statement of Liberian views should appear in the report no reference would be made to any specific country by name. The reference will apply to Great Britain, France and the United States. With respect to the objection raised by Firestone to a Dutchman, please refer to Cecil's letter of September 27, 1932,⁷⁵ which in my opinion fully covers that situation as Cecil, with whom I have discussed the matter, will undoubtedly bring that to the attention of the Council when consideration is given to the appointment of the Chief Adviser. It would appear most inappropriate in the circumstances for us to raise the question further or for the Firestones to refer to it in their acceptance. [Winship.]

GILBERT

⁷⁵ *Foreign Relations*, 1932, vol. II, p. 764.

882.01 Foreign Control/682 : Telegram

The Secretary of State to the Consul at Geneva (Gilbert)

WASHINGTON, October 13, 1933—8 p.m.

106. For General Winship. Your 248⁷⁷ and 250, October 13. Firestone has just telephoned that they are sending a message to Hines tonight authorizing him to give their endorsement to the Plan in accordance with your suggestion and furthermore to indicate their willingness to accept a figure of \$325,000 for the operating expenses of the Government, the increase to be devoted specifically to education.

The Firestones have furthermore agreed not to refer to the question of the nationality of the Chief Adviser in their message of endorsement. They are, however, still concerned about the phrasing of the report on this question. While they have undertaken to waive their insistence on an American, they do not feel that the Liberian Government should be automatically estopped from asking for the appointment of an American in case it should later change its views and decide to ask for one. They are also still somewhat uneasy about the possibility of the selection of a Dutch national. Would it be possible so to phrase the report as to meet these preoccupations, without in the second instance mentioning the Dutch by name?

The Firestones are further telegraphing Hines asking for explanations on certain changes made in the Plan, the import of which is not entirely clear to them, notably those appearing under Article 2; Article 3, Paragraph 3 (where they question whether the reference to Article VIII should not rather be to Article XII, Paragraph 3 as amended); Article 6; and Article 19, Paragraph 3.

HULL

882.01 Foreign Control/683 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

[Extract]

GENEVA, October 13, 1933—9 p.m.

[Received October 13—7:43 p.m.]

255. From General Winship. My numbers 248⁷⁷ and 250. The Committee met in final session today.

As to the report by the Committee to the Council this was adopted along the lines of the second paragraph of my 250. The following is the penultimate paragraph:

⁷⁷ Not printed.

"The Committee reminded the Liberian delegation that the request of the Government of Liberia was for the assistance of the League of Nations. A plan had now been established which outlined the conditions under which the League was prepared to grant assistance to Liberia. Whether such assistance was accepted or not on the terms offered depended entirely on the desire of the Liberian Government. The Committee pointed out that it had carefully considered and expressed an opinion on each of the amendments raised by the Liberian delegation and the present plan represented the considered conditions upon which assistance could, in the opinion of the Committee, be granted to Liberia. The Committee emphasized that its plan must be regarded as a whole and that the financial advantages contained in the plan are conditional on the administrative part of the plan." Full text by mail.

As anticipated the Council will consider and probably endorse the report of the Committee tomorrow afternoon. I should like to reiterate the hope expressed in my 250 that the endorsement of the Finance Corporation coupled, if possible, with a favorable statement in connection with the suggestion I made in the penultimate paragraph of my 250, can be received here by 3 p.m. Geneva time.

I shall discuss with Cecil as soon as possible the question of supplementing any message to Liberia by the Council with representation by interested governments at Monrovia. [Winship.]

GILBERT

882.01 Foreign Control/698

*Draft Protocol Establishing a Plan of Assistance for Liberia*⁷⁸

WHEREAS the Liberian Government has requested assistance from the League of Nations in the establishment of reforms in the administration and finances of the Republic of Liberia;

AND WHEREAS the Council of the League of Nations, after examination of the administration and financial situation of Liberia, in collaboration with representatives of the Government of Liberia, by a Committee appointed by the Council and a Committee of Experts, has agreed to the plan of assistance established by the present Protocol and the Annex thereto, which were approved by the Council by its resolution of 1933;

AND WHEREAS the plan is intended to ensure the political independence of the Republic of Liberia, and to avoid infringing in any way its territorial integrity or the exercise by its Government of its sovereign rights;

The undersigned, duly authorised, accepts on behalf of the Government of Liberia the following provisions:

⁷⁸ This document constitutes Annex III of the Liberia Committee's Final Report to the Council of the League of Nations, October 14, 1933. It was forwarded to the Department from Geneva by General Winship with his unnumbered despatch of October 16, not printed. For complete text of the Final Report, see League of Nations, *Official Journal*, December 1933, p. 1733.

CHAPTER I—*Administration*

ARTICLE 1

1. For administrative purposes, the territory of the Republic of Liberia is already divided into three provinces by the legislative authority of Liberia.

2. It is understood that the whole territory of the Republic is to be included within the three provinces.

3. Unless otherwise fixed by the Liberian Government in agreement with the Chief Adviser, whose appointment is provided for in Chapter IV:

- (a) The Western Province shall extend from the Anglo-Liberian boundary on the north-west to the St. Paul River, and from the Atlantic Ocean to the Franco-Liberian boundary;
- (b) The Central Province shall extend from the St. Paul River to the Cestos or Nuon River, and from the Atlantic Ocean to the Franco-Liberian boundary; and
- (c) The Eastern Province shall extend from the Cestos or Nuon River to the Cavalla River, and from the Atlantic Ocean to the Franco-Liberian boundary.

ARTICLE 2

1. Each province shall be administered by a Provincial Commissioner assisted by a Deputy Commissioner.

2. The Provincial Commissioner is responsible to the Chief Adviser and, as representative of the executive power, to the President of the Republic of Liberia, through the intermediary of the Secretary of the Interior, with the understanding that no instructions, regulations or orders shall be issued to the Provincial Commissioner except after consultation with and approval of the Chief Adviser.

3. It shall be his duty to see that the laws and regulations are carried out, and he shall be responsible for public peace and order.

ARTICLE 3

1. To ensure public order, the Commissioners will have under their direct orders a corps of messengers, the numbers of which will be settled by the Liberian Government in consultation with the Chief Adviser.

The Government of Liberia shall decide, on the recommendation of the Chief Adviser, whether the messengers are to be armed or not.

2. Neither the "Frontier Force" nor any other military organisation of Liberia may intervene in the provinces, except at the request of the Provincial Commissioner, and then only within what the latter considers to be the necessities of the case.

ARTICLE 4

1. The Government of Liberia will engage three foreign specialists as

Commissioners of the three provinces, and three other persons as deputies of the said Commissioners. They shall be designated by the Council of the League of Nations and approved by the President of the Republic of Liberia and appointed by him.

2. Only the three Provincial Commissioners will be appointed immediately, in order to proceed to Liberia with the Chief Adviser. The Deputy Commissioners will be appointed later, as provided for in Chapter IV.

3. With the approval of the Chief Adviser, any or all of the three deputies may be Liberians. In such case, their appointment shall be made by the President of the Republic, on the proposal of the Chief Adviser.

4. The foreign specialists who act as Provincial Commissioners will undertake the administrative training of the Liberian officials by whom they will be succeeded on the expiration of their contracts if the Chief Adviser considers the said Liberians to be able to perform their duties satisfactorily.

CHAPTER II—*Health*

ARTICLE 5

1. The Liberian Government agrees in principle to engage two whole-time medical officers for hospital and health work. They shall carry out all the ordinarily accepted duties of a medical officer of health in a tropical country.

2. They will be designated by the Council of the League of Nations and approved by the President of the Republic of Liberia and appointed by him. One will be appointed immediately and the other as soon as the Chief Adviser thinks it opportune.

3. They will be responsible to the Chief Adviser and to the President of Liberia.

4. As regards the appointment of the second medical officer, the President of Liberia, in consultation with the Chief Adviser, will have regard to the financial resources available.

CHAPTER III—*Finance*

ARTICLE 6

1. The Liberian Government shall continue to appoint to its service a Financial Adviser, together with a certain number of assistants, as provided for in the Loan Agreement of September 1st, 1926, and any contractual modification thereof by and between the Republic of Liberia, the Finance Corporation of America and the National City Bank of New York, made before this Protocol comes into force.

ARTICLE 7

2. It shall be the duty of the Financial Adviser and his collaborators to ensure the efficient organisation and functioning of the Liberian fiscal services and also the regular payment of the service of the loan advanced by the Finance Corporation of America, and they shall have all the powers necessary for their purposes.

ARTICLE 8

The Financial Adviser shall have the right of supervision over all questions within the financial sphere and shall have the right, more particularly, to make sure that the credits allocated are being judiciously applied for the purposes stipulated.

ARTICLE 9

All revenues and receipts of the Liberian Government (including import and export duties of every description, poll-tax, and all other imposts, taxes and receipts of the Republic) shall be collected under the supervision and direction of the Financial Adviser and his collaborators, who shall co-operate with the officials responsible for collection and, as regards provincial revenues and receipts, with the Provincial Commissioners.

ARTICLE 10

All revenues and receipts of the Government shall be deposited in a bank designated as the official depository in accordance with Article XVIII of the Loan Agreement of 1926, or any agreement supplementary thereto.

ARTICLE 11

No commitment in respect of expenditure shall be entered into and no sum shall be withdrawn from the Government funds deposited in the bank without the approval of the Financial Adviser.

ARTICLE 12

Any disagreement between the Liberian Government or any official thereof and the Financial Adviser shall be submitted to the Chief Adviser, who will arbitrate thereon and will make to the Council of the League of Nations a report which shall be communicated to the Government of the United States of America. This shall in no way modify or restrict the provision for arbitration between the Parties to the Loan Agreement of 1926, as provided in Article XXV of that Agreement, or any contractual modification thereof made before this Protocol comes into force.

CHAPTER IV—*Co-ordination of Measures of Reform and Liaison With the League of Nations*

ARTICLE 13

1. A Chief Adviser shall be appointed by the Council of the League of Nations with the acceptance (agrément) of the President of the Republic of Liberia.* This adviser shall be responsible to and removable by the Council of the League of Nations. He shall be attached to the Central Government, in order to give it the benefit of his advice, to supervise the execution of the Plan of Assistance and to co-ordinate the work of the foreign experts.

2. The Chief Adviser shall proceed with the three Provincial Commissioners as soon as possible to Liberia and assume his activities. He will prepare, in collaboration with the President of the Republic of Liberia and with the assistance of the advisers provided in the preceding chapters, the progressive details of the Plan of Assistance upon the principles agreed to in this Protocol, and taking account of the draft plan drawn up by the experts and of the discussions that have taken place in the Committee referred to in the Preamble.

3. The Liberian Government undertakes to collaborate with the Chief Adviser, and, subject to the reservation hereafter provided in the following article, to act in accordance with his advice and recommendations, and grant him all facilities for the performance of his duties throughout his term of office. It hereby agrees to delegate to the Chief Adviser sufficient authority for the effective execution of the plan of assistance in accordance with his powers defined in the first two paragraphs of the present article. The Chief Adviser may, in particular, ask for any documents and official reports he may require, and may make such investigations as he may think fit in the country.

ARTICLE 14

1. The Liberian Government may, if it considers necessary, refer any question to the Council of the League of Nations, including any question upon which there is any disagreement between the Liberian Government and the Chief Adviser.

2. Should it consider that the recommendations made by the Chief Adviser are in violation of the existing constitution of the Republic, it may ask the Council to refer the question to the Permanent Court of International Justice for an advisory opinion.

3. Until a decision has been given by the Council, the Liberian Government undertakes to comply with the recommendations made by the

* It is understood that the Chief Adviser should not belong to the same nationality as the Financial Adviser or to the nationality of any country which has territory adjacent to Liberia. [Footnote in the original.]

Chief Adviser, provided that, on the application of the Liberian Government, the Council of the League of Nations, or the acting President thereof, may decide that the execution of these recommendations shall be suspended pending the final decision of the Council.

4. The Chief Adviser shall make such communications as he may think fit to the Council of the League of Nations, provided he shall report at least every quarter upon the progress of his work and the execution of the plan of reforms, and will file a copy of the report with the Government of Liberia, to be kept in the archives of the Republic.

5. Should the Council consider that the Liberian Government has disregarded the undertakings given in the present Protocol, it may declare that the present Protocol has lapsed and that consequently the arrangements entered into with the Finance Corporation of America for the execution of the plan of assistance are no longer binding on this company. In such case, compensation to be fixed by the Council shall be paid to the Chief Adviser and other specialists appointed or designated by the Council, and any balance of the working capital provided for in the report of Mr. Lighthart reproduced in the Annex shall be applied to immediate amortisation of bonds issued under the Loan Agreement of 1926 or any agreement supplementary thereto.

6. In urgent cases, the acting President of the Council may act on behalf of the Council, provided that he refers the matter to the Council as soon as possible.

ARTICLE 15

1. The Chief Adviser shall receive a salary not exceeding U.S.\$12,000.

2. If it is found possible to fix the Chief Adviser's salary at a figure lower than U.S.\$12,000, this will be done.

CHAPTER V—*Duration of the Plan of Assistance*

ARTICLE 16

The plan of assistance will terminate and the present Protocol will cease to be in force after a period of five years from the date of nomination of the Chief Adviser by the Council of the League of Nations, unless the Liberian Government intimates its desire that it should continue. In the latter case, the Council of the League of Nations may reconsider whether it desires to continue its co-operation and under what conditions.

CHAPTER VI—*General Provisions*

ARTICLE 17

1. All the powers exercisable by the Council of the League of Nations under the provisions of the present Protocol, except under Chapter IV

(Article 14, paragraph 5) and Chapter V, may, unless otherwise decided by the Council, be exercised, and final decisions may be taken, by a standing committee which will be appointed by the Council.

2. The powers given to the President-in-office of the Council cannot be delegated to the President of the committee mentioned above.

ARTICLE 18

1. For the purposes of Chapter IV, Article 14, paragraph 5, the Council of the League of Nations shall take all decisions by a unanimous vote, Liberia's vote not counting in the calculation of such unanimity.

2. Subject to the provisions of Article 18, paragraph 1, and with the exception of the action proposed under Chapter V, all decisions to be taken in virtue of the present Protocol by the Council or the committee appointed by the Council shall be taken by a two-thirds majority.

ARTICLE 19

1. The salaries of the foreign specialists will be fixed by the Council of the League of Nations, on the basis of the salaries of the similar officials of neighbouring colonies.

2. Account will be taken of the special conditions which should be granted to officials of international status, and also, of course, of the financial resources available.

3. The foreign experts appointed under the Plan shall be attached to the relevant department concerned and shall work in association with the head of that department.

ARTICLE 20

The foreign specialists mentioned in Chapters I and II may be replaced for adequate reasons with the consent of the Council of the League of Nations.

ARTICLE 21

Liberia accepts and undertakes, so far as it is concerned, to give effect to the report of Mr. Lighthart, as reproduced in the Annex to the present Protocol.

ARTICLE 22

The Liberian Government undertakes forthwith, after the signature of the present Protocol, to lay before the Liberian Legislature a draft law, or to take such other measures as are necessary, to give during the operation of the Plan of Assistance to any Government which may be in power the necessary authority to take all measures which may be necessary to enable full force and effect to be given to all the provisions of the present Protocol and its annexes.

ARTICLE 23

In the event of any discrepancy between the English and French texts of the present Protocol or the Annex, the English text shall prevail.

ARTICLE 24

1. The present Protocol shall be ratified by Liberia and the instrument of ratification shall be deposited with the Secretariat of the League of Nations.

2. The present Protocol shall not enter into force until the Chairman of the Committee referred to in the Preamble is satisfied that there has been concluded between the Government of Liberia and the Finance Corporation of America an adequate arrangement for financing the Plan of Assistance on the lines indicated in the annexed report of Mr. Lighthart.

3. Subject to the provisions of paragraph 2, the present Protocol shall enter into force as soon as the Government of Liberia has deposited with the Secretary-General of the League of Nations:

- i) a declaration signed by the President of the Republic certifying that a law has been enacted or other necessary measures have been taken so as to satisfy the requirements of Article 22 together with a certified true copy of such legislation as has been enacted;
- ii) the instrument of ratification of the present Protocol,

or has notified the Secretary-General through diplomatic channels that the said two instruments have been despatched.

4. If the Protocol has not entered into force by its entry into force shall require the consent of the Council of the League of Nations.

DONE at on 1933, in a single copy which shall remain deposited in the archives of the League of Nations and of which a certified true copy shall be delivered by the Secretary-General to the Government of Liberia. In faith whereof the undersigned has signed the present Protocol.

ANNEX TO THE DRAFT PROTOCOL ESTABLISHING A PLAN OF ASSISTANCE
FOR LIBERIA

MR. TH. LIGHTHART'S REPORT REFERRED TO IN THE PROTOCOL †

1. At its meeting on May 19th, 1933, the Council Committee decided to take advantage of the presence in Europe of special representatives

† This report reproduces the essential conclusions reached by Mr. Lighthart in the more comprehensive report on his investigations which he presented to the Committee appointed by the Council to examine the problem raised by the Liberian Government's request for assistance (Document C./Liberia 39 and C./Liberia 39 (a)). [Footnote in the original.]

of the Liberian Government, the Finance Corporation of America, and the Firestone Plantations Company, in order to settle the financial questions left open in the scheme drawn up by the Committee (document C.720.1932.VII.) It was suggested that the delegate of the Liberian Government and the representatives of the American groups concerned should begin negotiations as soon as possible, and I was asked to take charge of these negotiations, in collaboration with the Secretariat of the League of Nations.

2. We met in London from June 8th to June 23rd, 1933. The Liberian Government was represented by Mr. Grimes, Secretary of State, and Baron de Lynden, Chargé d'Affaires in London; the Finance Corporation of America by its Vice-President, Mr. L. T. Lyle, and the Firestone Interests by Mr. Harvey Firestone, Jr.

The special representative of the United States Government, General Blanton Winship, has closely followed our proceedings throughout.

I was greatly helped by the presence of Dr. Mackenzie, with whom M. Brunot and I visited Liberia in 1931 and who went there again in 1932.

In drawing up the present report, I have had the opportunity of consulting the Financial Section of the Secretariat of the League of Nations from time to time.

3. In the first instance, we dealt with the *minimum budget* required by the Liberian Government for its ordinary running expenses. In this connection we discussed the actual budget in application in Liberia for 1933, although this budget is not one sanctioned by the Financial Adviser. This budget totals Lib.\$367,800 † whereas the estimates worked out by the Finance Corporation provide only for Lib.\$281,500.‡

After careful consideration, I came to the conclusion that the figure of Lib.\$300,000 † a year is sufficient to defray the running expenses of the Liberian Government. My figure is rather higher than that proposed by the Finance Corporation and that suggested in the experts' report (document C.469.M.238.1932, page 26). This is on the assumption that every possible saving in the budget will, of course, be made.§

4. Salaries and expenses for *loan officials* total about Lib.\$44,500, as given by the Finance Corporation, and Bank of Commission charges Lib.\$7,500.

5. We have also considered the *cost of the plan of assistance*, and I have reached the conclusion that about \$150,000 a year are needed in order to carry out the plan of assistance. This sum includes salaries and

† Exclusive of salaries and expenses for loan officials and of arrears. [Footnote in the original.]

§ The Liberian Delegation wished that the minimum budget figure of Lib.\$300,000 a year should be raised to Lib.\$375,000.

This amendment has not been retained by the Committee. [Footnote in the original.]

travelling expenses to Europe to the amount of U.S.\$78,000, the balance being for roads, bridges, public health, etc. (for further particulars, see paragraph 19).[¶]

The salaries and conditions of service of the foreign League officials are to be those obtaining for white officials of similar rank serving in West Africa, and making allowance for the temporary character of the appointment.

6. We then took up the questions of *arrears apart from the loan*. In view of the difficult financial position of Liberia, I think that the creditors must make a sacrifice at least of interest on their claims. The first step is to fix the amount of the outstanding claims. I estimate that these total about Lib.\$500,000. It seems to me that a provision of a sum not exceeding Lib.\$40,000 per annum in the Liberian budget would be a fair settlement for the amortisation of these claims. The details of the funding arrangements to be made with the creditors on these lines should be left to the Liberian Government and the Chief Adviser in consultation with the Financial Adviser.[¶]

7. With regard to the *interest rate on the loan*, the Finance Corporation is prepared to reduce this from 7 per cent to 5 per cent. The interest charge would therefore be in future about U.S.\$125,000 ** per annum instead of U.S.\$175,000. Amortisation will require an additional U.S. \$66,000 per annum. Outstanding interest on the loan amounted, on January 1st, 1933, to U.S.\$133,000. The Finance Corporation proposes to take up this amount in additional bonds.

8. Funds for the following items have therefore to be provided:

	\$	\$	\$
(1) Running Government expenses (estimates for the first year)		300,000	
(2) Execution of plan of assistance	150,000		
Salaries and expenses for loan officials	44,500		
Bank Commission charges	7,500	202,000	
(3) Interest on loan		125,000	627,000
(4) Amortisation of arrears		40,000	
(5) Amortisation of loan		66,000	106,000
Total		\$733,000	

[¶] The Liberian Government considers that the sum of \$150,000 a year for the plan of assistance is excessive.

The Committee does not agree with this view. [Footnote in the original.]

[¶] The Liberian Government makes a reservation as regards the question of arrears, as this amount is already provided for by act of the legislature in internal bonds.

The Committee did not feel able to give effect to this reservation. [Footnote in the original.]

** Anticipating the issue of further bonds. [Footnote in the original.]

9. Estimates for *revenues* of the fiscal year 1933 total about Lib. \$456,500.

I am confident that this amount will be increased considerably by the application of the plan and by a proper administration, as this will lead to a speedy development of the country and its resources.

For the time being we have, however, to face an adverse balance in the budget and to make the necessary provisions to meet this. In this connection it should be borne in mind that the cost of the plan of assistance for the first year will be less than that estimated, as it is proposed that the plan should come into operation gradually.

10. First of all, it is necessary to guarantee that sufficient funds for the salaries of the foreign officials, and other expenses provided for in the plan of assistance, will be available.

I therefore propose that the Finance Corporation by the issue of fresh bonds, should provide an initial fund of U.S.\$150,000 as *working capital* for the operation of the plan; that the amounts withdrawn from this fund should, if possible, be repaid to it out of the Liberian budget; and that, if such replenishment is not possible, the Finance Corporation should in any event by the issue of bonds ensure that the fund shall always be in a position to pay salaries and travelling expenses to Europe of the foreign experts provided for in the plan, estimated at U.S.\$78,000 per annum.

Out of this fund should be paid the cost of the plan of assistance, and, in the first place, the salaries of the new foreign officials.

The fund will be paid in a special blocked account of the Liberian Government into a bank to be determined later by the Council committee. The Council committee will equally have to decide the conditions under which the fund has to be administered.^{††}

11. Under my scheme *priority* is therefore as follows:

- | | |
|--|---------------|
| (a) Ordinary running expenses of the Government (estimates for the first year) | Lib.\$300,000 |
| (b) Cost of the plan of assistance, salaries and expenses of loan officials | U.S.\$ 78,000 |
| Bank commission charges | Lib.\$124,000 |
| (c) Interest on loan | U.S.\$125,000 |
| (d) Remaining balance: | |
| One-half to be proportionately allocated: | |
| To amortisation of arrears of internal debt to an amount not exceeding | Lib.\$ 40,000 |
| To amortisation of the loan | U.S.\$ 66,000 |
| The other half to be devoted to the development of the country. | |

^{††} The Liberian Government reiterates the reservation it made in May 1932 to the effect that it could not possibly accept a new loan issued under new external bonds.

The Committee thought it essential to issue the relatively small amount necessary to guarantee the salaries of the foreign experts. [Footnote in the original.]

If the *annual interest* on the loan cannot be met out of revenue, it is to be renounced at the end of the corresponding fiscal year.

12. The question of *transferring funds* from Liberia abroad will probably only arise in respect to a portion of the foreign officials' salaries, but it will clearly be the duty of the Government of Liberia, the Chief Adviser, and the Financial Adviser to maintain sufficient bullion in the country for the proper operation of the currency.

13. The figures upon which the plan of assistance is based must be subject to reconsideration, at the moment when the plan is brought into force, in the light of the relative values of the currencies concerned at that time and possibly their future prospects. In particular, it is essential that the arrangements made as regards providing and replenishing the working capital fund should be adequate to permit offering conditions of service sufficient to enable suitable foreign experts to be engaged. At present, it is impossible to say what, at any particular moment in the future, will be the relation between the United States dollar and the Liberian dollar, or the gold value of either currency. Accordingly, wherever in the present report a table had to be drawn up showing expenditure both in United States dollars and Liberian dollars, I have treated the United States dollar and the Liberian dollar as equivalent to one another, as they originally were.

14. I have not thought it my duty to consider the merits of the existing loan contract, but have contented myself to find within the given limits of the situation the best solutions for all parties concerned.

Permanent modifications in the Loan Agreement have been discussed independently by the Liberian Government and the Finance Corporation.

A special arrangement is also being made to modify the new loan contract temporarily, so as to bring its provisions into line with the plan of assistance.**

15. The conditions on which the Finance Corporation is willing to accept my proposals, including the renunciation of interest and the provision of fresh capital, as stated to the Council Committee at its meeting on June 27th, 1933 [are] as follows:

“(a) That Liberia accept and approve by legislative action the proposed supplementary agreement to the Loan Agreement of 1926^{§§} and remove all legislative acts and executive orders in contravention of the Loan Agreement of 1926.

“(b) That Liberia accept and approve, by legislative action where

** The Liberian Government would hope for further reformation of the two contracts with the Finance Corporation of America and the Firestone Plantation Company respectively.

The Committee was of opinion that the question of permanent modifications in these contracts is a matter for negotiations between the parties concerned. [Footnote in the original.]

§§ The text of this agreement is reproduced at the end of the present document. [Footnote in the original.]

necessary, the programme of assistance as recommended by the Council Committee on Liberia to the Council of the League of Nations, including the recommendations contained in Mr. Lighthart's report to the Committee.

"(c) That Liberia recognise the existing Depository Agreement between the Liberian Government and the United States Trading Company Banking Department, and function in accordance with this agreement.

"(d) That Liberia concur in Mr. Lighthart's recommendation that the floating indebtedness be gradually amortised from current revenues without recourse to the issuance of 3 per cent internal bonds."[¶]

16. In regard to the Plantation Contract, I understand from the Firestone Plantations Company's representative that it is prepared to make the utmost possible allowance for the general interests of Liberia, and that it would be perfectly ready, in consideration of the well-being of the population, to take account of competent opinions. In particular, I understand that the Firestone Plantations Company, during the operation of the plan, will be glad to consult with the Chief Adviser and the Provincial Commissioner concerned in the selection of additional land.^{¶¶}

17. If the plan is adopted, I must emphasize the importance of having an undertaking from the Liberian Government that it will submit to the Chief Adviser any proposals that may be made by prospective concessionaries and to give due consideration to any advice he may offer, without, however, undertaking to bind itself by such advice.

18. As a preliminary stage it was necessary to fix the amount of the Liberian budget, and for convenience only I have considered the items of the separate departments of the Government. It is clear, however, that, broadly speaking, the total sum of the budget in proportion to the revenues of Liberia is of more importance than the detailed application of the sums available for the various departments. I anticipate that the details of the amount to be allocated to the individual departments will be considered by the Chief Adviser in consultation with the Liberian Government and the Financial Adviser.^{***}

^{¶¶} The Liberian Government would hope for further reformation of the two contracts with the Finance Corporation of America and the Firestone Plantation Company respectively.

The Committee was of opinion that the question of permanent modifications in these contracts is a matter for negotiations between the parties concerned. [Footnote in the original.]

^{¶¶¶} Same as footnote ^{¶¶} on previous page. [Footnote in the original.]

^{***} The Government of Liberia fears that no provision for education is made in the annual budget, and that the schools of the country will be limited to those provided by sundry missionary boards. As this would stagnate the intellectual, spiritual and cultural development of the youth of the country, it finds it impossible to agree to the budget proposed.

The Committee, emphasizing the importance of education, felt that this question must be left to be decided by the Liberian Government on the advice of the Chief Adviser and the Financial Adviser. [Footnote in the original.]

19. A detailed estimate for the plan of assistance is given below. It will be seen that the number of staff proposed is that agreed to by the Liberian Government and the Committee. It should be noted, however, that provision is made for two doctors, whereas it was decided that, in the first instance, one doctor only should be appointed, the second post being filled when, in the opinion of the Chief Adviser, funds permitted of this.

It is clear that it is impossible to define a figure for the first year of the working of the plan. My figure represents, therefore, the cost of the plan as adopted when all the appointments have been made.

	U.S. \$
Chief Adviser	12,000
Three Commissioners at \$8,000 each	24,000
Three assistants at \$6,000 each	18,000
Two doctors at \$8,000 each	16,000
Travelling expenses	8,000
	U.S.\$ 78,000 †††

	Lib. \$
Sanitation	10,000
Road construction	54,000
Education medical assistants	3,000
Unforeseen	5,000
	Lib.\$ 72,000

Approximate total \$150,000

(Signed) TH. LIGHTHART

882.01 Foreign Control/684 : Telegram

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 14, 1933—8 p.m.

[Received 9:20 p.m.]

256. From General Winship. My 255⁷⁹ and your 106.⁸⁰ Council adopted the report of the Committee and the plan of assistance, Grimes abstaining from voting.

After a brief statement by the *rappporteur* (Poland), Cecil read a communication from me informing the Committee of the willingness of

††† The Liberian Government thinks that the salaries provided for the foreign advisers are too high.

The Committee did not agree with this view. [Footnote in the original.]

⁷⁹ October 13, 9 p.m., p. 944.

⁸⁰ October 13, 8 p.m., p. 944.

the Finance Corporation to undertake the obligations of the plan and the Corporation's position regarding funds for education. I believe this had an exceedingly good effect and I have made it available to the press. Text by part air.^{80a} I have also asked Hines to telegraph my personal gratification to Firestone.

Grimes made a speech referring to his "reservations" and stressing "constitutional objections." Cecil replied that there were ample guarantees in the plan and that it was the opinion of the Committee, "an opinion which I believe to be well founded, that unless something of this kind is done the political independence of Liberia would be in serious danger." He emphasized that Liberia must now express a definite acceptance or rejection of the plan as a whole.

The only other speaker was Madariaga.⁸¹ Although he made several somewhat critical allusions to the previous attitude of the Firestone interests, he characterized as "very considerate" and "generous" the concessions now made. He referred to the guarantee afforded Liberia by the continuing interest of the League and strongly urged Liberia to accept the plan. (I consider Madariaga's remarks to constitute on the whole a very valuable contribution especially as, notwithstanding Pedroso's⁸² helpful attitude on the Committee, it had been previously understood that Madariaga might support Grimes' contentions before the Council.)

With reference to the point on the Chief Adviser raised in your telegram 106, second paragraph, the following appears in the protocol as a note relating to article 13, section 1:

"It is understood that the Chief Adviser should not belong to the same nationality as the Financial Adviser or to the nationality of any country which has territory adjacent to Liberia."

The same appears in the report of the Committee to the Council.

I have explained to Hines the questions raised in your 106, third paragraph, and he is telegraphing his principals.

As soon as possible I shall telegraph a summary of my views on the existing position.

Documents are being forwarded steamship *Bremen* sailing October 16th. [Winship.]

GILBERT

^{80a} *Infra.*

⁸¹ Salvador de Madariaga, Spanish delegate to the Council of the League of Nations.

⁸² Manuel Pedroso, Spanish member of the International Committee on Liberia of the Council of the League.

882.01 Foreign Control/686 : Telegram (part air)

The Consul at Geneva (Gilbert) to the Secretary of State

GENEVA, October 14, 1933—9 p.m.

[Received October 17—8:40 a.m.]

257. From General Winship. My telegram No. 256, October 14, 8 p.m.

The American representative has the honor to inform the Chairman of the Council Committee on Liberia, with the request that it be made a matter of record, that he has received from the Finance Corporation of America its acceptance of the plan of assistance to Liberia as finally revised and adopted by the Committee during its deliberations this week, and its willingness to undertake the obligations of the plan on the conditions already outlined in Mr. Lighthart's report of June 27, 1933.⁸⁸

The Finance Corporation has also been informed of the views of the Liberian Government on the question of the amount required for the ordinary operating expenses of the Liberian Government, which amount shall constitute the first priority on Liberian revenues, and of the views of the Liberian Government on the subject of funds for education. The Finance Corporation noted that the Committee was definitely of the opinion that the original recommendation of the financial expert that \$300,000 was sufficient for the ordinary operating expenses of the Government, including education, for the first year, should be sustained, subject to revision by the Chief Adviser and the Financial Adviser in consultation with the Liberian Government.

In expressing its agreement with this position taken by the Committee, the Finance Corporation has asked that the American representative state on its behalf that it would be prepared on the subsequent recommendation of the pertinent officials in consultation with the Liberian Government to give its assent to the figure of \$325,000 for the operating expenses of the Government, provided that the additional \$25,000 should be devoted specifically to education.

The American representative points out that the Finance Corporation had already agreed to an absolute renunciation of all interest on its outstanding bonds not met during any given year from Liberian revenues after first deducting the operating expenses of the Liberian Government and the cost of the League plan of assistance including road building and sanitation and the salaries and expenses of the officials appointed under the League plan and fiscal officials. In other words, instead of receiving interest beginning with Liberian revenues in excess of \$502,000 as contemplated with the figure of \$300,000 for operating expenses of the Government, under this suggestion the corporation would begin to receive interest payments only after \$527,000 had first been utilized by the Liberian Government. Moreover, the corporation had previously agreed to a permanent reduction of the rate of interest from 7 per cent to 5 per cent.

[Winship]

GILBERT

⁸⁸ See League of Nations document C.421.M.214.1933.VII (1933.VII.5).

882.01 Foreign Control/687 : Telegram

The Secretary of State to the Ambassador in France (Straus)

WASHINGTON, October 18, 1933—6 p.m.

304. For General Winship. We have just received the following telegram dated October 17, 2 p.m., from Werlich:⁸⁴

"President of Liberia is expected to deliver his annual message to the Legislature end of this week; understand he has delayed so far pending result of present Geneva negotiations.

["] Rumor is increasingly insistent that the Legislature will refuse League Plan and call upon President Barclay to resign in favor of Vice President Smith, and that the latter will accept the Presidency only on condition that ex-President King is made Chief Justice of the Supreme Court.

["] Ex-President King, who is doubtlessly behind Barclay resignation project, has told me twice that he is flatly against any plan under League of Nations patronage especially since the United States is reported to have agreed to a non-American Chief Adviser. He has told me he favors a Liberian Legislature commission waiting on you in Washington to request some form of all American advisership; although he was not clear as to what authority or scope such advisers should have, he stated that purpose would be to rehabilitate Liberian finances. Obviously, he had in mind again interesting United States directly in Liberia.

"I envisage possibility of such a Legislature commission and would appreciate your instructions for such eventuality.

"I would recommend my being instructed to discourage any commission go[ing] to the United States primarily on account of the expense and I would be inclined to refuse visas on grounds suggested by you."

If you concur, please send the following telegram to Monrovia as the Department's No. 48.

"Your 84, October 17, 2 p.m. The American Government believes and is definitely committed to the policy that international cooperation offers the most feasible means of assistance to Liberia. We feel that the Plan of Assistance adopted by the Council of the League on October 14 last is fair and workable, and it is the expectation of the American Government that Liberia will accept this Plan.

"It is not in accordance with our policy for the American Government to accept any exclusive responsibility in Africa and we would thus not receive a 'Commission' from Liberia to discuss 'some form of all American advisership'.

"You will be guided by the foregoing in dealing with any situation which may arise in Monrovia.

"We are sending you this telegram through General Winship."

If you have any suggestions regarding our proposed reply quoted above, please telegraph them at once.

⁸⁴ McCeney Werlich, Chargé in Liberia.

In order that there may not be any possible misunderstanding on the part of the members of the League-Liberian Committee of our position in regard to this matter, we feel that it is desirable that you write Cecil informally in the sense of these two telegrams.

HULL

882.01 Foreign Control/692 : Telegram

The Consul at Southampton (Travers) to the Secretary of State

SOUTHAMPTON, October 19, 1933—9 p.m.

[Received October 20—12:50 p.m.]

From General Winship. Your telegram No. 304, October 18, 6 p.m., to Paris. I have forwarded your No. 48 to Monrovia double priority, adding the following comment:

“With reference to the foregoing, I think the following points should be borne in mind:

1. That the League plan ‘is intended to secure the political independence of Liberia’ as stated in the preamble of the protocol as now amended.

2. That although it is of the utmost importance that action on the plan be taken by the Liberian Government without delay in order that its benefits may begin to accrue to Liberia, the arrival in Monrovia of the Committee’s full report containing the protocol should be awaited.

3. That the plan of assistance in final form was not adopted until after friendly and prolonged consideration of the Liberian point of view.

Finally, I think it should be made clear that if the Liberian Government should be so ill advised as to reject this opportunity, it can not expect a sympathetic hearing from the American Government.”

In accordance with your suggestion, I have written an informal letter to Cecil summarizing Werlich’s report and your reply. [Winship.]

TRAVERS

882.01 Foreign Control/702a : Telegram

The Secretary of State to the Chargé in Liberia (Werlich)

WASHINGTON, November 1, 1933—2 p.m.

50. In due course we think you should call formally on Barclay and leave a written statement substantially as follows:⁸⁵

“Through its special representative on the Council Committee the American Government closely followed the negotiations which took place at Geneva last month in connection with the Liberian request for the assistance of the League of Nations. The Liberian Government is reminded that this request has now been under consideration for nearly

⁸⁵ This statement, dated November 6, was communicated to President Barclay by the Chargé in Liberia, as reported in his despatch No. 56, November 7 (not printed).

three years, that every phase of the situation has been examined by impartial experts, and that prolonged and sympathetic consideration has been given to all the Liberian views.

"The American Government regards the Plan of Assistance as adopted by the Council Committee and as endorsed to Liberia by the Council on October 14, 1933, as fair and practical. It considers that the Plan contains ample safeguards for Liberia and that it will lead to a solution of Liberia's problems.

"The American Government is confident that the Plan of Assistance will be accepted by the Government of Liberia."

You will choose the appropriate time to deliver the foregoing and you may make use orally of the pertinent statements contained in the Department's No. 48,⁸⁶ forwarded on October 19 by General Winship, including his comments.⁸⁷ You may also refer to the fact that the preamble states that "the Plan is intended to insure the political independence of the Republic of Liberia," together with Lord Cecil's comment on this in the minutes of the Council meeting on October 14, as well as to the fact that Madariaga also urged acceptance just prior to the unanimous adoption of the Plan by all members of the Council other than Liberia.

Please report on the general attitude of the Legislature and the local feeling with respect to the Plan, together with your opinion of Barclay's probable position.

HULL

882.01 Foreign Control/741a : Telegram

The Acting Secretary of State to the Chargé in Liberia (Werlich)

WASHINGTON, December 11, 1933—5 p.m.

62. We have received reports that the Liberian Legislature is about to adjourn. Please telegraph briefly the present situation with regard to the consideration of the League Plan and your suggestions as to what, if anything further, should be done to secure its adoption. Have your colleagues exerted any pressure in its favor?

PHILLIPS

882.01 Foreign Control/742 : Telegram

The Chargé in Liberia (Werlich) to the Acting Secretary of State

MONROVIA, December 12, 1933—noon.

[Received 5:11 p.m.]

97. Referring to Department's telegram No. 62, Barclay is considering attempt to adjourn present session of the Legislature with assurances

⁸⁶ See telegram No. 304, October 18, 6 p.m., to the Ambassador in France, p. 961.

⁸⁷ See *supra*.

that special sessions will be called within 3 days of adjournment to consider League plan and 1934 budget. I question that he would call special sessions after the initial adjournment.

He has not submitted plan to Legislature. Only relevant action has been reports in person to each House by Grimes on his trips to London and Geneva. He has been confirmed as Chief Justice by the Senate voting 5 to 4.

There is dissension in the Senate and True Whig Party based on opposition to Grimes. Some political changes may result this week.

British Chargé d'Affaires tells me he has spoken to Grimes of British Government's endorsement of the plan. French Chargé d'Affaires says he has taken no action lacking instructions from Paris; he has added that according young [to?] Grimes, the Liberian Chargé at Paris was called to French Foreign Office and told that French Chargé d'Affaires here would receive telegraphic instructions to notify Liberian Government of French endorsement of plan. German Consul has taken no action. It is obvious that European governments desire that onus of persuasion on Liberia for acceptance of plan fall on the United States.

If Department desires I can call on President of Liberia and express formally the surprise of the United States Government that he has not submitted plan to the Legislature for consideration. I question that it should be advisable that any action should be taken beyond this unless you wish to recreate before world the former feeling that the United States has a special maternal interest in Liberia. Please expedite reply to this paragraph.

WERLICH

882.01 Foreign Control/742 : Telegram

The Acting Secretary of State to the Chargé in Liberia (Werlich)

WASHINGTON, December 14, 1933—3 p.m.

63. Your telegram No. 97, December 12, noon. We believe that our position has been made so abundantly clear that for the present no further action need be taken.

PHILLIPS

882.01 Foreign Control/746 : Telegram

The Chargé in Liberia (Werlich) to the Acting Secretary of State

MONROVIA, December 14, 1933—3 p.m.

[Received 3:30 p.m.]

99. President of Liberia told me in interview this afternoon that he has submitted League plan to the Legislature with recommendation for

such favorable consideration as is within framework of Liberia's Constitution, calling attention to the 12 objections advanced by Grimes at Geneva and saying that some but not all of these had been given favorable consideration by Committee. He advised me that if Legislature votes to adjourn before final decision on plan he will call immediately special session for plan. Barclay said objections raised to the plan in the Legislature this morning dealt primarily with Finance Corporation supplementary agreement; also Legislature would probably require fiscal officers responsible to the President, arming of messengers to be decided upon by the President and [that] all deputy provincial commissioners be Liberians.

Supreme Court now complete; Speaker Simpson offered portfolio of Foreign Affairs.

WERLICH

882.01 Foreign Control/753 : Telegram

The Chargé in Liberia (Werlich) to the Acting Secretary of State

MONROVIA, December 27, 1933—4 p.m.

[Received December 28—1:20 a.m.]

100. In continuation of my telegram 99, December 24 [14], 3 p.m., Legislature has recessed until January 3rd. As Barclay said, Legislature has been considering supplementary agreement but apparently this has been to the exclusion of other features of the plan.

As matters now stand it is probable that a Liberian commission will be created by the Legislature to go to the United States during January for [apparent omission] and that no decision will be taken over plan in time for January Council of League session on the excuse of awaiting the results commission's visit.

A bill for the creation of the commission is receiving attention in the House and Secretary of the Treasury tells me he has been requested by House of Representatives to give consideration to a credit of \$8,000 in 1934 budget for commission's expenses.

Duty of commission would be to solicit financial and moral support from American negroes in order to avoid League plan; to obtain an interview with Firestone, Senior, in order to persuade him to modify loan and Plantations contracts in exchange for promise of loan regularization; to persuade Firestone to have Department receive the commission with a view to our recognition of Barclay.

If the Department so desires I can leave *aide-mémoire* with President of Liberia on January 3rd (and make it public here immediately afterwards) in which case I would repeat that United States Government considers League plan the only solution for Liberia's difficulties, adding

that the Finance Corporation has informed you that its loan agreement modifications are exclusively in conjunction with the plan, and ending with a statement which you might phrase to the effect that any such commission in the present circumstances would be unwelcome.

Such a statement might possibly stop further legislative action on a commission. On the other hand you may consider it advisable to delay statement until the commission really has been created.

The foregoing has been read to Hines.

Have you any relevant visa recommendations?

Your reply should be sent by cable not by wireless telegraphy.

WERLICH

882.01 Foreign Control/753 : Telegram

The Acting Secretary of State to the Chargé in Liberia (Werlich)

WASHINGTON, December 29, 1933—5 p.m.

66. Your 100, December 27, 4 p.m.

(1) As stated in Department's 48, October 19, 9 p.m.,⁸⁸ the Government of the United States is definitely committed to the policy that international cooperation offers the most feasible means of assistance to Liberia and it is the expectation of this Government that Liberia will accept the League Plan. We could not officially receive a "commission" and could take no official cognizance whatever of its presence in the United States if such a commission were sent to this country. We question the advisability of your leaving an *aide-mémoire* in this sense with Barclay, but approve your making this perfectly clear to him orally. You should, of course, not speak for the Firestone interests in any way. You may use your own judgment in the matter of acquainting other interested persons in Monrovia with what you have said to Barclay.

(2) If, despite the foregoing, a "commission" of Liberians wishes to come to this country to solicit financial and moral support from American negroes and to deal with private American corporations, this Government would not be in a position to place obstacles in its way.

(3) If applications are made to you for visas, by members of a "commission", you will be guided by Note 18, Section 361, Consular Regulations. It is believed that any visas issued should be granted under Section 3 (2) of the Immigration Act of 1924.

PHILLIPS

⁸⁸ See telegram No. 304, October 18, 6 p.m., to the Ambassador in France, p. 961.

MOROCCO

RESERVATION OF AMERICAN RIGHTS WITH RESPECT TO CERTAIN MEASURES IN THE FRENCH ZONE OF MOROCCO¹

881.51/49

*The Diplomatic Agent and Consul General at Tangier (Blake)
to the Secretary of State*

No. 791

TANGIER, December 15, 1932.

[Received January 4, 1933.]

SIR: In further reference to my No. 787 of November 24th, 1932, which replied to Instruction No. 713 of November 10th, 1932, (File No. 881.51/45),² I have the honor to enclose herewith, in the French text and in English translation, copy of a communication, dated December 1st, 1932, from Monsieur Lucien Saint, Resident General of France at Rabat,³ in explanation of his declaration as to the incorporation of the proceeds of the Special Tax created by Article 66 of the Act of Algeciras,⁴ with the ordinary budget of the French Protectorate in Morocco.

These explanations are found to be identical in tenor with those made by the French Government in response to the representations on the subject by the British Government, and the latter, my British Colleague informs me, is not disposed to press the matter further, in view of the fact that there appears to be no question that the expenditures by the Protectorate Government on public works of the nature referred to in Article 66 of the Act of Algeciras, exceed in amount the proceeds of the Special Tax.

My own analysis of the situation is set forth in my despatches Nos. 716 and 787 of March 23rd and November 24th, 1932 respectively,² and I would deeply appreciate an expression of the Department's view in the premises, and its instructions as to the tenor of the reply which it may deem advisable to return to the French Resident-General's Note of which a copy is annexed hereto.

¹ The documents here printed indicate typical cases arising with respect to measures in the French Zone relating to the treaty rights of the United States. Representations during 1933 were also made with respect to regulations governing headlights of automobiles, sanitary measures regarding imported vegetable products, and a concession for the completion and operation of the Port of Saffi. For previous correspondence, see *Foreign Relations*, 1931, vol. II, pp. 737 ff.

² Neither printed.

³ Not printed.

⁴ Signed April 7, 1906, *Foreign Relations*, 1906, pt. 2, p. 1495.

In addition to the considerations set forth in the despatches above referred to, I would signalize to the Department the invocation by the French Resident-General of the Protectorate Treaty of March 30th, 1912, between Morocco and France,⁶ as a justification of the unilateral action of France in deciding upon a departure, in theory at least, from the specific provisions of Article 66 of the Act of Algeciras.

In view of the fact that it has been necessary on several occasions in the past to recall to the French and to the Protectorate Governments that the United States has not adhered to the Treaty of March 30th, 1912 and that, so far as the United States Government is concerned, that treaty cannot be deemed in any manner to justify any modification of the terms of anterior treaties to which the United States is a party, the Department may deem necessary a reiteration of this principle in the present connection.

It is unnecessary to point out that Monsieur Lucien Saint's Note of December 1st, 1932, evades the real principle at issue, and ignores the fact that the specifically temporary character of the Special Tax makes it abundantly clear, in my opinion, that the Moroccan Government is not empowered, without the assent of the other signatories of the Act of Algeciras, to appropriate the proceeds of the tax, except with a strict observance of the terms of Article 66 of the Act of Algeciras.

Respectfully yours,

MAXWELL BLAKE

681.118/12

*The Diplomatic Agent and Consul General at Tangier (Blake)
to the Secretary of State*

[Extract]

No. 806

TANGIER, January 30, 1933.

[Received February 16.]

SIR: I have the honor to enclose herewith copies of correspondence exchanged between this Legation and the Residency-General of France at Rabat,⁷ in regard to disputes at the Tangier Customs concerning the appraisement of the dutiable value of imported American radio sets and of flour imported by an American *ressortissant*.

The correspondence referred to is sufficiently self explanatory to dispense with much further comment.

As the Department will note, the developments in the case concerning imported American radio goods ought to warrant the removal of future difficulties in regard to the shipments of the American manu-

⁶ *The American Journal of International Law*, Supplement, 1912, vol. vi, p. 207; *British and Foreign State Papers*, vol. cv1, p. 1023.

⁷ Not printed.

facturers referred to. It is, however, the case relative to imported flour, which raises the most important treaty issue, since it reflects the attempt to introduce arbitrary considerations, and the attribution, to the Moroccan Customs authorities, of arbitrary powers in connection with the dutiable appraisement of imported merchandise, contrary to the specific provisions of the Act of Algeiras and of the treaties thereby confirmed.

* *

The Department will realize the danger arising to the principle of economic equality in Morocco from any tampering, on the part of the French authorities, with the protective armature to international trade in the Shereefian Empire, which is afforded by the present treaty régime of the Moroccan Customs.

My British and Italian colleagues share my views as to the importance of the principles involved in the controversy which is the subject of the annexed correspondence, and I trust that my attitude in the matter and the position taken in my Notes to the French Resident-General will be approved by the Department.

My British colleague states that failing satisfaction from the local Franco-Shereefian authorities, representations will be made by the British to the French Government, and the Department may deem that similar action may become necessary in our own case.

I shall await with great interest the Department's comments and instructions in this regard.

Respectfully yours,

MAXWELL BLAKE

681.003/41

*The American Diplomatic Agent and Consul General at Tangier
(Blake) to the French Resident General in Morocco (Saint)*⁸

TANGIER, February 8, 1933.

MR. RESIDENT GENERAL: I have the honor to inform Your Excellency that my attention has been drawn to the publication in the local press and in the *Bulletin Officiel* of the French Protectorate, of a Dahir dated January 30, 1933, which purports to institute "Compensation Taxes" upon certain products and merchandise imported into the French Zone of Morocco, in addition to the Customs duties as defined by the treaties.

The terms of this Dahir appear to be in direct violation of specific provisions of the Act of Algeiras and of anterior treaties confirmed thereby, and I therefore have no option but to register my formal protest

⁸ Copy transmitted to the Department by the Diplomatic Agent and Consul General at Tangier in his despatch No. 813, February 16; received March 9.

in regard thereto, and to make the fullest reservations for the protection of the interests of American nationals and *ressortissants*, which may be affected by any attempt to apply to them the provisions of the Dahir referred to.

Whatever justification the Protectorate Government may desire to advance in reference to measures for the prevention of dumping, it is obvious that no legislation for this purpose can be applied to American nationals or protégés in Morocco, unless and until such regulations shall have received the formal assent of the Government of the United States of America, as signatory of the Act of Algeciras.

Please accept [etc.]

MAXWELL BLAKE

681.003/47

*The French Resident General in Morocco (Saint) to the American Diplomatic Agent and Consul General at Tangier (Blake)*⁹

[Translation]

No. 75-D

RABAT, March 8, 1933.

MR. DIPLOMATIC AGENT: By letter dated February 8th last, you have been good enough to communicate to me your observations on the subject of the Dahir of January 30, 1933, instituting the compensatory taxes.

I have the honor to inform you that the dispositions of this Dahir are applicable only to merchandise originating or shipped from countries which do not enjoy in the Shereefian Empire the benefit of the most favored nation clause, and imported into Morocco at prices manifestly inferior to normal cost prices.

This, moreover, is specified in the Vizirial Decree of February 20, 1933, published in the *Official Bulletin* of the 24th of that month, the text of which you will find enclosed herewith.¹⁰

Please accept [etc.]

LUCIEN SAINT

681.003/47

*The American Diplomatic Agent and Consul General at Tangier (Blake) to the French Resident General in Morocco (Saint)*⁹

TANGIER, March 14, 1933.

MR. RESIDENT GENERAL: I have the honor to acknowledge the receipt of Your Excellency's Note No. 75-D of March 8, 1933, on the subject of my protest and reservations concerning the Dahir of January

⁹ Copy transmitted to the Department by the Diplomatic Agent and Consul General in his despatch No. 823, March 14; received March 30.

¹⁰ Not printed.

30, 1933, which purports to institute compensatory taxes on certain imported merchandise, in conflict with the provisions of the Act of Algeciras and of the treaties confirmed in that Act.

With respect to Your Excellency's remarks on the Vizirial Decree of February 20, 1933, issued in virtue of the Dahir in question, I would observe, firstly that equal freedom of trade with Morocco is assured by the Act of Algeciras for all nations, and secondly that the Act of Algeciras itself provides for the treatment in the Customs of merchandise which it is attempted to clear at prices manifestly below normal values.

Moreover, the Dahir and the Vizirial Decree referred to violate, even in regard to the Powers signatory of the Act of Algeciras, treaty provisions which give their nationals in Morocco the right to import goods or produce from any country, without the imposition on such goods, of duties or taxation in excess of those imposed on similar products of any other origin.

In these conditions it is obvious that the terms of the Vizirial Decree do not in any manner modify the objectionable character of the legislation impugned in my representations of February 8, 1933, and I have no option but to reiterate the protest and to confirm the reservations set forth in my communication of that date.

In conclusion I would advise Your Excellency that I am now transmitting to my Government, for its complete information, copies of the correspondence exchanged between us in this connection.

Please accept [etc.]

MAXWELL BLAKE

881.51/50

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

No. 727

WASHINGTON, March 16, 1933.

SIR: Careful consideration has been given by the Department to your despatches Nos. 787¹¹ and 791 of November 24 and December 15, 1932, respectively, relating to the recent declaration of the Resident General of France to incorporate with the ordinary budget the special tax of 2½% provided for in Article 66 of the Act of Algeciras.

The Department has weighed carefully the observations and explanations of the Resident General in this matter, as set forth in his letter to you of December 1, 1932. Notwithstanding these elucidations of M. Lucien Saint, the Department is constrained to maintain the view that this act of the French Protectorate authorities, undertaken of their own initiative and unilaterally, constitutes an unauthorized departure from the provisions of Article 66 of the Act of Algeciras to which the United States is a party. Accordingly, while the Department

¹¹ Despatch No. 787 not printed.

fully appreciates the practical considerations discussed by M. Lucien Saint, the Department considers that the importance of maintaining unimpaired the provisions of the Act of Algeciras outweighs the practical considerations mentioned and the Department is therefore regretfully impelled to protest the action of the Protectorate authorities as a contravention of Article 66 of the Act of Algeciras.

Accordingly, you are directed to address a communication to the Resident General expressing this Government's views as outlined above.

The Italian Embassy, which has frequently made inquiry of the Department with regard to this Government's attitude in this matter, has been informally advised of the steps which you are instructed to take in the premises.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

681.003/47

The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)

No. 736

WASHINGTON, April 10, 1933.

SIR: Reference is made to your despatch No. 823 of March 14, 1933,^{12a} and to previous correspondence on the same subject, relating to the Dahir dated January 30, 1933, instituting compensatory taxation on certain imported merchandise contrary to the provisions of the Act of Algeciras and other Moroccan treaties. In your despatch under reference you point out that some of your colleagues "have expressed the opinion that an effective remedy would be found only by simultaneous collective pressure at the Quai d'Orsay".

While the Department fully appreciates the extremely serious nature and the possible far reaching consequences of the promulgation of this Dahir, the Department does not feel that it would be politic at this time to make protest in the matter through the American Embassy at Paris. However, the Department fully supports the protest which you made to the French Resident General in your letter of February 8, 1933, a copy of which was enclosed with your despatch No. 813 of February 16, 1933.¹³ Moreover, the reiterated protest, embodied in your letter to the Resident General, dated March 14, 1933, a copy of which was enclosed with your despatch under reference, likewise enjoys the full support of this Government. If you should consider such a course helpful, you may accordingly advise the French Resident General.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

^{12a} See footnote 9, p. 970.

¹³ Despatch not printed.

881.7971/9

The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State

No. 834

TANGIER, April 12, 1933.

[Received May 2.]

SIR: I have the honor to inform the Department that, by a Note dated March 8 [3], 1933, the Resident General of France, as Minister for Foreign Affairs of His Sherifian Majesty, has requested this Diplomatic Agency to render applicable to American nationals and *ressortissants* the provisions of a Sherifian Dahir and of a Vizirial Decree, both dated February 6, 1933, concerning the conditions under which services, for the transport of passengers by motor omnibus, may be operated in the French Zone of Morocco.

Copies, in the French text and in English translation, of M. Lucien Saint's Note, and of the Dahir and Vizirial Decree therein referred to,¹⁴ are annexed to this despatch.

The Dahir and decree in question purport to provide for the protection of the traveling public, and the legislation is therefore deserving of our cooperation, insofar as it may be designed to promote technical supervision of the conditions of safety of the motor vehicles used, and control of the competency of the personnel employed, and also to require that the responsibilities and obligations of the carriers should be effectively guaranteed by means of sufficient insurance contracted with reliable underwriters.

It will be obvious, however, that the terms of the regulations go beyond these laudable objects, and that while dealing with them the Protectorate legislators avail themselves of the opportunity for the further pursuit of their policy to break down the treaty conditions of liberty of commercial and industrial enterprise without inequality in Morocco.

A perusal of the articles of the vizirial decree (1, 2, 3, 6 and 7) which concern the powers of the commission constituted for the purpose of controlling passenger motor omnibus services in the French Zone, will be sufficient to justify the apprehension, already alluded to in my No. 819 of March 2, 1933,¹⁵ as to the danger of arbitrary restriction of the freedom of competition in regard to such enterprises.

The commission is composed exclusively of functionaries, necessarily of French nationality, and it is given wide and arbitrary powers in regard to the grant, refusal or withdrawal of permits for the establishment of transportation lines. Appeals from the decisions of the

¹⁴ None printed.

¹⁵ Not printed.

commission may be made only to the heads of the departments from which the members of the commission receive their appointment.

The veritable purpose of the legislation—the arbitrary control and limitation of competition in enterprises for the motor omnibus conveyance of passengers—is so obvious from the terms of article 6 of the vizirial decree, that mere reference thereto, without further analysis would appear sufficient to enlist the Department's condemnation of these provisions.

The commission is not required to make known its reasons for declining to issue transportation licenses. It may refuse to license any American car, and grant license to any French car for the same run.

As was pointed out in my No. 819 of March 2, 1933, similar legislation is to be extended, in the near future, to motor transportation of goods, and restriction or elimination of motor vehicle competition with railroads is the objective principally to be pursued.

The control of passenger and merchandise transport exercised by the commission referred to in the vizirial decree will undoubtedly place, in the hands of the C.T.M. and its affiliates, complete control of automotive transport in the Protectorate, and it may be foreseen that this French group will acquire power to exclude from the Moroccan market, in an important measure, American trucks and automotive equipment, such as tires, gasoline, and lubricants.

In the circumstances, it is assumed that my reply to the Note of the Resident General should, in substance, be to the following effect:

"The Department is prepared to cooperate to the fullest extent with the Protectorate authorities in promoting the security of the traveling public in Morocco. To such end, all American *ressortissants* who may operate or intend operating motor omnibus services for the transportation of passengers by road, shall be required to comply with regulations concerning a periodical certification, by competent experts, of the proper condition of the vehicle used, and give proof of the competency of the driving personnel, and shall be bound to carry adequate insurance to cover the responsibilities which are referred to in the vizirial decree under discussion.

"It would appear, however, that the dahir and vizirial decree in question may be construed to give the 'Transport Commission' powers of an arbitrary nature which would enable it, at its discretion, to control, regulate, or even to eliminate free competition in the matter of enterprise for the transportation of passengers by motor omnibus.

"Since these conditions appear to be contrary to the principles of economic liberty without inequality laid down by the treaties, the Department regrets that it is compelled to refuse to assent to the enforcement upon American *ressortissants* of the regulations in question, in their present form."

In the meanwhile, the American Consul at Casablanca will be requested to keep a vigilant observation over the application of the regulations, and promptly to report any decisions of the "Transport Commission" which may discriminate against non-American transport enterprises by reason of their employment of American equipment.

Such cases will immediately be brought to the attention of the Department, because it is believed that for the safeguard not only of the principle involved, but of important American interests which are jeopardized, firm and persistent action should not be relaxed in any instance until complete satisfaction shall be obtained.

Unless and until the regulations are amended in such manner as to receive the Department's assent, American *ressortissants* will, of course, continue to be free to establish and to operate motor omnibus services for passengers, subject to the conditions above stated in reference to the safety of the traveling public and the responsibilities of the carriers.

Respectfully yours,

MAXWELL BLAKE

881.7971/9

*The Secretary of State to the Diplomatic Agent and Consul General at
Tangier (Blake)*

No. 739

WASHINGTON, May 8, 1933.

SIR: The Department has received your despatch No. 834, of April 12, 1933, relating to the request of the French Resident General for this Government's assent to the enforcement of regulations governing the operation of motor omnibus services for passengers in the French Zone of Morocco, in so far as concerns American *ressortissants*.

The Department fully concurs with the views expressed by you in this despatch, and you are authorized to address a communication to M. Lucien Saint, in reply to his note to you of March 3, 1933, in the general sense of the text of such a communication suggested by you on pages five and six of your despatch under reference.

Very truly yours,

For the Secretary of State:

WILLIAM PHILLIPS

REPRESENTATIONS RESPECTING THE VIOLATION OF AMERICAN
TREATY RIGHTS TO TRADE IN THE SPANISH ZONE OF MOROCCO

681.116/27

*The Diplomatic Agent and Consul General at Tangier (Blake) to the
Secretary of State*¹⁶

No. 869

TANGIER, August 8, 1933.

[Received August 26.]

SIR: I have the honor to inform the Department that in the early part of July, 1933, the authorities in the Spanish Zone of Morocco abruptly held up the clearance of all consignments of flour lying at the Customs Houses of Tetuan and Larache, and prohibited the entry into the Spanish Zone of flour proceeding from or transitory through either the French or Tangier Zones.

As a result of these measures, quantities of flour have been detained and are still at this date uncleared in the Customs stores or in railroad wagons at the ports referred to. The goods, in this hot season, are exposed to deterioration with probably serious prejudice to the interests of importers and holders of flour who supply the market of the Spanish Zone.

Among these, two American protégés, Jacob S. Cohen of Tangier, and Jacob J. Bentolila of Tetuan, have brought the matter to my attention and requested my intervention to obtain the removal of these obstacles to their legitimate trading activities.

In the absence of official relations between this Legation and the Spanish High Commissioner at Tetuan, pending the recognition by the United States Government of the Spanish position in Morocco, my only avenue of approach is through my colleague, the Consul General of Spain in Tangier.

I enclose copies of the communications exchanged between the latter and myself on this subject, and I respectfully suggest that the Department may deem it opportune also to take up the matter with the Spanish Government through the American Embassy at Madrid.

The two American *ressortissants* above named are the "Semsars"¹⁷ of important New York shippers of flour to Spanish Morocco. Their purchases of American flour have been rendered impossible by the bonuses granted by the French Government on flour exported from France which are referred to in my No. 812 of February 10, 1933.¹⁸

It seems difficult to suppose that this policy of the French Government can be indefinitely maintained. A press telegram appeared in the

¹⁶ Mr. Blake departed from Tangier on leave before this despatch was ready for signature, but he verbally approved it for transmittal to the Department by the Chargé at Tangier.

¹⁷ Brokers or factors.

¹⁸ Not printed.

Petit Marocain of to-day, dated Paris, August 4, 1933, is perhaps indicative of some hopes in this direction. The telegram reads in translation as follows:—

“A truly extraordinary situation was denounced yesterday by M. Lebecq, Municipal Counselor, in a written Memorandum addressed to the Prefect of the Seine. M. Lebecq is struck by the fact that in the last few days 140,000 or 150,000 quintals of French wheat were exported abroad at the price of 41 francs c.i.f. Rotterdam, 45 francs c.i.f. London, and 45 francs delivered to the Swiss Frontier. These prices, he observes, are possible only thanks to a bonus of 80 francs granted by the State to exporters, at the expense of the French tax payer. The foreign consumers—English, German, Dutch or Swiss—pay therefore for their bread at a cheap price, while the French miller continues to pay for wheat on the basis of 119 francs per quintal.

That assistance should be given to French cultivators by the payment of high prices for their products, observes Mr. Lebecq, is all very well. But that the tax payers should be made to pay in order that bread may be cheap everywhere except in France, is an insult to common sense.

Mr. Lebecq requests the Prefect of the Seine to intervene with the Government in order that this anomalous situation may be brought to an end.”

The conditions referred to in the above press report are identical with those which militate against the normal entrance of American flour into North Morocco.

Should the export bonuses on flour shipped from France eventually disappear, American shippers may again find themselves in a position to regain the important participation in the flour trade of the Spanish Zone of Morocco which they have enjoyed in this market for over half a century. It would then be extremely regrettable to find their efforts in this direction blocked by arbitrary measures on the part of the Spanish authorities.

A brief outline of certain developments in the economic antagonism between the French and Spanish Zones of Morocco will indicate the grounds upon which such a contingency is to be apprehended.

About a year ago, the French Protectorate authorities closed their frontier along the Spanish zone to the introduction of any agricultural product unless provided with a phytopathological certificate issued by the protectorate authorities. This measure was obviously tantamount to entire interdiction since the phytopathological laboratory of the French Protectorate was established at Casablanca, that is to say, some 140 miles from Arbaoua, the transit point, both on the main highway and on the railroad, between the Spanish and French Zones. The phytopathological formalities in the French Protectorate are obviously a politico-economic ruse rather than a prophylactic necessity.

The authorities, and the representatives of the commercial interests

of both the Spanish and Tangier Zones, laid their grievances before the French Protectorate authorities and solicited the establishment at Arbaoua of a phytopathological station to deal with their consignments to the French Zone. Their repeated representations have however been met by the French authorities with nothing but evasive promises.

It is to be noted that the closure of the French Protectorate land frontiers in this manner was directed particularly against Spanish vegetable and fruit products, since Algerian products entering Morocco over the Eastern frontier were afforded the facilities of phytopathological examination at Oudjda.

The Spanish High Commissioner at Tetuan has retaliated by closing the frontier of the Spanish Zone to agricultural products and their derivatives proceeding from the French and Tangier Zones, and has set up a phytopathological station at Tetuan, which is equally sufficiently removed from the frontier to suit political convenience.

The Spanish authorities have been further provoked by the action of the French Protectorate Government in regard to the treatment of flour exported to the French Zone from millers located in the Spanish Zone. It will be recalled that the illicit Dahir of June 4, 1929, closing the French Zone to imported foreign wheat and flour, did not purport to affect wheat grown, or flour made from wheat grown, in the Tangier and Spanish Zones. These conditions led to an active "contraband" trade in flour from the Spanish to the French Zone, which became a subject of recrimination between the authorities of the two Zones, and resulted ultimately in an agreement between them by which a fixed quota of flour was allowed to be imported into the French Zone from the Spanish Zone millers.

Under this quota, a miller in Melilla shipped a quantity of flour to Casablanca, but in spite of repeated representations on the part of the Spanish authorities, the consignment was held up for several months in the Casablanca Customs House, was finally refused admission, and ordered to be shipped back to the port of origin.

The quota for Spanish flour for the French Zone was simultaneously suppressed.

It seems to be obvious that these manoeuvres of the French authorities are designed to coerce the Spanish Zone authorities into closing their ports to imported wheat and flour, and to oblige them to enter into a combination with the milling industry of the French Zone to operate a virtual monopoly for the supply of flour within Moroccan territory.

From well-informed circles I learn that the French proposal in this regard is understood to offer the Spanish Zone a monetary subsidy to compensate for the diminution of revenue which, under the scheme above outlined, would arise from the loss of duties on importations of foreign wheat and flour into the Spanish Zone.

In their present mood, the Spanish authorities are resisting these overtures, and the Spanish High Commissioner admitted to a delegation of Tetuan flour dealers that his action, in holding up the flour consignments from France at the Tetuan and Larache Customs Houses, was taken in reprisal for the vexatious attitude of the French Protectorate. He intimated that this action would be persisted in, and that his future flour policy would be intended to favor colonist and industrial interests established in the Spanish Zone.

He further stated to the delegation that they might expect no facilities in the future in regard to their importation of flour into Spanish Morocco.

It is obvious, therefore, that the flour market of the Spanish Zone is in danger of being closed to American shippers, as a result either of eventual collusion between the French and the Spanish Protectorates, or of the establishment of a separate régime arbitrarily governing the flour trade in Spanish Morocco. In either case, the freedom of trade as provided for by the Moroccan treaties will be violated, and American interests will be prejudiced.

Some orders for American flour have been placed in New York and are now probably en route for Spanish Morocco, either direct, or via Tangier, and it is feared therefore that further incidents will occur.

Since the conduct of the Spanish authorities in this connection is still in a state of fluctuation, and there has been no official declaration as to a defined policy regarding the flour market in Spanish Morocco, the Department will probably consider that the Embassy at Madrid should concentrate upon an endeavor to secure the immediate release of the flour consignments of the American *ressortissants*, Jacob S. Cohen and Jacob J. Bentolila, which are held up respectively at Larache and at Tetuan. It is unnecessary to mention that, although the flour in question is of French origin, the goods are the property of the American protégés and therefore constitute, within the meaning of the treaties, an American interest which is the proper object of our intervention.

Full reservations should be made as to eventual claims for indemnity arising from damage to the flour as the result of undue and prolonged detention.

Incidental insistence upon the right of these American protégés to carry on their flour business without obstruction, will probably be sufficient indication, at this state of affairs, of the Department's opposition to any such high-handed and flagrant violation of commercial freedom in Morocco as is apparently contemplated by the Spanish authorities in regard to the trade in wheat and flour.

The Department's instructions will be awaited with great interest.

Respectfully yours,

[MAXWELL BLAKE]

[Enclosure]

*The American Diplomatic Agent and Consul General at Tangier
(Blake) to the Spanish Consul General at Tangier (Montero)*¹⁹

TANGIER, July 20, 1933.

MR. CONSUL GENERAL AND DEAR COLLEAGUE: I have the honor to bring to your attention a difficulty which has arisen in connection with the flour trade in the Spanish Zone of Morocco of the American *ressortissant*, Jacob J. Cohen, of Tangier, and to request your kind intervention with the Spanish authorities at Tetuan for a removal of the difficulty.

Mr. Cohen shipped, by the steamer *Gibel Dersa*, to Larache, on the 9th instant, 2,000 bags of French flour, and according to a notarial statement drawn up by Ildefonso Hernandez, Consular Agent of Spain in Larache, on July 17, 1933, the Customs authorities at Larache have refused to allow entry of the flour, at Larache. The reason stated is that by order of the High Commissioner and for the purposes of application of the Dahir of September 1, 1932, instituting the phytopathological service of the Spanish Zone, flour, as a derivation of a vegetal product, will in future be allowed entrance only through Customs Houses qualified for this purpose by a Vizirial Decree of April 29, 1933, which omitted any mention of the port of Larache in this connection.

The American *ressortissant* also informs me that his normal sales of flour from Tangier into the Spanish Zone, over the land frontier, average 200 bags per day, and that these goods are sent into the Spanish Zone from his stock in Tangier, which at this date amounts to 10,000 bags. This trade has also been suspended by the action above referred to, of the authorities in the Spanish Zone. With this suppression of the normal outlet of Mr. Cohen's trade, his stock of flour is in danger of deteriorating and of giving rise to a very serious pecuniary loss.

In view of the obvious violation of American treaty rights in the premises, I have no option but to take the firmest position for the protection of the interests involved, and I therefore must urge that, through your courteous intervention, the Spanish authorities in Morocco be brought to remove the obstacles to Mr. Cohen's flour trade without delay in order to avoid or to minimize an otherwise certain material loss of considerable magnitude, the responsibility for which will clearly incumb upon the authorities referred to.

Jacob J. Bentolila, an American protégé in Tetuan, informs me, by communication dated July 18, 1933, that twelve days have elapsed since samples were taken from a shipment of flour made to him for Tetuan,

¹⁹ The Spanish Consul General on July 28 acknowledged receipt of this note and stated that it had been transmitted to the Spanish authorities in Morocco.

and that as yet no action has been taken by the Tetuan Customs authorities to allow clearance of the flour. In the meantime, this perishable merchandise is suffering deterioration, while cost of storage, and rent of railroad trucks, is accumulating which cannot be properly or legally placed to the charge of the importer. In this case, also, as indeed with all other similar cases, there is no alternative but to hold the authorities responsible for the material prejudice suffered by American nationals and protégés, as a result of the obstacles herein discussed which have been raised against their legitimate trade in the Spanish Zone.

Please accept [etc.]

MAXWELL BLAKE

691.116/30

The Chargé at Tangier (Doolittle) to the Secretary of State

No. 875

TANGIER, September 1, 1933.

[Received September 16.]

SIR: In further reference to my No. 874 of August 21, 1933,²⁰ and anterior despatches on the above subject, I have the honor to inform the Department that all shipments of flour which had reached Tetuan and Larache prior to July 31, 1933, have now been released.

I enclose copy in the Spanish text and in English translation (Enclosures Nos. 1 and 2)²⁰ of a Notice issued by the Director of Customs at Larache, under date of August 14, 1933, in this connection, which purports to prohibit the entry or even debarkation of flour or semolina at the port of Larache, after July 31, 1933.

Although this prohibition would apply to a shipment of 500 bags of flour belonging to the American protégé, Jacob S. Cohen, which reached the port of Larache on August 4, 1933, Mr. Cohen has been given to understand that his goods will, exceptionally, be allowed clearance, if he applies to the Spanish High Commissioner at Tetuan for authorization to this effect.

It is not improbable, therefore, that the Spanish Government may complacently contend that the representations made by the American Embassy in Madrid²¹ should be deemed to be satisfactorily disposed of by the fact that the shipments of flour of American *ressortissants* hitherto held up have now been entirely released.

There remain, however, the still more important question of the illegality of their interference with the liberty of the flour trade, the demand that these illicit restrictions should be immediately removed,

²⁰ Not printed.

²¹ Representations were not made at Madrid until after receipt of the Department's instructions; see *infra*.

and the question of the liability of the Spanish authorities for material prejudice caused to American interests by this violation of the treaties.

In this connection, particular pressure should be made for a refund of the exorbitant sanitary inspection dues, which have been illegally levied on the shipments just released, and a formal objection made in regard to such levy on further consignments of flour and semolina.

Amongst others, a claim will, in all probability, justifiably arise from the deterioration of stocks held by American *ressortissants* in Tangier expressly imported for their trade in the Spanish Zone, which has been abruptly and illegally suspended by the refusal of the Spanish authorities to allow the importation of flour and semolina into the Spanish Zone from Tangier.

There is no doubt whatever that the pretended phytopathological régime is a mere pretext to favor Spanish interests and certain private concerns established in the Spanish Zone.

I am informed on good authority that the measures have been taken to promote and protect in particular the milling interest of the "Compañía Agrícola del Lucus," which operates a flour mill located in the vicinity of Larache, run by a Spanish director who is the intimate friend of the private secretary of the High Commissioner at Tetuan. The mill in question had considerable stocks of deteriorating flour which they were unable to sell in competition with imported flour, and the phytopathological regulations, including the imposition of a sanitary inspection fee of 60 pesetas a ton on imported flour, are intended to weight the die in favor of the mill in question.

This information derives incidental confirmation from the fact that an American protégé having obtained from the Customs director at Larache permission to clear 500 sacks of flour (out of the 4,000 he had lying at the Larache Customs), was refused a sanitary certificate for that quantity by the phytopathological inspector, on the ground that the Lucus mills had still a quantity of unsold stock, and it was only with difficulty that the American protégé succeeded in obtaining from the inspector, a certificate for a reduced quantity of 250 sacks.

It will be recalled from my previous despatches, that the Spanish authorities grounded their action on reprisals against the attitude of the French Protectorate. There is, therefore, somewhat of a pungent flavor in the fact that the privileged flour mill in question, though run by a Spanish director, is the property of a French concern.

These details are of secondary importance but they may nevertheless be of interest as showing the incredibly irresponsible spirit in which the Spanish authorities in Morocco are tampering with trade liberties, secured by treaty provisions which they are obliged to respect.

Finally, I append copy in the Spanish text and in English translation (Enclosures Nos. 3 and 4)²³ of a Notice issued by the "Círculo Mercantil" of Larache, an institution having the recognized standing of an official Chamber of Commerce, from which it is apparent that the intention of the Spanish authorities is to discriminate between foreign and Spanish agricultural produce imported through the port of Larache, for the needs of the population of the western districts of the Spanish Zone. While foreign agricultural products and their derivatives are to be refused entrance through the Port of Larache, similar Spanish products are exclusively to enjoy the privilege of entry at Larache when accompanied by phytopathological certificates issued at the port of shipment.

I await with great interest the Department's comments on the above situation, and indication of the action which it may deem proper to take in this connection.

Respectfully yours,

H. A. DOOLITTLE

681.116/27

The Secretary of State to the Ambassador in Spain (Bowers)

No. 39

WASHINGTON, September 28, 1933.

SIR: Your attention is directed to despatch No. 869 of August 8, 1933, from the American Diplomatic Agency at Tangier, with regard to certain recent regulations in the Spanish zone of Morocco affecting the importation into that zone of flour. A copy of this despatch and subsequent despatches from the Diplomatic Agency on this same subject are understood to have been furnished your Embassy. In order that the record may be kept clear and that the Spanish authorities may realize that we are cognizant of violations of our treaty rights in Morocco, you are requested to take up this problem informally and orally with the appropriate Spanish authorities. I feel that it will be sufficient if you outline briefly the facts involved in this case and express the hope that the situation will soon be corrected and that steps will be taken to have these regulations, which are in violation of our treaty rights, withdrawn.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

²³ Not printed.

681.116/32

The Ambassador in Spain (Bowers) to the Secretary of State

No. 177

MADRID, October 19, 1933.

[Received November 6.]

SIR: I have the honor to refer to your instruction No. 39 of September 28, 1933, with regard to certain recent regulations in the Spanish zone of Morocco affecting the importation into that zone of flour, and directing me to take up the matter informally and orally with the Spanish authorities in order that the record may be kept clear and that they may realize that we are cognizant of violations of our treaty rights in Morocco.

In compliance with the instruction under reference, I called on the new Minister of State, Señor Sanchez Albornoz, on October 18th, and after outlining briefly the facts involved in this case, I expressed the hope that the situation will soon be corrected and that steps will be taken to have these regulations, which are in violation of our treaty rights, withdrawn.

Señor Sanchez Albornoz knew nothing concerning the case but assured me that he would look into it.

Respectfully yours,

CLAUDE BOWERS

681.116/34

The Acting Secretary of State to the Ambassador in Spain (Bowers)

No. 65

WASHINGTON, January 18, 1934.

SIR: With further reference to the alleged suppression of American trade in the Spanish Zone of Morocco, as set forth in the Department's instruction No. 39, of September 28, 1933, your attention is further directed to the despatch, No. 901 of December 18, 1933, from the American Diplomatic Agency at Tangier,²⁴ copy of which, the Department is advised, has been furnished your Embassy. In this connection receipt is acknowledged of your despatch No. 177, of October 19, 1933, in which the Department was informed that you had presented this matter to the new Minister of State, Señor Sanchez Albornoz, expressing the hope that the situation would soon be corrected and that steps would be taken to have these regulations which are in violation of our treaty rights withdrawn by the Spanish Government. The Department has received no further communication.

Your representation related specifically to alleged embarrassments to American trade in cereals (flour) shipped into Spanish Morocco. A most recent impediment to American trade relates to a consignment of

²⁴ Not printed.

50 cases of prunes received at the port of Tangier from Messrs. Libby, MacNeil and Libby of Chicago, and stopped at the Spanish frontier upon the alleged pretext of the necessity of routing the merchandise by way of Río Martín (the port of Tetuan) because of the absence of facilities for phytopathological inspection at the frontier customs between Tangier and the Spanish Zone.

You are requested to furnish orally to the Spanish Minister of State this additional information with regard to alleged impediments to American trade in Spanish Morocco, and again express the hope that this matter will be investigated promptly to the end that the situation adversely affecting the importation of American products into the Spanish Zone will be corrected without delay.

Very truly yours,

WILLIAM PHILLIPS

SAUDI ARABIA

PROVISIONAL AGREEMENT BETWEEN THE UNITED STATES AND SAUDI ARABIA¹ WITH REGARD TO CONSULAR AND DIPLOMATIC REPRESENTATION, JURIDICAL PROTECTION, COMMERCE AND NAVIGATION²

711.90f2/12

The Chargé in Great Britain (Atherton) to the Secretary of State

No. 2553

LONDON, February 2, 1932.

[Received February 10.]

SIR: I have the honor to refer to the Department's instruction No. 953, October 12, 1931 (File No. 890 F.01/37),³ relating to an exchange of notes between the Government of the United States and the Government of the Kingdom of the Hedjaz and Nejd and its Dependencies, pending an opportunity for the negotiation of a formal treaty of commerce and navigation, and to forward herewith a copy of a memorandum, dated January 29, 1932, together with a draft of a provisional agreement,⁴ which the Hedjazi Minister left with me in reply to the Ambassador's memorandum of October 22, 1931.⁵

It will be noted from the Hedjazi Minister's memorandum that the Government of the Kingdom of the Hedjaz and Nejd has approved the text proposed by the Government of the United States, with the exception of a few minor modifications.

In amplification of his memorandum, the Hedjazi Minister stated that modification I (a) refers to the Holy Places only for Moham-medans.

As regards modification I (b), the omission of the clause "and they shall not be treated in a manner less favorable than similar officers of any other foreign country" should be interpreted in no way to indicate that there would at any time be any difference in the treatment accorded to ~~American~~ consular officers and that accorded to consular officers of any

¹ In September of 1932 the name "The Kingdom of the Hedjaz and Nejd and Its Dependencies" was changed to "The Kingdom of Saudi Arabia". See Department of State, *Press Releases*, October 8 and 15, 1932, pp. 203 and 245.

² For previous correspondence concerning a proposed treaty, see *Foreign Relations*, 1931, vol. II, pp. 547 ff.

³ File number changed to 711.90f2/6; *ibid.*, p. 552.

⁴ Draft of provisional agreement not printed.

⁵ Not printed; see instruction No. 953, October 12, 1931, *Foreign Relations*, 1931, vol. II, p. 552.

other country. According to the Hedjazi Minister, this clause has been omitted from all treaties since the Treaty of Jeddah, dated May 20, 1927,⁶ and his Government, I gather, attaches some importance to its omission, since *inter alia* certain Mohammedan consuls might have certain consideration in travel areas, etc.

In regard to modification II, the Hedjazi Government would prefer to leave out the words "and interests", since, as stated by the Hedjazi Minister, in the opinion of his Government it is an undefinable term.

Respectfully yours,

RAY ATHERTON

[Enclosure]

The Hedjazi Minister in Great Britain (Wahba) to the American Chargé (Atherton)

MEMORANDUM

The Government of His Majesty the King of Hedjaz and Nejd, as has been previously intimated, heartily reciprocates the wish of the Government of the United States of America to conclude a provisional Agreement in regard to consular and diplomatic representation, juridical protection, commerce and navigation, between the two countries and signifies its readiness to do so at the earliest possible opportunity by means of the exchange of notes between the Ambassador of the United States of America and the Minister of the Hedjaz and Nejd in London.

His Majesty's Government having examined the text proposed by the Government of the United States of America has approved it, with a few minor modifications, for reasons which I shall explain in person and which I hope will prove acceptable to the American Government. These modifications have been embodied in the enclosed proposed text⁷ and are as follows:—

I. In Part 1 Two modifications have been introduced:

a) The following words have been inserted at the end of the first clause in the second sentence:—

"in the places wherein consular representatives are by local laws permitted to reside;"

The clause in question now reads as follows:—

"The consular representatives of each country, duly provided with exequatur, will be permitted to reside in the territories of the other, in the places wherein consular representatives are by local laws permitted to reside".

⁶ Treaty of Friendship and Good Understanding with Great Britain; League of Nations Treaty Series, vol. LXXI, p. 131.

⁷ Not printed.

This of course means that the consular representatives of the United States of America will be allowed to reside wherever other consular representatives are allowed.

b) The third clause in the second sentence, which reads as follows:—

“and they shall not be treated in a manner less favorable than similar officers of any other foreign country.”

has been omitted.

This clause has been omitted from all treaties concluded after the Treaty of Jedda and therefore has no existence in the Treaties which His Majesty's Government concluded with Persia,⁸ Germany,⁹ Turkey,¹⁰ Iraq¹¹ and France.¹²

II. In Part 2, in the second sentence the words “and interests” have been omitted. Thus the second sentence now reads as follows:

“In respect of their persons and possessions and rights” . . . instead of

“In respect of their persons and possessions, rights and interests” . . .

III. In Part 6 the last clause which reads as follows:—

“but in the case of divergence in the interpretation of any part of the agreement the English text shall prevail”

has been omitted.

This clause has been omitted from all treaties concluded after the treaty of Jedda.

Apart from these modifications the text remains the same as it was proposed by the Government of the United States of America.

The Minister of the Hedjaz and Nejd is authorized to sign and transmit to the American Ambassador the enclosed note¹³ upon being advised by the latter of his authorisation to reply thereto in identical terms.

[LONDON,] 21 Ramadan, 1350.
29 January, 1932

⁸ Treaty of Friendship, August 24, 1929, *British and Foreign State Papers*, vol. cxxxi, p. 490.

⁹ Treaty of Friendship, April 26, 1929, *ibid.*, p. 371.

¹⁰ Treaty of Friendship, August 3, 1929, *ibid.*, p. 491.

¹¹ Treaty of Friendship and Neighbourship, April 7, 1931, *ibid.*, vol. cxxxiv, p. 899.

¹² Treaty of Friendship, November 10, 1931, *ibid.*, p. 823.

¹³ Not printed.

711.90f2/13

*The Acting Secretary of State to the Ambassador in Great Britain
(Mellon)*

No. 83

WASHINGTON, June 16, 1932.

SIR: The Department refers to the Embassy's despatch No. 2553 of February 2, 1932, enclosing a counter-draft¹⁴ of a proposed provisional agreement to be effected by exchange of notes between the United States and the Kingdom of the Hejaz and Nejd and its Dependencies in regard to consular and diplomatic representation, juridical protection, commerce and navigation. The Hejazi Government has proposed certain changes in the draft of the agreement transmitted by the Department with instruction No. 953 of October 12, 1931. The Department's attitude regarding each of the proposed changes is as follows.

Part 1 (a). The Hejazi Government has proposed that there be inserted in Part 1 of the draft submitted by this Government the phrase "in the places wherein consular representatives are by local laws permitted to reside," so that the first clause of the second sentence would read:

" . . . The consular representatives of each country, duly provided with exequatur, will be permitted to reside in the territories of the other in the places wherein consular representatives are by local laws permitted to reside; . . . "

You may agree to this proposal.

(b). It is proposed by the Hejazi Government that the last clause of Part 1 of this Government's draft be omitted. This clause, which refers to the treatment of consular officers, reads:

" . . . and they shall not be treated in a manner less favorable than similar officers of any other foreign country."

The Department is reluctant to agree to the omission of this clause. The Hejazi Government has indicated that some importance is attached to the omission of the clause because *inter alia* certain Mohammedan consuls might have special consideration in certain travel areas, etc. You should point out, however, that the omission of the clause seems unnecessary from the standpoint of the objects which the Hejazi Government apparently has in view. You should suggest that if the only objection to the provision is that it would prevent granting Moslem consuls certain special privileges, the situation might be met by specific qualifications on the subject rather than by the deletion of the provision. You should state that this Government would consider embodying in the provisional agreement, or in a separate exchange of notes, an under-

¹⁴ Not printed.

taking not to claim for American consular officers specified privileges enjoyed by Moslem consular officers in certain areas.

If the Hejazi Government hesitates to grant American consular officers general most-favored-nation treatment because of the fear that they might claim the right to the manumission of slaves, which is understood to be enjoyed by British consular officers in the Hejaz, you may state in writing that the laws of the United States do not authorize American consular officers to liberate slaves, and that this Government will not therefore claim for American consular officers the treatment granted to British consular officers in this respect. It is intended, of course, that this statement would be embodied in a communication to the Hejazi Minister in the course of the negotiations regarding the terms of the provisional agreement, and not in that agreement itself.

Part 2. The Hejazi Government proposes that the second sentence of Part 2 of the draft submitted by this Government be modified by omitting the words "and interests". This sentence reads:

" . . . In respect of their persons and possessions, rights and interests, they shall enjoy the fullest protection of the laws and authorities of the country, and they shall not be treated, in regard to the above-mentioned subjects, in a manner less favorable than nationals of any other foreign country."

The objections of the Hejazi Government to the words "and interests" seem to arise from the view that the word "interests" is an undefinable term. While it is true that the term is not definite, it is necessary to use general terms in such an agreement in order to ensure that nationals of each country will enjoy within the territories of the other the complete most-favored-nation treatment which it is understood to be the intention of both Governments to accord.

It is possible that the Hejazi Government may object to the words "and interests" on the technical ground that guarantees of full protection of the laws and authorities of the country should not be applicable to "interests" unless "rights" are involved. You should propose that the second sentence of Part 2 be modified to read as follows, so as to take account of the foregoing distinction:

" . . . In respect of their persons, possessions and rights, they shall enjoy the fullest protection of the laws and authorities of the country, and they shall not be treated, in regard to their persons, property, rights and interests, in a manner less favorable than the nationals of any other foreign country."

If the Hejazi Government should nevertheless insist on the omission of the words "and interests" you may agree to the amendment, in which event the second sentence of Part 2 would read as in the counter-draft submitted by that Government.

Part 6. The Hejazi Government has proposed the addition of the following paragraph:

"6. The English and the Arabic texts of the present agreement shall be of equal validity."

You should point out that acceptance of this proposal would delay the consummation of the agreement materially because it would be necessary for the Department to compare the proposed English and Arabic texts before authorizing you to sign the agreement. If the Hejazi Government insists on its proposal you should ascertain whether it would agree to the following substitute for the text of Part 6:

"6. The present agreement is expressed in English, Arabic and French. The English and Arabic texts shall be of equal validity, but in case of divergence the French text shall prevail."

If this proposal should be agreed to the Department would forward a French text embodying the terms agreed upon in the course of the negotiations, which would be signed by you and would accompany your note to the Hejazi Minister. It would be understood that the note in reply would embody the terms of the agreement expressed in Arabic and would be accompanied by an identic French text signed by the Minister.

Very truly yours,

W. R. CASTLE, JR.

711.9012/18

The Ambassador in Great Britain (Mellon) to the Secretary of State

No. 340

LONDON, September 9, 1932.

[Received September 17.]

SIR: I have the honor to refer to the Department's instruction No. 83, June 16, 1932, regarding a counter-draft of the proposed provisional agreement between the United States and the Kingdom of the Hejaz and Nejd and its Dependencies, the contents of which were duly discussed with the Hejazi representative here and conveyed by him to his Government.

My Hejazi colleague now informs me that his Government has noted the acceptance of the United States Government of Part 1 (a). Furthermore, the Hejazi Government will withdraw the proposal in Part 1 (b).

The Hejazi Government accepts that the second sentence of Part 2 be modified to read as follows:

" . . . In respect of their persons, possessions and rights, they shall enjoy the fullest protection of the laws and authorities of the country, and they shall not be treated, in regard to their persons, property, rights

and interests, in a manner, less favorable than the nationals of any other foreign country."

However, the Hejazi Government feels very strongly with regard to Part 6, and I am informed by my colleague that, with all due respect, his Government has great reluctance in abandoning to the United States what has been insisted upon in every treaty since the Treaty of Jeddah between Great Britain and the Hejaz Government; namely, that in the treaties with France, Germany, Italy, Turkey and Persia the foreign *mutatis mutandis* text and the Arabic text of the agreement are in each case of equal validity.

My Hejazi colleague points out, on behalf of his Government, that in the United States there are probably more competent Arabic scholars than in any of the other countries concerned, and that the Arabian Government, as a matter of national pride, has in each case given the most scrupulous care to the preparation of the Arabic text that there may be no incitement for an allegation that the use of the Arabic text will not prove equally satisfactory. In short, my Hejazi colleague pointed out that the language question in the Arabian Peninsula is at the present time of such national significance that in all treaties since the Treaty of Jeddah, as enumerated above, the equal validity of the two texts has been insisted upon, and that indeed more learned Arabic scholars reside in the United States than either English or French scholars in the Hejazi Kingdom. Furthermore, that the friendly attitude of the Hejazi Government is such that there could never be any dispute with the United States Government, and the fervent hope is expressed that the Department of State will not insist upon any substitution for the paragraph as originally proposed; namely, as follows:

"6. The English and the Arabic texts of the present agreement shall be of equal validity."

I have the honor to request the Department's instructions in this matter, as I have assured the Hejazi Legation that I will endeavor to present the question exactly as it was informally and in a most friendly manner set forth to me by the Hejazi Legation.

Respectfully yours,

(For the Ambassador)
RAY ATHERTON
Counselor of Embassy

711.90f2/23

The Secretary of State to the Ambassador in Great Britain (Mellon)

No. 255

WASHINGTON, October 18, 1932.

SIR: The Department refers to the Embassy's despatch No. 340 of September 9, 1932, stating that the Hejazi Minister has informed the

Embassy that his Government withdraws its proposal relating to Part 1 (b) of the proposed provisional agreement between the United States and the Hejaz and Nejd and its Dependencies, regarding diplomatic and consular representation, juridical protection, commerce and navigation. It is also noted that the Hejazi Government restates its desire that Part 6 be retained as originally proposed by that Government; namely,

“6. The English and Arabic texts of the present agreement shall be of equal validity.”

Inasmuch as this is the sole point upon which agreement has not been reached, you are informed that the Department now accepts the above provision.

There is enclosed a revised text of the agreement¹⁵ embodying the changes upon which agreement has been reached and certain changes in form which seem to be appropriate in view of the desire to draw up the agreement in two languages of equal validity.

The Embassy is requested to obtain from the Hejazi Legation a copy of the Arabic text of the arrangement as now agreed upon and forward it to the American Legation at Cairo in order that a comparison may be made between the English and Arabic texts. If the Legation at Cairo shall find the two texts to be as nearly identic as is consistent with the differences in the languages, you are authorized to sign both texts. In the event that the Arabic text requires correction, the Embassy should have the necessary changes made.

The Department is informed that the name of the Kingdom of the Hejaz and Nejd and its Dependencies has been changed to “The Arabian Saudian Kingdom”. The text of the final draft of the agreement has been made to conform to this change.

A copy of the Department’s instruction on the matter to the Legation at Cairo is herewith enclosed.¹⁵

Very truly yours,

For the Secretary of State:
JAMES GRAFTON ROGERS

711.90f2/26

The Ambassador in Great Britain (Mellon) to the Secretary of State

No. 472

LONDON, November 3, 1932.

[Received November 11.]

SIR: I have the honor to refer to the Department’s instruction No. 255 of October 18, 1932, and to report that on November 1 the revised text of the proposed Provisional Agreement between the United States and the Kingdom of Saudi Arabia was handed to Mr. Zada, First Secretary

¹⁵ Not printed.

of the Legation of Saudi Arabia in London. The text handed to Mr. Zada was identical with that forwarded in the Department's instruction under reference except that in all instances where the phrase "The Arabian Saudian Kingdom" appeared in the latter text, the phrase was altered to read: "The Kingdom of Saudi Arabia". This change was made in view of the note from the Legation, dated September 27, 1932,¹⁷ a copy of which was transmitted to the Department with the Embassy's despatch No. 455, October 26, 1932.¹⁷

Mr. Zada was informed that the Department had agreed that the English and Arabic texts of the Agreement should be of equal validity. He thereupon expressed the opinion that in order to preclude the possibility of any differences in the two texts, and in order that the texts should be as nearly identic as is consistent with the differences in the language, the Arabic text should be drawn up by the Foreign Office in Mecca rather than by the Saudi Arabian Legation in London. In this connection, he stated that the Saudi Arabian Minister in London was on the point of leaving London for a three months' vacation, so that there did not appear to be any reason for haste in drawing up the Arabic text. He added that, in his opinion, a month should prove sufficient in which [to] draw up the Arabic text and return it to London. The Embassy agreed to this procedure, since there would still remain the better part of two months during which the American Legation at Cairo could study the Arabic text.

On the following day Mr. Zada called at the Embassy to request that certain changes in the text of the Provisional Agreement agreed to in the Department's instruction No. 83, of June 16, 1932, and incorporated in an *aide-mémoire* left with the Minister of Saudi Arabia in London on July 6, 1932, should be made. The changes which Mr. Zada had in mind related to the interpretation of the last clause of Article I of the Provisional Agreement having to do with the treatment of consular officers and which reads:

" . . . and they shall not be treated in a manner less favorable than consular officers of any other foreign country."

Mr. Zada proposed that there be incorporated in the Provisional Agreement between the two countries:

(1) a separate undertaking on the part of the Government of the United States that it would not claim for American consular officers the right to visit or reside in Moslem Holy Places situated in the Kingdom of Saudi Arabia, and

(2) an undertaking on the part of the American Government not to claim for American consular officers the right of the manumission of slaves, a provision understood to be enjoyed by British consular officers in the Kingdom of Saudi Arabia.

¹⁷ Not printed.

Mr. Zada was informed that in the Embassy's opinion it would be preferable to incorporate such undertakings in an exchange of notes between the American Ambassador and the Minister of Saudi Arabia in London, rather than to have them embodied in the agreement between the two countries, as otherwise it would be necessary to return the text of the Provisional Agreement to Washington for alterations. Mr. Zada concurred, and a draft note was accordingly prepared, copy of which is enclosed. It covers the questions raised by Mr. Zada and would appear not to exceed the authority for making certain limited changes which was granted by the Department's instruction No. 83, of June 16, 1932.

Nevertheless it has been deemed advisable to have the Department's express authorization before sending the proposed note. The Department's instructions, by cable if the matter is considered of sufficient urgency, are accordingly respectfully requested.

Respectfully yours,

(For the Ambassador)

BENJAMIN THAW, JR.

First Secretary of Embassy

[Enclosure]

*Draft of Proposed Note From the American Ambassador in Great Britain
(Mellon) to the Saudi Arabian Minister (Wahba)*

LONDON,

SIR: I have the honor to refer to the revised text of the Provisional Agreement between the United States and the Kingdom of Saudi Arabia which Mr. Atherton handed to Mr. Zada on November 1, 1932, and in this connection my Government instructs me to make the following observations:

(1) With reference to the last clause of Article I of the Provisional Agreement, relating to the treatment of consular officers, and which reads:

“. . . and they shall not be treated in a manner less favorable than consular officers of any other foreign country.”

my Government undertakes not to claim for American consular officers the privileges accorded to Moslem consular officers of visiting and residing in Moslem Holy Places situated in the Kingdom of Saudi Arabia.

(2) So far as the manumission of slaves is concerned, a privilege which it is understood is enjoyed by British consular officers in the Kingdom of Saudi Arabia, I have the honor to inform you that the laws of the United States do not authorize American consular officers to liberate slaves and that, in consequence, my Government will not claim for American consular officers the treatment granted to British consular officers in this respect.

I shall accordingly be grateful if you will be good enough to inform me whether your Government is willing to conclude the Provisional Agreement, subject to the qualifications set forth in this note.

Accept [etc.]

711.90f2/27 : Telegram

The Secretary of State to the Ambassador in Great Britain (Mellon)

WASHINGTON, November 18, 1932—5 p.m.

285. Draft note enclosed with your despatch 472, November 3 is approved.

STIMSON

711.90f2/28

The Ambassador in Great Britain (Mellon) to the Secretary of State

No. 505

LONDON, November 23, 1932.

[Received December 7.]

SIR: I have the honor to refer to the Department's cabled instruction No. 285, November 18, 5 p.m., and to report that in reply to the note which as authorized thereby was on November 19 addressed to the Minister of the Kingdom of Saudi Arabia I have now received a communication under date of November 21, a copy of which is enclosed together with the original Arabic text accompanying it.

Respectfully yours,

For the Ambassador:
RAY ATHERTON
Counselor of Embassy

[Enclosure]

The Saudi Arabian Chargé in Great Britain (Zada) to the American Ambassador (Mellon)

22 Rajab 1351.

LONDON, 21 November, 1932.

SIR: In the absence of His Excellency the Minister, I have the honour to acknowledge Your Excellency's note of the 19th instant, regarding the revised text of the Provisional Agreement between the United States of America and the Kingdom of Saudi Arabia, which Mr. Atherton handed to me on November 1st.

I have the honour to note that with reference to the last clause of Article I of the Provisional Agreement, relating to the treatment of consular officers, and which reads: ". . . and they shall not be treated in

a manner less favourable than consular officers of any other foreign country."

(1) that Your Excellency's Government undertakes not to claim for American consular officers the privileges accorded to Moslem consular officers of visiting and residing in Moslem Holy Places situated in the Kingdom of Saudi Arabia, and

(2) that so far as the manumission of slaves is concerned, a privilege enjoyed by British consular officers in the Kingdom of Saudi Arabia, Your Excellency's Government will not claim for American consular officers the treatment granted to British consular officers in this respect.^{17a}

I have the honour to inform Your Excellency that subject to the above qualifications, my Government will be willing to conclude the Provisional Agreement.

Pray accept [etc.]

W. R. ZADA

711.90f2/30

*The Saudi Arabian Legation in Great Britain to the American Embassy in Great Britain*¹⁸

MEMORANDUM REGARDING THE PROVISIONAL AGREEMENT

LONDON, March 14, 1933.

The Arabian Government would like the following alterations made if the United States Government sees no objection:—

1. That the words "its territories and possessions" be added after the words "the United States of America" in the two cases in which they are missing in Article III.

2. That the following clause, which occurs at the end of Article V, be omitted:—"but should the Government of the United States of America be prevented by future action of its Legislature from carrying out the terms of these stipulations, the obligations thereof shall thereupon lapse".

3. That although an exchange of notes has already taken place between the Embassy of the United States of America and the Legation of Saudi Arabia with regard to the Muslim sacred places in Arabia and the manumission of slaves, the Arabian Government would prefer the exchange of notes to take place on the same day as the signature of the Agreement as an annexe of it, provided the United States Government sees no objection.

^{17a} In telegram No. 247, May 3, noon, 1948, the Minister in Saudi Arabia informed the Department that in the publication of this memorandum the Saudi Arabian Government wished to have the following notation added: "The right for slavery manumission is cancelled because Saudi Arabia has prohibited the entry of slaves into the country."

¹⁸ Copy transmitted to the Department by the Counselor of Embassy in Great Britain in his despatch No. 733, March 14; received March 22.

711.90f2/35

The Secretary of State to the Chargé in Great Britain (Atherton)

No. 494

WASHINGTON, April 26, 1933.

SIR: The receipt is acknowledged of your despatch No. 733 of March 14, 1933,¹⁹ with reference to the proposed provisional agreement between the United States and the Kingdom of Saudi Arabia regarding diplomatic and consular representation, juridical protection, commerce and navigation, and enclosing a copy of a memorandum of the same day from the Legation of Saudi Arabia in London.

With respect to the proposal for the addition of the words "its territories and possessions" following the words "the United States of America" in Article III of the draft agreement sent with the Department's instruction of October 18, 1932, you are authorized to accept the proposal. The revised Article will read as follows:

"In respect of import, export and other duties and charges affecting commerce and navigation, as well as in respect of transit, warehousing and other facilities, the United States of America, its territories and possessions, will accord to the Kingdom of Saudi Arabia, and the Kingdom of Saudi Arabia will accord to the United States of America, its territories and possessions, unconditional most-favored-nation treatment. Every concession with respect to any duty, charge or regulation affecting commerce or navigation now accorded or that may hereafter be accorded by the United States of America, its territories and possessions or by the Kingdom of Saudi Arabia to any foreign country will become immediately applicable without request and without compensation to the commerce and navigation of the Kingdom of Saudi Arabia and of the United States of America, its territories and possessions, respectively."

It is noted that the Arabian Government suggests the omission from Article V of the provision that the obligations of the agreement should lapse in the event that the Government of the United States is prevented by future action of its legislature from carrying out the terms of its stipulations. For reasons which were stated in the Department's instructions of October 12, 1931,²⁰ this Government is unable to accept the proposal.

With respect to the suggestion that a new exchange of notes take place regarding Muslim sacred places in Arabia and the manumission of slaves, in view of the fact that provision has already been made in the exchange of notes dated November 19 and 21, 1932,²¹ you are informed that this Government prefers not to repeat the assurances which have already been given.

Very truly yours,

CORDELL HULL

¹⁹ Not printed.

²⁰ *Foreign Relations*, 1931, vol. II, p. 552.

²¹ See despatch No. 505, November 23, 1932, from the Ambassador in Great Britain, p. 996.

711.90f2/42

The Secretary of State to the Ambassador in Great Britain (Bingham)

No. 113

WASHINGTON, October 17, 1933.

SIR: The receipt is acknowledged of your despatch No. 191 of September 12, 1933,²² transmitting the finally agreed upon English and Arabic texts of the proposed provisional agreement between the United States and the Kingdom of Saudi Arabia in regard to diplomatic and consular representation, juridical protection, commerce and navigation.

As an examination of the texts satisfies the Department that they are in accord with the version authorized by the Department, the agreement has been prepared by the Department for signature. The two originals so prepared are transmitted herewith for your signature and that of Sheikh Hafiz Wahba. The original in which the English text appears in the left-hand column should be forwarded to the Department promptly after signature.

Very truly yours,

For the Secretary of State:
WILLIAM PHILLIPS

Executive Agreement Series No. 53

*Provisional Agreement Between the United States of America and the Kingdom of Saudi Arabia in Regard to Diplomatic and Consular Representation, Juridical Protection, Commerce and Navigation*²³

The Undersigned,

Mr. Robert Worth Bingham, Ambassador Extraordinary and Plenipotentiary of the United States of America at London, and Sheikh Hafiz Wahba, Minister of the Kingdom of Saudi Arabia at London, desiring to confirm and make a record of the understanding which they have reached in the course of recent conversations in the names of their respective Governments in regard to diplomatic and consular representation, juridical protection, commerce and navigation, have signed this Provisional Agreement:

ARTICLE I

The diplomatic representatives of each country shall enjoy in the territories of the other the privileges and immunities derived from generally recognized international law. The consular representatives of each country, duly provided with exequatur, will be permitted to reside in the territories of the other in the places wherein consular representatives are by local laws permitted to reside; they shall enjoy the honorary

²² Not printed.²³ Arabic text not printed.

privileges and the immunities accorded to such officers by general international usage; and they shall not be treated in a manner less favorable than similar officers of any other foreign country.

ARTICLE II

Subjects of His Majesty the King of the Kingdom of Saudi Arabia in the United States of America, its territories and possessions, and nationals of the United States of America, its territories and possessions, in the Kingdom of Saudi Arabia shall be received and treated in accordance with the requirements and practices of generally recognized international law. In respect of their persons, possessions and rights, they shall enjoy the fullest protection of the laws and authorities of the country, and they shall not be treated in regard to their persons, property, rights and interests, in any manner less favorable than the nationals of any other foreign country.

ARTICLE III

In respect of import, export and other duties and charges affecting commerce and navigation, as well as in respect of transit, warehousing and other facilities, the United States of America, its territories and possessions, will accord to the Kingdom of Saudi Arabia, and the Kingdom of Saudi Arabia will accord to the United States of America, its territories and possessions, unconditional most-favored-nation treatment. Every concession with respect to any duty, charge or regulation affecting commerce or navigation now accorded or that may hereafter be accorded by the United States of America, its territories and possessions, or by the Kingdom of Saudi Arabia to any foreign country will become immediately applicable without request and without compensation to the commerce and navigation of the Kingdom of Saudi Arabia and of the United States of America, its territories and possessions, respectively.

ARTICLE IV

The stipulations of this Agreement shall not extend to the treatment which is accorded by the United States of America to the commerce of Cuba under the provisions of the Commercial Convention concluded between the United States and Cuba on December 11, 1902,²⁴ or the provisions of any other commercial convention which hereafter may be concluded between the United States of America and Cuba. Such stipulations, moreover, shall not extend to the treatment which is accorded to the commerce between the United States of America and the Panama Canal Zone or any of the dependencies of the United States of America or to the commerce of the dependencies of the United States of America with one another under existing or future laws.

²⁴ *Foreign Relations*, 1903, p. 375.

Nothing in this Agreement shall be construed as a limitation of the right of either Government to impose, on such terms as it may see fit, prohibitions or restrictions of a sanitary character designed to protect human, animal, or plant life, or regulations for the enforcement of police or revenue laws.

Nothing in this Agreement shall be construed to affect existing statutes of either country in relation to the immigration of aliens or the right of either Government to enact such statutes.

ARTICLE V

The present stipulations shall become operative on the day of signature hereof and shall remain respectively in effect until the entry in force of a definitive treaty of commerce and navigation, or until thirty days after notice of their termination shall have been given by the Government of either country, but should the Government of the United States of America be prevented by future action of its legislature from carrying out the terms of these stipulations, the obligations thereof shall thereupon lapse.

ARTICLE VI

The English and Arabic texts of the present agreement shall be of equal validity.

Signed at London this seventh day of November, one thousand nine hundred and thirty-three.

ROBERT WORTH BINGHAM [SEAL]
[Signature and seal of SHEIKH HAFIZ WAHBA]

SYRIA

ASSENT BY THE UNITED STATES TO CHANGES OF FRONTIER BETWEEN SYRIA AND JEBEL DRUSE ON THE ONE HAND AND TRANS-JORDAN ON THE OTHER

790d.90115/1

The Consul at Geneva (Gilbert) to the Secretary of State

No. 235 Political

GENEVA, February 17, 1932.

[Received February 26.]

SIR: I have the honor to transmit herewith two copies of League of Nations Document C.82.1932.VI. containing the Protocol of Agreement concluded on October 31, 1931, between the British and French Governments for the settlement of the question of the frontier between Syria and the Jebel Druze on the one hand, and Transjordan on the other.¹

This Agreement was submitted to the Council of the League of Nations for approval on January 30, 1932.² The *rapporteur*, in presenting this question to the Council, recalled the fact that the boundary between the territories detached from the former Ottoman Empire and placed under the British and French mandates, was defined in the Franco-British Convention of December 23, 1930 [1920], which was registered with the League Secretariat on February 6, 1924.³

The first section of the frontier thus determined, mainly, the Syria-Palestine section, extending from the Mediterranean to El-Hammé (situated south-east of the Lake of Tiberias) formed the object of a protocol concerning the boundary lines which was ratified by an exchange of notes signed on March 7, 1923, by the two mandatory powers and registered with the League Secretariat on February 6, 1924.⁴

The second section of this line comprises the Syria-Iraq frontier boundary which was dealt with by the League Council at its meeting held in Paris in December, 1931.⁵ In accordance with a request by the British and French Governments, the Council then agreed in principle to define the frontier between Syria and Iraq with the assistance of a commission which would be appointed to collect appropriate information on the spot.

¹ League of Nations, *Official Journal*, March 1932, p. 798.

² *Ibid.*, p. 503.

³ League of Nations Treaty Series, vol. xxii, p. 354.

⁴ *Ibid.*, p. 363.

⁵ See League of Nations, *Official Journal*, December 1931, p. 2372.

The third section, situated between the two sections mentioned above, is the frontier between Syria and the Jebel Druze on the one hand, and Transjordan on the other which the Council was asked to approve.

The *rappporteur*, in submitting the agreement to the Council for approval, made the following explanation concerning the reasons for the changes in the boundary line:

"I thought it my duty to enquire of the Representatives of the two Governments on the Council as to the reasons for the line adopted in this agreement.

"According to the information which I thus obtained, an experience of eleven years, during which mutual goodwill prevented any serious incident, has proved that it would be very difficult, if not impossible, to keep strictly in this sector to the stipulations of the agreement of December 23rd 1920. The modifications which the two Governments have made in these provisions have been inspired by the desire not to disturb the populations in the exercise of their rights and customs, to increase security by facilitating administration, and to ensure, in the present and in the future, the security of the vital communications between Iraq and Transjordan towards the Mediterranean. The arrangement which is submitted to us today appears to us to strike an equitable balance between these different factors, particularly as, after defining the frontier, it lays down the main lines of an agreement of 'bon voisinage' which will give the populations of the boundaries every facility for carrying on their daily life on either side of the frontier."

The Council then passed a resolution approving the agreement. There was no opposition in principle among the members of the Council to the approval of the agreement, but the Italian member, while giving his assent in this case, objected to the procedure followed by the two parties in submitting the relevant documentation immediately before the meeting of the Council, thus allowing practically no time for studying the question. He also objected to the parties not having submitted the question to the Permanent Mandates Commission for its examination. He stated, however, that he was satisfied that the boundary was an appropriate one, and that he was raising the question merely as a protest against the procedure in this case forming a precedent.

The enclosed mimeographed copies of Document C.82.1932.VI were furnished the Consulate by the Secretariat pending the issuance of this document in printed form as an annex to the Minutes of the Council. As regards the maps mentioned in connection with this Protocol, the Secretariat was not provided by the two governments with sufficient copies for them to be distributed. It is suggested, however, that should the matter be of interest to the Department, the maps might be obtained either from the British or French Government through our Embassy in London or in Paris.

Respectfully yours,

PRENTISS B. GILBERT

790d.90i15/6

The Acting Secretary of State to the Chargé in Great Britain (Atherton) ⁶

No. 165

WASHINGTON, August 18, 1932.

SIR: Reference is made to the Geneva Consulate's despatch No. 235 Political of February 17, 1932, a copy of which was transmitted direct to your Embassy. This despatch reported the passage by the Council of the League of Nations of a resolution approving an Agreement concluded on October 31, 1931, between the British and French Governments with regard to the frontiers of Syria and the Jebel Druze on the one hand and Transjordan on the other.

The question of the transfer of any of the mandated territory of Palestine, within which is included Transjordan, is governed by the Provisions of Article 5 of the Mandate which reads as follows:

"Article 5. The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the government of any foreign Power."

The consent of the United States to the administration by Great Britain of Palestine was limited by the terms of the American-British Convention of December 3, 1924,⁷ Article 1 of which reads as follows:

"Article 1. Subject to the provisions of the present Convention the United States consents to the administration of Palestine by His Britannic Majesty, pursuant to the mandate recited above."

When the United States gave its consent to the administration of the Palestine mandate by Great Britain, such consent was necessarily limited to the territory then legally established as the territory of Palestine and could not, without the concurrence of the United States, be regarded as applicable to any area not within the boundaries of the mandated territory at the time the Convention was signed. It would seem to be clear, therefore, that the recently effected changes in the boundaries of Syria and the Jebel Druze constitute a material alteration of the terms of the mandate. While those changes have been approved by the Council of the League of Nations on behalf of the members of the League, they have not been approved by the United States, as required by Article 7 of the American-British Convention of December 3, 1924, in order to make them applicable to the United States and its nationals. This Article reads as follows:

"Article 7. Nothing contained in the present convention shall be affected by any modification which may be made in the terms of the mandate as recited above unless such modification shall have been assented to by the United States."

⁶ The same instruction, *mutatis mutandis*, was sent on August 18 to the Ambassador in France as Department's No. 1280.

⁷ *Foreign Relations, 1924*, vol. II, p. 212.

The Department therefore considers that the transfer of territory accomplished by the terms of the British-French Agreement of October 31, 1931, is legally inapplicable to the United States and its nationals until such time as this Government shall have assented to the changes in question.

It is desired that you seek an early occasion to bring this matter to the attention of the Foreign Office at which time you should point out that although this Government has no desire to be obstructive and although it will probably have no occasion to object to the boundary changes when officially informed of their nature, it considers the principle involved to be of importance. You should add that although apparently through inadvertence the consent of this Government has not been sought to these frontier alterations, the Department entertains no doubt that the Foreign Office shares the view that territorial changes in the mandated territory of Palestine are inapplicable to the United States and its nationals unless such changes have received the assent of the United States.

A similar instruction, *mutatis mutandis*, has been addressed to the American Embassy at Paris, to which you are requested to furnish a copy of your reply to the present instruction.

Very truly yours,

W. R. CASTLE, JR.

790d.90115/13

The Chargé in Great Britain (Atherton) to the Secretary of State

No. 607

LONDON, January 10, 1933.

[Received January 19.]

SIR: I have the honor to refer to the Department's instruction No. 165 of August 18, 1932 concerning the agreement concluded on October 31, 1931, between the British and French Governments with regard to the frontiers of Syria and the Jebel Druze on the one hand and Transjordan on the other. As I stated in my despatch in reply, No. 341 of September 12, 1932,⁸ an *Aide-Mémoire* containing the Department's views⁸ as outlined in this instruction was given on September 12 to the Foreign Office official concerned, who stated that a full reply would be handed to the Embassy after the necessary consultation with the appropriate British officials.

There are enclosed herewith copies of a Foreign Office note No. E 6256/15/89 of January 4, 1933 on this subject, together with its enclosures, copies of the Anglo-French Convention of December 23, 1920 and of the Protocol of October 31, 1931.

As reference is made in the Foreign Office note of January 4 to the

⁸ Not printed.

Embassy's memorandum and letter of September 12, 1932, copies of these two documents are likewise enclosed for the Department's records.⁹

A copy of this despatch is being furnished to the American Embassy at Paris, as instructed.

Respectfully yours,

RAY ATHERTON

[Enclosure]

The British Secretary of State for Foreign Affairs (Simon) to the American Chargé (Atherton)

No. E 6256/15/89

[LONDON,] 4 January, 1933.

SIR: I have the honour to inform you that His Majesty's Government in the United Kingdom have had under their consideration the memorandum which Mr. Cox¹⁰ left at the Foreign Office on the 12th September in regard to the agreement of October 31st, 1931 between His Majesty's Government and the French Government concerning the frontiers of Syria and the Jebel Druze on the one hand and Transjordan on the other.

2. The view of the United States Government appears from that memorandum to be that the frontier settlement incorporated in the Anglo-French Agreement of October 31st, 1931, involved on the part of Transjordan a change in the previously existing frontier and consequently a cession of some territory previously within Transjordan, as well as the acquisition of territory not previously part of Transjordan; that an alteration in the area of the mandated territory is to be deemed to be a modification of the terms of the mandate, and thus to come within the provisions of Article 7 of the Anglo-United States Convention of December 3rd, 1924; and that it is consequently legally inapplicable to the United States and its nationals until the United States Government shall have assented thereto.

3. His Majesty's Government note with appreciation from Mr. Cox's letter of the 12th September that the United States Government have no desire to be obstructive in the matter of the new frontier between Syria and Transjordan and will probably have no occasion to raise objections to the frontier settlement when officially informed of its nature.

4. His Majesty's Government for their part do not propose to embark on a discussion of the views contained in the memorandum of September 12th, since, without prejudice to the question whether this step is legally necessary, they are fully prepared to invite the United States Government to consent to the modified frontier and indeed they desire to take this occasion to do so.

⁹ Neither printed.

¹⁰ First Secretary of Embassy in Great Britain.

5. The frontier between the British and French mandated territories in the Middle East was laid down in the Anglo-French Convention of December 23rd, 1920, a convention concluded before the date of the Mandate for Palestine. For various reasons it proved impossible to delimit or adopt in practice the line between Syria and Transjordan as therein defined. In 1931, however, His Majesty's Government and the French Government agreed, subject to the approval of the Council of the League of Nations, upon a modified line to be delimited upon the ground by a Commission such as is provided for in Article 2 of the 1920 Convention. This agreement was embodied in a Protocol, signed by the High Commissioner of the French Republic in Syria and by the High Commissioner for Iraq, who had been entrusted by His Majesty's Government in the United Kingdom with the conduct of these negotiations, on October 31st, 1931. This Protocol was in due course submitted to the Council of the League of Nations by His Majesty's Government and the French Government. The slight modifications which the Protocol introduced into the frontier, as laid down in the 1920 Convention, were, in the words of the *Rapporteur* to the Council of the League of Nations, "inspired by the desire not to disturb the populations in the exercise of their rights and customs, to increase security by facilitating administration, and to ensure, in the present and in the future, the security of the vital communications between Iraq and Transjordan towards the Mediterranean". The agreement was approved by the Council of the League on January 30th last, as one which the Council had "every reason to believe to be in the interests of the populations under mandate".

6. Copies of the Anglo-French Convention of December 23rd 1920, and of the Protocol of October 31st, 1931, to which reference has been made above, are enclosed herein.

I have the honour [etc.]

For the Secretary of State:
G. W. RENDEL

790d.90115/14

The Ambassador in France (Edge) to the Secretary of State

No. 3271

PARIS, January 19, 1933.

[Received January 31.]

SIR: I have the honor to refer to the Department's instruction No. 1280 of August 18, 1932,¹¹ concerning an agreement concluded on October 31, 1931, between the British and French Governments, with regard to the frontiers of Syria and Jebel Druze on the one hand and Transjordan on the other.

In compliance with the above-mentioned instruction, this matter was

¹¹ See footnote 6, p. 1004.

taken up with the Ministry for Foreign Affairs on September 1, 1932, and the Embassy is now in receipt of a reply from the Ministry, dated January 12, 1933, enclosing a certified copy of the Franco-British Convention of December 23, 1920, and of the Protocol of October 31, 1931, together with certified copies of the five maps annexed to the aforesaid Protocol. A copy and translation of the note from the Ministry for Foreign Affairs, as well as its enclosures, are transmitted herewith, together with a copy of the Embassy's note No. 1960 of September 1, 1932,¹² to the Ministry for Foreign Affairs.

In accordance with the Department's instructions, a copy of this despatch is being forwarded to the American Embassy at London.

Respectfully yours,

WALTER E. EDGE

[Enclosure—Translation ¹³]

The French Ministry for Foreign Affairs to the American Embassy

PARIS, 12 January, 1933.

By a note No. 1960 of the 1st of last September, the Embassy of the United States was good enough to explain to the Ministry for Foreign Affairs the reasons why its Government considers it necessary that the Franco-British agreement of October 31, 1931, relating to the delimitation of the frontier between Syria and the Jebel Druze on the one hand and Trans-Jordan on the other be submitted for its approbation.

In reply to this communication, the Ministry has the honor to inform the Embassy that the French Government notes with satisfaction that the settlement of the frontier between Syria and the Jebel Druze on the one hand and Trans-Jordan on the other, as effected by the aforesaid agreement, will probably not give rise to any objections on the part of the American Government.

The Government of the Republic sees no objection to asking the Government of the United States to approve this boundary line, which had not been previously marked out, without, however, in any way prejudging by this request the legal issue as to whether there is a question in this case of a modification of the terms of the mandate to which the consent of the United States should be given beforehand—in accordance with article 6 of the Convention of April 4, 1924¹⁴—in order that it might become applicable to the American Government and American citizens.

The Ministry for Foreign Affairs is forwarding with the present note:

1) True certified copies of the Franco-British Convention of December 23, 1920, and of the Protocol of October 31, 1931;

2) True certified copies of the five maps annexed to the aforesaid protocol.

¹² Not printed.

¹³ File translation revised by the editors.

¹⁴ *Foreign Relations*, 1924, vol. 1, p. 741.

790d.96i15/25

*The Secretary of State to the Chargé in Great Britain (Atherton)*¹⁵

No. 513

WASHINGTON, May 18, 1933.

SIR: Reference is made to your despatch No. 607 of January 10, 1933, enclosing a copy of a Foreign Office note No. E 6256/15/89 of January 4, 1933, in reply to the representations contained in the Embassy's *aide-mémoire* of September 12, 1932, with regard to the right of the United States to be consulted in connection with the changes effected in the frontiers between Syria and the Jebel Druse, on the one hand, and Transjordan, on the other.

Having consulted with the American consular representatives at Beirut and Jerusalem, neither of whom perceives any objection to the frontier changes in question, the Department authorizes you to inform the Foreign Office that the Government of the United States assents to the alterations in the frontiers between Syria and the Jebel Druse, on the one hand, and Transjordan, on the other, as set forth in the Anglo-French Agreement concluded on October 31, 1931.

Very truly yours,

For the Secretary of State:

WILLIAM PHILLIPS

¹⁵ The same instruction, *mutatis mutandis*, was sent on May 18 to the Chargé in France as Department's No. 1686.

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