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Foreign Relations of the United States

1923

Volume I

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Papers Relating to the
Foreign Relations
of the
United States

1923

(In Two Volumes)

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MESSAGE OF THE PRESIDENT OF THE UNITED STATES TO CONGRESS, DECEMBER 6, 1923

Since the close of the last Congress the Nation has lost President Harding. The world knew his kindness and his humanity, his greatness and his character. He has left his mark upon history. He has made justice more certain and peace more secure. The surpassing tribute paid to his memory as he was borne across the continent to rest at last at home revealed the place he held in the hearts of the American people. But this is not the occasion for extended reference to the man or his work. In this presence, among those who knew and loved him, that is unnecessary. But we who were associated with him could not resume together the functions of our office without pausing for a moment, and in his memory reconsecrating ourselves to the service of our country. He is gone. We remain. It is our duty, under the inspiration of his example, to take up the burdens which he was permitted to lay down, and to develop and support the wise principles of government which he represented.

Foreign Affairs

For us peace reigns everywhere. We desire to perpetuate it always by granting full justice to others and requiring of others full justice to ourselves.

Our country has one cardinal principle to maintain in its foreign policy. It is an American principle. It must be an American policy. We attend to our own affairs, conserve our own strength, and protect the interests of our own citizens; but we recognize thoroughly our obligation to help others, reserving to the decision of our own judgment the time, the place, and the method. We realize the common bond of humanity. We know the inescapable law of service.

Our country has definitely refused to adopt and ratify the covenant of the League of Nations. We have not felt warranted in assuming the responsibilities which its members have assumed. I am not proposing any change in this policy; neither is the Senate. The incident, so far as we are concerned, is closed. The League exists as a foreign agency. We hope it will be helpful. But the United States sees no reason to limit its own freedom and independence of action by joining it. We shall do well to recognize this basic fact in all national affairs and govern ourselves accordingly.

World Court

Our foreign policy has always been guided by two principles. The one is the avoidance of permanent political alliances which would sacrifice our proper independence. The other is the peaceful settlement of controversies between nations. By example and by treaty we have advocated arbitration. For nearly 25 years we have been a member of The Hague Tribunal, and have long sought the creation of a permanent World Court of Justice. I am in full accord with both of these policies. I favor the establishment of such a court intended to include the whole world. That is, and has long been, an American policy.

Pending before the Senate is a proposal that this Government give its support to the Permanent Court of International Justice, which is a new and somewhat different plan. This is not a partisan question. It should not assume an artificial importance. The court is merely a convenient instrument of adjustment to which we could go, but to which we could not be brought. It should be discussed with entire candor, not by a political but by a judicial method, without pressure and without prejudice. Partisanship has no place in our foreign relations. As I wish to see a court established, and as the proposal presents the only practical plan on which many nations have ever agreed, though it may not meet every desire, I therefore commend it to the favorable consideration of the Senate, with the proposed reservations clearly indicating our refusal to adhere to the League of Nations.

Russia

Our diplomatic relations, lately so largely interrupted, are now being resumed, but Russia presents notable difficulties. We have every desire to see that great people, who are our traditional friends, restored to their position among the nations of the earth. We have relieved their pitiable destitution with an enormous charity. Our Government offers no objection to the carrying on of commerce by our citizens with the people of Russia. Our Government does not propose, however, to enter into relations with another régime which refuses to recognize the sanctity of international obligations. I do not propose to barter away for the privilege of trade any of the cherished rights of humanity. I do not propose to make merchandise of any American principles. These rights and principles must go wherever the sanctions of our Government go.

But while the favor of America is not for sale, I am willing to make very large concessions for the purpose of rescuing the people of Russia. Already encouraging evidences of returning to the ancient ways of society can be detected. But more are needed. Whenever

there appears any disposition to compensate our citizens who were despoiled, and to recognize that debt contracted with our Government, not by the Czar, but by the newly formed Republic of Russia; whenever the active spirit of enmity to our institutions is abated; whenever there appear works mete for repentance; our country ought to be the first to go to the economic and moral rescue of Russia. We have every desire to help and no desire to injure. We hope the time is near at hand when we can act.

Debts

The current debt and interest due from foreign Governments, exclusive of the British debt of $4,600,000,000, is about $7,200,000,000. I do not favor the cancellation of this debt, but I see no objection to adjusting it in accordance with the principle adopted for the British debt. Our country would not wish to assume the rôle of an oppressive creditor, but would maintain the principle that financial obligations between nations are likewise moral obligations which international faith and honor require should be discharged.

Our Government has a liquidated claim against Germany for the expense of the army of occupation of over $255,000,000. Besides this, the Mixed Claims Commission have before them about 12,500 claims of American citizens, aggregating about $1,225,000,000. These claims have already been reduced by a recent decision, but there are valid claims reaching well toward $500,000,000. Our thousands of citizens with credits due them of hundreds of millions of dollars have no redress save in the action of our Government. These are very substantial interests, which it is the duty of our Government to protect as best it can. That course I propose to pursue.

It is for these reasons that we have a direct interest in the economic recovery of Europe. They are enlarged by our desire for the stability of civilization and the welfare of humanity. That we are making sacrifices to that end none can deny. Our deferred interest alone amounts to a million dollars every day. But recently we offered to aid with our advice and counsel. We have reiterated our desire to see France paid and Germany revived. We have proposed disarmament. We have earnestly sought to compose differences and restore peace. We shall persevere in well-doing, not by force, but by reason.

Foreign Papers

Under the law the papers pertaining to foreign relations to be printed are transmitted as a part of this message. Other volumes of these papers will follow.

Foreign Service

The foreign service of our Government needs to be reorganized and improved.

Fiscal Condition

Our main problems are domestic problems. Financial stability is the first requisite of sound government. We can not escape the effect of world conditions. We can not avoid the inevitable results of the economic disorders which have reached all nations. But we shall diminish their harm to us in proportion as we continue to restore our Government finances to a secure and endurable position. This we can and must do. Upon that firm foundation rests the only hope of progress and prosperity. From that source must come relief for the people.

This is being accomplished by a drastic but orderly retrenchment, which is bringing our expenses within our means. The origin of this has been the determination of the American people, the main support has been the courage of those in authority, and the effective method has been the Budget System. The result has involved real sacrifice by department heads, but it has been made without flinching. This system is a law of the Congress. It represents your will. It must be maintained, and ought to be strengthened by the example of your observance. Without a Budget System there can be no fixed responsibility and no constructive scientific economy.

This great concentration of effort by the administration and Congress has brought the expenditures, exclusive of the self-supporting Post Office Department, down to three billion dollars. It is possible, in consequence, to make a large reduction in the taxes of the people, which is the sole object of all curtailment. This is treated at greater length in the Budget message, and a proposed plan has been presented in detail in a statement by the Secretary of the Treasury which has my unqualified approval. I especially commend a decrease on earned incomes, and further abolition of admission, message, and nuisance taxes. The amusement and educational value of moving pictures ought not to be taxed. Diminishing charges against moderate incomes from investment will afford immense relief, while a revision of the surtaxes will not only provide additional money for capital investment, thus stimulating industry and employing more labor, but will not greatly reduce the revenue from that source, and may in the future actually increase it.

Being opposed to war taxes in time of peace, I am not in favor of excess-profits taxes. A very great service could be rendered through immediate enactment of legislation relieving the people of some of

the burden of taxation. To reduce war taxes is to give every home a better chance.

For seven years the people have borne with uncomplaining courage the tremendous burden of national and local taxation. These must both be reduced. The taxes of the Nation must be reduced now as much as prudence will permit, and expenditures must be reduced accordingly. High taxes reach everywhere and burden everybody. They bear most heavily upon the poor. They diminish industry and commerce. They make agriculture unprofitable. They increase the rates on transportation. They are a charge on every necessary of life. Of all services which the Congress can render to the country, I have no hesitation in declaring this one to be paramount. To neglect it, to postpone it, to obstruct it by unsound proposals, is to become unworthy of public confidence and untrue to public trust. The country wants this measure to have the right of way over all others.

Another reform which is urgent in our fiscal system is the abolition of the right to issue tax-exempt securities. The existing system not only permits a large amount of the wealth of the Nation to escape its just burden but acts as a continual stimulant to municipal extravagance. This should be prohibited by constitutional amendment. All the wealth of the Nation ought to contribute its fair share to the expenses of the Nation.

Tariff Law

The present tariff law has accomplished its two main objects. It has secured an abundant revenue and been productive of an abounding prosperity. Under it the country has had a very large export and import trade. A constant revision of the tariff by the Congress is disturbing and harmful. The present law contains an elastic provision authorizing the President to increase or decrease present schedules not in excess of 30 per centum to meet the difference in cost of production at home and abroad. This does not, to my mind, warrant a rewriting of the whole law, but does mean, and will be so administered, that whenever the required investigation shows that inequalities of sufficient importance exist in any schedule, the power to change them should and will be applied.

Shipping

The entire well being of our country is dependent upon transportation by sea and land. Our Government during the war acquired a large merchant fleet which should be transferred, as soon as possible, to private ownership and operation under conditions

which would secure two results: First, and of prime importance, adequate means for national defense; second, adequate service to American commerce. Until shipping conditions are such that our fleet can be disposed of advantageously under these conditions, it will be operated as economically as possible under such plans as may be devised from time to time by the Shipping Board. We must have a merchant marine which meets these requirements, and we shall have to pay the cost of its service.

Public Improvements

The time has come to resume in a moderate way the opening of our intracoastal waterways; the control of flood waters of the Mississippi and of the Colorado Rivers; the improvement of the waterways from the Great Lakes toward the Gulf of Mexico; and the development of the great power and navigation project of the St. Lawrence River, for which efforts are now being made to secure the necessary treaty with Canada. These projects can not all be undertaken at once, but all should have the immediate consideration of the Congress and be adopted as fast as plans can be matured and the necessary funds become available. This is not incompatible with economy, for their nature does not require so much a public expenditure as a capital investment which will be reproductive, as evidenced by the marked increase in revenue from the Panama Canal. Upon these projects depend much future industrial and agricultural progress. They represent the protection of large areas from flood and the addition of a great amount of cheap power and cheap freight by use of navigation, chief of which is the bringing of ocean-going ships to the Great Lakes.

Another problem of allied character is the superpower development of the Northeastern States, consideration of which is proceeding under the direction of the Department of Commerce by joint conference with the local authorities.

Railroads

Criticism of the railroad law has been directed, first, to the section laying down the rule by which rates are fixed, and providing for payment to the Government and use of excess earnings; second, to the method for the adjustment of wage scales; and third, to the authority permitting consolidations.

It has been erroneously assumed that the act undertakes to guarantee railroad earnings. The law requires that rates should be just and reasonable. That has always been the rule under which rates have been fixed. To make a rate that does not yield a fair return

results in confiscation, and confiscatory rates are of course unconstitutional. Unless the Government adheres to the rule of making a rate that will yield a fair return, it must abandon rate making altogether. The new and important feature of that part of the law is the recapture and redistribution of excess rates. The constitutionality of this method is now before the Supreme Court for adjudication. Their decision should be awaited before attempting further legislation on this subject. Furthermore, the importance of this feature will not be great if consolidation goes into effect.

The settlement of railroad labor disputes is a matter of grave public concern. The Labor Board was established to protect the public in the enjoyment of continuous service by attempting to insure justice between the companies and their employees. It has been a great help, but is not altogether satisfactory to the public, the employees, or the companies. If a substantial agreement can be reached among the groups interested, there should be no hesitation in enacting such agreement into law. If it is not reached, the Labor Board may very well be left for the present to protect the public welfare.

The law for consolidations is not sufficiently effective to be expeditious. Additional legislation is needed giving authority for voluntary consolidations, both regional and route, and providing Government machinery to aid and stimulate such action, always subject to the approval of the Interstate Commerce Commission. This should authorize the commission to appoint committees for each proposed group, representing the public and the component roads, with power to negotiate with individual security holders for an exchange of their securities for those of the consolidation on such terms and conditions as the commission may prescribe for avoiding any confiscation and preserving fair values. Should this permissive consolidation prove ineffective after a limited period, the authority of the Government will have to be directly invoked.

Consolidation appears to be the only feasible method for the maintenance of an adequate system of transportation with an opportunity so to adjust freight rates as to meet such temporary conditions as now prevail in some agricultural sections. Competent authorities agree that an entire reorganization of the rate structure for freight is necessary. This should be ordered at once by the Congress.

Department of Justice

As no revision of the laws of the United States has been made since 1878, a commission or committee should be created to undertake this work. The judicial Council reports that two more district judges are needed in the southern district of New York, one in the northern district of Georgia, and two more circuit judges in the

Circuit Court of Appeals of the Eighth Circuit. Legislation should be considered for this purpose.

It is desirable to expedite the hearing and disposal of cases. A commission of Federal judges and lawyers should be created to recommend legislation by which the procedure in the Federal trial courts may be simplified and regulated by rules of court, rather than by statute; such rules to be submitted to the Congress and to be in force until annulled or modified by the Congress. The Supreme Court needs legislation revising and simplifying the laws governing review by that court, and enlarging the classes of cases of too little public importance to be subject to review. Such reforms would expedite the transaction of the business of the courts. The administration of justice is likely to fail if it be long delayed.

The National Government has never given adequate attention to its prison problems. It ought to provide employment in such forms of production as can be used by the Government, though not sold to the public in competition with private business, for all prisoners who can be placed at work, and for which they should receive a reasonable compensation, available for their dependents.

Two independent reformatories are needed; one for the segregation of women, and another for the segregation of young men serving their first sentence.

The administration of justice would be facilitated greatly by including in the Bureau of Investigation of the Department of Justice a Division of Criminal Identification, where there would be collected this information which is now indispensable in the suppression of crime.

PROHIBITION

The prohibition amendment to the Constitution requires the Congress and the President to provide adequate laws to prevent its violation. It is my duty to enforce such laws. For that purpose a treaty is being negotiated with Great Britain with respect to the right of search of hovering vessels. To prevent smuggling, the Coast Guard should be greatly strengthened, and a supply of swift power boats should be provided. The major sources of production should be rigidly regulated, and every effort should be made to suppress interstate traffic. With this action on the part of the National Government, and the cooperation which is usually rendered by municipal and State authorities, prohibition should be made effective. Free government has no greater menace than disrespect for authority and continual violation of law. It is the duty of a citizen not only to observe the law but to let it be known that he is opposed to its violation.

The Negro

Numbered among our population are some 12,000,000 colored people. Under our Constitution their rights are just as sacred as those of any other citizen. It is both a public and a private duty to protect those rights. The Congress ought to exercise all its powers of prevention and punishment against the hideous crime of lynching, of which the negroes are by no means the sole sufferers, but for which they furnish a majority of the victims.

Already a considerable sum is appropriated to give the negroes vocational training in agriculture. About half a million dollars is recommended for medical courses at Howard University to help contribute to the education of 500 colored doctors needed each year. On account of the migration of large numbers into industrial centers, it has been proposed that a commission be created, composed of members from both races, to formulate a better policy for mutual understanding and confidence. Such an effort is to be commended. Everyone would rejoice in the accomplishment of the results which it seeks. But it is well to recognize that these difficulties are to a large extent local problems which must be worked out by the mutual forbearance and human kindness of each community. Such a method gives much more promise of a real remedy than outside interference.

Civil Service

The maintenance and extension of the classified civil service is exceedingly important. There are nearly 550,000 persons in the executive civil service drawing about $700,000,000 of yearly compensation. Four-fifths of these are in the classified service. This method of selection of the employees of the United States is especially desirable for the Post Office Department. The Civil Service Commission has recommended that postmasters at first, second, and third class offices be classified. Such action, accompanied by a repeal of the four-year term of office, would undoubtedly be an improvement. I also recommend that the field force for prohibition enforcement be brought within the classified civil service without covering in the present membership. The best method for selecting public servants is the merit system.

Public Buildings

Many of the departments in Washington need better housing facilities. Some are so crowded that their work is impeded, others are so scattered that they lose their identity. While I do not favor at this time a general public building law, I believe it is now neces-

sary, in accordance with plans already sanctioned for a unified and orderly system for the development of this city, to begin the carrying out of those plans by authorizing the erection of three or four buildings most urgently needed by an annual appropriation of $5,000,000.

Regulatory Legislation

Cooperation with other maritime powers is necessary for complete protection of our coast waters from pollution. Plans for this are under way, but await certain experiments for refuse disposal. Meantime laws prohibiting spreading oil and oil refuse from vessels in our own territorial waters would be most helpful against this menace and should be speedily enacted.

Laws should be passed regulating aviation.

Revision is needed of the laws regulating radio interference.

Legislation and regulations establishing load lines to provide safe loading of vessels leaving our ports are necessary and recodification of our navigation laws is vital.

Revision of procedure of the Federal Trade Commission will give more constructive purpose to this department.

If our Alaskan fisheries are to be saved from destruction, there must be further legislation declaring a general policy and delegating the authority to make rules and regulations to an administrative body.

Army and Navy

For several years we have been decreasing the personnel of the Army and Navy, and reducing their power to the danger point. Further reductions should not be made. The Army is a guarantee of the security of our citizens at home; the Navy is a guarantee of the security of our citizens abroad. Both of these services should be strengthened rather than weakened. Additional planes are needed for the Army, and additional submarines for the Navy. The defenses of Panama must be perfected. We want no more competitive armaments. We want no more war. But we want no weakness that invites imposition. A people who neglect their national defense are putting in jeopardy their national honor.

Insular Possessions

Conditions in the insular possessions on the whole have been good. Their business has been reviving. They are being administered according to law. That effort has the full support of the administration. Such recommendations as may come from their people or their governments should have the most considerate attention.

Education and Welfare

Our National Government is not doing as much as it legitimately can do to promote the welfare of the people. Our enormous material wealth, our institutions, our whole form of society, can not be considered fully successful until their benefits reach the merit of every individual. This is not a suggestion that the Government should, or could, assume for the people the inevitable burdens of existence. There is no method by which we can either be relieved of the results of our own folly or be guaranteed a successful life. There is an inescapable personal responsibility for the development of character, of industry, of thrift, and of self-control. These do not come from the Government, but from the people themselves. But the Government can and should always be expressive of steadfast determination, always vigilant, to maintain conditions under which these virtues are most likely to develop and secure recognition and reward. This is the American policy.

It is in accordance with this principle that we have enacted laws for the protection of the public health and have adopted prohibition in narcotic drugs and intoxicating liquors. For purposes of national uniformity we ought to provide, by constitutional amendment and appropriate legislation, for a limitation of child labor, and in all cases under the exclusive jurisdiction of the Federal Government a minimum wage law for women, which would undoubtedly find sufficient power of enforcement in the influence of public opinion.

Having in mind that education is peculiarly a local problem, and that it should always be pursued with the largest freedom of choice by students and parents, nevertheless, the Federal Government might well give the benefit of its counsel and encouragement more freely in this direction. If anyone doubts the need of concerted action by the States of the Nation for this purpose, it is only necessary to consider the appalling figures of illiteracy representing a condition which does not vary much in all parts of the Union. I do not favor the making of appropriations from the National Treasury to be expended directly on local education, but I do consider it a fundamental requirement of national activity which, accompanied by allied subjects of welfare, is worthy of a separate department and a place in the Cabinet. The humanitarian side of government should not be repressed, but should be cultivated.

Mere intelligence, however, is not enough. Enlightenment must be accompanied by that moral power which is the product of the home and of religion. Real education and true welfare for the people rest inevitably on this foundation, which the Government can approve and commend, but which the people themselves must create.

Immigration

American institutions rest solely on good citizenship. They were created by people who had a background of self-government. New arrivals should be limited to our capacity to absorb them into the ranks of good citizenship. America must be kept American. For this purpose, it is necessary to continue a policy of restricted immigration. It would be well to make such immigration of a selective nature with some inspection at the source, and based either on a prior census or upon the record of naturalization. Either method would insure the admission of those with the largest capacity and best intention of becoming citizens. I am convinced that our present economic and social conditions warrant a limitation of those to be admitted. We should find additional safety in a law requiring the immediate registration of all aliens. Those who do not want to be partakers of the American spirit ought not to settle in America.

Veterans

No more important duty falls on the Government of the United States than the adequate care of its veterans. Those suffering disabilities incurred in the service must have sufficient hospital relief and compensation. Their dependents must be supported. Rehabilitation and vocational training must be completed. All of this service must be clean, must be prompt and effective, and it must be administered in a spirit of the broadest and deepest human sympathy. If investigation reveals any present defects of administration or need of legislation, orders will be given for the immediate correction of administration, and recommendations for legislation should be given the highest preference.

At present there are 9,500 vacant beds in Government hospitals. I recommend that all hospitals be authorized at once to receive and care for, without hospital pay, the veterans of all wars needing such care, whenever there are vacant beds, and that immediate steps be taken to enlarge and build new hospitals to serve all such cases.

The American Legion will present to the Congress a legislative program too extensive for detailed discussion here. It is a carefully matured plan. While some of it I do not favor, with much of it I am in hearty accord, and I recommend that a most painstaking effort be made to provide remedies for any defects in the administration of the present laws which their experience has revealed. The attitude of the Government toward these proposals should be one of generosity. But I do not favor the granting of a bonus.

Coal

The cost of coal has become unbearably high. It places a great burden on our industrial and domestic life. The public welfare requires a reduction in the price of fuel. With the enormous deposits in existence, failure of supply ought not to be tolerated. Those responsible for the conditions in this industry should undertake its reform and free it from any charge of profiteering.

The report of the Coal Commission will be before the Congress. It comprises all the facts. It represents the mature deliberations and conclusions of the best talent and experience that ever made a national survey of the production and distribution of fuel. I do not favor Government ownership or operation of coal mines. The need is for action under private ownership that will secure greater continuity of production and greater public protection. The Federal Government probably has no peace-time authority to regulate wages, prices, or profits in coal at the mines or among dealers, but by ascertaining and publishing facts it can exercise great influence.

The source of the difficulty in the bituminous coal fields is the intermittence of operation which causes great waste of both capital and labor. That part of the report dealing with this problem has much significance, and is suggestive of necessary remedies. By amending the car rules, by encouraging greater unity of ownership, and possibly by permitting common selling agents for limited districts on condition that they accept adequate regulations and guarantee that competition between districts be unlimited, distribution, storage, and continuity ought to be improved.

The supply of coal must be constant. In case of its prospective interruption, the President should have authority to appoint a commission empowered to deal with whatever emergency situation might arise, to aid conciliation and voluntary arbitration, to adjust any existing or threatened controversy between the employer and the employee when collective bargaining fails, and by controlling distribution to prevent profiteering in this vital necessity. This legislation is exceedingly urgent, and essential to the exercise of national authority for the protection of the people. Those who undertake the responsibility of management or employment in this industry do so with the full knowledge that the public interest is paramount, and that to fail through any motive of selfishness in its service is such a betrayal of duty as warrants uncompromising action by the Government.

Reorganization

A special joint committee has been appointed to work out a plan for a reorganization of the different departments and bureaus of

the Government more scientific and economical than the present system. With the exception of the consolidation of the War and Navy Departments and some minor details, the plan has the general sanction of the President and the Cabinet. It is important that reorganization be enacted into law at the present session.

Agriculture

Aided by the sound principles adopted by the Government, the business of the country has had an extraordinary revival. Looked at as a whole, the Nation is in the enjoyment of remarkable prosperity. Industry and commerce are thriving. For the most part agriculture is successful, eleven staples having risen in value from about $5,300,000,000 two years ago to about $7,000,000,000 for the current year. But range cattle are still low in price, and some sections of the wheat area, notably Minnesota, North Dakota, and on west, have many cases of actual distress. With his products not selling on a parity with the products of industry, every sound remedy that can be devised should be applied for the relief of the farmer. He represents a character, a type of citizenship, and a public necessity that must be preserved and afforded every facility for regaining prosperity.

The distress is most acute among those wholly dependent upon one crop. Wheat acreage was greatly expanded and has not yet been sufficiently reduced. A large amount is raised for export, which has to meet the competition in the world market of large amounts raised on land much cheaper and much more productive.

No complicated scheme of relief, no plan for Government fixing of prices, no resort to the public Treasury will be of any permanent value in establishing agriculture. Simple and direct methods put into operation by the farmer himself are the only real sources for restoration.

Indirectly the farmer must be relieved by a reduction of national and local taxation. He must be assisted by the reorganization of the freight-rate structure which could reduce charges on his production. To make this fully effective there ought to be railroad consolidations. Cheaper fertilizers must be provided.

He must have organization. His customer with whom he exchanges products of the farm for those of industry is organized, labor is organized, business is organized, and there is no way for agriculture to meet this unless it, too, is organized. The acreage of wheat is too large. Unless we can meet the world market at a profit, we must stop raising for export. Organization would help to reduce acreage. Systems of cooperative marketing created by the farmers themselves, supervised by competent management, without

doubt would be of assistance, but they can not wholly solve the problem. Our agricultural schools ought to have thorough courses in the theory of organization and cooperative marketing.

Diversification is necessary. Those farmers who raise their living on their land are not greatly in distress. Such loans as are wisely needed to assist in buying stock and other materials to start in this direction should be financed through a Government agency as a temporary and emergency expedient.

The remaining difficulty is the disposition of exportable wheat. I do not favor the permanent interference of the Government in this problem. That probably would increase the trouble by increasing production. But it seems feasible to provide Government assistance to exports, and authority should be given the War Finance Corporation to grant, in its discretion, the most liberal terms of payment for fats and grains exported for the direct benefit of the farm.

Muscle Shoals

The Government is undertaking to develop a great water-power project known as Muscle Shoals, on which it has expended many million dollars. The work is still going on. Subject to the right to retake in time of war, I recommend that this property with a location for auxiliary steam plant and rights of way be sold. This would end the present burden of expense and should return to the Treasury the largest price possible to secure.

While the price is an important element, there is another consideration even more compelling. The agriculture of the Nation needs a greater supply and lower cost of fertilizer. This is now imported in large quantities. The best information I can secure indicates that present methods of power production would not be able profitably to meet the price at which these imports can be sold. To obtain a supply from this water power would require long and costly experimentation to perfect a process for cheap production. Otherwise our purpose would fail completely. It seems desirable, therefore, in order to protect and promote the public welfare, to have adequate covenants that such experimentation be made and carried on to success. The great advantage of low-priced nitrates must be secured for the direct benefit of the farmers and the indirect benefit of the public in time of peace, and of the Government in time of war. If this main object be accomplished, the amount of money received for the property is not a primary or major consideration.

Such a solution will involve complicated negotiations, and there is no authority for that purpose. I therefore recommend that the Congress appoint a small joint committee to consider offers, conduct negotiations, and report definite recommendations.

Reclamation

By reason of many contributing causes, occupants of our reclamation projects are in financial difficulties, which in some cases are acute. Relief should be granted by definite authority of law empowering the Secretary of the Interior in his discretion to suspend, readjust, and reassess all charges against water users. This whole question is being considered by experts. You will have the advantage of the facts and conclusions which they may develop. This situation, involving a Government investment of more than $135,000,000, and affecting more than 30,000 water users, is serious. While relief which is necessary should be granted, yet contracts with the Government which can be met should be met. The established general policy of these projects should not be abandoned for any private control.

Highways and Forests

Highways and reforestation should continue to have the interest and support of the Government. Everyone is anxious for good highways. I have made a liberal proposal in the Budget for the continuing payment to the States by the Federal Government of its share for this necessary public improvement. No expenditure of public money contributes so much to the national wealth as for building good roads.

Reforestation has an importance far above the attention it usually secures. A special committee of the Senate is investigating this need, and I shall welcome a constructive policy based on their report.

It is 100 years since our country announced the Monroe doctrine. This principle has been ever since, and is now, one of the main foundations of our foreign relations. It must be maintained. But in maintaining it we must not be forgetful that a great change has taken place. We are no longer a weak Nation, thinking mainly of defense, dreading foreign imposition. We are great and powerful. New powers bring new responsibilities. Our duty then was to protect ourselves. Added to that, our duty now is to help give stability to the world. We want idealism. We want that vision which lifts men and nations above themselves. These are virtues by reason of their own merit. But they must not be cloistered; they must not be impractical; they must not be ineffective.

The world has had enough of the curse of hatred and selfishness, of destruction and war. It has had enough of the wrongful use of material power. For the healing of the nations there must be good will and charity, confidence and peace. The time has come for a more practical use of moral power, and more reliance upon the prin-

ciple that right makes its own might. Our authority among the nations must be represented by justice and mercy. It is necessary not only to have faith, but to make sacrifices for our faith. The spiritual forces of the world make all its final determinations. It is with these voices that America should speak. Whenever they declare a righteous purpose there need be no doubt that they will be heard. America has taken her place in the world as a Republic—free, independent, powerful. The best service that can be rendered to humanity is the assurance that this place will be maintained.

LIST OF PAPERS

[Unless otherwise specified, the correspondence is *from* or *to* officials in the Department of State.

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Proposal by the President to the Senate That the United States Adhere to the Protocol of Signature Establishing the Permanent Court of International Justice

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1922 July 21	*From the Chief Justice of the Supreme Court* Report of conversation with Balfour and other British officials: Taft's suggestion that in order to obtain U. S. participation in Permanent Court arrangement, the Court must be separated from the League of Nations so that nonmembers of the League might participate in selection of Court judges. Balfour's request for note outlining suggestion.	1
Aug. 1	*To the Chief Justice of the Supreme Court* Concurrence in views expressed to British officials. Suggestion that arrangement for U. S. participation might be made analogous to that with respect to mandates.	2
Sept. 27	*From the Chief Justice of the Supreme Court* Letter to Earl Balfour, September 14 (text printed) quoting communication from Elihu Root outlining a procedure for American entry into Court. Similar letter to Lord Cecil.	3
Nov. 16	*From the Chief Justice of the Supreme Court* Letter from Lord Cecil (text printed) commenting on Root's proposal and suggesting consideration of Lord Phillimore's proposal providing for immediate U. S. cooperation in Court by adherence to protocol of signature with reservation as to participation in future election of judges.	5
1923 Feb. 17	*To President Harding* History of establishment of Court; objections to U. S. adherence to protocol and acceptance of statute in present form; recommendation that United States adhere to protocol accepting statute, but not the optional clause, with reservations and understandings concerning U. S. freedom from legal involvement with the League, U. S. participation in election of judges, U. S. share in Court expenses, and amendment of statute only with U. S. consent.	10
Feb. 24	*President Harding to the Senate* Request for Senate's consent to U. S. adhesion to protocol under conditions and with reservations suggested by the Secretary of State.	17
Mar. 1	*To President Harding* Recommendation that negative replies be made to inquiries of Senate Committee on Foreign Relations as to whether: (1) The administration favors negotiation of a treaty creating compulsory arbitration; (2) the administration proposes to recognize part XIII (Labor) of the Treaty of Versailles as binding; and (3) any other countries have made reservations on adhering to protocol.	19

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DISCUSSION WITH THE BRITISH AND JAPANESE GOVERNMENTS REGARDING A PROPOSED INCREASE IN GUN ELEVATION ON CAPITAL SHIPS RETAINED UNDER THE WASHINGTON NAVAL TREATY

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1923 Undated	*Memorandum by the Secretary of State of a Conversation with the British Ambassador, March 5, 1923* The Ambassador's reference to reports concerning increased elevation of British turret guns, made public in speech of Secretary of State at New Haven, December 29, 1922, and in remarks by Secretary of Navy before House Committee; his denial of such alterations. The Secretary's request for information from British Admiralty regarding guns, in accordance with letter from Secretary of Navy (text printed) and also for memorandum of Ambassador's denial.	24
Mar. 15	*From the British Embassy* Categorical declaration that no alterations had been made in gun elevations of any British capital ships since construction.	26
Mar. 20	*To the British Embassy* Statements for press by Secretary of State and Secretary of Navy (texts printed) presenting British denial of increases in gun elevation on capital ships, as correction of previous statements.	30
Apr. 26	*Statement Issued to the Press by the Navy Department* Decision not to use money appropriated by Congress for elevation of guns of U. S. fleet until directed to do so by Congress.	31
Undated	*Memorandum by the Secretary of State of a Conversation with the Japanese Ambassador, May 3, 1923* Japanese Government's unwillingness to negotiate special agreement with United States to limit increase of gun elevation on ships retained under treaty.	32

REFUSAL BY THE UNITED STATES TO RATIFY THE CONVENTION FOR THE CONTROL OF THE TRADE IN ARMS AND AMMUNITION, SIGNED SEPTEMBER 10, 1919

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1923 May 1	*From the Acting President of the Council of the League of Nations* Request that the United States express its objections to provisions of convention and state basis on which it would be willing to cooperate for control of manufacture and export of arms.	34

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Sept. 12 (53)	*To the Minister in Switzerland (tel.)* Note for Secretary General of the League (text printed) outlining U. S. objections to provisions of convention.	38
Sept. 26	*From the Secretary of War* View that compliance with League request would serve no useful purpose.	40
Sept. 27 (61)	*To the Minister in Switzerland (tel.)* Publication of U. S. note of September 12 to the League; press statement (text printed) explaining refusal to ratify convention and describing U. S. efforts to control arms traffic. (Instructions to mail note and press statement to London, Paris, and Rome.)	42
Dec. 14	*From the Acting President of the Council of the League of Nations* Failure of United States to suggest basis for cooperation. Invitation to appoint U. S. experts to cooperate with Temporary Mixed Commission in preparation of new convention.	43
Dec. 15 (1290)	*From the Minister in Switzerland* Letter from Secretary General of League, December 14 (text printed) suggesting procedure for appointment of U. S. members to Temporary Mixed Commission.	45

American Representation on the International Commission for the Revision of the Rules of Warfare

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1922 Sept. 5	*To the Secretary of War* Suggestion that Departments of State, War, and Navy embody views on revision of rules of warfare in report for guidance of J. B. Moore, appointed U. S. Commissioner to attend meeting of Commission of Jurists at The Hague, December 10, 1922. (The same, *mutatis mutandis*, to the Secretary of the Navy.)	47
Nov. 1 (3809–959: 190–1)	*From the Secretary of the Navy* Rules for use of radio in war, submitted by General Board of the Navy Department (text printed) and approved by Secretary of the Navy.	48

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Nov. 14 (WPD 375–15)	*From the Acting Secretary of War* Rules to govern use of aircraft in war, submitted by Army representatives (text printed) and approved by Acting Secretary of War.	51
Nov. 20 (Op–12B 3809–959:190)	*From the Secretary of the Navy* Rules for use of aircraft in war formulated by General Board and approved by Navy Department.	59
Nov. 20	*To the American Representative on the Commission of Jurists* Transmittal of copies of rules proposed by War and Navy Departments, with instructions to be guided by them and to attempt to reach a compromise when proposals differ. Department's desire that Commission's discussions be limited to aviation and radio.	63
1923 Feb. 26	*From the American Delegates on the Commission of Jurists* Transmittal of General Report of Commission (extracts printed) containing codes of rules to regulate use of radio and aircraft in war. Appointment of Washburn as second U. S. Commissioner.	66
May 19 (SC 226–110)	*From the Secretary of the Navy* General approval of draft codes; suggestion that General Report be published and that codes be embodied in a treaty.	87
Sept. 27 (WPD 375–33)	*From the Secretary of War* General approval of draft codes and willingness that they be embodied in a treaty.	88

Participation by Delegates From the United States in the Deliberations of the League of Nations Advisory Committee on Traffic in Opium

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Dec. 9 (74)	*To the Minister in Switzerland (tel.)* Instructions to notify Secretary General of League of Dr. Rupert Blue's appointment to cooperate with Advisory Committee in unofficial and consultative capacity at January meeting.	93
Dec. 14	*To the Secretary of the Treasury* General statement for Secretary and for Dr. Blue on U. S. interest in opium problem, primarily as a problem of national protection and control and secondarily as an international problem.	94

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May 25	*From the Chief of the American Delegation to the Meeting of the Advisory Committee on Traffic in Opium (tel.)* Presentation of statement of U. S. position; Bishop Brent's statement on moral aspects of opium traffic.	104
May 27	*From the Chief of the American Delegation at the Meeting of the Advisory Committee on Traffic in Opium (tel.)* Presentation of U. S. proposals; objections by India and others. Intention to challenge India's right to vote if such vote on proposals is decisive.	104
May 29	*To the Consul at Geneva (tel.)* For Porter: Caution against challenging India's right to vote, since United States is represented in consultative capacity only.	105
June 6	*From the Consul at Geneva (tel.)* From Porter: Advisory Committee's resolution (extracts printed) accepting U. S. proposals, with reservations, and recommending negotiation of agreements (*a*) to limit manufacture, importation for manufacture, and production for export of opium and other drugs, and (*b*) to reduce importations of raw opium where temporarily continued and to adopt measures for control by China.	105
June 8	*To the Consul at Geneva (tel.)* For Porter: Expression of gratification at results of meeting.	107
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Aug. 24	*To the American Delegation at the Meeting of the Fifth Committee of the Assembly of the League of Nations* Selection to represent United States in consultative capacity at meetings of Fifth Committee of the Assembly; instructions as to U. S. policy.	109
Undated [Rec'd Sept.21]	*From the Chief of the American Delegation at the Meeting of the Fifth Committee of the Assembly of the League of Nations (tel.)* Resolutions adopted by the Fifth Committee of the Assembly providing for the calling of two conferences to conclude agreements recommended by Advisory Committee.	109

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1921 Apr. 20	*From the French Ambassador* Resolution, December 10, 1920, of the First Assembly of the League of Nations providing for the creation of an international health office. Request for U. S. approval of project of placing under the League the International Office of Public Health established at Paris under the convention of 1907.	110
May 12	*To the French Ambassador* Statement that departure from 1907 convention would require sanction of President and Senate, which has not been given.	111
1923 Aug. 7	*From the French Chargé* Request for U. S. agreement to scheme of collaboration between International Office of Public Health and Health Committee of League of Nations drawn up at mixed meeting held at Paris.	112
Aug. 21	*To President Coolidge* Explanation of scheme of collaboration between two health organizations. Request for President's views.	113
Aug. 21	*From President Coolidge* Approval of scheme of collaboration.	114
Aug. 31	*To the French Chargé* Approval of scheme of collaboration, with understanding as to autonomy of International Office of Public Health.	115

Appointment of American Delegates to the International Emigration and Immigration Conference To Be Convened at Rome

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1923 Undated [Rec'd Apr. 9]	*From the Italian Embassy* Proposal of an international conference to consider technical problems connected with emigration and immigration.	115
May 10	*To the Italian Embassy* Willingness of United States to participate in conference, with reservations as to right to treat reception of immigrants within the United States as domestic matter.	117
June 22	*From the Italian Ambassador* Formal invitation to conference, with further assurances of its purely technical nature.	118
Oct. 13 (409)	*To the Chargé in Italy* Information concerning U. S. refusal to participate in preliminary conference at Paris suggested by France.	118
Undated [Rec'd Oct. 18]	*From the Italian Embassy* Inquiry concerning U. S. attitude toward a preliminary meeting of experts to be held somewhere in Italy.	119
Oct. 26	*To the Italian Embassy* Refusal to participate in proposed preliminary meeting of experts.	120
Dec. 26	*To the Italian Ambassador* List of the U. S. delegates to conference.	120

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Decision by the United States To Adopt an Unconditional Most-Favored-Nation Policy in the Negotiation of New Commercial Treaties

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1922 Dec. 14	*From the Acting Chairman of the Tariff Commission* Recommendation that the United States abandon conditional most-favored-nation principle as basis of commercial treaties in favor of principle of unconditional most-favored-nation treatment.	121
1923 Jan. 8	*From Senator Henry Cabot Lodge* Comments on recommendations made December 14 by the Acting Chairman of the Tariff Commission.	126
Jan. 15	*To President Harding* Information concerning necessity for negotiation of certain new commercial treaties and for revision of long-standing treaties; opinion that United States should adopt unconditional form of most-favored-nation clause in these treaties.	127
Feb. 27	*From President Harding* Authorization to proceed with negotiations upon unconditional policy; consideration of effect this change in policy would have upon reciprocity arrangement with Cuba.	128
Mar. 2	*To President Harding* Intention to negotiate treaties which would except the reciprocity arrangement with Cuba from operation of unconditional most-favored-nation clause; possibility that other powers may request similar exceptions.	129
Mar. 5	*From President Harding* Authorization to proceed with negotiations along lines already approved, although preservation of reciprocity arrangement with Cuba may cause some embarrassment.	130
Aug. 18	*To American Diplomatic Officers* Information concerning decision to adopt unconditional most-favored-nation policy in the negotiation of new commercial treaties. Request for comments on desirability of undertaking negotiations with country to which accredited.	131

Prevention of the Illegal Importation of Liquor Into the United States

PROPOSAL BY THE UNITED STATES TO OTHER POWERS TO SANCTION BY TREATY THE RIGHT TO SEARCH FOREIGN SHIPS WITHIN 12 MILES FROM SHORE FOR THE PREVENTION OF LIQUOR SMUGGLING

Date and number	Subject	Page
1923 May 3	*To the Chiefs of Foreign Missions in the United States* Treasury notice (text printed) that Supreme Court, in opinion of April 30 construing Prohibition Act, holds it unlawful for any vessel to bring within U. S. territorial waters any liquor for beverage purposes; and that regulations for effecting decision will be promulgated shortly and become effective June 10. (Footnote: The Treasury notice was sent also to all U. S. diplomatic officers and consuls.)	133

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PREVENTION OF THE ILLEGAL IMPORTATION OF LIQUOR INTO THE UNITED STATES—Continued

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1923 Undated [Rec'd May 11] (44-07)	*From the Spanish Ambassador* Protest against Supreme Court decision as violating international law and probably causing loss to Spanish ships.	133
May 18	*To the Spanish Ambassador* Information that in cases where vessels cleared foreign ports prior to promulgation of Supreme Court decision, seizure will not be made if liquor is kept under seal while in U. S. territorial waters.	134
May 25 (410)	*From the British Ambassador* Protest against Supreme Court decision as contrary to principle stated in excerpt from Supreme Court's judgment in *Wildenhus* case, 1886, and as leading to imposition of conflicting national laws on shipping.	135
May 28	*From the Belgian Ambassador* Protest against Supreme Court decision as creating difficulties for Belgian ships and as establishing dangerous precedent.	136
May 29	*From the Italian Embassy* Protest against Supreme Court decision as unwarranted limitation of Italy's freedom of commerce and navigation.	138
May 29	*To American Diplomatic Officers (tel.)* Instructions to transmit to Foreign Office, repeat to consuls, and give widest publicity to paragraph from Treasury regulations effecting Supreme Court decision (text printed), which declares that liquor on vessels leaving foreign ports before June 10 will not be seized.	139
May 31	*From the Swedish Legation* Protest against Supreme Court decision as introducing dangerous precedent in international voyages.	139
May 31	*From the Portuguese Legation* Protest against Supreme Court decision as causing inconvenience to Portuguese vessels.	140
June 1 (151)	*From the Danish Minister* Protest against Supreme Court decision as contrary to international usage stated in excerpt from *Wildenhus* case, and as causing hardships to Danish ships legally bound to carry liquor for crew.	140
June 1 (1763)	*From the Netherland Minister* Protest against Supreme Court decision as contrary to international comity and exigencies of intercourse.	142
June 1 (1764)	*From the Netherland Minister* Further protest against Supreme Court decision.	143
June 6	*To the British Ambassador* Inability of Executive to discuss international legality of Prohibition Act. Assumption that next Congress will give attention to operation of act. Quotation of another excerpt from *Wildenhus* case as upholding U. S. position.	144

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June 9	*To the Belgian Ambassador* Inability of Executive to discuss international legality of Prohibition Act. Assumption that next Congress will give attention to operation of act. (Sent, *mutatis mutandis,* to the Netherland Minister and the Norwegian Chargé.)	145
June 9	*To the Swedish Legation* Inability of Executive to discuss international legality of Prohibition Act. Assumption that next Congress will give attention to operation of act. (Sent, *mutatis mutandis,* to the Italian Embassy and Portuguese Legation.)	146
June 9 (7509)	*From the Chargé in Mexico* Mexican note, June 5 (text printed) protesting against Supreme Court decision and citing understanding reached by United States and Mexico in *Harvester* case.	147
June 9 (26)	*To the Ambassador in Spain (tel.)* Proposal to negotiate treaties with maritime powers granting right to carry liquors under seal within U. S. waters in return for right of visit and search within 12 miles of shore. Historic precedent for such action.	149
June 9 (27)	*To the Ambassador in Spain (tel.)* Proposed treaty with Spain (text printed) providing (1) that authorities of either nation may visit and search ships of other within 12 miles of coast and (2) that articles importation of which is prohibited may be brought within 12 miles of coast under seal.	150
June 12	*To the Ambassador in France (tel.)* Proposal to negotiate treaties with maritime powers granting right to carry liquors under seal within U. S. waters in return for right of visit and search within 12 miles of shore. Historic precedent for such action. (Instructions to repeat to London and Rome and in part to Belgium, Denmark, the Netherlands, Norway, Portugal, and Sweden.)	152
June 12 (228)	*To the Ambassador in France (tel.)* Presentation of proposed treaty to Ambassadors of Great Britain, France, Italy, Japan, and Spain, whose replies are awaited before other Governments are approached. (Sent also to Great Britain, Italy, and Japan. Instructions to Ambassador in France to repeat to Belgium, Denmark, the Netherlands, Norway, Sweden, and Portugal.)	154
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June 16	*To the Danish Minister* Inability of Executive to discuss international legality of Prohibition Act. Assumption that next Congress will give attention to operation of act. Quotation of excerpt from *Wildenhus* case as upholding U. S. position. Request for copies of Danish laws and regulations requiring that liquor be carried for crews.	158
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June 28 (300)	*From the Ambassador in France (tel.)* Favorable attitude of Foreign Office toward proposed treaty; French suggestion that 12-mile limit be reduced in English Channel to leave international waterway in center.	161
June 30 (543)	*From the British Chargé* Protest against U. S. refusal to permit the *Tuscania* to carry wine required by Italian medical laws for vessels entering Italian ports with steerage passengers aboard.	161
July 3 (2472)	*To the Chargé in Mexico* Instructions to inform Mexican Government of Executive's inability to discuss international legality of Prohibition Act; and to state that understanding reached in *Harvester* case is irrelevant.	162
July 10 (578)	*From the British Chargé* Statement that any attempt on the part of the United States to seize a British ship outside the 3-mile limit would be regarded by Great Britain as creating a very serious incident. Explanation that no protest was made in *Henry L. Marshall* condemnation because vessel was not of British registry.	163
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July 16	*To the British Chargé* Résumé of facts in *Henry L. Marshall* case as set forth in statement of case by U. S. Circuit Court of Appeals. Hope that Great Britain will not espouse cause of merchant ships, even of valid British registry, when similarly engaged.	165
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July 27	*To the British Chargé* Information concerning order issued to Surgeon General (text printed) authorizing U. S. Public Health Service officers to allow such use of liquors for medicinal purposes on foreign vessels in U. S. territorial waters as laws and regulations of home port prescribe.	171
Aug. 25 (961)	*To the Chargé in Great Britain* Information that only amelioration possible in enforcement of prohibition law is by act of Congress or ratification of treaties proposed. Citation of precedents for extending territorial jurisdiction and for seizures. Instructions to report British views; also possible nature of British reply to treaty proposal.	172
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1924 Mar. 4 (271)	*From the Chargé in Spain* Foreign Office *note verbale*, February 28, 1924, and memorandum of the Embassy (texts printed) containing information regarding extent of territorial jurisdiction claimed by Spain.	225

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ARRANGEMENT BETWEEN THE UNITED STATES AND CUBA FOR THE EXCHANGE OF INFORMATION USEFUL IN SUPPRESSING TRADE IN PROHIBITED GOODS

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Aug. 3 (235)	*From the Chargé in Cuba* Cuba's willingness to enter into proposed arrangement; information that details are being worked out.	256
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1920 May 21 (722)	*To Consular Officers* Instructions concerning accident reports and legal proceedings conducted for the United States Shipping Board.	263
1923 Jan. 11 (D. 171; C. 871)	*To Diplomatic and Consular Officers* Definition of status and immunities in foreign countries of U. S. Shipping Board vessels and representatives.	267
Mar. 5 (178)	*To Diplomatic Officers* Instructions to inform Government to which accredited that although U. S. Shipping Board vessels will not be regarded as immune, United States reserves right to aid vessels as provided in section 7 of Suits in Admiralty Act.	270
July 7	*To the British Chargé* Explanation, in reply to inquiry, that under Suits in Admiralty Act, Government practice has been to pay bail or its equivalent and admiralty judgments for commercially engaged Shipping Board vessels involved in suits in foreign courts.	271

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1923 Oct. 20 (48)	*To the Minister in Estonia, Latvia, and Lithuania (tel.)* Note for Latvian Foreign Office (text printed) explaining inability of Debt Commission to conduct negotiations in Europe and its willingness to negotiate at Washington at early date; and pointing out U. S. understanding that no other country has prior claims to debt payment.	275
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Reservation by the United States of Its Rights to Wrangell Island

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1916 Dec. 2 (479)	*From the Ambassador in Russia* Circular notice of Russian Government dated October 3, 1916, as quoted in the *Kronstadtskii Vyestnik* of October 16, announcing the inclusion in the Russian Empire of Wrangell and other newly discovered islands in the Arctic Ocean (text printed).	278
1922 Mar. 30	*Memorandum by the Chief of the Division of Russian Affairs, Department of State* Receipt of memorandum from Russian Embassy, March 30, 1922 (text printed) referring to press report that British flag had been raised on Wrangell Island by Stefansson expedition and island proclaimed part of the British Empire, justification being that survivors of Canadian *Karluk* remained there 8 months in 1914; statement of Russian claims based on location.	279
Sept. 12 (643)	*To the Ambassador in Great Britain* Instructions to make formal inquiry regarding British views on subject of Wrangell Island, especially in view of recent Canadian statement indicating possible intention to claim ownership; reservation of U. S. rights to island, on which American party first to land and raise flag; readiness to discuss island's status.	281
1923 Jan. 18 (781)	*To the Chargé in Great Britain* Instructions to renew inquiry regarding Wrangell Island, in view of statement appearing in Whitaker's *Almanack* for 1923 (text printed) mentioning the hoisting of British flag on island in 1921 and the notification of annexation to Canada in 1922.	283

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1923 Mar. 28 (840)	*To the Ambassador in Great Britain* Instruction to report immediately concerning steps taken in regard to instructions of September 12, 1922, and January 18, 1923, on the subject of Wrangell Island. Information that new map of world published by Department of Interior of Canada shows Wrangell Island as British possession.	283
Apr. 11 (2251)	*From the Ambassador in Great Britain* Report on communications with Foreign Office in effort to ascertain views on Wrangell Island; press report that Stefansson is being sent to London by Canadian Government to discuss Canada's claim to island and its value from strategic point of view.	284
May 17 (895)	*To the Chargé in Great Britain* Instruction to press for British statement of views on Wrangell Island.	285
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Preliminaries to the Assembling of the Fifth International Conference of American States at Santiago, Chile

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1922 Dec. 15 (253)	*From the Chilean Ambassador* Invitation to U. S. Government to be represented at Fifth Pan American Conference, to be held at Santiago, March 25, 1923.	286
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Dec. 20	*To the Chilean Ambassador* Acceptance of invitation to conference. (Footnote: List of delegates.)	288
Dec. 21 (88)	*From the Chargé in Peru (tel.)* Chile's second telegram to Peru deploring Peru's attitude of complaint against Chile; Peru's reply maintaining attitude.	288
1923 Jan. 12 (1)	*To the Chargé in Peru (tel.)* Department's views on Peru's refusal to participate in conference, as expressed by Secretary in conversation with Peruvian Ambassador. Instructions to make discreet use of views in conversations with Foreign Minister.	288
Jan. 18 (2)	*From the Chargé in Peru (tel.)* Willingness of Peruvian President to have Peru attend conference if Chilean Government will take some action satisfactory to Peruvian public.	290

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Mar. 5 (20)	*To the Chargé in Mexico (tel.)* Transmittal of copy of *aide-mémoire* sent to Brazilian Ambassador.	296
Mar. 6 (10)	*From the Chargé in Peru (tel.)* Peruvian President's statement that Peru would be unable to attend conference.	297
Mar. 8 (30)	*To the Ambassador in Chile (tel.)* *Aide-mémoire* sent to Chilean Ambassador (text printed) expressing hope that Mexico would participate in conference, but refusing to give pledge or promise concerning reservations.	297

CONVENTIONS BETWEEN THE UNITED STATES AND OTHER AMERICAN REPUBLICS SIGNED AT THE FIFTH INTERNATIONAL CONFERENCE OF AMERICAN STATES

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1923 Apr. 28	*Convention between the United States of America and Other American Republics* For protection of commercial, industrial, and agricultural trade marks and commercial names.	297

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1923 May 3	*Treaty between the United States of America and Other American Republics* To avoid or prevent conflicts between the American States.	308

CONVENTION PROVIDING FOR THE PUBLICITY OF CUSTOMS DOCUMENTS

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1923 May 3	*Convention between the United States of America and Other American Republics* Providing for the publicity of customs documents.	314

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1923 May 3	*Convention between the United States of America and Other American Republics* Providing for uniformity of nomenclature for the classification of merchandise.	318

Agreements Between the United States and Central American Republics, Signed at Washington, February 7, 1923

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1923 Feb. 12	*From the Secretary General of the Conference on Central American Affairs* Signed originals (texts printed), for deposit with U. S. Government, of convention for the establishment of commissions of inquiry, and of protocol of an agreement in connection with convention establishing International Central American Tribunal, signed February 7.	320

Boundary Disputes

COLOMBIA AND PANAMA

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1922 Mar. 23	*Memorandum by the Secretary of State of a Conversation with the Colombian Chargé* Chargé's request that United States take steps, as provided in treaty of 1914 between United States and Colombia, for the conclusion of a treaty between Colombia and Panama for the establishment of diplomatic relations and adjustment of pecuniary liabilities.	328
1923 Apr. 12	*To the Panaman Minister* Draft procès-verbal (text printed) of meeting between Secretary of State and Ministers of Colombia and Panama as an arrangement for negotiation of treaty and resumption of diplomatic relations, on understanding that boundary between Colombia and Panama is the line fixed by the law of New	328

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Apr. 18	*Memorandum by the Chief of the Division of Latin American Affairs, Department of State* Panaman Minister's statement that boundary should be settled by public treaty after institution of relations and not be an informal document such as the proposed procès-verbal.	331
Apr. 30 (1063)	*From the Colombian Minister* Colombian Government's approval of text of procès-verbal and authorization for Minister to sign.	334
June 2	*To the Panaman Legation* Review of U. S. efforts to settle boundary dispute. Hope that Panama will accept proposed line, which is in accordance with that described in the Panaman Constitution.	334
Undated	*Memorandum by the Secretary of State of a Conversation with the Panaman Minister, June 2, 1923* Secretary's oral statement of substance of memorandum to Panaman Minister and refusal to follow Minister's suggestion that Colombia be persuaded to resume relations and leave boundary settlement to future negotiations.	337
June 25	*Memorandum by the Chief of the Division of Latin American Affairs, Department of State* Secretary's inability to comply with Colombian Minister's request for a statement regarding situation with Panama.	340
Aug. 6	*From the Panaman Minister* Renewal of proposal of May 8 that that portion of boundary line between Aspavé and Pacific Ocean be left to settlement by future diplomatic negotiations either by direct convention or by arbitration.	341
Aug. 25	*To the Panaman Minister* Refusal to agree that boundary question requires further examination by either Government concerned or by impartial arbiter.	348
Oct. 29	*From the Chief of the Division of Latin American Affairs, Department of State* Panaman Minister's oral statement of his Government's categorical refusal to accept boundary proposed in draft procès-verbal; and his intimation that if matter is allowed to rest it might be possible to reach agreement at later date.	350

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Nov. 7 (39)	*To the Ambassador in Peru (tel.)* Instructions to ascertain what steps have been taken by Peru to fix date for joint submission of boundary treaty to Congresses of Colombia and Peru; and, if there have been none, to approach President in sense of Department's telegram no. 36 of October 8.	352
Nov. 16	*From the Ambassador in Peru (tel.)* Avowed intention of President of Peru to submit treaty to Congress and insist upon its approval.	353
Dec. 4 (47)	*To the Ambassador in Peru (tel.)* Department's doubt that more energetic representations to President of Peru would be effective at this time, since the President apparently intends to avoid submitting treaty to Congress because of approaching election.	353

GUATEMALA AND HONDURAS

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1923 Jan. 29 (6)	*To the Minister in Guatemala (tel.)* Instructions to inform President of Guatemala that Honduras has agreed to submit boundary controversy to President of the United States; and to express hope that like decision will be reached by Guatemala.	354
Jan. 31 (9)	*From the Minister in Guatemala (tel.)* President's assurance that Guatemala will join in agreement to submit boundary dispute to President of United States and that Minister at Washington will be instructed accordingly.	354
Sept. 14 (58)	*To the Minister in Guatemala (tel.)* Willingness of President Coolidge to arbitrate boundary dispute in place of late President Harding if formal request should be made by both Governments.	355
Sept. 17 (388)	*From the Chargé in Guatemala* Desire of Guatemalan Government that no action be taken on boundary dispute until after presidential election in Honduras.	355

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1923 Apr. 26 (50)	*From the American Commissioner in the Dominican Republic* Report of his suggestion to Commission of Dominicans that present was opportune time for negotiating immigration agreements with Italy and Spain and for commencing negotiations with Haiti to settle boundary question. Hope that Department will exert its good offices with Haiti.	356

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1923 May 18 (509)	*To the Minister in the Dominican Republic* Suggestion of High Commissioner in Haiti that portion of boundary line surveyed in 1901 in district of Laguna Salidilla be resurveyed by joint commission. Instructions to discuss suggestion with Commissioner in Dominican Republic and report on its advisability.	358
May 29 (858)	*From the Minister in the Dominican Republic* Inadvisability of proposing resurvey of portion of line surveyed in 1901 in district of Laguna Salidilla, in view of activities of subcommittee of Commission of Dominicans appointed to make recommendations for immediate negotiations with Haiti for definite settlement of dispute.	358
June 25 (20)	*To the Minister in the Dominican Republic (tel.)* Instructions to do everything possible to obtain settlement of dispute during nonpartisan Dominican regime. (Similar instructions to High Commissioner in Haiti.)	359
June 25 (68)	*To the Chargé in Haiti (tel.)* For General Russell: Instructions to inform President of Haiti of undesirability of proposing partial resurvey of boundary and opportuneness of time for negotiating a permanent settlement of boundary question.	360
June 29 (90)	*From the High Commissioner in Haiti (tel.)* Opposition of President of Haiti to any action by the Dominican Provisional Government toward a permanent settlement of boundary question; his claim that the Provisional Government has no authority to take such action.	360
July 7 (75)	*To the Chargé in Haiti (tel.)* For General Russell: Information that Commission of Dominicans, which elected Provisional Government, voted unanimously on May 11 authorizing Government to negotiate with Haiti for submission of dispute to arbitration. Instructions to make every effort to secure cooperation of President of Haiti.	361
July 14 (100)	*From the High Commissioner in Haiti (tel.)* President's intention to accept in principle the question of immediate negotiation for settlement by arbitration, but to request that negotiations be carried on at Port-au-Prince.	361
Sept. 14 (50)	*From the Minister in the Dominican Republic (tel.)* Likelihood that arbiters will soon be named to begin negotiations at Port-au-Prince.	362

HONDURAS AND NICARAGUA

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1923 Jan. 29 (6)	*To the Minister in Honduras (tel.)* Instructions to advise President of Honduras that Nicaragua has accepted draft protocol (text printed) providing for submission of boundary dispute to arbitral decision of U. S. Secretary of State, as agreed upon by delegations of Honduras and Nicaragua at Central American Conference; and to express hope that Honduras will accept protocol so that announcement of agreement may be made at closing plenary session of conference.	362

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Feb. 10 (7)	*To the Minister in Honduras (tel.)* Suggestion that Government submit protocol to Congress as coming from its own representatives, nature of proposed mediation making suggested U. S. note inadvisable.	363

The Tacna-Arica Question: Opening of the Arbitration and the Exchange of Cases by Chile and Peru

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1923 Jan. 16 (16)	*From the Chilean Ambassador* Application to President of the United States to act as arbitrator in Tacna-Arica controversy, as provided in arbitration agreement of July 20, 1922.	364
Jan. 20	*From the Peruvian Ambassador* Application to President of United States to act as arbitrator in Tacna-Arica controversy, as provided in the arbitration agreement of July 20, 1922.	365
Jan. 29	*To the Chilean Ambassador* President's acceptance of office of arbitrator. (Sent, *mutatis mutandis*, to the Peruvian Ambassador.)	365
Mar. 1 (52)	*From the Chilean Ambassador* Appointment of representative to take charge of Chile's interests in arbitration proceedings.	366
Mar. 14	*From the Peruvian Ambassador* Personnel of commission to present Peruvian case in arbitration proceedings.	366
Mar. 21 (178)	*To the Chargé in Peru* Arrangements as to time for preparation and presentation of cases and for examination of each case by the other party, with privilege of certain extensions of time. (Sent also to Chile.)	367
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ALBANIA

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AUSTRIA

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1924 Jan. 3 (1)	*From the Minister in Bolivia* (*tel.*) Passage of law and its signature by the President, notwithstanding Minister's formal protest.	452

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Dec. 16 (172)	*To the Ambassador in Brazil* (*tel.*) Instructions not to request renewal of preferences for 1923, pending further instructions.	453
Dec. 26 (136)	*From the Ambassador in Brazil* (*tel.*) Suggestion that, pending conclusion of new commercial arrangements, customary decree granting preferentials be requested, thus securing preferential treatment for articles usually listed.	453
1923 Jan. 6 (2)	*To the Ambassador in Brazil* (*tel.*) Instructions to inform Government that United States, now committed to principle of unconditional most-favored-nation treatment, requests, instead of renewal of preferences, a formal announcement that Brazil will accord United States such treatment; and that United States contemplates proposing new commercial treaty. View that request for renewal of preferences is inconsistent with new U. S. policy.	454
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Date and number	Subject	Page
1923 May 23	*From the Brazilian Embassy* Readiness to accept U. S. policy of reciprocal most-favored-nation treatment; inquiry as to best means of effecting an understanding; citation of certain disadvantages which may develop by interruption of customary preferential treatment of U. S. products.	456
June 2	*To the Brazilian Embassy* Submission of notes which countries might exchange. Inability of United States under new policy to request customs preferences in return for favors of any kind.	459
Oct. 18	*To the Brazilian Ambassador* Understanding that, in respect of customs and other duties and changes affecting importation of products and manufactures of United States into Brazil and of Brazil into United States, each country will accord to the other unconditional most-favored-nation treatment, with certain exceptions as to Cuba and the commerce between the United States and its dependencies and Panama Canal Zone.	461
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Naturalization Treaty Between the United States and Bulgaria, Signed November 23, 1923

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Nov. 23	*Treaty between the United States of America and Bulgaria* Concerning status of former nationals of either country who have acquired, or who may acquire, nationality in the other country by process of naturalization.	464

CANADA

Signing of a Convention Between the United States and Great Britain for the Preservation of the Halibut Fishery in the Northern Pacific

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Feb. 27	*To the British Ambassador* Concurrence in suggested modifications and preparation of convention for signature.	468
Mar. 2	*Convention between the United States of America and Great Britain.* For the preservation of the halibut fishery in the northern Pacific.	468

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Signing of a Convention for the Preservation of the Halibut Fishery in the Northern Pacific—Continued

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Apr. 4	*To the British Ambassador* Information that intention of framers of resolution was undoubtedly to cover any part of the British Empire.	472
June 16	*To President Harding* Canada's refusal to ratify convention with Senate reservation because it would place Canada in embarrassing position of having to secure consent of British Empire to the convention which Canada had negotiated and signed without usual approach to British Foreign Office. Suggestion that either the treaty be resubmitted to Senate omitting reservation, or that the two Governments enact protective legislation.	472
June 18	*To President Harding* Canada's willingness to ratify convention as signed, on reasonable assurance that convention would be introduced in forthcoming session of Congress and approved without reservation.	474
June 20	*From President Harding* Promise to ask for Senate's ratification of original treaty and, in case of failure, to recommend protective legislation.	475
Sept. 6 (764)	*From the British Chargé* Inquiry whether United States would agree to simultaneous public announcement that close season will not be effective during 1923–24, since convention cannot be put into effect.	476
Sept. 28 (822)	*From the British Chargé* Canada's suggestion that the two Governments take simultaneous action prohibiting the landing in their ports of halibut taken in Pacific during 3 months beginning November 16, or that they send simultaneous announcements October 1 to Pacific halibut fishing industry that close season will not be effective during 1923–24.	476
Oct. 4	*To the British Chargé* Information that the President has expressed his willingness to resubmit to the Senate the convention as signed; that the Executive is without authority to make or enforce regulations suggested by Canada; that the United States is prepared to join Canada in public announcement that close season will not be effective during 1923–24.	478
Oct. 9 (872)	*From the British Chargé* Draft statement (text printed) announcing that, as result of correspondence exchanged between Canada and United States and to avoid continued uncertainty, there will be no close season for halibut during winter of 1923–24.	479
Oct. 12	*To the British Chargé* Modified draft statement (text printed) omitting reference to correspondence exchanged in regard to close season.	479

CANADA

Signing of a Convention for the Preservation of the Halibut Fishery in the Northern Pacific—Continued

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Undated [Rec'd Dec. 31]	*From the Consul General at Ottawa* Letter from Canadian Deputy Minister of Marine and Fisheries (text printed) quoting opinion of Department of Justice that section 9 does not exempt British vessels from forfeiture but excludes them from two causes applicable to foreigners.	481

Termination of the Canadian Practice of Granting Port Privileges to United States Fishing Vessels

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Negotiations for a New Treaty Between the United States and Canada To Limit Naval Armament on the Great Lakes

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July 13 (538)	*From the British Chargé* Advisability of delaying reply to U. S. inquiry concerning entry of U. S. S. *Wilmington* into Great Lakes, as Canadian Prime Minister and Minister of National Defense are visiting Washington to discuss general question of naval vessels on Great Lakes.	486
July 24	*To the British Chargé* Understanding that concrete proposals for an agreement will be submitted by the Canadian Government.	487
Nov. 28 (887)	*From the British Ambassador* Submission of draft treaty (text printed) to supersede the Rush-Bagot Agreement.	487

CANADA

Negotiations for a New Treaty To Limit Naval Armament on the Great Lakes—Continued

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May 12	*To the British Ambassador* Submission of new draft treaty (text printed) and statement explaining modifications.	490

Canadian Legislation Authorizing the Prohibition of the Exportation of Pulpwood

Date and number	Subject	Page
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July 6	*To the President of the American Paper and Pulp Association of New York* Canadian resolution of June 26 (text printed). Assurance of Department's interest in matter.	495
July 7	*To the Consul General at Ottawa (tel.)* Information of serious effect prohibition of export of pulpwood would have upon U. S. newspaper industry; Department's suggestion that U. S. interests concerned proceed to Ottawa and emphasize seriousness of situation; possibility of U. S. retaliation. Instructions to make informal representations.	495
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Establishment of a Joint Board of Control To Supervise the Diversion of Waters From the Niagara River

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CANADA

Establishment of a Joint Board of Control To Supervise the Diversion of Waters From the Niagara River—Continued

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CHINA

Collapse of the Government of Li Yuan-hung and the Election of Tsao Kun to the Presidency of China

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Oct. 12 (345)	*From the Minister in China (tel.)* Sun Yat-sen's telegram to dean of diplomatic corps (excerpt printed) opposing recognition of Tsao Kun. Sun's almost desperate position. Power of Chihli Party, which supports Tsao Kun.	519
Oct. 12 (220)	*To the Minister in China (tel.)* Inquiry as to extent to which diplomatic corps has committed itself as regards recognition of Tsao Kun; whether country at large will recognize him and whether he gives promise of ability; also as to attitude of other powers.	520
Oct. 14 (346)	*From the Minister in China (tel.)* General feeling that Chihli Party under Tsao should be given chance; Tsao's efforts to suppress banditry and protect foreigners; acceptance by diplomatic corps of assurances with respect to demands of Lincheng note; intention of all Ministers to attend diplomatic reception.	520
Oct. 15 (348)	*From the Minister in China (tel.)* Account of President's reception to diplomatic corps.	522
Nov. 10 (365)	*From the Minister in China (tel.)* Summary of political situation: President's policy of conciliating leaders of rival factions; popular demand that civil strife cease; nomination by President of compromise candidate as Premier; stagnation in business of Government; no relief in financial situation.	523

UNSUCCESSFUL NEGOTIATIONS FOR A CONSORTIUM LOAN TO CHINA FOR THE PURPOSE OF CONSOLIDATING THE CHINESE FLOATING DEBT

Date and number	Subject	Page
1923 Jan. 4 (5)	*From the Minister in China (tel.)* Joint note, December 23, 1922, addressed to the Chinese Foreign Minister by the U. S., British, French, and Japanese Ministers making representations against continued application of customs surplus to internal loans to detriment of foreign obligations. Minister's conference with inspector general of Chinese customs.	525
Jan. 12 (2)	*To the Ambassador in Japan (tel.)* Instructions to confer with British Ambassador in endeavor to find out whether Japan is opposed to any loan to China or merely to a loan giving China funds in addition to amounts used for debt funding, in view of ambiguity of Japanese attitude as indicated in Japanese note of December 28, 1922, to Department and telegram to London December 18, 1922, sent by British Ambassador at Tokyo.	526

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UNSUCCESSFUL NEGOTIATIONS FOR A CONSORTIUM LOAN TO CHINA—Continued

Date and number	Subject	Page
1923 Jan. 17 (2)	*From the Ambassador in Japan (tel.)* Explanation concerning British Ambassador's telegram of December 18, 1922, to London and Japanese note of December 28, 1922, to United States. Japan's willingness to have representatives of Japanese banking group take part with others in continuing discussions with Chinese officials for single purpose of consolidating Chinese floating debt.	527
Jan. 27 (9)	*From the Ambassador in Japan (tel.)* Japan's willingness to have representatives of Japanese banking groups join others in considering small additional loan to China above the total of consolidated floating debt.	529
Feb. 1 (12)	*To the Ambassador in Japan (tel.)* Continued ambiguity of Japanese attitude. Department's view, also favored by Great Britain, that Consortium should discuss with Chinese authorities the possibilities of negotiating a loan for consolidation of floating debt and in addition thereto a small administrative loan. (Instructions to repeat to Peking together with pertinent correspondence.)	529
Feb. 16 (14)	*To the Ambassador in Japan (tel.)* Instructions to ascertain Japanese position in loan negotiations.	530
Feb. 22 (15)	*From the Chargé in Japan (tel.)* Foreign Minister's explanation that his Government is not prepared to have its group participate in negotiations with Chinese Government for funding loan; that it is willing only that Japanese group should in common with U. S., British, and French groups consider and recommend to their respective Governments such plans as they may agree upon for consolidation of Chinese debts.	530
Mar. 12 (49)	*To the Ambassador in Great Britain (tel.)* Instructions to advise British Foreign Office of Japanese attitude; opinion that most feasible course of action is to have Consortium bankers proceed to consider and recommend a concrete proposal for consolidation, as suggested by Japanese Foreign Office.	531
Apr. 10 (276)	*From the British Ambassador* Inquiry whether United States concurs in proposals of British, French, and Japanese Governments that the four Consortium groups proceed immediately to examination of question of debt consolidation.	532
Apr. 13 (61)	*To the Minister in China (tel.)* Note sent British Ambassador (text printed) informing him that United States concurs in suggested plan and that American group is being advised. (Instructions to repeat to Tokyo.)	533
Apr. 13	*To the American Group* Résumé of loan situation. Desirability of completing consolidation plan before meeting of Special Conference on Chinese Tariff.	534

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UNSUCCESSFUL NEGOTIATIONS FOR A CONSORTIUM LOAN TO CHINA—Continued

Date and number	Subject	Page
1923 Apr. 21 (116)	*From the Minister in China (tel.)* Report on conference, April 17, between group representatives and Chinese Minister of Finance in which Minister explained China's urgent need for administrative loan.	537
Apr. 27	*From the American Group* Opinion that first lien on customs surtax should be created for bonds issued in exchange for foreign debts; hope that idea of an advance to Chinese Government will not be encouraged in authoritative quarters.	538
Apr. 28 (127)	*From the Minister in China (tel.)* Information concerning telegram sent to London for four groups containing recommendations of group representatives. Identic telegram (text printed) conveying agreement of U. S., British, and French Ministers to endorse recommendations of group representatives and intention of Japanese Chargé to refer matter to his Government.	539
Apr. 30	*From the American Group* Cablegram from British group (text printed) quoting message from group representatives at Peking for four groups, disclosing China's willingness to entrust to Consortium issue of consolidated bonds when plans have been approved by Chinese Government, contingent upon certain monthly advances for current expenses; and requesting authorization to proceed on lines indicated.	540
May 11	*From the American Group* Cablegram from Messrs. Morgan, Grenfell & Co., London (text printed) quoting message of four groups to their representatives in Peking, May 10, rejecting recommendations for cash advances to China; also quoting message for four groups from their representatives at Peking, May 9, stating that negotiations cannot be pursued on lines contemplated, in view of outrage on Tientsin-Pukow Railway.	541
June 20	*From the American Group* Consortium Council Report adopted May 28 at Paris outlining policy (text printed).	543
Sept. 18 (316)	*From the Minister in China (tel.)* Identic telegram from British, French, and Japanese Ministers to their Governments (text printed) interpreting proposals to salt banks as attempt of Chinese Government to secure disguised administrative loan; and recommending consolidation and administrative loans only if more stable government emerges from Presidential crisis.	547
Sept. 21 (319)	*From the Minister in China (tel.)* Opinion that no government will be set up in Peking in near future strong enough to warrant administrative loans. Appointment by Peking Government of a financial adjustment commission with Yen as president and Yen's offer to appoint Consortium representatives as advisers.	548
Sept. 29 (326)	*From the Minister in China (tel.)* Recommendation that Consortium representatives accept Yen's invitation to them individually and personally to become advisers on financial adjustment commission.	549

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Unsuccessful Negotiations for a Consortium Loan to China—Continued

Date and number	Subject	Page
1923 Oct. 8 (214)	*To the Minister in China (tel.)* Information that Department perceives no objection to acceptance by American Group representative of advisership to financial adjustment commission and that American group has been so advised.	549
Oct. 9	*From the American Group* Information that Consortium groups have already expressed approval of Peking representatives' service on financial adjustment commission in their individual capacities.	549
Oct. 15 (350)	*From the Minister in China (tel.)* Joint note, October 12, of U. S., British, French, and Japanese Ministers to Chinese Foreign Office protesting against recent mandate preempting for service of internal loans whole customs surplus.	550

Naval Demonstration at Canton by the United States and Other Powers To Avert Seizure of the Customs by the Local Authorities

Date and number	Subject	Page
1923 Jan. 16 (20)	*From the Minister in China (tel.)* Telegram from consul at Canton, January 16 (text printed) reporting the occupation of Samshui by Yunnan-Kwangsi Army; departure of Chen Chiung-ming presumably for Hongkong; readiness of local troops to change sides.	551
Jan. 18 (22)	*From the Minister in China (tel.)* Telegram from Canton, January 17 (text printed) reporting withdrawal of part of Kwantung forces to Waichow, January 15; arrival of Yunnan-Kwangsi forces on the 16th and 17th.	551
Jan. 19 (24)	*From the Minister in China (tel.)* Telegram from Canton, January 18 (text printed) reporting Chen's departure for Waichow, not Hongkong; confused situation at Canton, there being no recognized leader.	551
Jan. 26 (32)	*From the Minister in China (tel.)* Telegram from consul at Canton reporting inauguration of Hu Han-min, sympathizer of Sun Yat-sen, as Civil Governor.	551
Feb. 15 (58)	*From the Minister in China (tel.)* Telegram from Shanghai, February 15 (text printed) reporting departure of Sun Yat-sen and staff for Hongkong.	552
Feb. 22 (64)	*From the Minister in China (tel.)* Telegram from Canton, February 21 (text printed) reporting arrival of Sun Yat-sen at Canton.	552
Sept. 22 (321)	*From the Minister in China (tel.)* Note dated September 5 from Canton Government to diplomatic corps at Peking (excerpts printed) presenting claim of Southwestern provinces to share in customs surplus after foreign obligations charged on customs revenues have been paid. Possibility that Canton Government may issue threat of making Canton a free port if their claim is denied.	552

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NAVAL DEMONSTRATION AT CANTON BY THE UNITED STATES AND OTHER POWERS—Continued

Date and number	Subject	Page
1923 Oct. 20 (226)	*To the Minister in China (tel.)* Advice that Department maintains its previous position that diplomatic body deals with customs surpluses only as trustees for recognized government of China; that United States would regard proposed suppression of customhouses and levying of taxes in lieu of import and export duties as subversive of treaty basis of foreign trade with China.	556
Nov. 14 (367)	*From the Minister in China (tel.)* Report of capture of Sheklung by Chen Chiung-ming, November 12, and retreat of Sun's forces into Canton; presence of U. S. S. *Asheville* at Canton; arrangement for protection of Americans.	556
Nov. 16 (369)	*From the Minister in China (tel.)* Communications dated November 15 from consul general at Canton and commander of South China Patrol (texts printed) reporting imminence of serious fighting just outside Canton.	556
Nov. 27 (376)	*From the Minister in China (tel.)* Telegram from consul general at Canton (text printed) reporting Sun Yat-sen as seriously considering attempt to seize maritime customs at Canton. Information that Chen's advance seems halted.	557
Nov. 30 (240)	*To the Minister in China (tel.)* Inquiry as to action contemplated by interested foreign powers in case customs are seized.	557
Dec. 1 (379)	*From the Minister in China (tel.)* Diplomatic corps' intention to inform Sun Yat-sen that it cannot advise Chinese Government as to disposition of customs surplus. Dean's telegram to senior consul at Canton (text printed) requesting that Sun be warned against seizing maritime customs. Opinion of U. S., British, French, Italian, and Japanese Ministers that there should be a concentration of available naval units at Canton to deter Canton Government from its threatened course of action.	557
Dec. 4 (381)	*From the Minister in China (tel.)* Telegram from consul general at Canton, December 3 (text printed) reporting that Sun has not yet made final decision and requesting instructions as to position should British and French blockade port if Sun attempts seizure of customs. Minister's reply, December 4 (text printed) explaining plan for naval demonstration at Canton. Request for instructions.	559
Dec. 5 (384)	*From the Minister in China (tel.)* Telegram from consul general at Canton, December 4 (text printed) reporting possibility that Sun may postpone final decision; understanding that British and French contemplate blockade only if other measures fail. Recommendation that United States participate in naval demonstration.	561
Dec. 5	*To President Coolidge* Request for President's views before seeking cooperation of Navy Department in naval demonstration at Canton.	561

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Naval Demonstration at Canton by the United States and Other Powers—Continued

Date and number	Subject	Page
1923 Dec. 5	*From President Coolidge* Approval of plan and authorization to seek Navy Department's cooperation.	562
Dec. 5 (243)	*To the Minister in China (tel.)* Approval of measures adopted to prevent seizure of customs. Arrangements for participation of U. S. naval units in naval demonstration at Canton.	562
Dec. 6 (385)	*From the Minister in China (tel.)* Telegram from commander of South China Patrol, December 5 (text printed) reporting British consul general's receipt of Canton Government's reply to December 1 note of diplomatic corps.	563
Dec. 6 (244)	*To the Minister in China (tel.)* Information that commander in chief of U. S. Asiatic Fleet and commander of South China Patrol have been instructed to concentrate available ships at Canton for naval demonstration and to cooperate with other powers in taking necessary measures short of actual warfare.	563
Dec. 6 (386)	*From the Minister in China (tel.)* Information that Department's telegram no. 243, December 5, was repeated to Canton with additional instructions as to contemplated course of action.	564
Dec. 8 (389)	*From the Minister in China (tel.)* Canton Government's reply to note of diplomatic corps (text printed) asserting intention to order Commissioner of Customs to cease remittances to Peking Government and retain funds for local uses, but deferring definite action for 2 weeks to await decision of diplomatic corps.	564
Dec. 9 (391)	*From the Minister in China (tel.)* Telegram from consul general at Canton, December 8 (text printed) expressing opinion that Sun will carry out threat to seize customs in spite of 2 weeks' postponement. Discussions of possibility of foreign powers' taking customhouse before Sun does; also restiveness of Peking Government over action of foreign powers at Canton.	565
Dec. 10 (393)	*From the Minister in China (tel.)* Foreign Office memorandum, December 8 (text printed) inquiring as to reports concerning assembly of war vessels and armed marines of Great Britian, France, Italy, Japan, and United States at Canton and the purpose thereof. Information that other foreign ministers mentioned have received similar communications.	567
Dec. 11 (396)	*From the Minister in China (tel.)* Note from dean of diplomatic corps to Foreign Office (text printed) explaining that no troops have been landed at Canton but that war vessels have been assembled there to prevent seizure of customs.	567

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NAVAL DEMONSTRATION AT CANTON BY THE UNITED STATES AND OTHER POWERS—Continued

Date and number	Subject	Page
1923 Dec. 11 (397)	*From the Minister in China (tel.)* Telegram from diplomatic corps to senior consul at Canton (text printed) requesting him to inform Canton authorities that the granting or refusal of claim for share in customs surplus does not lie within province of diplomatic corps. Information that time of presentation of this reply to Canton Government is left to discretion of senior consul.	568
Dec. 12 (1061)	*From the British Chargé* Information that first results of joint naval demonstration seem to have been satisfactory. Hope that, if further action is necessary, the United States will cooperate with all means at disposal.	569
Dec. 13	*To President Coolidge* Telegram from consul general at Canton, December 10 (text printed) reporting plan of consular body to land marines and occupy customhouse, transferring archives and funds to French concession, if Sun attempts forcible seizure. Plan's endorsement by Minister to China and by Secretary. Request for President's approval.	569
Dec. 14	*From President Coolidge* Approval of plan of consular body at Canton.	570
Dec. 14 (399)	*From the Minister in China (tel.)* Information that diplomatic corps' reply would be delivered to Sun immediately. Telegram from consul general at Canton, December 13 (text printed) reporting conditions quiet but tense; consular body's opinion Sun will not act before Monday.	571
Dec. 15 (402)	*From the Minister in China (tel.)* Telegram from commander of South China Patrol, December 14 (text printed) reporting agreement by conference of naval officers that United States, England, France, Portugal, and Japan be represented in landing force, if used; and the starting of antiforeign propaganda.	571
Dec. 15 (250)	*To the Minister in China (tel.)* Approval of plan of consular body to prevent seizure of customhouse.	572
Dec. 15 (403)	*From the Minister in China (tel.)* Telegram from consul general at Canton, December 14 (excerpt printed) reporting decision of consular body to transmit diplomatic body's reply to Canton Government; and to address warning to commander of Chinese forces that should Sun attempt to seize customs, powers would place marines in customhouse.	572
Dec. 16 (405)	*From the Minister in China (tel.)* Telegram from consul general at Canton, December 15 (text printed) reporting that on the 19th Sun will order Commissioner of Customs to retain customs but promises not to use force for present; possibility of further negotiations; continuation of antiforeign propaganda. Arrival of additional naval units.	572

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Naval Demonstration at Canton by the United States and Other Powers—Continued

Date and number	Subject	Page
1923 Dec. 18	*To the British Chargé* Information as to measures the United States has taken to cooperate with other powers for preventing seizure of Canton customhouse.	573
Dec. 18 (410)	*From the Minister in China (tel.)* Telegram from consul general at Canton, December 17 (text printed) reporting landing of British and French marines in Shameen; continued antiforeign agitation; expectation that Sun will issue customs order on the 19th as planned.	573
Dec. 18 (411)	*From the Minister in China (tel.)* Telegram from consul general at Canton, December 17 (text printed) reporting concentration of propaganda attacks upon United States.	574
Dec. 19 (412)	*From the Minister in China (tel.)* Messages from consul at Canton, December 18, and commander of South China Patrol (texts printed) stating that if propaganda attacks endanger American lives or property, local authorities will be warned of responsibility.	574
Dec. 21 (416)	*From the Minister in China (tel.)* Telegram from consul general at Canton, December 20 (text printed) reporting understanding that Sun's order to Commissioner of Customs has been delivered; urging, as a face-saving measure for Sun, that pressure be brought on Peking Government to allocate customs surplus proportionally among provinces. Necessity of adopting plan for future action.	575
Dec. 22 (417)	*From the Minister in China (tel.)* Messages from senior consul at Canton to dean of diplomatic corps, from U. S. consul general at Canton, and from commander of South China Patrol, December 21 (texts printed) reporting delivery of Sun's order to Commissioner of Customs.	576
Dec. 24 (419)	*From the Minister in China (tel.)* Message from commander of South China Patrol, December 22 (text printed) reporting departure of certain British, French, and Portuguese naval units and marines; opinion that Sun will not seize customhouse but will establish own customs; need for continued presence of U. S. naval vessels because of anti-American propaganda.	577
Dec. 26 (422)	*From the Minister in China (tel.)* Telegram from senior consul at Canton to dean of diplomatic corps, December 22 (text printed) reporting press statement of Canton Government justifying recent order and threatening to appoint new customs officers if order is not obeyed; opinion of consular corps that naval vessels in port should remain. Suggestion that departure of British consul general and half of British marine contingent from Canton be mentioned to British Ambassador as creating impression that Great Britain is weakening.	577
Dec. 27 (423)	*From the Minister in China (tel.)* Telegram sent to consul general at Canton, December 27 (text printed) conveying information that inspector general of customs, in reply to Sun, explained why he cannot comply with Sun's orders, but let Sun down easily; and commending consul general on conduct of affair.	578

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Naval Demonstration at Canton by the United States and Other Powers—Continued

Date and number	Subject	Page
1924 Jan. 3 (1)	*To the Minister in China (tel.)* Information that British Chargé has been approached regarding matter of departure from Canton of half of British marine contingent.	579

Attitude of the American Government With Respect to Certain Chinese Internal Taxes

Date and number	Subject	Page
1923 May 4	*From the Vice President of the Standard Oil Company of New York* Information concerning recent activities of Chinese provincial authorities with respect to internal taxes, especially as to their apparent desire to obtain possession of inland transit revenues normally accruing to customs authorities from issuance of transit passes for foreign goods. Problems confronting company and its reluctance to take action.	579
May 8	*From the Tobacco Merchants Association of the United States* Request that steps be taken to effect abrogation of tax of 20 percent ad valorem levied upon cigars and cigarettes by authorities of Chekiang Province, in contravention of treaties between United States and China.	581
May 22 (405)	*To the Minister in China* Opinion that dean of diplomatic corps had no proper ground for his protest of April 26, 1922, to the Chinese Foreign Office against imposition of famine relief surcharge stamps upon likin receipts.	582
May 29	*To the Vice President of the Standard Oil Company of New York* Information that forthcoming Special Conference on Chinese Tariff will consider abolition of likin and allied problems.	588
May 31	*To the Tobacco Merchants Association of the United States* Information concerning representations already made to Chinese Foreign Office against 20 percent ad valorem tax levied upon cigars and cigarettes by Chekiang authorities; possibility of increased interference by provinces in treaty arrangements in regard to taxes.	589
July 13 (1678)	*From the Minister in China* Suspension of tax on cigars and cigarettes in northern Fukien; and Minister's efforts to secure similar action in southern Fukien.	590
Sept. 29 (479)	*To the Minister in China* Instructions to continue to file with Chinese Government protests against imposition of destination taxes, pending consideration of subject before Special Conference on Chinese Tariff.	591

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Concurrence by the United States in the Contention by Certain Powers That the Boxer Indemnity Payments Should Be Made in Gold Currency

Date and number	Subject	Page
1923		
Jan. 4 (6)	*From the Minister in China (tel.)* Resumption of deferred Boxer indemnity payments. Refusal of Belgian, French, and Italian Ministers to accept payment by telegraphic transfer at exchange rate, arguing that debt must be paid in gold. Proposal of identic note by representatives of protocol powers supporting contention of Ministers. Request for instructions.	592
Jan. 10 (7)	*To the Minister in China (tel.)* Opinion that Governments concerned have right under protocol of 1901 and exchange of notes of July 2, 1905, to insist upon payment in gold francs, which have the same gold content now as in 1905.	593
Feb. 23 (65)	*From the Minister in China (tel.)* Request for authorization to sign note prepared by representatives of protocol powers for Chinese Foreign Office (text printed), expressing unanimous opinion of Governments that indemnity of 1901 should be paid in gold.	593
Feb. 26 (39)	*To the Minister in China (tel.)* Authorization to join colleagues in signing note.	594
Apr. 27 (124)	*From the Minister in China (tel.)* Recommendation of Belgian and Italian Ministers to their Governments to cause postponement of meeting of Special Conference on Chinese Tariff, if China persists in refusal to make indemnity payments in gold. France's acquiescence in recommendation.	594
Nov. 5 (1905)	*From the Minister in China* Note from representatives of protocol powers to Chinese Foreign Minister, November 3 (text printed) quoting their unanswered note of February 24 and demanding immediate settlement of question.	594
Dec. 8 (290)	*From the Minister in China (tel.)* Identic telegram to respective Governments adopted December 6 by representatives of protocol powers at suggestion of French Minister (text printed), requesting authority to institute an embargo on Chinese customs funds. Minister's criticism of plan.	596
Dec. 15 (1067)	*From the British Chargé* Information that British Minister at Peking has been instructed to make it clear that Great Britain cannot agree to embargo plan and to propose that issue be submitted to Hague Tribunal or some other agreed arbitrator.	597
Dec. 24 (256)	*To the Minister in China (tel.)* Note sent to British Embassy, December 24 (text printed) stating that U. S. Minister at Peking has been instructed not to participate in proposed embargo.	598
Dec. 28 (426)	*From the Minister in China (tel.)* Receipt of note dated December 26 from Foreign Office, refusing to accept contention of protocol powers.	598

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Concurrence by the United States in the Contention by Certain Powers That the Boxer Indemnity Payments Should Be Made in Gold Currency—Continued

Date and number	Subject	Page
1923 Dec. 30 (258)	*To the Minister in China (tel.)* French Embassy's view that French proposal may have contemplated embargo only on funds necessary to pay France, Belgium, Italy, and Spain in gold. Authorization to join colleagues in such action, pending definite word from French Embassy; instructions to inform French and British Legation.	599
1924 Jan. 1 (1)	*From the Minister in China (tel.)* Report that embargo proposal was dropped because of British disapproval; but that a meeting would be held to discuss limited embargo.	599
Jan. 2 (1999)	*From the Minister in China* Note from Chinese Acting Foreign Minister, December 26 (text printed) refusing to accept contention of protocol powers.	600
Jan. 7 (8)	*From the Minister in China (tel.)* Note from inspector general of Chinese customs to dean of diplomatic corps, January 4, 1924 (excerpt printed) stating that all indemnity installments had been fully paid from customs in 1923, except those refused by Belgium, France, and Italy; but that sufficient silver had been retained in loan service accounts at Shanghai to cover these payments at gold parity.	605

Efforts by the British and American Governments To Secure From Other Powers Acceptance of the Arms Embargo Resolution Which Had Been Proposed at the Washington Conference

Date and number	Subject	Page
1923 Feb. 9 (46)	*From the Minister in China (tel.)* Adoption by diplomatic body of statement (text printed) which was agreed upon as a substitute for identic telegram of October 3, 1922, because of objections of certain Ministers and which recommends that as many powers as possible approve Washington Conference arms resolution without reservations, but widened to include aircraft other than commercial aircraft. Discussion by diplomatic body of proposal to withhold naval assistance to China.	606
Mar. 2 (71)	*From the Minister in China (tel.)* Inquiry whether proclamation of March 4, 1922, regarding export of arms and munitions of war from United States to China applies to the Philippine Islands.	607
Mar. 14 (209)	*From the British Ambassador* Information that as a preliminary to British formal adhesion to Washington Conference resolution, the self-governing dominions and India have been consulted. Inquiry whether United States will adopt recommendations of diplomatic corps at Peking. Information that Great Britain is sounding out other governments. Amended draft of Washington Conference resolution (text printed).	607
Mar. 30 (55)	*To the Minister in China (tel.)* Inapplicability of proclamation of March 4, 1922, to the Philippine Islands.	608

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Efforts by the British and American Governments To Secure From Other Powers Acceptance of the Arms Embargo Resolution Which Had Been Proposed at the Washington Conference—Continued

Date and number	Subject	Page
1923 Apr. 21 (223)	*From the Chargé in Norway* Norwegian note, April 19, stating that Minister in Peking may participate in embargo discussion but has no authority to commit Government; and that embargo proposals seem unnecessary for Norway, as an embargo is already in force on arms exportations from Norway to China.	609
July 2 (550)	*From the British Chargé* Request that U. S. representative at The Hague be instructed to support British colleague in seeking Netherland concurrence in arms embargo resolution; also that similar instructions be sent to U. S. representative at Christiania.	609
July 16 (142)	*To the Minister in China (tel.)* Inquiry as to present status of adherence of Governments represented at Peking to embargo and whether Minister sees any objection to informing British Government of U. S. willingness to accept terms of embargo.	610
July 31 (268)	*From the Minister in China (tel.)* Adhesion of Netherland, Norwegian, and Swedish Ministers to recommendations of October 3, 1922. Conviction of Ministers that unanimity as regards embargo could easily be secured if Italy were prevented from enjoying monopoly in selling arms and munitions of war to China. No objection to informing British Government of U. S. adherence.	611
Aug. 25 (721)	*From the British Chargé* Information that no replies have been received from Norwegian, Netherland, or Swedish Governments. Request that U. S. representatives at capitals of powers participating in 1919 arms embargo agreement be instructed to support representations of British colleagues, except in case of France, Belgium, Italy, and Japan, who have already expressed concurrence.	612
Oct. 5 (422)	*From the Ambassador in Great Britain (tel.)* Foreign Office note (text printed) expressing adherence of British Empire to resolution with interpretative note, provided other powers concerned agree to do likewise.	613
Oct. 17	*To the British Chargé* Information that U. S. Minister at Peking has been advised of U. S. readiness to assent to terms of embargo provided unanimity of action can be had among other governments, and that recommendations for adoption have been sent to powers which have not yet signified approval.	613
Oct. 17	*To the Ambassador in Brazil* Instructions to inform Foreign Office that United States has signified its approval of terms of embargo and hopes Brazilian Government will instruct its representative at Peking in similar sense. (Sent, *mutatis mutandis*, to diplomatic representatives in Denmark, the Netherlands, Norway, Peru, Portugal, Spain, and Sweden.)	614

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Efforts by the British and American Governments To Secure From Other Powers Acceptance of the Arms Embargo Resolution Which Had Been Proposed at the Washington Conference—Continued

Date and number	Subject	Page
1923 Nov. 22 (145)	*From the Ambassador in Spain* Foreign Office note, November 20, stating that Minister at Peking has already been instructed of Spanish Government's approval of amended draft resolution and interpretative note and of its readiness to adhere if there is substantial unanimity among powers.	615
Nov. 23 (2107)	*From the Ambassador in Brazil* Foreign Minister's note, November 17, stating that Great Britain has been informed of Brazil's preference to abstain from embargo agreement, while continuing to follow sympathetically the attitude of the signatories of the Washington Conference.	615
Dec. 6 (92)	*From the Ambassador in Peru* Foreign Minister's note, November 26, stating that Peru is entirely in accord with U. S. action and that representative in Peking is being instructed to approve terms of embargo and interpretative note.	616

Amended American Proposal for a Mutual Undertaking Among the Powers To Refrain From Assisting China in Naval Construction

Date and number	Subject	Page
1923 Jan. 24 (15)	*To the Minister in China (tel.)* Instructions to present to diplomatic body an amended formula for withholding naval assistance to China (text printed).	617
July 25 (1689)	*From the Minister in China* Circular no. 187, July 13, of dean of diplomatic corps (text printed) circulating a letter from Netherland Minister announcing his authorization to concur in U. S. proposal, provided other powers concur. Observation of Japanese Minister, July 16 (text printed) that his Government accepts proposals.	617
Sept. 13 (1809)	*From the Minister in China* Dean's circular no. 227, August 30, containing copy of letter from Belgian Minister stating that Belgian Government concurs in proposal, provided other powers concur.	619
Sept. 18 (1827)	*From the Minister in China* Dean's circular no. 236, September 14, containing copy of letter from German Minister stating that German Government concurs in proposal.	619

Further Postponement of the Meeting of the Commission on Extraterritoriality in China

Date and number	Subject	Page
1923 Mar. 9 (45)	*To the Minister in China (tel.)* Tentative program on work of Commission on Extraterritoriality in China; instructions to discuss program with colleagues, particularly the British and Japanese Ministers.	620
May 4	*From the Chinese Chargé* Advice that Government would be pleased to have Commission meet at Peking, November 1; request that interested Governments be informed.	620

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Further Postponement of the Meeting of the Commission on Extraterritoriality in China—Continued

Date and number	Subject	Page
1923 May 11	*To the Chinese Minister* Advice that meeting of Commission at Peking, November 1, would be agreeable to United States; also that interested Governments are being informed.	621
May 25 (181)	*From the Minister in China* (*tel.*) Minister's refusal to commit himself, without instructions, to identic telegram (text printed) adopted May 24 by his colleagues recommending to their Governments that meeting of Commission should again be postponed in view of existing conditions in China. Also his opposition and British Minister's opposition to resolution recommending postponement of Special Conference on Chinese Tariff.	621
May 28 (90)	*To the Minister in China* (*tel.*) Request for opinion whether convening of Commission might be used to focus world attention upon political abuses in China which must be remedied as condition of obtaining relaxation of foreign treaty rights.	622
June 1 (192)	*From the Minister in China* (*tel.*) Unanimous opposition of diplomatic body and foreign community to convening of Commission for any purpose. Chinese desire for convening of Commission.	622
June 3 (99)	*To the Minister in China* (*tel.*) Japanese Government's willingness to proceed in accordance with U. S. views. Secretary's reluctance to postpone Commission indefinitely; suggestion that question be held in abeyance.	623
Undated	*Memorandum by the Secretary of State of a Conversation with the Chinese Minister, June 7, 1923* Minister's representations against delay in holding Conference; Secretary's reply that subject is receiving consideration but that conditions in China do not justify changes proposed.	624
July 17 (189)	*To the Chargé in Great Britain* (*tel.*) Reply to British inquiry that apart from Danish, Peruvian, Spanish, and Swedish adherence to resolution to establish Commission, no expression of views has been received except from British and Japanese, latter having expressed willingness to take part in Conference.	626
Sept. 13 (312)	*From the Minister in China* (*tel.*) Recommendation that Conference be postponed, in view of increasing weakness of Peking Government.	626
Sept. 27	*To the Chargé in France* (*tel.*) Instructions to inform Government as to lack of unanimity among powers toward convening Conference on November 1, 1923, and to request that Government state definitely whether it desires to proceed with Conference or to postpone Conference to November 1, 1924. (Instructions to repeat to London, Rome, The Hague, Brussels, Lisbon, Copenhagen, Stockholm, and Madrid. Sent also to Lima and Tokyo.)	627

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Further Postponement of the Meeting of the Commission on Extraterritoriality in China—Continued

Date and number	Subject	Page
1923 Oct. 25	*To the Chargé in France (tel.)* Instructions to inform Government that U. S. inquiry disclosed lack of unanimity on convening of Conference on November 1, but that majority of powers assent to postponement to definite date; and to request Government to indicate whether it would agree to postponement to November 1, 1924. (Instructions to repeat to London, Rome, The Hague, Brussels, Lisbon, Copenhagen, Stockholm, and Madrid. Sent also to Lima and to Tokyo with instructions to repeat to China.)	629
Nov. 14	*To the Chinese Minister* Information that U. S. inquiry has disclosed lack of unanimity on convening of Conference on November 1, but that majority of powers assent to postponement to definite date, November 1, 1924, having been suggested.	629
Dec. 14 (400)	*From the Minister in China (tel.)* Foreign Office memorandum, December 13, consenting to postponement of Conference to November 1, 1924, and requesting that nature of replies from various Governments be transmitted to Chinese Government.	630
1924 Jan. 14 (15)	*To the Minister in China (tel.)* Instructions to inform Foreign Office that consent of Governments to convening of Commission November 1, 1924, has not been obtained; also to refrain from giving intimation as to attitude of individual powers.	630

Kidnaping of Railway Passengers Near Lincheng by Bandits and Consequent Demands Upon China by the Powers

Date and number	Subject	Page
1923 May 6	*From the Minister in China (tel.)* Report of train hold-up by bandits near Lincheng; capture of 19 foreigners including James B. Powell, an American; killing of British subject; also that inquiry is being made whether there were other Americans on train. (Footnote: List of other Americans on train; those who escaped or were released; those held as captives.)	631
May 8 (140)	*From the Counselor of Legation at Peking (tel.)* Representations by dean of diplomatic body to Chinese Government demanding measures to secure immediate release of foreign captives, payment of ransom by Chinese Government, strong military action to put down brigandage in Shantung, and an official inquiry. Prime Minister's agreement to demands. Subsequent resolution of diplomatic body to demand progressive indemnity after May 12. British Minister's proposal for adequate police protection on Tientsin-Pukow line under foreign supervision.	631

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KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS, ETC.—Contd.

Date and number	Subject	Page
1923 May 9 (143)	*From the Counselor of Legation at Peking (tel.)* Telegram from U. S. Minister from Tsinanfu, May 8 (text printed) reporting his demands upon Marshal Tsao Kun and military and civil governors; letter from Powell, May 6, transmitting bandit commander's promise to release captives if troops withdrawn; release of several captives; telegram from Naill of Asia Development Co., May 8 (text printed) announcing his departure for bandit outpost with French and Italian consuls general to conduct negotiations; relief for released captives.	632
May 9 (145)	*From the Counselor of Legation at Peking (tel.)* Acting Foreign Minister's statement that attempts were being made to send supplies to captives through natives, that government would desist from military measures against bandits, and that he believed negotiations had begun. Presidential mandate ordering investigation of outrage.	634
May 10	*From the Minister in China (tel.)* Presentation to Tien, Shantung Military Governor, of Naill's telegrams reporting privations of captives and possibility they will be killed if Chinese authorities do not negotiate with bandits. Military Governor's instructions to his generals to consult with Naill.	635
May 10 (148)	*From the Counselor of Legation at Peking (tel.)* Telegram from consul at Lincheng (text printed) reporting release of two American boys, sons of men held by bandits; situation hopeful.	635
May 11	*From the Minister in China (tel.)* Conference with Chi, Military Governor at Nanking: Military Governor's efforts in behalf of captives and promise of further instructions to his representatives concerning their immediate release; Minister's intimation of possible foreign intervention. Information that Chi, Tien, Peking Government, and Tsao Kun are all in agreement.	635
May 11 (151)	*From the Counselor of Legation at Peking (tel.)* Telegram sent to consul at Lincheng (text printed) instructing him and assistant military attaché to participate in joint inquiry at Lincheng into outrages; and informing him of selection of other representatives on the commission.	636
May 14 (156)	*From the Counselor of Legation at Peking (tel.)* Telegrams from consul and assistant military attaché at Lincheng, May 13 and 14 (texts printed) reporting progress in negotiations with bandits, Roy S. Anderson's participation, bandits' demands. Diplomatic body's decision to remind Foreign Office of progressive indemnity; and to address note to Foreign Office concerning policing of railway lines.	636
May 15 (157)	*From the Counselor of Legation at Peking (tel.)* Notes from the dean of the diplomatic body to the Foreign Minister, May 14 (texts printed): (1) Insisting that Government reenforce troops and police guarding principal railways, informing Government of appointment of commission of foreign officers to investigate Chinese measures for protecting railways, and reserving right to take further action; (2) reminding Government of its responsibility for payment of ransom.	637

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KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS, ETC.—Contd.

Date and number	Subject	Page
1923 May 16 (161)	*From the Counselor of Legation at Peking (tel.)* Diplomatic body's decision to address further note to Foreign Office in view of unsatisfactory progress of negotiations with bandits; and to consult governments and senior naval officers concerning advisability of making joint naval demonstration at Taku near Tientsin.	639
May 17 (166)	*From the Counselor of Legation at Peking (tel.)* Memorandum handed by dean of diplomatic body to Acting Foreign Minister, May 16 (text printed) making further representations against delay in release of captives and reserving right to fix at later date nature and scope of sanctions.	640
May 18 (168)	*From the Minister in China (tel.)* Report on his conferences at Lincheng with consul and assistant military attaché and with representatives of various Chinese officials. Opinion that competition among Chinese officials on spot to obtain credit for effecting release of prisoners indicates that negotiations are reaching stage when success is probable. Institution of regular service of supply for captives.	641
May 18 (170)	*From the Minister in China (tel.)* Opinion that a naval demonstration is unnecessary and also likely to delay release of captives. British and French Ministers' accord with views.	642
May 20 (174)	*From the Minister in China (tel.)* Release of French citizen by bandits to bring to diplomatic body at Peking and President of China the bandits' threat to shoot two foreign captives if troops are not withdrawn, their refusal to negotiate until troops are withdrawn, and inclusion in their terms of a guarantee for their safety by six foreign powers.	643
May 23 (176)	*From the Minister in China (tel.)* Telegram from consul and assistant military attaché at Lincheng (text printed) reporting military situation and condition of captives. Detailed account of situation.	644
May 23 (178)	*From the Minister in China (tel.)* Adoption by diplomatic body of U. S. Minister's suggestion to send to Tsaochwang an international commission of military commanders at Tientsin, or substitutes, to investigate and report upon military situation.	647
May 24 (179)	*From the Minister in China (tel.)* Information that consuls at Lincheng had been instructed, in accordance with resolution of diplomatic body, to convey to bandit chiefs a message (text printed) warning them that they would be held responsible with their lives for any fatality to foreign captives as result of delay or refusal to negotiate.	647
May 26 (182)	*From the Minister in China (tel.)* Report on various measures suggested for the protection of lives and property of foreigners. Inquiry whether United States would approve extension of use of armed force in China for protection of U. S. nationals in future.	648

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KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS, ETC.—Contd.

Date and number	Subject	Page
1923 May 28 (185)	*From the Minister in China* (*tel.*) Bandits' reply to message of diplomatic body that they would not endanger lives of foreigners and would accept reasonable terms; reiteration of demands.	649
May 29 (186)	*From the Minister in China* (*tel.*) Statement of the five demands made by the bandits.	649
May 31	*From the Consul General at Shanghai* (*tel.*) Unconditional release of two captives.	650
June 1 (193)	*From the Minister in China* (*tel.*) Meeting of international commission of inquiry, May 31, to receive instructions of diplomatic body and arrange program for Lincheng visit. Commission's departure for Lincheng, June 1, U. S. representative on commission being accompanied by Congressman Wainwright of New York.	650
June 1 (97)	*To the Minister in China* (*tel.*) President Harding's endorsement of Secretary's view that general use of foreign force in China would be inadvisable. Request for Minister's views on feasibility and possible usefulness of foreign occupation of railroad from Tientsin to Pukow in manner analogous to occupation of line from Peking to sea; also for views on British suggestion concerning railway police and on possibility of inducing Government to install a budget system under control of an international auditing board.	650
June 2	*From the Consul General at Shanghai* (*tel.*) Unconditional release of four more captives.	652
June 6 (199)	*From the Minister in China* (*tel.*) Congressman Wainwright's arrival at Peking in advance of international commission and report that bandits and Governor of province appear to have reached agreement on taking bandits into army, but that bandits desire Roy Anderson's personal guarantee as to their pay; that Anderson is willing provided he is guaranteed in writing, also personally, by Tsao Kun.	652
June 6 (200)	*From the Minister in China* (*tel.*) Inadvisability of foreign occupation of Tientsin-Pukow railway. Views on foreign inspection or supervision of railway police force.	653
June 8 (207)	*From the Minister in China* (*tel.*) Report of international commission as to estimated number Chinese troops and number bandits within cordon; necessity for control of troops by Central Government; inadequacy of protection afforded Tientsin-Pukow railway.	654
June 10 (212)	*From the Minister in China* (*tel.*) Recommendation that 3d battalion of 15th Infantry be sent from Philippine Islands to Tientsin because of chaotic conditions in China.	655
June 10 (213)	*From the Minister in China* (*tel.*) Telegram from consul and assistant military attaché at Lincheng, June 9 (text printed) reporting bandits' acceptance of all terms with request for 3 more days for enrollment into army; efforts to effect release of captives by Monday.	655

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KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS, ETC.—Contd.

Date and number	Subject	Page
1923 June 11 (214)	*From the Minister in China* (*tel.*) Instructions, June 7, to consul and assistant military attaché at Lincheng to make clear to bandits that Anderson in no way represents the United States and that his signature to guarantee does not involve United States in any way. Their reply, June 10 (text printed) reporting satisfactory telegram from Tsao Kun regarding guarantee.	656
June 12 (107)	*To the Minister in China* (*tel.*) Request for fuller expression of views with respect to increasing U. S. forces at Tientsin and for a statement as to what action other powers may be contemplating.	656
June 12	*From the Consul General at Shanghai* (*tel.*) Report from consul at Lincheng of release of all foreign captives. Opinion that credit for release is due U. S. consul at Lincheng, Roy Anderson, and Wen, Chinese Commissioner of Foreign Affairs.	657
June 14 (222)	*From the Minister in China* (*tel.*) Reasons for suggesting increase in U. S. forces at Tientsin. Conference with British, French, and Japanese colleagues regarding increasing their forces at Tientsin.	657
June 14 (223)	*From the Minister in China* (*tel.*) Appointment of committee by diplomatic corps to make recommendations for settlement with Chinese Government. Commission's decision to demand (1) compensation, (2) guarantees for future, and (3) sanctions; agreement as to classes of compensation. Minister's objections to addition of progressive indemnity to classes of compensation.	658
June 15 (226)	*From the Minister in China* (*tel.*) Committee's adoption of guarantees for future (1) for imposition of penalties under 1901 protocol after inspection of troubled areas by foreign commission; and (2) for reforms in protection of Chinese railways. Committee's decision that sanctions should include punishment of offending civil and military officials and employees of railway, and settlement of harbor improvement of Shanghai, with extension of International Settlement and reorganization of Mixed Court. Discussion of methods to secure enforcement of demands.	659
June 19	*From the British Embassy* Expression of hope that United States will join in proposed concerted effort of diplomatic body to secure creation of railway police force under foreign officers and increased foreign control of railway revenues to pay force.	661
June 19 (229)	*From the Minister in China* (*tel.*) Recommendation that proposal for progressive indemnity be approved, in view of committee's adoption of term *indemnité* to cover all classes of compensation, including claim for loss of liberty and for moral and physical sufferings of foreign captives.	661

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KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS, ETC.—Contd.

Date and number	Subject	Page
1923 June 20 (231)	*From the Minister in China (tel.)* Committee's adoption of sanctions (1) for punishment of Generals Tien, Ho, Chang, and Chao; and (2) for extension of Shanghai Settlement, improvement of Shanghai harbor, and reorganization of Mixed Court. Concluding section of note for Chinese Government as drafted by U. S. Minister (text printed). Committee's decision not to report to diplomatic body until Governments have authorized measures for enforcing demands.	662
June 21 (118)	*To the Minister in China (tel.)* Department's disapproval of proposal to include in settlement of Lincheng affair such unrelated questions as extension of Shanghai Settlement, Mixed Court, etc., warning against any commitment until homogeneous plan can be authorized.	663
June 22 (233)	*From the Minister in China (tel.)* Inclusion in committee's report of claim for expense incurred by U. S. Chamber of Commerce, Shanghai, in providing subsistence and relief for captives.	664
June 22 (234)	*From the Minister in China (tel.)* Presentation of large claims by Major Allen, Major Pinger, and other victims of outrage.	664
June 22 (235)	*From the Minister in China (tel.)* Committee's decision to leave certain categories of pecuniary indemnities for action of Legations, diplomatic body demanding indemnity only for loss of personal property, for loss of liberty, and for relief expenses.	664
June 23 (236)	*From the Minister in China (tel.)* Reasons why Shanghai demands should be sustained, not as claim for pecuniary indemnity but as total of progressive sanctions announced by diplomatic body on May 9.	665
June 23 (121)	*To the Minister in China (tel.)* Department's suggestion that small international force be stationed at Tsinan for a year, as specific penalty for outrage in Shantung Province. Approval, in principle, of British plan to create railway police force; also of proposed penalties, etc. Inquiry as to possible use of political crisis to gain Chinese acquiescence in demands, disapproving, however, any demonstration of force for such purpose.	666
June 25 (238)	*From the Minister in China (tel.)* Desirability of stationing a force at Tsinan larger than Department proposes.	668
June 26 (126)	*To the Minister in China (tel.)* Reasons for disapproval of proposed demands with respect to Shanghai. Belief that suggestions for establishment of railway police and stationing of troops at Tsinan carry out policy of progressive sanctions.	669
June 29 (241)	*From the Minister in China (tel.)* Notification to committee of U. S. disapproval of demands with respect to Shanghai; committee's recognition of U. S. reasons as unanswerable.	671

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KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS, ETC.—Contd.

Date and number	Subject	Page
1923 June 29 (242)	*From the Minister in China (tel.)* Intention of certain Americans to raise indemnity claims to $150,000 each.	671
June 30 (546)	*From the British Chargé* Approval of committee's draft note to Chinese Government, with the exception of the demands with respect to Shanghai. Inquiry whether United States agrees to modified demands and whether United States would be prepared as last resort to enforce them by cooperating in naval demonstration, increasing garrison in North China, or establishment by powers of a railway police force.	671
July 2 (133)	*To the Minister in China (tel.)* No objections to categories of indemnities as designated in telegram no. 235, June 22. Authorization for acceptance by Legation of separate personal or supplementary claims.	674
July 9	*To the British Chargé* General concurrence in principles set forth in British memorandum of June 30; doubt, however, that demands could be secured by naval demonstration; and suggestion that withdrawal of recognition might prove effective as means of exerting pressure.	675
July 9 (138)	*To the Minister in China (tel.)* Summary of British memorandum of June 30 and Department's reply of July 9. Japanese disapproval of British suggestions concerning naval demonstration and organization of railway police force by powers. (Instructions to repeat to Tokyo.)	677
July 16 (261)	*From the Minister in China (tel.)* Completion of draft note to Chinese Government, with progressive sanctions omitted, indemnity increased, and subject of railway police reserved for future communication. Merits of French proposal for police reorganization, which Japanese are more likely to support than British plan; Japanese desire that diplomatic body work out entire program.	678
July 24 (147)	*To the Minister in China (tel.)* View that it would be hazardous to present demands without at least exploring measures for exerting pressure upon China; that there is no essential difference between British and French proposals concerning railway police; that withdrawal of recognition from Peking Government would not involve withdrawal of Legations from Peking. Decision not to request War Department to dispatch additional troops.	680
July 28	*To the British Embassy* Information that unqualified support cannot be given to plan for policing railways until practical details of plan have been agreed upon by diplomatic corps.	681
Aug. 14 (7732)	*From the Minister in China* Note from diplomatic body to Foreign Minister, August 10 (text printed) presenting categorical demands for damages, guarantees for future, and sanctions, as result of attack on foreigners at Lincheng.	682

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KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS, ETC.—Contd.

Date and number	Subject	Page
1923 Aug. 21 (289)	*From the Minister in China (tel.)* Details of plan for reorganization of Chinese railway police adopted by the committee August 20.	689
Aug. 25 (185)	*To the Minister in China (tel.)* Japanese amendments to plan for reorganization of Chinese railway police; Department's concurrence, except in proposal to change foreign codirector to adviser.	690
Aug. 29 (296)	*From the Minister in China (tel.)* Incorporation of amendments in committee's report to satisfaction of Japanese. Probability Chinese will reject plan as result of propaganda.	692
Sept. 28 (325)	*From the Minister in China (tel.)* Foreign Minister's intimation, in interview September 21, that demand for dismissal of General Tien was greatest difficulty, and hint of compromise by permitting General Tien to resign. Consideration by diplomatic body, September 27, of methods for answering Chinese reply to demands.	694
Sept. 29 (1852)	*From the Minister in China* Foreign Minister's reply, September 24, to diplomatic body's demands (text printed), deploring Lincheng incident; and stating Chinese intention to accept all except supplementary indemnity claims, to reorganize railway police on own initiative, to punish all culpable officials, and to conduct new campaign against banditry.	695
Oct. 2 (328)	*From the Minister in China (tel.)* Decision of diplomatic body to make early counter reply to Chinese Government maintaining original demands *en bloc;* discussion of possibility of nonrecognition in case of refusal of new Chinese administration to comply with demands.	701
Oct. 3 (329)	*From the Minister in China (tel.)* Japan's decision to approve committee's plan for reorganization of Chinese railway police.	702
Oct. 4 (211)	*To the Minister in China (tel.)* Interview with Chinese Minister wherein Minister expressed hope that Lincheng demands would be reconsidered, especially supplemental indemnities, and Secretary replied that changes were unlikely.	702
Oct. 4 (212)	*To the Minister in China (tel.)* Telegram, October 3, from Chinese Foreign Minister to Chinese Minister at Washington (text printed) instructing him to make representations against diplomatic body's insistence on original demands.	704
Oct. 5 (331)	*From the Minister in China (tel.)* Diplomatic body's note to Foreign Minister, October 4 (text printed) maintaining original demands.	704
Oct. 9 (336)	*From the Minister in China (tel.)* Chinese efforts to reach settlement, as result of decision of diplomatic corps not to attend inaugural reception to be held October 10. Possibility that diplomatic corps may accept compromise of resignation of General Tien.	705

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KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS, ETC.—Contd.

Date and number	Subject	Page
1923 Oct. 15	*The Chinese Minister for Foreign Affairs to the Dean of the Diplomatic Corps at Peking* Further concessions to demands, China agreeing in principle to inclusion of supplementary indemnities; information that General Tien has been removed and campaign against banditry has been renewed.	706
Oct. 18 (224)	*To the Minister in China* (*tel.*) Instructions to report concerning oral understanding between dean of diplomatic corps and Chinese Foreign Office regarding railway police scheme.	708
Oct. 20 (352)	*From the Minister in China* (*tel.*) Explanation that dean's acceptance of terms of Chinese Foreign Minister's note was conditional on understanding that Chinese Government would receive and consider diplomatic body's scheme for reorganization of railway police. Dean's proposal that Chinese Government be permitted to submit its own scheme framed upon confidential copy of diplomatic body's scheme. Publication simultaneously, October 16, of mandates relieving General Tien from office and elevating him to marshal.	708
Oct. 24 (229)	*To the Minister in China* (*tel.*) Disappointment that Tien's dismissal should be rendered nugatory by simultaneous promotion.	709

AMENDS BY THE CHINESE GOVERNMENT FOR THE KILLING OF CHARLES COLTMAN, AN AMERICAN CITIZEN, BY CHINESE SOLDIERS IN THE PRESENCE OF AN AMERICAN CONSUL

Date and number	Subject	Page
1922 Dec. 12 (489)	*From the Minister in China* (*tel.*) Shooting of Charles Coltman, U. S. merchant, by Chinese soldiers, following dispute as to Coltman's right to leave Kalgan in automobile with silver currency.	709
Dec. 13 (492)	*From the Minister in China* (*tel.*) Presence of U. S. consul at Kalgan in car with Coltman when shooting occurred. Representations to Foreign Office, demanding arrest and trial of offenders and reserving rights as to conditions of settlement.	710
Dec. 15 (495)	*From the Minister in China* (*tel.*) Death of Coltman. Oral representations to Premier and Foreign Minister charging Kalgan soldiers with murder of U. S. citizen and with firing on U. S. official. Recommendations as to amends to be demanded of Chinese Government and request for instructions. Details of case.	710
Dec. 20 (294)	*To the Minister in China* (*tel.*) Department's approval of suggested amends to be demanded of Chinese Government, and inquiry as to earning capacity of Coltman and financial condition of dependents. Advisability of issuing instructions to consular officers to prevent possible future abuse of U. S. privileges, in view of fact that Coltman was transporting funds for Chinese banks.	712

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AMENDS BY THE CHINESE GOVERNMENT FOR THE KILLING OF CHARLES COLTMAN —Continued

Date and number	Subject	Page
1922 Dec. 22 (502)	*From the Minister in China (tel.)* Unsatisfactory and frivolous note from Foreign Office contending that soldiers fired in self-defense, as consul and Coltman had fired first shots; that there was an administrative order prohibiting exportation of moneys from Kalgan; and that moneys belonged to Chinese banks. Consul's denial that Americans fired first shots. Explanation that neither consul nor Legation had been informed of administrative order and that question of money belonging to Chinese banks had not been raised at time of incident.	713
Dec. 23 (297)	*To the Minister in China (tel.)* Instructions, if investigation proves that soldiers' plea of self-defense was not justified, to advise Foreign Office that U. S. Government supports Minister's previous statements. Instructions also, if Chinese Government fails to act promptly, to indicate that United States considers this a test of confidence in Chinese Government and that it will influence U. S. attitude toward Boxer indemnity and other pending questions.	713
1923 Jan. 2 (2)	*From the Minister in China (tel.)* Conviction after investigation that none of Americans attempted to fire. Note to Foreign Minister refuting Chinese contentions; and demanding apologies from Chinese to U. S. Government and from Military Governor to consul, dismissal and punishment of responsible officers, indemnity, cancelation of transportation prohibition, etc. Information that Military Governor was absent from Kalgan at time Coltman was shot.	714
Jan. 3 (4)	*From the Minister in China (tel.)* Foreign Minister's request that U. S. demands be withdrawn pending receipt of Chinese report on investigations and expression of regret; U. S. Minister's refusal and further representations. Note from Foreign Minister (text printed) apologizing to U. S. Government for incident and reserving to some future communication further consideration of case. Opinion that there will be discussion, haggling, and delay with respect to other demands.	715
Jan. 4	*Memorandum by the Chief of the Division of Far Eastern Affairs, Department of State* Conversation with Chinese Chargé, in which Chargé, upon being informed of the extreme seriousness with which United States regarded the Coltman case, volunteered to send a strong cable to his Government.	716
Jan. 13	*Memorandum by the Chief of the Division of Far Eastern Affairs, Department of State* Further conversation with Chinese Chargé: Chargé's disposition to argue certain points reported by Chinese investigating committee; division chief's refutation, stating that China seeks to evade issue and find excuses for delay; Chargé's promise to send another strong telegram urging prompt settlement of main issues.	717
Jan. 17 (21)	*From the Minister in China (tel.)* Foreign Minister's contention that settlement of case is matter of practicability as well as justice; indemnity and punishment of officers the chief obstacles to adjustment.	718

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Amends by the Chinese Government for the Killing of Charles Coltman—Continued

Date and number	Subject	Page
1923 Jan. 30 (36)	*From the Minister in China (tel.)* Further representations to Premier repudiating contentions that U. S. demands are unjust and that Chinese tribunals should determine matter, and placing responsibility for crime on Kalgan military officers acting in contravention of U. S. treaty rights. Premier's postponement of reply to U. S. demands.	720
Jan. 31 (21)	*To the Minister in China (tel.)* Authorization to inform Premier that Military Governor's obstruction of justice in Coltman case is in effect ratification by him of his subordinates' action and that, unless satisfaction is given within reasonable time, United States will add to terms a demand for his dismissal from office. Request for Minister's views.	722
Feb. 11 (48)	*From the Minister in China (tel.)* Further unsatisfactory reply received from Foreign Office February 10 (text printed).	723
Feb. 13 (30)	*To the Minister in China (tel.)* Concurrence in Minister's view that latest Foreign Office reply is unsatisfactory. Request for views on Department's telegram no. 21, January 31.	724
Feb. 14 (53)	*From the Minister in China (tel.)* Opinion that demand for dismissal of Military Governor would appear unfair and also that it could not be obtained; and that time limit for settlement of Coltman case would serve no good purpose.	724
Feb. 15 (56)	*From the Minister in China (tel.)* Further conversation with Premier, centering on Premier's proposal to have Tutung voluntarily punish officers to avoid violation of Chinese sentiment, with Premier's guarantee that penalties would meet U. S. demands; inferiority of consul's rank an obstacle to apology from Tutung.	725
Feb. 19 (35)	*To the Minister in China (tel.)* Department's unconcern as to method of Chinese in arranging for punishment of officers, provided consul at Kalgan is witness to infliction of penalties.	726
Feb. 23 (37)	*To the Minister in China (tel.)* View that penalties imposed by Tutung were too mild and that punishment cannot be of value unless delivered publicly in presence of consul. Reliance upon Minister's judgment as to advisability of demanding more satisfactory action.	727
Mar. 14 (1410)	*From the Minister in China* Note from Foreign Minister, March 2 (text printed) transmitting formal apology of Military Governor to U. S. Minister for death of Coltman and what purports to be apology for attack on U. S. consul. Note to Foreign Minister, March 27 (text printed) agreeing to modify demand for apology from Tutung and reiterating unfulfilled demand for punishment of officers and unacceptability of indemnity offer.	727

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Amends by the Chinese Government for the Killing of Charles Coltman—Continued

Date and number	Subject	Page
1923 Apr. 7 (59)	*To the Minister in China* (*tel.*) Instructions to report upon status of Coltman case; and authorization, at Minister's discretion, to issue public statement to correct any impression that case has been settled to satisfaction of United States or that United States is permitting case to be dropped.	731
Apr. 18 (112)	*From the Minister in China* (*tel.*) Further negotiations resulting in Chinese proposition that no further demands for apology be made upon Tutung, that punishment of three officers be limited to summary dismissal, and that size of indemnity be determined by United States subject to Chinese approval. Recommendation that proposition be accepted. Opinion that no satisfactory settlement can be obtained without use of diplomatic pressure hurtful to China.	732
Apr. 26 (73)	*To the Minister in China* (*tel.*) Acceptance of Chinese proposal concerning determination of size of indemnity; unsatisfactoriness of suggestions concerning punishment of officers and apology by Tutung. Desire that offending officers be barred from Government employment in future and insistence that Tutung make formal apology at Kalgan consulate or to U. S. Minister.	734
May 4 (129)	*From the Minister in China* (*tel.*) Presentation to Foreign Minister of U. S. refusal to accept Chinese proposals, Conference with Tsao Kun at Paotingfu and Tsao Kun's promise to have Tutung offer suitable apology at U. S. Legation.	735
May 5 (131)	*From the Minister in China* (*tel.*) Apology of Tutung of Chahar at Legation for the firing on U. S. consul and Coltman. Request that indemnity be fixed promptly.	736
May 16 (83)	*To the Minister in China* (*tel.*) Advisability of reserving right to protest in event dismissed officers are again taken into military service. Fixing of indemnity for Coltman's death at 25,000 gold dollars.	737
May 26 (184)	*From the Minister in China* (*tel.*) Dismissal of chief of staff and other responsible officers, and acceptance of U. S. claims for $25,000 indemnity. (Footnote: Payment of claim on September 20.)	737

Refusal by the United States To Recognize the Applicability of Chinese Martial Law to American Citizens or to American Naval Vessels

Date and number	Subject	Page
1922 Aug. 18 (208)	*To the Minister in China* Opinion that declaration of martial law by Chinese authorities cannot operate to deprive U. S. citizens of any rights or privileges enjoyed by reason of existing treaties between the United States and China.	738

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REFUSAL BY THE UNITED STATES TO RECOGNIZE THE APPLICABILITY OF CHINESE MARTIAL LAW TO AMERICAN CITIZENS OR TO AMERICAN NAVAL VESSELS—Continued

Date and number	Subject	Page
1923 Nov. 26 (1952)	*From the Minister in China* Note from commissioner of foreign affairs of Kwangtung Province to U. S. consul general at Canton, November 7 (text printed) announcing restrictions upon movements of foreign vessels in ports and interior rivers owing to declaration of martial law; consul general's reply, November 13 (text printed) denying right of local authorities to interfere with movements of U. S. vessels. Minister's approval, with comment that consul general might have indicated that movements of U. S. vessels are based upon treaty stipulations; and Minister's desire to circularize consuls in China in regard to incident.	739
1924 Jan. 29 (556)	*To the Minister in China* Article IX of the treaty of 1858 (text printed) stipulating rights of U. S. vessels in Chinese waters. Approval of Minister's comment on treaty stipulations and his proposal to circularize consuls in China.	740

INCREASE OF LAWLESSNESS ON THE UPPER YANGTZE RIVER AND RECOMMENDATIONS BY AMERICAN OFFICERS IN CHINA TO REENFORCE THE AMERICAN GUNBOAT PATROL

Date and number	Subject	Page
1923 Mar. 20 (1422)	*From the Minister in China* Note from U. S., British, French, and Japanese representatives to Foreign Office, March 19 (text printed) making joint representations regarding outrages against foreign life and property on Upper Yangtze and transmitting memorandum prepared February 19 by senior officers of principal naval forces operating on Yangtze River (text printed).	741
June 13 (1605)	*From the Minister in China* Recommendation that six new river gunboats be constructed for proper protection of U. S. lives and property in region of Yangtze.	744
July 27 (264)	*From the Minister in China (tel.)* Telegram from commander of the Yangtze Patrol (text printed) reporting attacks on U. S. S. *Alice Dollar* and *Monocacy*, and defeat by latter vessel of attempt to establish illegal blockade of Chungking.	745
Aug. 6 (27403-340:23)	*From the Acting Secretary of the Navy* Inclusion in budget estimates for next Congress of a request for the construction of six river gunboats for service on the Yangtze River. Inquiry as to desirability of requesting emergency appropriation for their immediate construction.	746
Aug. 20	*To the Secretary of the Navy* Opinion that contemplated request for emergency appropriation for gunboats on Yangtze is fully warranted.	747
Aug. 28 (27403-340: 23)	*From the Acting Secretary of the Navy* Inadequacy of vessels constituting the Yangtze River Patrol; and reasons for requesting Congress for new vessels specially designed for service on Chinese rivers.	747

CHINA

INCREASE OF LAWLESSNESS ON THE UPPER YANGTZE RIVER, ETC.—Continued

Date and number	Subject	Page
1923 Oct. 16	*To the Secretary of the Navy* Gratification over inclusion in Navy Department's estimates for coming year of six new river gunboats especially designed for service on Chinese rivers. Review of need for maintaining adequate naval patrol on Yangtze.	748
Dec. 31 (525)	*To the Minister in China* Disapproval of official acquiescence on part of U. S. representatives in China to search of U. S. merchantmen by unarmed insurgents; inadvisability, however, of withdrawal by consul at Chungking from position already taken in Foochow case.	750
1924 Feb. 5 (27403-340:39-L)	*From the Secretary of the Navy* Information that proposed legislation regarding six new gunboats is not in conflict with President's financial program. Presentation of proposed legislation to House, with recommendation for enactment. (Footnote: Construction of six new river gunboats authorized by act by Congress approved December 18, 1924, and gunboats completed in 1928.)	751

RELATION OF CONSULAR OFFICERS TO OTHER AMERICAN OFFICERS IN CHINA

Date and number	Subject	Page
1922 Oct. 30	*To Diplomatic and Consular Officers in China* Instructions relative to administrative duties, representation, and rank of U. S. consular officers in China, defining their relation to officers of U. S. Court for China and to officials of other branches of U. S. Government in China.	751
1923 Feb. 22 (58)	*From the Vice Consul in Charge at Chungking* Interpretation of Navy regulations by commanders of the *Monocacy* and *Palos* as giving commander of the *Monocacy* the right to attempt to secure settlement at Wanhsien of a civil claim of the Standard Oil Co. of New York. Vice consul's disagreement with interpretation; and letter, January 22, from the commander of the Yangtze River Patrol to the commander of the *Monocacy*, also disagreeing with interpretation (text printed).	752

FINAL REPORT OF THE PRESIDENT OF THE INTER-ALLIED TECHNICAL BOARD FOR THE SUPERVISION OF THE CHINESE EASTERN AND SIBERIAN RAILWAYS

Date and number	Subject	Page
1923 Mar. 15	*From the President of the Technical Board* Final report upon activities and conditions surrounding work of Inter-Allied Technical Board.	758
Mar. 29	*To the President of the Technical Board* Expression of high appreciation of services rendered by President of Technical Board in supervision of Chinese Eastern and Siberian Railways, and also of work of technical and clerical subordinates.	775
Apr. 17	*From the President of the Technical Board* Final balance sheet, as of April 17, 1923, covering U. S. share of Allied fund advanced for supervising Chinese Eastern and Siberian Railways.	777

CHINA

Foreign Representations Dissuading Chang Tso-lin From Assuming Control of the Land Office of the Chinese Eastern Railway

Date and number	Subject	Page
1923 July 31	*From the Consul at Harbin (tel.)* Demand of General Chang Huan-hsiang of Harbin, acting allegedly under instructions of General Chang Tso-lin of Mukden, that land department of Chinese Eastern Railway be handed over to him. Efforts of U. S., British, French, and Japanese consuls to delay step pending instructions from their respective Ministers.	778
Aug. 2 (159)	*To the Minister in China (tel.)* Instructions to make representations to Chinese Government against alteration of *status quo*. Suggestion that powers participating in Washington Conference make joint representations.	778
Aug. 2	*From the Consul at Harbin (tel.)* Failure of General Chang Huan-hsiang's attempt to take over land department on August 1 because of opposition of railway officials and representatives of the Russo-Asiatic Bank. Apparent weakening of Chinese officials in their aggressive attitude and endeavor to find satisfactory retreat.	779
Aug. 12 (284)	*From the Minister in China (tel.)* Minister's representations to Foreign Office, August 3; also French protest. Joint U. S., British, French, and Japanese representations, August 11; and instructions to consular officers at Mukden to make friendly representations to Chang Tso-lin. Absence of Italian, Belgian, and Portuguese Ministers from Peking. (Footnote: Notification that Italian Minister joined in representations.)	779
Aug. 21 (290)	*From the Minister in China (tel.)* Admission by Chang Tso-lin, in conference with consuls at Mukden, of incorrect procedure of Harbin officials; his assurances of no intention to confiscate railway property although control over settlements is sought.	780
Sept. 14 (313)	*From the Minister in China (tel.)* Minister's trip to Harbin and other points on Chinese Eastern Railway; his speech, September 6, at Harbin; his conference with Chang Tso-lin, September 10, in which Minister suggested that Chang might solve his difficulties by suspending order creating new land department, pending conferences between Harbin authorities and railway company.	780
Sept. 18 (315)	*From the Minister in China (tel.)* Press account (text printed) of order by Chang Tso-lin to postpone taking over of railway land department, pending discussion of subject by railway directors, foreign consuls, and Chinese officials.	782

CHINA

Continued Support by the United States to the Federal Telegraph Company in Efforts To Obtain Execution of Its Contract With the Chinese Government

Date and number	Subject	Page
1923 Feb. 10 (47)	*From the Minister in China (tel.)* Japan's further protest to China against execution of terms of Federal Telegraph Co.'s contract as infringement on Mitsui contract. China's reasons for refusing to consummate with Federal Co. arrangements made necessary by inclusion of Radio Corporation of America. Official request that U. S. Government secure withdrawal of Japanese protest.	783
Feb. 14 (54)	*From the Minister in China (tel.)* Doubtful outlook for conclusion of Federal contract because of China's reported desire to remain on friendly terms with opposition cable companies and because of report that British, French, and Japanese radio groups have agreed to pool their radio interests in China, which agreement is endorsed by Great Northern Telegraph Co. Informal representations to Chinese officials urging immediate conclusion of Federal agreement to prevent alien radio monopoly.	783
Feb. 16 (60)	*From the Minister in China (tel.)* Suggestion that Chinese vacillation might be overcome if Chinese Chargé at Washington could be induced to cable his Government a report of strong U. S. representations for immediate conclusion of Federal agreement.	784
Feb. 28 (70)	*From the Minister in China (tel.)* Chinese Cabinet's affirmation, February 27, of its intention to execute the Federal contract; reluctance, however, to take necessary measures for contract's execution until Japanese opposition has been overcome.	785
Mar. 1 (1387)	*From the Minister in China* Note to Foreign Office, February 13 (text printed) making representations against Mitsui Co.'s claim to exclusive rights as being contrary to Chinese treaty obligations and not in accord with spirit of the nine-power treaty concerning China; and requesting that necessary steps be taken to execute Federal contract.	786
Mar. 8	*To the Chinese Legation* Representations against Japanese interference with execution of Federal contract as being contrary to principle of open door reasserted and confirmed by the nine-power treaty and the Shantung Agreement; reservation of all rights with respect to any purported telegraph and cable monopoly.	788
Mar. 8	*To the Japanese Embassy* Representations against interference with execution of Federal contract as being contrary to provisions of Shantung Agreement concerning monopolies; reservation of all rights with respect to any purported telegraph and cable monopoly.	789
Apr. 10 (100)	*From the Minister in China (tel.)* Prime Minister's obstructive tactics. Notes to Foreign Office, March 15 and 22, demanding replies to former communications; also interview, April 2, with Prime Minister. Suggestion that Secretary of State telegraph strong personal message for presentation to Wellington Koo, new Foreign Minister.	790

CHINA

Continued Support by the United States to the Federal Telegraph Company—Continued

Date and number	Subject	Page
1923 Apr. 22 (117)	*From the Minister in China (tel.)* Japan's urgent representations to Chinese officials that Federal contract should not be considered by Cabinet at present, on ground that negotiations are being conducted with U. S. Government by Japanese Ambassador at Washington.	791
Apr. 24 (72)	*To the Minister in China (tel.)* Instructions to advise Foreign Office and other interested authorities that no negotiations are in progress with Japan regarding Federal contract; that United States has merely addressed a remonstrance to Japan against interference with Federal contract. Inability of United States to comprehend China's withdrawal of cooperation and apparent willingness to permit continued delays.	791
May 28 (416)	*From the British Ambassador* Opinion that recommendations of experts put forward on February 4, 1922, at the Washington Conference provide the best solution and should be generally approved and put into execution. Inquiry as to U. S. views.	793
June 7 (202)	*From the Minister in China (tel.)* Chinese Cabinet's decision to postpone execution of Federal contract until settlement with Japanese. Request that strong protest be expressed to Chinese Minister at Washington.	794
June 7 (204)	*From the Minister in China (tel.)* Expiration of Federal option February 28 and its renewal until July 15. Request for confirmation of report that Radio Corp. will not extend present agreement beyond July 15 and may thereafter be compelled to enter into arrangements with Mitsui Co.	795
June 9 (103)	*To the Minister in China (tel.)* Request for views of Minister and of Schwerin, President of Federal Co., as to three alternative methods of procedure regarding wireless communication with China.	796
June 12 (216)	*From the Minister in China (tel.)* Schwerin's views (text printed) and Minister's comments and recommendations regarding alternative methods of procedure, both approving independent Federal contract.	798
June 19 (115)	*To the Minister in China (tel.)* Explanation as to differences between alternative proposals. Inquiry whether Schwerin approves giving British copies of proposed modifications in Federal contract.	801
June 20 (506)	*From the British Ambassador* Renewal of inquiry as to U. S. views regarding experts' recommendations.	803
June 25 (237)	*From the Minister in China (tel.)* Schwerin's reply (text printed) commenting on trend of negotiations away from Federal contract in favor of international wireless agreement on basis of experts' recommendations; and indicating his concurrence in giving desired information to British with request that it be considered confidential.	803

CHINA

CONTINUED SUPPORT BY THE UNITED STATES TO THE FEDERAL TELEGRAPH COMPANY—Continued

Date and number	Subject	Page
1923 June 25 (239)	*From the Minister in China (tel.)* Hope that Department will bring strong pressure upon Chinese Minister to urge his Government to carry out Federal contract.	804
June 28	*To the Secretary of the British Embassy* Expression of regret at inability to communicate details of proposed amendments to Federal contract as requested; assurance, however, that they will not be incompatible with recommendations of radio experts.	804
June 28 (128)	*To the Minister in China (tel.)* Radio Corp.'s terms for going forward with Federal enterprise, which includes corporation's purchase of the interests of Federal Co. of California. Disinclination of Department to pass on corporation's suggestions. Request for views of Minister and Schwerin.	805
July 3 (248)	*From the Minister in China (tel.)* Message from Schwerin (text printed) acquiescing in Radio Corp.'s suggestions and in any action corporation representative may take at London meeting.	808
July 5 (249)	*From the Minister in China (tel.)* Telegram from Chinese Foreign Office to Chinese Minister at Washington (text printed) informing him of Cabinet's decision to maintain Federal contract; completion of Mitsui station by end of July and Government's intention to take over station according to supplementary contract, thus enabling Federal contract to proceed.	808
July 12 (583)	*From the British Chargé* Inquiry as to correctness of provisions of clause of Federal's supplementary agreement of September 19, 1921, relating to handling of Chinese-American traffic (text printed). Comment that clause appears to be inconsistent with U. S. assurances and with memorandum of experts at Washington Conference.	808
July 14 (259)	*From the Minister in China (tel.)* Substitution of introduction (text printed) for preamble and Article 2 of Federal contract; signature and affixing of official seal to document by Ministry of Communications, July 13; Schwerin's request that notice be sent to Radio Corp. and Federal Co., but not made public until August 7.	809
July 19	*To the British Chargé* Statement that U. S. assurances covered only the proposed amendments and not the basic agreements themselves; that the clause relating to handling of Chinese-American traffic (text printed) is contained in one of the basic agreements; also that the traffic arrangement does not constitute a monopoly in contravention to the memorandum of experts at Washington Conference.	810
July 19 (304)	*From the Chargé in Great Britain (tel.)* From Owen D. Young and General Harbord of Radio Corp.: Request for attitude toward proposal to proceed under Federal contract prior to time when Great Northern Cable Co. grant for monopoly of Chinese external communications expires in 1929; also toward exchange of messages as tests between Mitsui station at Peking and Radio Corp.'s Long Island and San Francisco stations.	812

CHINA

Continued Support by the United States to the Federal Telegraph Company—Continued

Date and number	Subject	Page
1923 July 21 (293)	*To the Ambassador in France (tel.)* Instructions to inform Radio Corp. officials of Department's opinion that under treaty stipulations China had no power to grant monopoly such as is claimed by Great Northern Cable Co. or to divest U. S. interests, for that company's benefit, of their existing rights; Department's consent to proposed tests with Mitsui station, on understanding that any arrangement for exchange of traffic would be subject to Department's approval.	813
July 25 (612)	*From the British Chargé* Information that British Minister at Peking has been instructed to defend Marconi Co.'s interests insofar as they are affected by Federal agreement, and that British Government must continue to oppose Federal contract until United States accepts Washington experts' recommendations.	814
July 26	*To the British Chargé* Information that Department is prepared to advise U. S. firms that it has no objection to their coming to an arrangement with British, French, and Japanese radio interests on basis of recommendations of Washington experts, upon understanding that this does not imply U. S. recognition of monopolistic or exclusive rights claimed by cable companies and upon condition that governments concerned likewise give approval.	815
July 27	*To the British Chargé* Request to be apprised as to whether British Government intends to support Marconi Co.'s monopolistic claim or whether it is prepared to give assurance that it will support only such enterprise as involves no monopolistic element or abridgement of equality of opportunity.	816
Aug. 13 (678)	*From the British Chargé* Information that U. S. acceptance of experts' recommendations has removed grounds for opposition to Federal contract and that British Minister at Peking will be instructed accordingly.	817
Aug. 16	*From the President of the Radio Corporation of America* Interview of Radio Corp. officials with representatives of British Marconi Co. and Compagnie Générale de Télégraphie at London, July 19, on Chinese radio communications.	818
Aug. 31	*To the President of the Radio Corporation of America* Renewal of suggestion that traffic arrangements with Mitsui station should be declined until diplomatic questions have been adjusted.	819
Aug. 31	*To the Federal Telegraph Company* Suggestion that company consider advisability of coming to an agreement with British, French, and Japanese radio interests on basis of Washington experts' recommendations.	820
Aug. 31	*To the Vice President of the International Western Electric Company* Direction of attention to experts' recommendations for broadening of China National Wireless Co. to facilitate manufacture in China of radio apparatus; and suggestion that International Western Electric Co. consider advisability of arrangement on basis of these recommendations.	820

CHINA

Continued Support by the United States to the Federal Telegraph Company—Continued

Date and number	Subject	Page
1923 Nov. 5	*To the President of the Federal Telegraph Company of Delaware* Acknowledgment of notice that Federal Telegraph Co. of California has assigned rights and titles to Federal Telegraph Co. of Delaware for erection of wireless stations in China; information that Minister at Peking has been instructed to render all appropriate diplomatic support in connection with fulfillment of Federal contract.	821
Nov. 8 (951)	*From the British Chargé* Japan's disposition to accept and expedite plan of cooperation recommended by experts, subject to two conditions regarding paragraphs 2 and 6 of the Washington experts' recommendations. Inquiry whether United States will be disposed to meet objections of Japan.	822
Nov. 24	*To the British Chargé* Inability to meet Japan's objections to experts' recommendations.	823
Dec. 27 (257)	*To the Minister in China (tel.)* Chinese Foreign Minister's suggestion that United States send China a note expressing continued interest of U. S. Government in Federal enterprise, to counteract Japanese opposition. Instructions to consult Foreign Minister before presenting note.	824
Dec. 31 (433)	*From the Minister in China (tel.)* Report of Japan's appeals to China for maintenance of monopoly clause in Mitsui contract. Opinion that U. S. consideration would be given suggested joint control of wireless by Japanese, Chinese, and U. S. interests, if Mitsui station only was involved. Presentation of memorandum refuting Japan's contentions.	825

Rejection by Japan of the Proposal by China To Abrogate the Agreements of May 25, 1915

Date and number	Subject	Page
1923 Mar. 27 (174)	*To the Chargé in Japan* Chinese note of March 10 to Japan (text printed) proposing abrogation of treaties and of exchanges of notes of May 25, 1915. Japan's reply, March 14 (text printed) rejecting proposal. Japanese Ambassador's request for Secretary's observations on subject; latter's refusal to make any comment or add anything to what he had said upon this subject at Washington Conference.	826
Apr. 5 (57)	*To the Minister in China (tel.)* Instructions to state that no interview with Chinese Chargé has taken place on subject of retrocession of leased territory in China, and to refer, in this connection, to U. S. position as spread on records of Washington Conference.	830

COLOMBIA

Employment of American Financial Advisers by the Government of Colombia

Date and number	Subject	Page
1922 Dec. 19 (544)	*From the Colombian Minister* Request that names of qualified U. S. experts be suggested as technical financial advisers to Colombian Government, particularly in organizing Bank of Issue and in making study of changes in national finance system.	831
1923 Feb. 13 (578)	*To the Minister in Colombia* Department's recommendation of Professor E. W. Kemmerer as head of financial mission to Colombia; his qualifications. Names of other experts recommended. Status of mission.	831

COSTA RICA

Protocol of Agreement Between the United States and Costa Rica Relating to an Interoceanic Canal, and the Failure of Costa Rica To Ratify

Date and number	Subject	Page
1923 Jan. 20	*To President Harding* Draft protocol (text printed) of agreement between the United States and Costa Rica in regard to future negotiations for construction of an interoceanic canal by way of Lake Nicaragua.	834
Mar. 27 (19)	*From the Minister in Costa Rica (tel.)* Report that Costa Rican ratification of canal protocol is doubtful.	835
Mar. 31 (10)	*To the Minister in Costa Rica (tel.)* Instructions to make no representations to secure desired ratification of protocol.	835
Apr. 14 (23)	*From the Minister in Costa Rica (tel.)* Report that President has withdrawn canal protocol from Congress.	836

CUBA

Failure of President Zayas To Apply Vigorously the Program of Reform

Date and number	Subject	Page
1923 Jan. 13	*Memorandum by Mr. A. N. Young of the Office of the Economic Adviser, Department of State* Department's approval of draft paragraph (text printed) to be inserted in prospectus for Cuban loan to be floated by J. P. Morgan & Co.	837
Feb. 3 (C–S–258)	*From the Representative on Special Mission in Cuba* Letter from representative of J. P. Morgan & Co., January 22 (text printed) requesting advice concerning Cuban Cabinet crisis and possible Cabinet changes. Note from President Zayas, February 1 (text printed) giving assurances that he had no intention of making Cabinet changes; and conveying information that decrees were being prepared nullifying old public works contracts.	838

CUBA

Failure of President Zayas To Apply Vigorously the Program of Reform—Continued

Date and number	Subject	Page
1923 Feb. 23	*To the Ambassador in Cuba* Expression of gratification at President Zayas' assurances concerning Cabinet changes and at information regarding annulment of old public works contracts.	843
July 11 (47)	*From the Ambassador in Cuba (tel.)* Passage, with great secrecy, of bill reorganizing national lottery. Ambassador's purpose to request Presidential veto if bill is inimical to lottery reform.	844
July 13 (57)	*To the Ambassador in Cuba (tel.)* *Aide-mémoire* handed to Cuban Chargé (text printed) making representations against alleged lottery reorganization.	844
July 24 (51)	*From the Ambassador in Cuba (tel.)* Passage of lottery bill by Lower House over President's veto; Lower House resolution giving reasons for overriding veto.	845
July 25 (52)	*From the Ambassador in Cuba (tel.)* Passage of lottery bill by Senate over President's veto; Senate resolution making objectionable reference to U. S. interference.	846
July 28 (63)	*To the Ambassador in Cuba (tel.)* Instructions to come to Washington for conference. (Footnote: Ambassador left Habana August 2 and remained in the United States until December 14.)	846
Aug. 18 (260)	*From the Chargé in Cuba* Decree authorizing payment of 7 million dollars to the United States as balance of 10-million-dollar loan of 1917, payment to be effected through National City Bank of New York and J. P. Morgan & Co.	847
Undated	*Memorandum by the Secretary of State of a Conversation with the Cuban Chargé, August 21, 1923* Discussion of press reports regarding possible U. S. intervention in Cuba. Secretary's assertion that efforts of the United States have been directed to help Cuba, but that lottery law points to another era of corruption; and that, if Cuba persists in this course, United States cannot be held responsible for the inevitable disaster.	847
Aug. 31	*To the Cuban Chargé* Liquidation of demand obligations of Cuban Government dated March 27 and November 4, 1918, with accrued interest due the United States, and arrangements for surrender of collateral security.	848
Sept. 11 (91)	*To the Chargé in Cuba (tel.)* Authorization to state to Diaz Albertini, representative of Liberal leaders in Cuban Congress, that repeal of new lottery law would be gratifying; also that if Cuban Congress rejects U. S. advice and an unstable and inefficient government results, it must accept responsibility for the situation.	849

CUBA

Failure of President Zayas To Apply Vigorously the Program of Reform—Continued

Date and number	Subject	Page
1923 Undated	*Memorandum by the Secretary of State of a Conversation with the Appointed Cuban Ambassador, November 15, 1923* Secretary's welcome and assurances of U. S. friendly attitude toward Cuba; his statement that United States had no intention of intervening in Cuba unless Cuba herself made it necessary; his assertion that United States had been disquieted by conditions in Cuba, especially by the passage of the lottery law.	850
Dec. 13	*Extracts from the Remarks of the Cuban Ambassador on the Occasion of His Reception by President Coolidge* Reference to past relations between the two Governments and U. S. role in Cuban affairs since joint resolution of 1898; statement of Cuba's national principles and desire for continuance of friendly advice and aid of United States.	851
Dec. 13	*President Coolidge's Reply to the Remarks of the Cuban Ambassador on the Occasion of His Reception* Expression of pleasure upon receipt of credentials as first Cuban Ambassador to the United States and assurance of continuance of solicitude for welfare of Cuba and of friendly advice and aid of United States.	853

Revision of the Cuban Railway-Merger and Ports-Closing Bill Upon Representations by the United States

Date and number	Subject	Page
1923 July 21 (92)	*To the Ambassador in Cuba* Instructions to investigate and report on proposed Tarafa bill for consolidation of railways and reclassification of ports, latter measure imposing a high duty on sugar shipped from private wharves not connected with consolidated railways.	854
July 27 (220)	*From the Ambassador in Cuba* Report of preliminary investigation of Tarafa bill; information of appointment of committee by various U. S. companies to oppose bill and of demands upon both Houses for open hearings on measure.	855
Aug. 10 (67)	*To the Chargé in Cuba (tel.)* Note for Cuban Government (text printed) stating U. S. objections to Tarafa bill and expressing hope that legislation will not be enacted without affording opportunity for presentation of objections by all interested parties and consideration of probable effects.	857
Aug. 11 (72)	*From the Chargé in Cuba (tel.)* Presentation of note regarding Tarafa bill, as instructed.	859
Aug. 23 (78)	*To the Chargé in Cuba (tel.)* Tarafa's conference with Department. Proposed conference between Tarafa and sugar interests to discuss elimination from bill of provision closing existing private ports, retention of provisions prohibiting imports through such ports, and addition of provision prohibiting in future the establishment of private ports.	859

CUBA

Revision of the Cuban Railway-Merger and Ports-Closing Bill Upon Representations by the United States—Continued

Date and number	Subject	Page
1923		
Aug. 30 (296)	*From the Chargé in Cuba* Press report of compromise reached in New York between Tarafa and U. S. sugar interests eliminating confiscatory clauses in bill. Formidable opposition in Cuba to bill as being monopolistic and otherwise objectionable.	859
Sept. 13 (96)	*From the Chargé in Cuba (tel.)* Receipt of Tarafa bill as accepted by leaders in Congress, with monopolistic features seemingly removed and apparently carrying out agreement with sugar companies. Information that Senate will consider bill September 18.	861
Sept. 29 (96)	*To the Chargé in Cuba (tel.)* Passage of Tarafa bill by both Houses of Cuban Congress. Instructions to request President to interview representative of certain U. S. interests regarding manner in which U. S. rights are prejudiced by bill.	861
Oct. 9 (125)	*From the Chargé in Cuba (tel.)* Signature of Tarafa bill by President Zayas. Expectation that his promised interpretation of bill will give satisfaction to U. S. interests.	861

Establishment of Federal Reserve Bank Agencies in Cuba

Date and number	Subject	Page
1923		
Apr. 17 (33)	*To the Ambassador in Cuba (tel.)* Proposal of Federal Reserve Bank of Boston to open agency in Habana, where First National Bank of Boston would establish branch office. Request for opinion.	862
Apr. 17 (17)	*From the Ambassador in Cuba (tel.)* Opinion that conditions are favorable to success of proposed agency and that announcement of the project would be helpful in present Cuban crisis.	862
Undated [Rec'd May 5] (24)	*From the Ambassador in Cuba (tel.)* Suggestion for conference between Governor Harding and Federal Reserve Board. Comments on absorption of private banking interests in Cuba by Canadian banks, whose economic interests are unimportant compared with those of United States. Opinion that Federal Reserve Board agency would provide needed competition to combat exorbitant interest rates and to strengthen U. S. banking influence in Cuba.	862
May 8 (39)	*To the Ambassador in Cuba (tel.)* Concurrence of Governor Harding in opinion of Federal Reserve Board that proposed central bank in Cuba cannot be established under Federal Reserve Act. Possibility, however, that Board may establish agency in Cuba.	864
June 29 (54)	*To the Ambassador in Cuba (tel.)* Decision of Federal Reserve Board to grant to Federal Reserve Banks of Atlanta and Boston each an agency in Cuba to cooperate as agents of Federal Reserve Banks.	865

CZECHOSLOVAKIA

Exchange of Notes Between the United States and Czechoslovakia Mutually According Most-Favored-Nation Treatment in Customs Matters

Date and number	Subject	Page
1923 July 19 (27)	*To the Minister in Czechoslovakia* (*tel.*) Instructions to inquire whether it would be agreeable to Czechoslovak Government to negotiate a general treaty of amity, commerce, and consular rights with the United States.	866
July 21 (34)	*From the Minister in Czechoslovakia* (*tel.*) Assurance by Foreign Minister that Czechoslovakia will be glad to negotiate general treaty.	866
Aug. 3 (131)	*To the Minister in Czechoslovakia* Transmittal of draft of proposed treaty for submission to Government.	866
Aug. 30 (39)	*From the Minister in Czechoslovakia* (*tel.*) Hesitation in presenting draft treaty, no provision having been made therein regarding import license system. Suggestion of temporary arrangement by exchange of notes, to avoid penalization of U. S. imports. Government's approval of tentative draft (text printed) proposing provisional agreement on most-favored-nation basis, pending conclusion of treaty.	867
Sept. 6 (35)	*To the Minister in Czechoslovakia* (*tel.*) Draft of note for presentation to Foreign Minister (text printed) requesting unconditional most-favored-nation treatment of U. S. products with respect to quantities, valuation, licensing, and import and export duties, pending conclusion of general treaty.	868
Sept. 6 (505)	*From the Minister in Czechoslovakia* Assertion that ordinary provisions regarding most-favored-nation clause will not protect U. S. commerce in Czechoslovakia; explanation of results of import license system, necessitating some special arrangement such as exchange of notes.	868
Sept. 26 (41)	*From the Minister in Czechoslovakia* (*tel.*) Explanation that term "quantities" must be omitted from exchange of notes or matter left for special arrangements; urgency of accepting provisional agreement to assist importers of U. S. goods unable to compete with other countries enjoying lower treaty rates.	870
Oct. 11 (38)	*To the Minister in Czechoslovakia* (*tel.*) Willingness to omit word "quantities" from exchange of notes. Proposed amendment to draft note (text printed).	871
Oct. 24 (45)	*From the Chargé in Czechoslovakia* (*tel.*) Expectation of early exchange of notes; change in draft note to make most-favored-nation treatment effective November 5.	873
Oct. 29 (444)	*From the Chargé in Czechoslovakia to the Czechoslovak Minister for Foreign Affairs* Expression of hope that commercial relations may be maintained on basis of unconditional most-favored-nation treatment, pending the conclusion of a general treaty of amity, commerce, and consular rights, or until January 1, 1925.	873
Oct. 29 (182.207/iv/4-23)	*The Czechoslovak Minister for Foreign Affairs to the Chargé in Czechoslovakia* Assurance that most-favored-nation treatment will be accorded to commerce of United States, pending the conclusion of a general treaty, or until January 1, 1925.	874

CZECHOSLOVAKIA

Exchange of Notes Between the United States and Czechoslovakia Mutually According Most-Favored-Nation Treatment in Customs Matters—Continued

Date and number	Subject	Page
1923 Oct. 30 (47)	*From the Chargé in Czechoslovakia (tel.)* Notification that exchange of notes has been effected; Government's assurances as to quantities of restricted imports. Inquiry whether full treaty draft may now be presented.	875
Nov. 16 (49)	*From the Chargé in Czechoslovakia (tel.)* Effectiveness of agreement since November 5, although not yet ratified by Parliament.	875

Appointment of a Czechoslovak Commission To Negotiate a General Refunding of the Indebtedness of Czechoslovakia to the United States

Date and number	Subject	Page
1923 Feb. 7 (353)	*From the Minister in Czechoslovakia* Foreign Minister's hesitation in moving to prompt funding of Czechoslovak debt to United States because of loyalty to certain other nations unable to discharge their obligations. Minister's representations as to difference between Czechoslovak and French obligations and advantages to Czechoslovakia from funding of debt.	876
Feb. 19 (4)	*From the Minister in Czechoslovakia (tel.)* Government's intention to send commission to the United States to negotiate terms of payment.	876
Mar. 13 (10)	*To the Minister in Czechoslovakia (tel.)* Desirability of receiving binding obligations from Czechoslovak Debt Mission relative to outstanding and unsettled accounts of Czechoslovakia, to facilitate negotiations with World War Foreign Debt Commission.	877
Mar. 21 (15)	*From the Minister in Czechoslovakia (tel.)* Purposes and organization of special debt commission.	877
Apr. 30 (23)	*From the Chargé in Czechoslovakia (tel.)* Departure of debt commission for the United States with authorization to conduct negotiations for repayment, subject to final approval by Government.	878
May 2 (436)	*From the Chargé in Czechoslovakia* Note from Foreign Minister, April 30 (text printed) explaining nature of debt commission's full powers, settlement being dependent, in part, upon consent of French and Italian Governments.	879

DENMARK

Arrangement Between the United States and Denmark for Reciprocal Exemption From Income Tax on Shipping

Date and number	Subject	Page
1920 June 16 (156)	*From the Danish Minister* Memorandum by joint committee of the three Scandinavian treaty commissions (text printed) presenting arguments against taxation of foreign shipping and suggesting that question be dealt with by international conference.	881

DENMARK

Arrangement Between the United States and Denmark for Reciprocal Exemption From Income Tax on Shipping—Continued

Date and number	Subject	Page
1921 Oct. 27 (370)	*From the Danish Minister* Representations against striking from revenue bill of section providing for reciprocal exemption from taxation of foreign shipping. Request that notes and memorandum be presented to U. S. Congress.	885
Dec. 21	*To the Danish Minister* Information that section (text printed) of revenue act providing for reciprocal exemption from taxation of foreign shipping was reinserted in bill as enacted November 23, 1921.	886
1922 May 22 (157)	*From the Danish Minister* Proposal of exchange of notes to effect agreement for reciprocal exemption of shipowners from foreign taxation; desire that exemption be retroactive to include years 1917–1920.	887
Aug. 9	*To the Danish Minister* Necessity for reciprocal declaration by Denmark and Iceland of exemption from taxation of income of U. S. shipowners in those countries.	887
Aug. 18 (236)	*From the Danish Minister* Understanding that exemption would extend from January 1, 1921, notwithstanding exchange of notes at later date.	888
Oct. 24 (284)	*From the Danish Minister* Danish declaration exempting U. S. shipowners from income tax in Denmark and Iceland. Request for reciprocal U. S. exemption in accordance with Revenue Act of 1921.	889
Oct. 25	*To the Danish Minister* Confirmation of understanding that exemption of shipowners from foreign income tax will extend from January 1, 1921, and assurance of refund if such taxes have been collected.	889
Oct. 28 (290)	*From the Danish Minister* Affirmation that income of U. S. shipowners has not been subject to taxation in Denmark or Iceland since January 1, 1921, or previously.	890
Dec. 5	*To the Danish Minister* U. S. Treasury note (excerpt printed) declaring that Denmark and Iceland satisfy equivalent exemption provision of Section 213 (b) (8) of Revenue Act of 1921, and in case such taxes have been collected since January 1, 1921, they will be proper subject of claim for refund.	890
Dec. 6 (331)	*From the Danish Minister* Acknowledgment of note effecting agreement relative to exemption of shipowners from double income tax on shipping.	891

DOMINICAN REPUBLIC

Delay in Holding Elections in Fulfillment of the Plan of Evacuation, and the Extension of the Life of the Provisional Government

Date and number	Subject	Page
1923 Feb. 14 (6)	*To the Minister in the Dominican Republic* (tel.) Instructions to report on status of electoral law and all other political matters.	892
Feb. 15 (6)	*From the Minister in the Dominican Republic* (tel.) Completion of electoral law and its final reading before presentation to President for promulgation. Intense political feeling between parties. (Footnote: Promulgation of electoral law, March 8, 1923.)	892
Apr. 5 (42)	*From the Commissioner in the Dominican Republic* (tel.) Unnecessary delay in promulgation of electoral law, with consequent retarding of evacuation. Agreement with Commission of Dominicans for short registration period to be followed by general elections. Recommendation to Provisional Government for immediate procuring of material for registration and balloting.	893
Apr. 10 (46)	*From the Commissioner in the Dominican Republic* (tel.) Selection of Central Electoral Board; its personnel.	894
Apr. 30 (52)	*From the Commissioner in the Dominican Republic* Efforts to counteract propaganda spread by certain members of the National and Progressive Parties to the effect that U. S. Government and U. S. sugar companies favor and are financing the Presidential candidate of the National Coalition Party.	894
May 12 (56)	*From the Commissioner in the Dominican Republic* (tel.) Commission's agreement to continue Provisional Government in power until December 31, 1923, or if execution of Plan of Evacuation is not completed before January 1, 1924, for such further period as may be necessary.	895
May 17 (57)	*From the Commissioner in the Dominican Republic* (tel.) Completion of preparations for registration and elections; decision to leave for temporary stay in the United States.	896
May 24	*To the Commissioner in the Dominican Republic* Approval of Commissioner's endeavor to make clear in Dominican Republic the neutral position of the United States in Presidential contest.	897
June 23 (27)	*From the Minister in the Dominican Republic* (tel.) Report on progress of registration	897
Aug. 3 (29)	*To the Minister in the Dominican Republic* (tel.) Request for views on Acting Military Governor's report on increase in smuggling of arms into Dominican Republic and dangers from antagonism against United States; and on Navy Department's decision to send commander of Special Service Squadron in the *Rochester* to investigate situation.	897
Aug. 12 (40)	*From the Minister in the Dominican Republic* (tel.) Information concerning smuggling of arms into Republic. Belief that situation would not be unfavorably affected if *Rochester* came as a naval transport.	898
Aug. 16 (41)	*From the Minister in the Dominican Republic* (tel.) Presidential decree calling for elections on November 14.	898

DOMINICAN REPUBLIC

Delay in Holding Elections in Fulfillment of the Plan of Evacuation, etc.—Continued

Date and number	Subject	Page
1923 Sept. 10 (36)	*To the Minister in the Dominican Republic (tel.)* Inquiry whether indications of smuggling of arms continue; authorization, within discretion, to inquire of Provisional Government what preventive measures have been taken.	899
Sept. 11 (48)	*From the Minister in the Dominican Republic (tel.)* Indications of cessation in smuggling of arms; capture of quantity of arms by national police.	899
Sept. 27 (37)	*To the Minister in the Dominican Republic (tel.)* Reported agreement of Dominican Commission and Provisional Government to suspend from office for 10 days prior to elections all rural alcaldes pedañeos and to transfer their powers to local Policia Nacional. Department's belief that period should be extended to 45 days commencing October 1.	899
Sept. 28 (50)	*From the Minister in the Dominican Republic (tel.)* Information that there has been no agreement to suspend rural alcaldes pedañeos. Belief of Provisional Government that such suspension would be unwise and dangerous to preservation of order.	900
Sept. 28 (51)	*From the Minister in the Dominican Republic (tel.)* Dominican Commission's consideration of possibility of abolishing provision in electoral law for registration certificates, in view of impossibility of delivering sufficient number before elections.	900
Oct. 5 (39)	*To the Minister in the Dominican Republic (tel.)* Opinion that alcaldes pedañeos should be suspended for at least 30 days prior to elections, because of belief that the majority of them are actively working for candidates of National and Progressive Parties. Instructions to consult Provisional President, Minister of Interior, Military Governor, and Colonel Cutts concerning suspension of alcaldes pedañeos and competence of Policia Nacional to preserve order in rural districts during period.	900
Oct. 5 (41)	*To the Minister in the Dominican Republic (tel.)* Instructions to advise Commission and Provisional President of U. S. views that fair election cannot be held unless requirement of election law regarding registration is carried out without amendment.	901
Oct. 6 (42)	*To the Minister in the Dominican Republic (tel.)* Instructions to advise Department on certain points in connection with electoral boards, after consulting with President and Secretary of Interior.	902
Oct. 8 (53)	*From the Minister in the Dominican Republic (tel.)* Public protest against decision of Central Electoral Board in throwing out entire ticket of Vasquez Alliance nominated in La Vega Province, on ground that duplicate copy of original "acta" was not transmitted.	903
Oct. 10 (54)	*From the Minister in the Dominican Republic (tel.)* Categorical reply to inquiry regarding electoral boards.	903

DOMINICAN REPUBLIC

DELAY IN HOLDING ELECTIONS IN FULFILLMENT OF THE PLAN OF EVACUATION, ETC.—Continued

Date and number	Subject	Page
1923 Oct. 10 (55)	*From the Minister in the Dominican Republic (tel.)* Opinions of Provisional President, Colonel Cutts, Military Governor, and others that suspension of alcaldes pedaños from office prior to election would result in trouble, since there are not sufficient police to replace them in preserving order.	904
Oct. 10 (45)	*To the Minister in the Dominican Republic (tel.)* From Welles: Instruction to request President to induce Central Electoral Board to permit Provincial Assembly of the Alliance in La Vega Province to correct technical error by presentation to Board of required duplicate copy of "acta".	906
Oct. 10 (56)	*From the Minister in the Dominican Republic (tel.)* Protest of Vasquez and Velasquez (text printed) against Board's decision to throw out ticket of Vasquez Alliance in La Vega Province on ground of technical error.	907
Oct. 17 (49)	*To the Minister in the Dominican Republic (tel.)* From Welles: Instructions to present to Commission the view of the United States (text printed) that authorities should abide by decisions of Central Electoral Board or find recourse as provided in article 13 of electoral law.	908
Oct. 20 (63)	*From the Minister in the Dominican Republic (tel.)* Provisional President's offer to confer with Central Electoral Board and propose solution for case of rejection of Vasquez Alliance in La Vega Province as coming from U. S. Government. Electoral Board's failure to function following impeachment charges against two nonpolitical members.	909
Oct. 22 (51)	*To the Minister in the Dominican Republic (tel.)* Desire that Minister of Interior be urged to act as substitute on Central Electoral Board and that utmost influence be used to secure resumption of duties by Board. Instructions to express Department's appreciation of President's offer and to advise him that it is now too late to intervene in case of rejection of Alliance in La Vega Province and also that United States does not feel warranted in making formal suggestions in case.	910
Nov. 9 (62)	*From the Commissioner in the Dominican Republic (tel.)* Conferences with Commission and Presidential candidates, resulting in agreement to postpone elections for 46 days and to amend electoral law to correct certain inequalities and abuses, thus necessitating modification of article 2 of the Plan of Evacuation.	911
Nov. 12 (6)	*To the Commissioner in the Dominican Republic (tel.)* No objection to modification of article 2 of Plan of Evacuation; and gratification over agreement brought about by Commissioner.	913
Nov. 16 (63)	*From the Commissioner in the Dominican Republic (tel.)* Decree promulgated November 12 postponing elections. Progress in conference with Presidential candidates.	913
Nov. 27 (65)	*From the Commissioner in the Dominican Republic (tel.)* Conference with Presidential candidates, resulting in agreement as to method of reconstituting electoral boards, even distribution of positions between the parties, etc.	914

DOMINICAN REPUBLIC

Delay in Holding Elections in Fulfillment of the Plan of Evacuation, etc.—Continued

Date and number	Subject	Page
1923 Dec. 12 (66)	*From the Commissioner in the Dominican Republic* (*tel.*) Consent by both parties and Commission to extension of term of Provisional Government until replaced by constitutional government, conditional upon selection of a Minister of Interior satisfactory to both parties.	914
Dec. 22 (69)	*From the Commissioner in the Dominican Republic* (*tel.*) Reorganization of Executive departments of Provisional Government; Commission's adoption of amendment to election law, and appointment of new provincial and municipal electoral boards, and other officials.	915
Dec. 27 (70)	*From the Commissioner in the Dominican Republic* (*tel.*) Completion of reorganization of Provisional Government by appointment of two secretaries.	916
1924 Jan. 4 (1)	*From the Commissioner in the Dominican Republic* (*tel.*) Promulgation of decree containing amendments to electoral law; completion of appointments required by reorganization of provisional and municipal governments; also additional decree announcing dates for electoral period and national election. Personnel of new Central Electoral Board.	917

Arrangement for the Purchase of the Properties of the Santo Domingo Water, Light and Power Company by Dominican Municipalities

Date and number	Subject	Page
1923 Jan. 26 (2)	*From the Minister in the Dominican Republic* (*tel.*) Assurance by Minister of Interior that Santo Domingo Water, Light and Power Co. will not be dispossessed of property during his term of office; his suggestion that arrangement be made to sell plant or make new contract to assure service of water and light.	918
Mar. 8 (7)	*To the Minister in the Dominican Republic* (*tel.*) Desire that Provisional Government suspend embargo proceedings against company and make amicable settlement, preferably by Government's purchase of plant and rights of company.	918
Apr. 12 (47)	*From the Commissioner in the Dominican Republic* (*tel.*) For Francis White: Reasons Provisional Government cannot take over company's rights and property. Proposal that the two municipalities purchase plant by issue of municipal bonds with Government guaranty *ad referendum* to national Congress.	919
Apr. 16 (14)	*To the Minister in the Dominican Republic* (*tel.*) Approval of proposal that Provisional Government and company's representatives make a mutually satisfactory arrangement *ad referendum* for purchase of company's properties by municipalities of Santiago and Puerta Plata.	921
June 23 (28)	*From the Minister in the Dominican Republic* (*tel.*) Approval by both municipalities of contract for settlement of case of Santo Domingo Water, Light and Power Co.	921

DOMINICAN REPUBLIC

ARRANGEMENT FOR THE PURCHASE OF THE PROPERTIES OF THE SANTO DOMINGO WATER, LIGHT AND POWER COMPANY BY DOMINICAN MUNICIPALITIES—Continued

Date and number	Subject	Page
1923 July 12 (875)	*From the Minister in the Dominican Republic* Provisional Government's request for U. S. consent to issue of 5-percent bonds to be delivered to Water, Light and Power Co. Request for instructions.	922
Aug. 29 (46)	*From the Minister in the Dominican Republic (tel.)* Request for advice as to necessary formalities with Provisional Government for negotiating bond issue with bankers, it being necessary that bonds be ready for delivery to mortgage creditor upon completion of valuation of property and repairs and improvement.	922
Aug. 31 (520)	*To the Minister in the Dominican Republic* Department's promise to take necessary action toward granting consent to required increase in Dominican public debt under treaty provisions, as soon as the amount of the required payment of bonds by Dominican Government shall have been determined.	922

ECUADOR

EMPLOYMENT OF A FINANCIAL ADVISER BY THE GOVERNMENT OF ECUADOR

Date and number	Subject	Page
1922 Oct. 24 (22)	*To the Minister in Ecuador (tel.)* Unofficial information that President of Ecuador doubts necessity for employing a financial adviser as authorized by Congress, in view of failure of loan law in Congress. Instructions to report exact situation.	924
Nov. 6 (31)	*From the Minister in Ecuador (tel.)* President's reasons for not employing a financial adviser until a loan is obtained.	924
1923 June 9 (65)	*To the Chargé in Haiti (tel.)* For General Russell: Ecuadoran desire for U. S. approval of 4-year contract with John S. Hord as Financial Adviser to Ecuador. Request for views as to advisability of his leaving uncompleted his task of reconstruction work in Haiti.	925
June 26 (85)	*From the High Commissioner in Haiti (tel.)* Report of Hord's intention to leave Haiti, awaiting, however, word from Department before giving notice.	925
June 28 (70)	*To the Chargé in Haiti (tel.)* For General Russell: Authorization to state to President, when Hord presents his resignation, that Department has no objection to its acceptance.	926

ECUADOR

Refusal by the Government of Ecuador To Submit a Dispute With the Guayaquil and Quito Railway to Arbitration as Provided in the Company's Contract

Date and number	Subject	Page
1923 Jan. 6 (1)	*To the Minister in Ecuador (tel.)* Instructions to inform Government that its suit against Guayaquil and Quito Railway Co. for recovery of 600,000 sucres alleged to have been deposited with Company by Government in December 1909 appears to be contrary to provisions of contract, which calls for settlement of differences between Company and Government by arbitration.	926
Jan. 24 (1)	*From the Minister in Ecuador (tel.)* Government's contention that contracts with aliens should not give rise to diplomatic settlement except in case of denial of justice and that deposit of 600,000 sucres had no relation to contract for construction of railway. Request for permission to lay case before President of Ecuador and urge advisability of arbitration.	926
Feb. 1 (3)	*To the Minister in Ecuador (tel.)* Authorization to take up with President right of company to resort to arbitration.	927
Feb. 17 (4)	*From the Minister in Ecuador (tel.)* Foreign Minister's denial of right of company to present request for arbitration formally through diplomatic channels, especially since Ecuadoran Constitution makes waiver of diplomatic intervention an implicit part of every contract. President's inability to discuss justice of arbitration because of Constitutional provisions prohibiting him from hindering judicial procedure.	928
Mar. 14 (6)	*To the Minister in Ecuador (tel.)* Instructions to renew representations to President, reminding him that Government of Ecuador voluntarily agreed in its contract to settle controversies with company by arbitration, and expressing the hope that suit will be withdrawn.	928
Mar. 23 (5)	*From the Minister in Ecuador (tel.)* President's inability to take action because lawyer against company was appointed and instructed by Congress.	929
May 1 (117)	*From the Minister in Ecuador* Decision of court of Province of Pichincha, April 9, that present case is not subject to arbitration and that court has full jurisdiction. Company's appeal to Superior Court. Probability case will be prolonged until meeting of Congress in August, when Congress might be persuaded to withdraw suit.	929
July 9 (9)	*To the Minister in Ecuador (tel.)* Instructions to inform President that U. S. Government cannot admit that action taken by Government of Ecuador sets precedent for future and that United States must reserve all rights in case of adverse decision.	929
July 13 (136)	*From the Minister in Ecuador* Representations presented to President, July 11. President's reply, July 12, maintaining position that suit is in no way a violation of contract as it is foreign to the provisions thereof.	930

ECUADOR

Refusal by the Government of Ecuador To Submit a Dispute With the Guayaquil and Quito Railway to Arbitration—Continued

Date and number	Subject	Page
1923 Nov. 15 (210)	*From the Minister in Ecuador* Decision of Superior Court, October 20, that case is related to contracts of railway company with Government and that arbitral court is only competent judge. Reference of case to Supreme Court for final decision.	931

Objections by the United States to the Hypothecation of Ecuadoran Revenues Already Pledged to the Service of the Guayaquil and Quito Railway Bonds

Date and number	Subject	Page
1922 July 11 (12)	*From the Minister in Ecuador* Report on status of Ecuador's debt; failure of negotiations between Ecuador and Guayaquil and Quito Railway Co. for waiving of unpaid sinking fund and refunding of unpaid interest; railway's efforts to secure appointment of a financial adviser, to influence exchange, and to increase its own income.	931
1923 Oct. 23	*From the Consul General at London (tel.)* Approval by Congress of two loan contracts with Ethelburga Syndicate, one a government loan and the other a conversion loan, both guaranteed by first mortgage on customs.	933
Oct. 24 (14)	*From the Minister in Ecuador (tel.)* Recommendation that Department refuse to approve loan, in view of fact that under loan contract it will be possible for Government as bondholder to foreclose and seize railway and because loan contract makes no provision for payment of debt of Association of Agriculturists to Mercantile Bank, as previously promised by President.	933
Oct. 26 (15)	*To the Minister in Ecuador (tel.)* Letter for President (text printed) inquiring what measures Government proposes to take in conformity with President's assurances, February 5, 1922, that if Government obtained a foreign loan it would immediately pay half of the debt to the Mercantile Bank.	933
Oct. 29 (15)	*From the Minister in Ecuador (tel.)* Presentation of letter to President, October 27, and President's reply on same date (text printed) merely acknowledging letter.	934
Nov. 5 (16)	*To the Minister in Ecuador (tel.)* Instructions to request definite answer to letter of October 27 inquiring what measures Ecuador proposes to take regarding debt to Mercantile Bank.	934
Nov. 6 (17)	*To the Minister in Ecuador (tel.)* Instructions to report as to correctness of information that loan contract gives new bonds priority and exclusive claim to customs receipts, in violation of railway contract of 1908; and that Government apparently intends to obtain control of railway bonds and then to foreclose as bondholder and seize railway. Instructions also to make such representations as deemed necessary to protect U. S. rights.	934

ECUADOR

Objections by the United States to the Hypothecation of Ecuadoran Revenues Already Pledged to the Service of the Guayaquil and Quito Railway Bonds—Continued

Date and number	Subject	Page
1923 Nov. 9 (16)	*From the Minister in Ecuador (tel.)* Confirmation of Department's information regarding new loan contract. Possibility that contract may not be signed.	935
Nov. 30 (18)	*From the Minister in Ecuador (tel.)* President's statement that present loan is intended merely to consolidate foreign debt and to pay off domestic debt; his assurance that Government recognizes Mercantile Bank debt and that it will be paid when the amount has been determined by the Association of Agriculturists and the bank by arbitration or lawsuit.	936
Dec. 1 (19)	*From the Minister in Ecuador (tel.)* Decision not to make representations regarding rights of U. S. bondholders unless further instructed, in view of possibility that loan will not be concluded.	936
Dec. 6 (18)	*To the Minister in Ecuador (tel.)* Instructions not to make representations unless it seems probable that loan contract will be signed.	936
Dec. 7 (19)	*To the Minister in Ecuador (tel.)* Instructions to discuss loan contract with President immediately and, unless assured that loan contract will not be signed, to make representations to protect American rights.	937
Dec. 13 (20)	*From the Minister in Ecuador (tel.)* *Note verbale* sent to President in sense of Department's telegram no. 17, November 6, in view of information that Government was proceeding with negotiations to sign final contract in London. President's reply evading direct answer but giving assurance that Government will always respect and comply with its contracts.	937
Dec. 17 (383)	*To the Chargé in Great Britain (tel.)* *Note verbale* for Foreign Office (text printed) making representations against proposed Ecuadoran loan contract with British syndicate and giving notice that Guayaquil and Quito Railway Co. disputes right of Ecuador to pledge customs receipts in violation of company's rights.	938
Dec. 17 (21)	*To the Minister in Ecuador (tel.)* Instructions to address note to President acknowledging his communication and informing him of U. S. satisfaction at his assurances concerning contracts; also to indicate, if it is learned definitely that contract is to be signed, that U. S. Government will not view with favor the floating of such a loan in the United States.	938
1924 Jan. 24 (35)	*From the Ambassador in Great Britain* Foreign Office note, January 22, 1924 (text printed) stating that British syndicate is acting in friendly manner and fully recognizes rights of bondholders under contract of 1908, and that portion of new issue is appropriated to liquidation of external debt of Ecuador.	939

ECUADOR

Objections by the United States to the Hypothecation of Ecuadoran Revenues Already Pledged to the Service of the Guayaquil and Quito Railway Bonds—Continued

Date and number	Subject	Page
1924 Feb. 25 (3)	*From the Minister in Ecuador (tel.)* Information that President has authorized signing of loan contract; opposition of President-elect. (Footnote: Failure of Ecuador and syndicate to conclude contract.)	940

Efforts To Liquidate the Debts of the Cacao Growers Association

Date and number	Subject	Page
1923 July 30	*To the Minister in Ecuador* Instruction to render all appropriate assistance to Jordan Herbert Stabler, who is proceeding to Ecuador in interest of Mercantile Bank of the Americas in connection with matter pending between the bank and the Association of Agriculturists.	940
Sept. 11 (12)	*To the Minister in Ecuador (tel.)* Information of a bill introduced in Ecuadoran Senate August 30 reducing 3-sucre tax on cacao to 1 sucre. Instructions to inform Government that Department relies on President's assurances of February 5, 1922, that 3-sucre tax will be continued until Mercantile Bank debt has been canceled.	940
Sept. 30 (Quarterly Report 23)	*From the Minister in Ecuador* Stabler's acceptance in name of bank of a reduction of the tax to 2 sucres; and the amendment of the bill in the Chamber of Deputies placing the tax at 2 sucres and providing for the complete liquidation of the Association of Agriculturists and the assumption of the administration of the debt by the Government.	941
Dec. 1 (236)	*From the Minister in Ecuador* Detailed report on interview with President, in which President gave assurance that Mercantile Bank debt would be paid once the amount had been determined between the bank and the association by arbitration or lawsuit.	942

ESTONIA

Extradition Treaty Between the United States and Estonia

Date and number	Subject	Page
1923 Nov. 8	*Treaty between the United States of America and Estonia* For the extradition of fugitives from justice.	945

GENERAL

PROPOSAL BY THE PRESIDENT TO THE SENATE THAT THE UNITED STATES ADHERE TO THE PROTOCOL OF SIGNATURE ESTABLISHING THE PERMANENT COURT OF INTERNATIONAL JUSTICE[1]

500.C114/236

The Chief Justice of the Supreme Court (Taft) to the Secretary of State

[Extract]

POINTE-AU-PIC, CANADA, *July 21, 1922*.
[Received July 26.]

MY DEAR SECRETARY HUGHES: After a very delightful but somewhat strenuous three weeks in London, I have returned to Murray Bay, and I thought I ought to let you know, in a summary way, some impressions that I gathered while there in respect to a matter which we discussed. I saw Earl Grey, Lord Robert Cecil and Lord Phillimore, and had a considerable talk with each one. I also had a satisfactory conversation with Earl Balfour. I told them that it was important, if they expected the United States to come into a Court arrangement, for the League of Nations to make the Court a separate institution, in the sense that an outsider might become a member of the Court association, without involving itself in any way in the obligations of the League, and might enjoy an equal opportunity with other members to vote in the selection of judges. I found all of them much interested in the suggestion and favorable to it, but Earl Balfour was anxious to have me write a note to him, as a personal suggestion from me, as to how the matter could be done. I referred him to Lord Phillimore as one who had drafted the present statute, and told him that I had talked with Lord Phillimore on the subject—that Lord Phillimore could probably demonstrate in a lawyer's way that the United States might safely come into the Court now without involving herself in the obligations of the League. But I said to Lord Balfour that that was not enough, that the United States of course could not come in unless she was given a full opportunity to join in the selection of judges and have every other advantage which members of the League would have in the hearing of causes. Indeed that in order to make it at all possible

[1] For text of protocol, see *Foreign Relations*, 1920, vol. I, p. 17.

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that the United States could come in, I suggested that the League ought to take public steps to put the Court on a basis which would in a sense separate it from the League by making it an institution which outsiders could join and have equal opportunity in. I haven't yet written the note to Lord Balfour which I promised to write, because I wanted to examine the statute which Lord Phillimore furnished me, with comments, and I thought possibly that I might get a personal note from you, with suggestions that may occur to you, which I could incorporate in my note as my own views, without using your name at all.

. . . .

With warm regards [etc.] WM. H. TAFT

500.C114/236

The Secretary of State to the Chief Justice of the Supreme Court (Taft)

[Extract]

WASHINGTON, *August 1, 1922.*

MY DEAR MR. CHIEF JUSTICE:

. . . .

I am very glad to learn of what you said to Lord Balfour, Lord Robert Cecil and others with respect to the necessity of having some provision by which this Government can have a voice in the election of judges of the International Court. Of course it would be impossible to have this Government participate in the maintenance of the Court so long as it did not have an appropriate opportunity to join in the election of judges.

The present plan was worked out to give the large States, through the Council, and the small States, through the Assembly, of the League of Nations, the opportunity to vote that they desired and thus to avoid the difficulties hitherto encountered in providing for the election of judges. This was a happy solution so far as the members of the League were concerned, and it is a difficult one to change because neither the large Powers nor the small Powers would be willing to surrender the effective participation they now enjoy respectively.

The only suggestion that I can make at this time, and it is merely a personal one, is based upon an analogy to the treaties we are now negotiating in respect to mandates. There you will remember, doubtless, that the guarantees of the mandates run only to States, and nationals of States, who are members of the League of Nations. I have provided in the treaties recognizing the mandates that the United

States and its nationals shall have the same rights with respect to these guarantees as though the United States was a member of the League of Nations. Perhaps it could be arranged that the United States should have a vote for judges of the International Court although the United States is not a member of the League of Nations and exactly with the same effect as though it were a member.

. . . .

Faithfully yours,

CHARLES E. HUGHES

500.C114/236½

The Chief Justice of the Supreme Court (Taft) to the Secretary of State

WASHINGTON, *September 27, 1922.*

MY DEAR MR. SECRETARY: I enclose herewith copies of the two letters which I wrote—one to Lord Robert Cecil,[1a] and the other to Earl Balfour—in respect to the matter which we discussed to-day.

Sincerely yours,

WM. H. TAFT

[Enclosure]

The Chief Justice of the Supreme Court (Taft) to the British Representative on the Council of the League of Nations (Balfour)

POINTE-AU-PIC, CANADA, *September 14, 1922.*

MY DEAR EARL BALFOUR: Mr. Hughes' absence in South America has delayed me in writing the letter which I proposed to write. I consulted Mr. Root about the matter, and his letter written to me is as follows:

"I should think it desirable that any action by the Assembly of the League of Nations or by the Council should be quite general and rather in the direction of conferring authority than in exercising it.

"The matter is not very complicated. There are three respects in which the United States is already a part of the Court.

"(1) She is a competent suitor in the Court. The Court is bound by the law of its creation to hear and determine cases by and against the United States unless she refuses to appear. This is provided by Article 35,[2] by making the Court open not only to the members of the League but 'also to States mentioned in the annex to the Covenant'.

"(2) The United States, as a member of the old Permanent Court of Arbitration at the Hague, is entitled through its members of that

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[1a] Not printed.

[2] Of the Statute of the Permanent Court; the text of the Statute is printed in *Foreign Relations*, 1920, vol. I, p. 18.

Court to take part in making up the eligible list from which the Judges of the Court are elected. The American group of members of the old Court of Arbitration are authorized by Article 5 of the Statute under which the new Court is organized to name four persons for each vacancy in the Court.

"The American members of the Court of Arbitration received last year a formal request to discharge their function, but it was deemed unwise to do this because it might have been very unfortunate to precipitate a controversy in Washington just on the eve of the Conference for the Limitation of Armament.

"(3) American citizens are eligible to sit in the Court. Witness the presence of John Bassett Moore. Incidentally the American members of the Court of Arbitration had agreed that if it were determined that they should make nominations they would nominate Moore for the American member. Of course this was known and doubtless produced an effect upon his selection.

"There seem to be but two things of substance left. (1)—that the United States should undertake to contribute its fair share towards the support of the Court generally, and (2)—that the United States should have its voice in the election of Judges from the eligible list, without having to become a member of the League of Nations in order to exercise that right. So far as I can see there is no objection to either of these things. The United States of course would be quite willing to pay its share of the expense of such a Court, for it is exactly the kind of Court with the kind of jurisdiction that the United States has been urging for many years. On the other hand, there appears to be no objection on the other side of the ocean to having the United States in the Court without being in the League. I should think a provision something like this might be effective as a basis for an arrangement. For example; a resolution by the Assembly of the League:—

" 'Resolved, that whenever the members of the Assembly and the Council of the League of Nations meet for the purpose of electing Judges or Deputy Judges of the Permanent Court of International Justice, established under the protocol executed at Geneva, December 16th, 1920,[3] any nation named in the annex to the covenant for the League of Nations, and which shall undertake to bear its fair share of the expense of maintaining the Court, may, without becoming a member of the League of Nations, appoint a representative who shall have authority to sit with the Assembly throughout the electoral proceedings, and who shall have the same right to vote and otherwise take part in such proceedings as the several members of the Assembly. In case such nation, not a member of the League of Nations, shall be one of the powers described in the Treaty of Versailles of June 28th, 1919, as 'principal, allied and associated powers', then such nation may appoint a representative to sit with the Council during such electoral proceedings with the same right to vote and otherwise take part in such proceedings as the several members of the Council.

" 'The Council is requested to take such steps as will give effect to the foregoing resolution.' "

"Something like this will put the Council in the position where they will feel authorized to go ahead and negotiate an agreement, the substance of which I think is contained in the resolution. The result will probably have to be passed around among the powers who signed the protocol, but I should think there would be no doubt of their assent because the effect would be to strengthen the Court and decrease their share of expense.

[3] *Foreign Relations*, 1920, vol. I, p. 17.

"I think it is desirable to avoid the proposing of any provision under which the United States would be called upon formally to say they accept the terms of the protocol, because that might seem to be a certain acceptance of the provisions in the protocol which relate to the League of Nations. The shorter and simpler the agreement on our part can be made, the better. If we are called upon to accept the provisions of a long document a lot of people will be afraid of it and the people who want to make trouble will find much material for distortion. Looking at the thing from the European point of view, I should say they ought to feel that an undertaking to contribute to the expense of supporting the Court and the appointment of representatives to take part in the election of Judges was an acceptance of the Court as it is, under the statute by which it was constituted, and that there is no practical occasion to say anything more about the acceptance of that statute".

I think his views are sound, and that if you were to consult Lord Phillimore you would find that he would agree with him.

I am afraid that this will not reach you in time to secure any direct action by the League of Nations at this session, but perhaps it is just as well, because a year's delay may make matters more favorable in many respects. I shall write you again as soon as Mr. Hughes returns from South America.

Let me say, in closing the letter, how grateful I feel for the wonderful reception that Mrs. Taft and I were given in England and Scotland, and to express my gratitude to you especially for the part which you took in it. It is a red letter episode in our lives.

With very warm regard [etc.] WM. H. TAFT

500.C114/240

The Chief Justice of the Supreme Court (Taft) to the Secretary of State

WASHINGTON, *November 16, 1922.*

MY DEAR MR. SECRETARY: I send you herewith a copy of a letter I have from Lord Robert Cecil, for your perusal, and to complete your files in respect to this general subject matter.

With best wishes [etc.] WM. H. TAFT

[Enclosure]

Lord Robert Cecil, Member of the British Delegation in the Assembly of the League of Nations, to the Chief Justice of the Supreme Court (Taft)

LONDON [*undated*].

DEAR MR. CHIEF JUSTICE: May I express to you my most sincere gratitude for your letter[4] regarding America's relationship

[4] Not printed.

to the Permanent Court of International Justice and for the enclosure therewith of the extract of a letter from Mr. Elihu Root, dated September 9, 1922, outlining a procedure for American entry into the Court.[5] This letter followed me on to Geneva where I happened to be attending the Third Assembly of the League of Nations. My delay in answering it has been due, as you can well imagine, first of all to the work attendant on that meeting and, second, to my desire to think out most carefully the various questions involved before attempting to make any comments thereon.

Mr. Root's proposal is very obviously the shortest and simplest method yet suggested for effecting American co-operation with the Court. It would seem from Mr. Root's letter to have been conceived very largely from the point of view of the internal situation in America, and to have the very great advantage of reducing to a minimum any objections which might be raised in America to affiliation with the Court. It is undoubtedly true that it is easier to secure approval for a short document than for a long one, as those who want to find trouble might, as Mr. Root says, find much material for distortion if the whole Protocol were to be acted upon.

It would, of course, be impertinent for me, or indeed for any one on this side, to attempt any estimate of what is practicable and what is not practicable in the American situation as it exists to-day. The fact Mr. Root has come to a solution such as that suggested in his letter to you, would seem to indicate his judgment that the formal acceptance of the Protocol on the same basis as that document had been accepted by other nations was not at the moment feasible, and that it is, therefore, necessary to search for a solution somewhat short of this desired goal.

As far as I can see from a study of the Protocol, the relationship of the United States to the Court would not be materially different whether she actually ratified the Protocol or agreed to recognise and support the Court on some special basis as that suggested by Mr. Root. In other words, the actual ratification of the Protocol so far as America is concerned, would seem to have practically no legal consequence which could not similarly be brought about by a plan on the lines of Mr. Root's.

There then arises the question of the reaction to this plan of States already members of the Court. While, of course, I have no authority to speak for the other nations on this side, nevertheless my personal opinion is that if such a solution as Mr. Root's were absolutely essential to American participation, the other nations could not but find their way to accepting it. Of course, you can appreciate that from the strict point of view of the Court itself,

[5] Quoted in letter from Chief Justice Taft to Lord Balfour, *supra*.

it would be highly desirable to have all nations on exactly the same basis, and bound by the same Statute. If, however, that be impossible in America's case, I am sure that what is desired on this side is the substance of American co-operation rather than the mere form.

The greatest difficulty that arises in my mind, however, is that of tracing out the actual steps to be taken to lead up to American co-operation with the Court. I think I am right in saying that everyone on this side is anxious to do all that can be done to bring about this much desired result, but, so far, the difficulty has been in knowing just what specific action would bring it about. In other words, the nations now Members of the Court are anxious to meet America's desires but they do not know specifically how to do it.

I think I may, without risking any misunderstanding, recall that two years ago when the Protocol of the Court was accepted by the Assembly, a special provision was inserted solely to permit America to become a member of the Court without becoming a Member of the League. It was felt at that time, and had continued to be felt until quite recently, that that provision entirely met the American viewpoint, and in fact left the door open for America to join the Court at any time she so desired. Just recently, however, Secretary Hughes has raised an entirely new question, and admittedly a vitally important question, which had not previously occurred to anyone on this side, and which has again fundamentally changed the relationship of the United States and the Court. Please do not for a moment think that I am recalling this fact with any thought of criticism; quite on the contrary I realise that until the question of American participation in the election of Judges is solved, it would be impossible to expect any real American co-operation with the Court.

This instance, however, shows, to my mind at least, the supreme necessity of having the method and procedure of American cooperation worked out in the first instance by America itself. It would seem to me that as the difficulties which are to be met are purely American difficulties, it would be almost presumptuous for us on this side to attempt to lay down any solution therefor. For example, I think you would agree that it would be unwise, if not undignified, for either the Assembly or the Council to pass a Resolution regarding American participation in the Court unless the American Government had in some way given formal indication that such a Resolution would be acceptable.

Another question which comes to my mind in close connection with this point is the method by which the American co-operation in the Court would be effected within the United States itself. Mr. Root's proposal would seem to indicate not only suitable action by

the League itself, but also action by the Senate. This I deduce not only from the fact that any appropriation for the Court would have to be made by Congress, but also from Mr. Root's desire to have a very short proposal rather than the whole Protocol itself submitted for discussion.

If I am right, I should say that at the present moment the United States was entering into the phase of executive co-operation with the League of Nations. The State Department has already formally nominated a representative to sit "in an unofficial and consultative capacity" on the Anthrax Committee of the International Labour Office and, according to Press announcements is willing to nominate representatives to sit in a similar capacity on the Opium and White Slave Commissions. If America finds it possible to cooperate thus effectively in these Commissions, it does not seem at all impossible that as time goes on her co-operation may be extended into a considerably wider field. Parenthetically, I should like to add just a word of most profound gratification that this happy solution has now been achieved.

As regard the Court, however, it would seem to me highly desirable that American co-operation be assured not only by Executive action but also by legislative endorsement. Though I assume from Mr. Root's letter that this intention was in his mind, nevertheless it seems important enough from the European point of view to stress with special emphasis. Such final endorsement by both branches of the American Government would give the Executive far greater freedom, I should imagine, in co-operating with the Court, and would demonstrate that co-operation with the Court had entered into the very fibre of American foreign politics.

Fortunately we already have the precedent of Senate ratification of the Yap Treaty [6] which quotes verbatim the League of Nations Mandate for the North Pacific Islands. At the same time, I understand that one of the Senators who was at Geneva this summer, had in mind a plan to initiate action in the Senate looking towards American membership in the Court in order specifically to relieve the Administration of appearing to attempt to force the League issue once more on to the Senate.

Curiously enough, just before Mr. Root's proposal came, I had received another proposal almost equally ingenious from Lord Phillimore. The salient points of his letter may be quoted as follows:

" . . . What does occur to me for the moment is this: The election has taken place. The U.S. has one of its citizens on the Bench. There will be no further general election for about eight years though there may probably be death vacancies to fill.

[6] *Foreign Relations*, 1922, vol. II, p. 600.

"1. Would the U.S. *rebus sic stantibus* sign the Protocol, which can be done as an unilateral act, accompanying it with a Reservation Counter Protocol or other diplomatic act, stating that if before the next election of judges she is not admitted to (say) a vote with the Council and a vote with the Assembly, either her adhesion is to be deemed *non avenu* or withdrawn, or she reserves to herself the liberty in that event to withdraw?

"2. Would the Secretary-General or the Council accept such a qualified or conditional acceptance? I think he or they might. The qualifying document might recite as a matter of history that the U.S. members of the Hague Tribunal had taken their part according to the statute in nominating candidates and that though the U.S. had not taken part in the voting she was represented on the Court by a citizen in whom she had every confidence. . . . "[7]

This plan, you will see, provides for immediate American co-operation in the Court as it exists to-day, and would give the Members of the League adequate time to make all the necessary changes in order to secure American participation in the first new election of Judges. From that point of view, and assuming that the present composition of the Court is acceptable to America, it would seem to be an even shorter method than Mr. Root's. In any case, I think it is very worth while submitting it to your judgment as another possible way out of the difficulty. From the strictly Court point of view, it would have the advantage of formal American endorsement of the Protocol on the same basis as other nations, and would allow time for the necessary readjustments. The question of participation in the expenses of the Court, as suggested by Secretary Hughes and Mr. Root would easily be arranged.

Whatever form of solution may be arrived at, certain actions will have to be taken here which will require considerable thought and effort. For example, the Court Statute provides that the Judges shall be elected "by the Assembly and by the Council", while the Covenant defines both those bodies in clearly-expressed terms, the Assembly for instance consisting "of representatives of the Members of the League". Quite obviously this difficulty can be overcome in any one of several ways but as with all constitutional questions of that sort it will be necessary that those on this side give the matter considerable thought and allow the procedure a certain amount of time.

The necessity of these internal changes would seem to me to afford another argument for the most precise and the earliest possible definition of the solution which would be acceptable to the American Government. Precision would, of course, be necessary if the Members of the League were to have a definite programme on which to work, while at the same time an early decision would allow all the

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[7] This omission and the omission at the beginning of the quotation are indicated in the file copy of Lord Robert Cecil's letter.

various plans to be worked out so that perhaps some immediate provisional steps might be initiated by the Council.

I can not help but feel that some solution should be achieved within a reasonably short time. While again disavowing any claim to speak for the nations on this side, I should not hesitate to assert unequivocally that any reasonable suggestion made by America would be immediately accepted here. At the same time, if my information and observations are correct, America herself is equally desirous of having this question put to rest in the normal and reasonable way. When there is such good will on both sides it is impossible to think that a solution can not be had just as soon as the American Government shall have worked out the form which would be acceptable to it.

I am deeply grateful for the interest you have taken in this matter and very much hope that all the efforts now being made may come to an early result. I should very much appreciate your views as to the various points raised in this letter, and should be more than glad to be of any possible service should any further questions arise, or should you arrive at any new or combined project. It would be superfluous for me to say that I am eager to do anything in my power to bring about the happy event of American admission to the Court.

Yours very truly,

ROBERT CECIL

500.C114/225a

The Secretary of State to President Harding

WASHINGTON, *February 17, 1923.*

MY DEAR MR. PRESIDENT: Referring to our interviews with respect to the advisability of action by this Government in order to give its adhesion, upon appropriate conditions, to the Protocol establishing the Permanent Court of International Justice, I beg leave to submit the following considerations:

From its foundation, this Government has taken a leading part in promoting the judicial settlement of international disputes. Prior to the first Peace Conference at The Hague in 1899, the United States had participated in fifty-seven arbitrations, twenty of which were with Great Britain. The President of the United States had acted as arbitrator between other nations in five cases, and Ministers of the United States, or other persons designated by this Government, had acted as arbitrator or umpire in seven cases. In 1890 the Congress adopted a concurrent resolution providing,—

"That the President be, and is hereby, requested to invite, from time to time, as fit occasions may arise, negotiations with any Government

with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which cannot be adjusted by diplomatic agency may be referred to arbitration and be peaceably adjusted by such means. (*Cong. Rec.* 51st Cong., 1st Sess., Part 3, Vol. 21, p. 2986)."

In his instructions to the delegates of this Government to the First Peace Conference at The Hague,[8] Secretary Hay said:

"Nothing can secure for human government and for the authority of law which it represents so deep a respect and so firm a loyalty as the spectacle of sovereign and independent States, whose duty it is to prescribe the rules of justice and impose penalties upon the lawless, bowing with reverence before the august supremacy of those principles of right which give to law its eternal foundation."

A plan for a permanent international tribunal accompanied these instructions.

At that Conference, there was adopted a "Convention for the Pacific Settlement of International Disputes"[9] which provided for a Permanent Court of Arbitration. This organization, however, while called a permanent court, really consists of an eligible list of persons designated by the contracting parties respectively, from whom tribunals may be constituted for the determination of such controversies as the parties concerned may agree to submit to them.

In 1908 and 1909 the United States concluded nineteen general conventions of arbitration[10] which, in accordance with The Hague Conventions, provided for arbitration by special agreement of differences which are of a legal nature or which relate to the interpretation of treaties, and which it may not have been possible to settle by diplomacy, provided that the differences do not affect the vital interest, the independence, or the honor of the two contracting States and do not concern the interests of third parties. Moreover since the First Peace Conference at The Hague a number of Conventions have been concluded by this Government submitting to arbitration questions of great importance.

It is believed that the preponderant opinion in this country has not only favored the policy of judicial settlement of justiciable international disputes through arbitral tribunals specially established, but it has also strongly desired that a permanent court of international justice should be established and maintained. In his instructions to the delegates of the United States to the Second Peace Conference held at The Hague in 1907,[11] Secretary Root emphasized the impor-

[8] *Foreign Relations*, 1899, p. 511.
[9] *Ibid.*, p. 521.
[10] *Ibid.*, 1908 and 1909, *passim*.
[11] *Ibid.*, 1907, pt. 2, p. 1128.

tance of the establishment of such a tribunal in conformity with accepted judicial standards. He said:

"It should be your effort to bring about in the Second Conference a development of The Hague tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility. These judges should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented. The court should be [made] of such dignity, consideration and rank that the best and ablest jurists will accept appointment to it, and that the whole world will have absolute confidence in its judgments."

The Second Peace Conference discussed a plan looking to the attainment of this object, but the project failed because an agreement could not be reached with respect to the method of selecting judges. The Conference adopted the following recommendation:

"The Conference recommends to the signatory powers the adoption of the project, hereto annexed, of a convention for the establishment of a Court of Arbitral Justice and its putting into effect as soon as an accord shall be reached upon the choice of the judges and the constitution of the court."

The Covenant of the League of Nations provided, in Article 14, that the Council of the League should formulate and submit to the members of the League plans for the establishment of a Permanent Court of International Justice, which should be competent to hear and determine any dispute of an international character which the parties thereto should submit to it, and which also might give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly of the League. This provision of the Covenant, it may be said, did not enter into the subsequent controversy with respect to participation by this Government in the League of Nations; on the contrary it is believed that this controversy reflected but little, if any, divergence of view in this country with respect to the advisability of establishing a permanent international court.

Pursuant to the direction contained in the Article above quoted, the Council of the League appointed an advisory committee of jurists which sat at The Hague in the summer of 1920 and formulated a plan for the establishment of such a court. Honorable Elihu Root was a member of that committee. It recommended a plan which was subsequently examined by the Council and Assembly of the League; and, after certain amendments had been made, the Statute constituting the Permanent Court of International Justice was adopted by the Assembly of the League on December 13, 1920.

While these steps were taken under the auspices of the League, the Statute constituting the Permanent Court of International Justice did not become effective upon its adoption by the Assembly of the League. On the contrary, it became effective by virtue of the signature, and ratification by the signatory powers, of a special Protocol. The reason for this procedure was that, although the plan of the Court was prepared under Article 14 of the Covenant, the Statute went beyond the terms of the Covenant, especially in making the Court available to States which were not members of the League of Nations. Accordingly a Protocol of Signature was prepared by which the signatory powers declared their acceptance of the adjoined Statute of the Permanent Court of International Justice. The Permanent Court, thus established by the signatory powers under the Protocol with the Statute annexed, is now completely organized and at work.

The Statute of the Court provides for the selection of the judges; defines their qualifications; and prescribes the jurisdiction of the Court and the procedure to be followed in litigation before it.

The Court consists of fifteen members,—eleven judges, called "ordinary judges," and four deputy judges. The eleven judges constitute the full Court. In case they cannot all be present, deputies are to sit as judges in place of the absentees; but, if eleven judges are not available, nine may constitute a quorum. It is provided that the judges shall be elected regardless of their nationality from amongst persons of high moral character, possessing the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law. The judges are elected by the Council and Assembly of the League, each body proceeding independently. The successful candidate must obtain an absolute majority of votes in each body. The judges are elected for nine years and are eligible for re-election. The ordinary judges are forbidden to exercise any political or administrative function. This provision does not apply to the deputy judges except when performing their duties on the Court.

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

Provision has also been made so that any signatory power, if it desires, may in signing the Protocol accept as compulsory "*ipso facto* and without special Convention" the jurisdiction of the Court in all or any of the classes of legal disputes concerning (*a*) the interpretation of a treaty; (*b*) any question of international law; (*c*) the existence of any fact which, if established, would constitute

a breach of an international obligation; and (*d*) the nature or extent of the reparation to be made for the breach of an international obligation.

This is an entirely optional clause and unless it is signed the jurisdiction of the Court is not obligatory.

The first election of judges of the Court took place in September 1921. The eleven ordinary judges are the following:

Viscount Robert Bannatyne Finlay, Great Britain,
B. C. J. Loder, Holland,
Ruy Barbosa, Brazil,
D. J. Nyholm, Denmark,
Charles André Weiss, France,
John Bassett Moore, United States,
Antonio Sanchez de Bustamante, Cuba,
Rafael Altamira, Spain,
Yorozu Oda, Japan,
Dionisio Anzilotti, Italy,
Max Huber, Switzerland.

The four deputies are:

Michailo Yovanovitch, Serb-Croat-Slovene State,
F. V. N. Beichmann, Norway,
Demetre Negulesco, Roumania,
Chung-Hui Wang, China.

It will be noted that one of the most distinguished American jurists has been elected a member of the Court, Honorable John Bassett Moore.

In considering the question of participation of the United States in the support of the Permanent Court, it may be observed that the United States is already a competent suitor in the Court. The Statute expressly provides that the Court shall be open not only to members of the League but to States mentioned in the Annex to the Covenant.

But it is not enough that the United States should have the privileges of a suitor. In view of the vast importance of provision for the peaceful settlement of international controversies, of the time-honored policy of this Government in promoting such settlements, and of the fact that it has at last been found feasible to establish upon a sound basis a permanent international court of the highest distinction and to invest it with a jurisdiction which conforms to American principles and practice, I am profoundly convinced that this Government, under appropriate conditions, should become a party to the convention establishing the Court and should contribute its fair share of the expense of maintenance.

I find no insuperable obstacle in the fact that the United States is not a member of the League of Nations. The Statute of the

Court has various procedural provisions relating to the League. But none of these provisions save those for the election of judges, to which I shall presently refer, are of a character which would create any difficulty in the support of the Court by the United States despite its non-membership in the League. None of these provisions impair the independence of the Court. It is an establishment separate from the League, having a distinct legal status resting upon the Protocol and Statute. It is organized and acts in accordance with judicial standards, and its decisions are not controlled or subject to review by the League of Nations.

In order to avoid any question that adhesion to the Protocol and acceptance of the Statute of the Court would involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Covenant of the League of Nations, it would be appropriate, if so desired, to have the point distinctly reserved as a part of the terms of the adhesion on the part of this Government.

Again, as already noted, the signature of the Protocol and the consequent acceptance of the Statute, in the absence of assent to the optional compulsory clause, does not require the acceptance by the signatory powers of the jurisdiction of the court except in such cases as may thereafter be voluntarily submitted to the Court. Hence, in adhering to the Protocol, the United States would not be required to depart from the position, which it has thus far taken, that there should be a special agreement for the submission of a particular controversy to arbitral decision.

There is, however, one fundamental objection to adhesion on the part of the United States to the Protocol and the acceptance of the Statute of the Court in its present form. That is, that under the provisions of the Statute only members of the League of Nations are entitled to a voice in the election of judges. The objection is not met by the fact that this Government is represented by its own national group in The Hague Court of Arbitration and that this group may nominate candidates for election as judges of the Permanent Court of International Justice. This provision relates simply to the nomination of candidates; the election of judges rests with the Council and Assembly of the League of Nations. It is no disparagement of the distinguished abilities of the judges who have already been chosen to say that the United States could not be expected to give its formal support to a permanent international tribunal in the election of the members of which it had no right to take part.

I believe that the validity of this objection is recognized and that it will be feasible to provide for the suitable participation by the

United States in the election of judges, both ordinary and deputy judges, and in the filling of vacancies. The practical advantage of the present system of electing judges, by the majority votes of the Council and Assembly of the League acting separately, is quite manifest. It was this arrangement which solved the difficulty, theretofore appearing almost insuperable, of providing an electoral system conserving the interests of the Powers both great and small. It would be impracticable, in my judgment, to disturb the essential features of this system. It may also be observed that the members of the Council and Assembly of the League in electing the judges of the Court do not act under the Covenant of the League of Nations but under the Statute of the Court and in the capacity of electors performing duties defined by the Statute. It would seem to be reasonable and practicable, that in adhering to the Protocol and accepting the Statute, this Government should prescribe as a condition that the United States, through representatives designated for the purpose, should be permitted to participate, upon an equality with other States members of the League of Nations, in all proceedings both of the Council and of the Assembly of the League for the election of judges or deputy judges of the Court or for the filling of vacancies in these offices.

As the Statute of the Court prescribes its organization, competence and procedure, it would also be appropriate to provide, as a condition of the adhesion of the United States, that the Statute should not be amended without the consent of the United States.

The expenses of the Court are not burdensome. Under the Statute of the Court, these expenses are borne by the League of Nations; the League determines the budget and apportions the amount among its members. I understand that the largest contribution by any State is but little more than $35,000 a year. In this matter also, the members of the Council and Assembly of the League do not act under the Covenant of the League but under the Statute of the Court. The United States, if it adhered to the Protocol, would of course desire to pay its fair share of the expense of maintaining the Court. The amount of this contribution would, however, be subject to determination by Congress and to the making of appropriations for the purpose. Reference to this matter also might properly be made in the instrument of adhesion.

Accordingly I beg leave to recommend that, if this course meets with your approval, you request the Senate to take suitable action advising and consenting to the adhesion on the part of the United States to the Protocol of December 16, 1920, accepting the adjoined Statute of the Permanent Court of International Justice, but not the optional clause for compulsory jurisdiction; provided, however,

that such adhesion shall be upon the following conditions and understandings to be made a part of the instrument of adhesion:

I. That such adhesion shall not be taken to involve any legal relation on the part of the United States to the League of Nations or the assumption of any obligations by the United States under the Covenant of the League of Nations constituting Part I of the Treaty of Versailles;

II. That the United States shall be permitted to participate through representatives designated for the purpose and upon an equality with the other States members respectively of the Council and Assembly of the League of Nations in any and all proceedings of either the Council or the Assembly for the election of judges or deputy judges of the Permanent Court of International Justice, or for the filling of vacancies.

III. That the United States will pay a fair share of the expenses of the Court as determined and appropriated from time to time by the Congress of the United States;

IV. That the Statute for the Permanent Court of International Justice adjoined to the Protocol shall not be amended without the consent of the United States.

If the Senate gives its assent upon this basis, steps can then be taken for the adhesion of the United States to the Protocol in the manner authorized. The attitude of this Government will thus be defined and communicated to the other signatory Powers whose acquiescence in the stated conditions will be necessary.

Copies of the Resolution of the Assembly of the League of Nations of December 13, 1920, the Protocol of December 16, 1920, and the Statute of the Court are enclosed herewith.[12]

I am [etc.] CHARLES E. HUGHES

500.C114/219a

President Harding to the Senate

WASHINGTON, *February 24, 1923.*

TO THE SENATE: There has been established at The Hague a Permanent Court of International Justice for the trial and decision of international causes by judicial methods, now effective through the ratification by the signatory powers of a special protocol. It is organized and functioning. The United States is a competent suitor in the court, through provision of the statute creating it, but that relation is not sufficient for a Nation long committed to the peaceful settlement of international controversies. Indeed, our Nation had a conspicuous place in the advocacy of such an agency of peace and

[12] For texts of these documents, see *Foreign Relations*, 1920, vol. I, pp. 17 ff.

international adjustment, and our deliberate public opinion of to-day is overwhelmingly in favor of our full participation, and the attending obligations of maintenance and the furtherance of its prestige. It is for this reason that I am now asking for the consent of the Senate to our adhesion to the protocol.

With this request I am sending to the Senate a copy of the letter addressed to me by the Secretary of State,[13] in which he presents in detail the history of the establishment of the court, takes note of the objection to our adherence because of the court's organization under the auspices of the League of Nations, and its relation thereto, and indicates how, with certain reservations, we may fully adhere and participate, and remain wholly free from any legal relation to the league or assumption of obligation under the covenant of the league.

I forbear repeating the presentation made by the Secretary of State, but there is one phase of the matter not covered in his letter with which I choose frankly to acquaint the Senate. For a long period, indeed, ever since the International Conference on the Limitation of Armament, the consideration of plans under which we might adhere to the protocol has been under way. We were unwilling to adhere unless we could participate in the selection of judges; we could not hope to participate with an American accord if adherence involved any legal relation to the league. These conditions, there is good reason to believe, will be acceptable to the signatory powers, though nothing definitely can be done until the United States tenders adhesion with these reservations. Manifestly the Executive can not make this tender until the Senate has spoken its approval. Therefore, I most earnestly urge your favorable advice and consent. I would rejoice if some action could be taken, even in the short period which remains of the present session.

It is not a new problem in international relationship, it is wholly a question of accepting an established institution of high character, and making effective all the fine things which have been said by us in favor of such an agency of advanced civilization. It would be well worth the while of the Senate to make such special effort as is becoming to record its approval. Such action would add to our own consciousness of participation in the fortunate advancement of international relationship, and remind the world anew that we are ready for our proper part in furthering peace and adding to stability in world affairs.

WARREN G. HARDING

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[13] Letter of Feb. 17, *supra*.

500.C114/228

The Secretary of State to President Harding

WASHINGTON, *March 1, 1923.*

MY DEAR MR. PRESIDENT: I have received your letter of February twenty-eighth,[14] enclosing a request handed to you by Senator Lodge, Chairman of the Senate Committee on Foreign Relations, for certain information desired by the Committee in order to reach a decision relative to advising and consenting to our adhesion to the Protocol establishing the Permanent Court of International Justice. I beg leave to submit the following statement upon the points raised.

First. The first inquiry is this:

"That the President be requested to advise the Committee whether he favors an agreement obligating all powers, or governments, who are signers of the protocol creating the court, to submit all questions about which there is a dispute and which cannot be settled by diplomatic efforts, relative to: *a*, The interpretation of treaties; *b*, Any question of international law; *c*, The existence of any fact, which, if established, would constitute a breach of an international obligation; *d*, The nature or extent of reparation to be made for the breach of an international obligation; *e*, The interpretation of a sentence passed by the Court."

I understand that the question is not intended to elicit your purely personal opinion, or whether you would look with an approving eye upon an agreement of this sort made effective by the action of all Powers, but whether you as President, in the exercise of your constitutional authority to negotiate treaties, favor the undertaking to negotiate a treaty on the part of the United States with other Powers creating such an obligatory jurisdiction.

So understood, I think that the question must be answered in the negative. This is for the reason that the Senate has so clearly defined its attitude in opposition to such an agreement, that until there is ground for believing that this attitude has been changed, it would be entirely futile for the Executive to negotiate a treaty of the sort described.

I may briefly refer to earlier efforts in this direction.

In the latter part of the Cleveland Administration a very strong public sentiment was expressed in favor of a general arbitration treaty between the United States and Great Britain, this being regarded as a step toward a plan for all civilized nations. In January, 1897, the Olney-Pauncefote Treaty was signed,[15] with provisions for compulsory arbitration having a wide scope. This Treaty was supported not only by the Cleveland Administration, but President

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[14] Not printed.

[15] *Foreign Relations,* 1896, p. 238.

McKinley endorsed it in the strongest terms in his annual message of December 6, 1897, urging "the early action of the Senate thereon, not merely as a matter of policy, but as a duty to mankind."[16] But despite the safeguards established by the Treaty, the provisions for compulsory arbitration met with disfavor in the Senate and the Treaty failed. (Moore's *Int. Law Dig.* Vol. VII, pp. 76–78.)

A series of arbitration treaties was concluded in 1904 by Secretary Hay with about twelve States. Warned by the fate of the Olney-Pauncefote Treaty, Secretary Hay limited the provision for obligatory arbitration in these treaties to "Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy." Even with this limitation, there was added the further proviso: "provided, nevertheless, that they (the differences) do not affect the vital interests, the independence, or the honour of the two contracting States, and do not concern the interests of third parties."

It was also provided that the parties should conclude a "special agreement" in each individual case, "defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the arbitral tribunal and the several stages of the procedure."

Notwithstanding the limited scope of these treaties for compulsory arbitration, the Senate amended them by substituting the phrase "special treaty" for "special agreement", so that in every individual case of arbitration a special treaty would have to be made with the advice and consent of the Senate. (Moore's *Int. Law Dig.* Vol. VII, p. 102–103). In view of this change Secretary Hay announced that the President would not submit the amendment to the other Governments.

It should also be observed that the Hague Conventions of 1899 and 1907, to which the United States is a party, relating to the general arbitration of certain classes of international differences, do not make recourse to the tribunal compulsory.

In 1908, a series of arbitration treaties was negotiated by the United States. The provisions of these treaties were limited to "Differences which may exist of a legal nature or relating to the interpretation of treaties existing between the two contracting parties and which it may not have been possible to settle by diplomacy," with the proviso "that they do not affect the vital interests, the

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[16] This quotation is not from President McKinley's annual message to Congress but from his first inaugural address, Mar. 4, 1897; see Moore's *Digest of International Law*, vol. VII, p. 78.

independence, or the honor of the two Contracting States and do not concern the interests of third parties." Secretary Root also provided, taking account of the failure of the Hay Treaties, that "in each individual case", the contracting parties before appealing to the arbitral tribunal should conclude a "special agreement" defining the matter in dispute, the scope and powers of the arbitrator, etc., and it was further explicitly stipulated in these treaties that such "special agreement" on the part of the United States should be made by the President "by and with the advice and consent of the Senate." These treaties, with these limiting provisions, made in deference to the opinion of the Senate as to the permissible scope of such agreements, received the Senate's approval.

In 1911, the Taft Administration submitted to the Senate general arbitration conventions with Great Britain [17] and with France [18] which were of broad scope. There were numerous objections on the part of the Senate. There was a provision in Article III that in case of a controversy as to whether a particular difference was justiciable, the issue should be settled by a proposed joint high commission. Objection was made that such an arrangement was an unconstitutional delegation of power, and the provision was struck out by the Senate. Again the Senate conditioned its approval on numerous other reservations, withholding from the operation of the treaty any question "which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several States, or the territorial integrity of the several States or of the United States, or concerning the question of the alleged indebtedness or monied obligation of any State of the United States, or any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine, or other purely governmental policy."

In the amended form the treaties were not acceptable to the Administration and remained unratified.

In the light of this record it would seem to be entirely clear that until the Senate changes its attitude it would be a waste of effort for the President to attempt to negotiate treaties with the other Powers providing for an obligatory jurisdiction of the scope stated in the Committee's first inquiry quoted above.

If the Senate, or even the Committee on Foreign Relations, would indicate that a different point of view is now entertained, you might

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[17] Garfield Charles (ed.), *Treaties, Conventions, etc., between the United States of America and Other Powers*, supp., 1913, to S. Doc. No. 357, 61st Cong., 2d sess. (Washington, Government Printing Office, 1913), vol. III, p. 385.

[18] *Ibid.*, p. 380.

properly consider the advisability of negotiating such agreements.

Second. The second inquiry is as follows:

"Secondly, if the President favors such an agreement does he deem it advisable to communicate with the other Powers to ascertain whether they are willing to obligate themselves as aforesaid.

"In other words, are those who are signers of the protocol creating the court willing to obligate themselves by agreement to submit such questions as aforesaid, or are they to insist that such questions shall only be submitted in case both, or all, parties interested agree to the submission after the controversy arises.

"The purpose being to give the court obligatory jurisdiction over all purely justiciable questions relating to the interpretation of treaties, questions of international law, to the existence of facts constituting a breach of international obligation, to reparation for the breach of international obligation, to the interpretation of the sentences passed by the Court, to the end that these matters may be finally determined in a court of justice."

What has been said above is believed to be a sufficient answer to this question. It may, however, be added that the Statute establishing the Permanent Court of International Justice, as I stated in my previous letter, has a provision (Art. 36) by which compulsory jurisdiction can be accepted, if desired, in any or all of the classes of legal disputes concerning: (*a*) The interpretation of a treaty; (*b*) Any question of international law; (c) The existence of any fact which, if established, would constitute a breach of an international obligation; and (*d*) The nature or extent of the reparation to be made for the breach of an international obligation. Accordingly, attached to the Protocol of Signature for the establishment of the Permanent Court of International Justice is an "optional clause" by which the signatory may accept this compulsory jurisdiction.

I understand that of the forty-six States who [*which*] have signed the Protocol for the establishment of the Court, fifteen [19] have ratified this optional clause for compulsory jurisdiction, but among the States which have not as yet assented to the optional clause are to be found, I believe, Great Britain, France, Italy and Japan. The result is that aside from the objections to which I have referred in answering the first inquiry, there is the additional one resulting from the attitude of these Powers.

It was for all the reasons above-stated that in my previous letter I recommended that if this course met with your approval, you should request the Senate to give its advice and consent to the adhesion on the part of the United States to the Protocol accepting,

[19] On Mar. 2, the Secretary wrote to President Harding: "I should like to have my letter of yesterday amended . . . so as to say instead of 'fifteen,' the following, 'about fifteen,' in reference to the countries which have ratified the optional clause."

upon the conditions stated, the adjoined Statute of the Permanent Court of International Justice, but not the optional clause for compulsory jurisdiction.

Third. The next inquiry is: "The Committee would also like to ascertain whether it is the purpose of the Administration to have this country recognize Part XIII (Labour) of the Treaty of Versailles as a binding obligation.—See Article 26 of Statute of League establishing the court."

I submit that the answer should be in the negative.

Part XIII of the Treaty of Versailles relating to Labour is not one of the Parts under which rights were reserved to the United States by our Treaty with Germany.[20] On the contrary, it was distinctly stated in that Treaty that the United States assumes no obligations under Part XIII. It is not now contemplated that the United States should assume any obligations of that sort. Article 26 of the Statute of the Court, to which the Committee refers in its inquiry, relates to the manner in which Labour cases referred to in Part XIII of the Treaty of Versailles shall be heard and determined. But this provision would in no way involve the United States in Part XIII. The purpose of the Court is to provide a judicial tribunal of the greatest ability and distinction to deal with questions arising under treaties. The fact that the United States gave its adhesion to the Protocol and accepted the Statute of the Court, would not make the United States a party to treaties to which it was otherwise not a party, or a participant in disputes in which it would otherwise not be a participant. The function of the Court, of course, is to determine questions which arise under treaties, although only two of all the Powers concerned in maintaining the Court may be parties to the particular treaty or the particular dispute.

Undoubtedly there are a host of treaties to which the United States is not a party, as well as Part XIII of the Treaty of Versailles, which would give rise to questions which such a Permanent Court of International Justice should hear and determine. None of the Signatory Powers by cooperating in the establishment and maintenance of the Court make themselves parties to treaties, or assume obligations under treaties, between other Powers. It is to the interest of the United States, however, that controversies which arise under treaties to which it is not a party should be the subject of peaceful settlements, so far as it is practicable to obtain them, and to this end that there should be an instrumentality, equipped as a Permanent Court, through which impartial justice among the nations may be administered according to judicial standards.

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[20] Treaty of Aug. 25, 1921, *Foreign Relations*, 1921, vol. II, p. 29.

Fourth. Finally the Committee states that "they would also like to be informed as to what reservations, if any, have been made by those countries who have adhered to the protocol."

I am not advised that any other State has made reservations on signing or adhering to the Protocol.

I am [etc.] CHARLES E. HUGHES

500.C114/227

President Harding to the Secretary of State

WASHINGTON, *March 5, 1923.*

MY DEAR MR. SECRETARY: This is a belated acknowledgment of yours of March first, with which you sent to me your replies to the inquiries instituted by the Senate Committee on Foreign Relations regarding the proposal that we should adhere to the Permanent Court of International Justice at The Hague. You have noted that I promptly submitted your letter to the Senate Committee and I am delighted to say to you that every newspaper reaction has been, to my mind, a favorable one, though it was not expected that the Senate would take any decisive action before adjournment. I think your prompt reply has put the Administration in a position of advantage.

Very truly yours,

WARREN G. HARDING

DISCUSSION WITH THE BRITISH AND JAPANESE GOVERNMENTS REGARDING A PROPOSED INCREASE IN GUN ELEVATION ON CAPITAL SHIPS RETAINED UNDER THE WASHINGTON NAVAL TREATY[21]

500.A4b/128½

Memorandum by the Secretary of State of a Conversation with the British Ambassador (Geddes), March 5, 1923

The British Ambassador called to take up with the Secretary the subject which he had started to discuss at his last interview (March 1st, 1923), that is, with respect to the reports as to the alterations in the British ships. The Ambassador said, referring to the Secretary's speech at New Haven on December 29, 1922,[22] and to remarks subsequently made by Secretary Denby before the Committee of the House of Representatives that these statements had occasioned considerable discussion in Great Britain and very definite inquiry. The

[21] Treaty of Feb. 6, 1922, *Foreign Relations,* 1922, vol. I, p. 247.
[22] At a meeting of the American Historical Association.

particular point was with respect to the statements as to increased elevation of turret guns and the modification of turret loading arrangements to conform to such increased elevation.

The Ambassador said that the facts were these: that no British ship had had its capacity for the elevation of its guns increased since its original construction, and that all reports to the contrary were absolutely false.

The Secretary said that he had just received a letter from Secretary Denby which he would read to the Ambassador. In this letter Secretary Denby said:

"As you know, it is the Navy Department's policy at all times to abide by both the letter and spirit of the Limitation of Armament Treaty. The modernization proposed by us all comes within this category.

"In order to prepare our plans and guide our policy, we have been desirous of obtaining accurate information as to the gun elevation of the main batteries of the British capital ships covered by the Treaty. Such information as we have tends to be contradictory on this point. For example, *Jane's Fighting Ships*, 1921, a British publication regarded as the leading authority on naval armaments, gives under the *Queen Elizabeth* class the following statement:

'Range of fifteen inch only limited by maximum visibility. Elevation of these guns has been enlarged.'

"Furthermore, officers of ours who have served with the British, as well as our naval attaché in London, have informed us that the guns of the main batteries have had their elevations increased since originally installed, and that battle practice ranges are now thirty thousand yards. On the other hand, within the last few days Mr. Amery, of the British Admiralty, has stated that the elevation of the main batteries of the British capital ships has not been changed since their original fitting, and a statement from the British Admiralty transmitted to us by our naval attaché, says that no changes in elevation of main batteries has been made since the Battle of Jutland.

"Will you, therefore, request the British Admiralty, through the proper channels, to give us final information regarding gun elevation and gun ranges of main batteries on their capital ships to be retained under the Limitation of Armament Treaty? The present Congress has appropriated funds whereby we may alter the elevation of our guns. We would appreciate obtaining this information at the earliest possible date, and we would be glad to furnish the British Admiralty with similar information in return."

The Secretary said he could not understand how any misunderstanding had arisen; that before making his New Haven speech on December 29, 1922 the Secretary had asked for a written statement from the Navy as to exactly what had taken place; that in his speech he had presented a portion in condensed form of what had been stated by the Navy and that he had sent his speech to Secretary Denby to be checked up before its delivery. The Secretary felt that

there was no doubt as to the understanding of the Navy at that time that the statements made were correct. The Secretary wondered how such an impression could have been created if there had been no increase in the gun elevation of British ships. The Secretary said that he would like to have a specific statement in accordance with Secretary Denby's request regarding the gun elevation and gun arrangements of the main batteries of their capital ships to be retained under the Treaty. The Secretary called attention to the fact that our Navy Department was willing to furnish similar information to the British Admiralty with respect to our ships.

The Ambassador said that he did not know what the attitude of the British Admiralty would be with respect to exchanging information as to actual elevation and ranges but he was authorized to say, and he repeated, that none of the ships retained by the British under the Treaty had had their capacity of gun elevation increased since the time of their construction. He said that there was a single qualification to be made to this in the case of the ships of the *King George V* class . . .

. . . .

. . . The Ambassador called attention to the fact that these ships of the *King George V* class were those which were to be scrapped on the completion of the two new ships which they were allowed to build under the Treaty.

. . . .

. . . The Secretary said he would be only too glad to have any false impression removed from the public mind, but he would like to have the Ambassador give him in writing in the form of a memorandum the statement which he had made orally, so that the Secretary in communicating with the Navy Department would not be compelled to trust his recollection and run the risk of making any mistake in repetition. The Secretary again inquired carefully whether he understood clearly that with the exception of the alteration to which he had referred in ships of the *King George V* class the other capital ships of the British Navy had the same gun elevation and gun range that they had when they were first built. The Ambassador said that that was exactly the case.

. . . .

500.A4b/132

The British Embassy to the Department of State

MEMORANDUM

In a conversation with the Secretary of State on the 1st instant His Majesty's Ambassador drew attention to statements made before

the Committee on Naval Affairs of the House of Representatives by the Secretary of the Navy on January 22nd, 1923, which conveyed the impression that an increase in the elevation of the turret guns of British warships had recently been undertaken by His Majesty's Government. The Secretary's statements to which attention was drawn were as follows:—

On Monday, 22nd January, 1923, during a Hearing on the Bill H.R. 13997, To Increase the Efficiency of the United States Navy, and for other purposes (elevation and range of turret guns), before the Committee on Naval Affairs, House of Representatives, the Secretary of the Navy stated that an appropriation of $6,500,000 was urgently required this session for the purpose of modernising certain ships now somewhat obsolete "owing to the activities of other powers in modernising their ships."

This work, he said, consisted of (1) elevation of guns to increase their range; (2) additional deck protection against airplane bombs; (3) additional protection in the shape of blisters.

Secretary Denby stated "most of these have been done in connection with the British ships . . .[23] and perfectly proper, because they come within the purview of the provisions of the Treaty. We think our Navy should be on a parity with their Navies in the strength of the individual ships, and the only way to do that is to elevate the guns by such necessary structural changes as do not contravene the terms of the Treaty, by adding additional sheathing on the decks. . . . "[23] Asked when the British and Japanese made these more or less extensive modernising repairs on their ships, Secretary Denby replied "They began them before the Conference was held."

Attention was also drawn to a statement in the same sense made by Mr. Hicks in the House of Representatives on February 16th in the course of the debate on this question which conveyed the impression that Great Britain was still making alterations to the gun armament—"They have elevated their guns on most of their ships and they are doing work on some of the other ships."

The matter again came before the House on Monday, 26th February. It was argued that increasing the range of the guns was equivalent to a change in the mounting. Mr. Hicks' statement was again calculated to convey the impression (P. 4733 [*4693*] of *Congressional Record* of 26th February, 1923) that Great Britain was employed in altering the elevation of her guns:—"All that is proposed here is the reconstruction of these ships as Great Britain is doing now with her fleet, as she was doing at the time of the Conference, and as Japan is doing,—all within the purview of the agreements."

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[23] Omission indicated in the Embassy's memorandum.

His Majesty's Ambassador pointed out that the House of Representatives presumably gained the impression that Great Britain was engaged at the present moment in effecting elevation alterations. In point of fact however no such work had been undertaken. At so recent a date as January 5th, 1923, (i. e. seventeen days before Mr. Denby's statement to this Committee) this circumstance was made perfectly clear to the United States Naval Attaché in London, as will be seen from the following correspondence:—

"AMERICAN EMBASSY
OFFICE OF THE NAVAL ATTACHÉ
LONDON, *5th January, 1923.*

"DEAR SIR OSWYN,

Confirming my oral request of this date, the Naval Attaché will appreciate receiving from the Admiralty such details as may be immediately available, of the modernization of ships of the Royal Navy that has been undertaken, is under way, or completed since 6 February, 1922, giving the names of the ships affected, and particularly what increase in gun elevation, installation of additional deck armour, and under-water protection has been given them since that date.

Very sincerely yours,

(Sgd.) C. L. HUSSEY, *Captain, U. S. Navy, Naval Attaché*"

SIR OSWYN A. R. MURRAY, K. C. B.,
Admiralty, S. W."

"ADMIRALTY
WHITEHALL, S. W. 1.
5th January, 1923.

"DEAR CAPTAIN HUSSEY,

In reply to your letter of today and confirming the information given verbally by the Controller of the Navy and myself this afternoon, I write to say:—

The only reconstruction work that has been undertaken, is under way, or has been completed since 6th February, 1922, relates to the ships shewn under the heading "Reconstruction" on page 238 of the Navy Estimates, viz:—

Furious. In process of being converted into an Aircraft Carrier. (This reconstruction was in hand before the Washington Conference).
Renown. About to be taken in hand for Bulging, and for Re-armouring similarly to the *Repulse*, as specifically provided for in Chapter II, Part 3, Section I (*d*) of the Draft Treaty.
Royal Sovereign. Bulging has just been completed.
Royal Oak. Has just been taken in hand for Bulging only.

No increase in gun elevation has been given to any of our Ships since the date mentioned, nor is it in contemplation to give any.

No additional deck armour has been given to any of our Ships since the date mentioned. The Board's intention is to continue the programme of Bulging, but to leave the question of providing additional deck protection, as mentioned in the above-quoted Section of the Draft Treaty, for later consideration when the financial situation allows.

Believe me,
Yours very truly,

(Sgd.) O. A. R. MURRAY"

Captain C. L. HUSSEY,
CMG, U. S. N."

Having regard to the foregoing, Sir Auckland Geddes felt convinced that the United States Government would wish to issue some

statement in order to correct the misapprehension which had undoubtedly arisen in the public mind as a result of the statements made before the House of Representatives.

In his reply the Secretary of State declared that he also was clearly under the impression that work had recently been undertaken to increase the elevation of British guns. So much so that he had, on the authority of the Navy Department, made a public statement to this effect at New Haven on December 29th last. The passage to which Mr. Hughes referred ran as follows:—

"The result is that in a considerable number of British ships bulges have been fitted, elevation of turret guns increased and turret-loading arrangements modified to conform to increased elevation."

In the circumstances the Secretary of State promised to make enquiry of the Navy Department and to continue the discussion with His Majesty's Ambassador at a later date. On the 5th instant Sir Auckland Geddes again referred to the matter and was informed by Mr. Hughes that he was in receipt of a letter from Mr. Denby to the effect that the statements of the Navy Department were based on the fact that modifications in the elevation of British guns on vessels in commission had actually been seen by American Naval Officers and that the United States Naval Attaché in London had reported that firing had been carried out at 30,000 yards.

To this Sir Auckland Geddes replied that he could only imagine that the Naval Officers must be under a misapprehension. Minor modifications had been made to the sights to admit of the effective use of the maximum elevation for which the mountings were designed and constructed. This work, which was completed by the end of 1916, that is before the United States entered the war, is possibly that to which the Officers referred.

Referring again to Mr. Hughes' statement of 29th December, Sir Auckland Geddes desired to declare categorically that no alteration had been made in the elevation of the turret guns of any British Capital ships since they were first placed in commission and further to point out that no additional deck protection had been provided. The position had been clearly set forth in the letter from Sir Oswyn Murray to the United States Naval Attaché of 5th January, 1923.

Having regard to the precise statement of fact which had been made in writing to the United States Naval Attaché in London on 5th January (also, it appears on enquiry, on three occasions since) and verbally to the Secretary of State by himself, Sir Auckland Geddes trusted that some corrective statement would be made. The Secretary of State promised to consider the matter further and suggested that the verbal statements made by His Majesty's Ambassador should be recorded in the form of a memorandum and communi-

cated to the State Department. This Sir Auckland Geddes undertook to do.

Since the conversations above recorded took place Sir Auckland Geddes has ascertained from His Majesty's Government that no firing practice has taken place at 30,000 yards as stated in Mr. Denby's letter to the Secretary of State.

In concluding the present memorandum His Majesty's Ambassador desires to draw attention to the following quotation from the *Army and Navy Journal* of January 6th last:—

"(Extract from Weekly Washington Letter
by E. B. Johns, Washington Correspondent).

. . . Great Britain was the first to see the importance of bringing existing battleships up to the highest state of efficiency. While she had been pleading poverty, she has been modernizing a number of her ships. United States Naval authorities now contend that by this policy she has disturbed the 5.5.3. ratio provided for in the arms treaty. . ."

This statement and others of the same character are calculated to arouse in the public mind suspicions in regard to the good-faith of a friendly Power signatory to the Washington Treaty for the limitation of Naval Armament. Such statements appear to owe their origin, at least in part, to the official pronouncements to which reference has been made above. Sir Auckland Geddes feels assured that there is nothing further from the minds of American Naval experts than to foster the growth of those sentiments of mistrust which it was one of the primary objects of the Washington Conference to dispel. He looks confidently to the issue of a statement which will place the facts correctly before the public.

WASHINGTON, *March 15, 1923.*

500.A4b/132

The Department of State to the British Embassy

MEMORANDUM

With reference to the memorandum handed him by the British Ambassador on March 15, 1923, relating to the statements which had been made as to the elevation of the turret guns of British capital ships, the Secretary of State today made the following statement to the press:

"In my speech at New Haven on December 29, 1922, I made the following statement with respect to alterations in the British capital ships: 'The result is that in a considerable number of British ships bulges have been fitted, elevation of turret guns increased and turret loading arrangements modified to conform to increased elevation'.

In making this statement I relied upon specific information which had been furnished me by the Navy Department and which of course the Navy Department believed to be entirely trustworthy.

"The Department of State has been advised by the British Government categorically, 'that no alteration has been made in the elevation of the turret guns of any British capital ships since they were first placed in commission', and further, 'that no additional deck protection has been provided [since February 6, 1922, the date of the Washington Treaties]'.[25]

"It gives me pleasure to make this correction, as it is desired that there should be no public misapprehension."

The Acting Secretary of the Navy has also made a statement to the press as follows:

"The Navy Department, in the hearings before Congress, stated that the elevation of the turret guns on the British capital ships had been and was being increased. This statement was based on information believed to be thoroughly reliable by the Department.

"The British Admiralty has informed the Department that this is not the case, and that the elevation of the turret guns on the British capital ships is the same as when these ships were originally commissioned. This places the matter beyond further question, and the Department takes pleasure in correcting its previous statement in consonance with the above."

WASHINGTON, *March 20, 1923.*

500.A4b/140

Statement Issued to the Press by the Navy Department

WASHINGTON, *April 26, 1923.*

Secretary Denby announces that:

During the discussion at the last Congress of the proposal to appropriate $6,500,000.00 for elevating the guns of thirteen battleships of the United States Fleet, certain statements were made in regard to the disparity between the ranges of guns of the ships of the British Fleet and those of the Fleet of the United States. These statements were made in absolute good faith, but were shown by later reports from the government of Great Britain to have been exaggerated. While the disparity does exist, it is not so great as was then supposed.

Upon the representations of the Navy Department, Congress appropriated the sum asked for. In view of the discrepancy between the statements of the Department and actual conditions, the Department has determined not to employ the money appropriated for

[25] The phrase in brackets was added to the public statement at the request of the British Embassy.

the purpose of increasing the elevation of the guns of the American Fleet until further directed to do so by Congress.

This course has the President's approval.

500.A4b/144½

Memorandum by the Secretary of State of a Conversation with the Japanese Ambassador (Hanihara), May 3, 1923

Gun Elevation.—The Ambassador said that he had received instructions from his Government with respect to the inquiry which the Secretary had made in a personal and informal way at his recent interview (see memorandum of April 12)[26] and that he would endeavor to interpret these instructions. Count Uchida felt that there was danger that if negotiations were entered upon with respect to the matter of gun elevation and they did not result in an agreement between the two Governments that the effect would be unfortunate and might tend to impair the cordial understanding which was happily the result of the Washington Conference. For that reason Count Uchida felt that it would be better not to take up such formal negotiations, but to state the views entertained by the Japanese Government in the same informal and confidential way as that in which the Secretary had presented the subject. Count Uchida said that there were technical questions which would have to be considered. Many things might be done which would increase the actual capacity for offensive action in the case of a battleship which, nevertheless, were not prohibited by the Naval Treaty. For example, in the size and shape of shells, in the character of powder, with respect to casings, et cetera, changes might be made which would in effect increase the range. There were other matters besides the elevation of guns which would have an important bearing upon the offensive power of warships as, for example, in connection with torpedoes, wireless installations, et cetera. The treaty makers, very wisely, had not attempted to deal with all these things, but had established certain general standards for their capital ships. It must also be observed that two new ships were to be built by England and certain ships were to be completed by the United States, but there was no attempt to define all the particulars that went to make up the offensive power of the ships or just what should be done. Probably no agreement could have been reached about such details and so the treaty merely dealt with certain standards which were deemed to be practically sufficient without attempting to prescribe limitations as to everything that went into the actual fighting capacity of the ships. There were also

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[26] Not printed.

to be considered the special provisions of the Treaty, Section 1 of Part III, as to France and Italy, which were permitted to increase their armor protection and the calibre of their guns, but these special provisions said nothing about gun elevation. In the light of all these considerations, Count Uchida had said that it was not the view of the Japanese Government that a change in the gun elevation, which did not require changes of the prohibited sort, in the ships themselves, would be a violation of the Treaty. This being so, if the Governments attempted to deal with the matter, it would be necessary to negotiate a new agreement upon this point and it was very doubtful whether it was wise to undertake special agreements as to particular details of this sort. Count Uchida would like to have the Secretary comment quite freely upon the views that had been expressed. The Secretary said that he cordially appreciated the frankness of Count Uchida in stating his views and the spirit in which the matter had been taken up. The Secretary referred to the fact that he had called attention to it in a purely personal and unofficial way, as he was not prepared to commit his Government with respect to the matter. It would be necessary before he could do that to confer with the President. He understood that for the present the matter was in abeyance until Congress met and the question could be taken up uninfluenced by the inaccurate information which had been received as to the changes in gun elevation on the British ships. The Secretary said that there were two questions. The first was with regard to the terms of the Treaty itself. The Secretary said he appreciated the force of the observations that had been made by Count Uchida and he did not care to discuss the matter from the technical standpoint with respect to the construction of the Treaty. He was gratified, however, to be advised as to the Japanese point of view upon that matter. The Secretary said that it was the second aspect of the question to which he desired to direct particular attention, although he was speaking in an entirely personal way. As to new ships there was, of course, no question but that, within the limitations of the Treaty, the Powers were at liberty to take advantage of the latest improvements in naval architecture and in developing the offensive power of these ships. Action of that sort would be expected and would not excite any public discussion. On the other hand, there were the existing ships which the Powers were entitled to retain under the Treaty, and the question raised was as to changes in the gun elevation upon these ships which had actually existed with certain guns and gun elevation at the time the Treaty was signed. The Secretary pointed out that if one Power proceeded to make changes in the gun elevation on these ships doubtless

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other Powers would be led to do the same and there would be created in the public mind a notion that if the existing ships were being changed for this purpose that the state of unrest and apprehension which it was intended by the Conference to remove, still existed to a considerable extent. If it were reported, for example in this country that the Japanese were changing their gun elevation on their retained ships, it would doubtless excite a good deal of comment here. On the other hand, if both Powers proceeded to make changes of this sort, each acting because the other was taking action, when they got through they might be in precisely the same position relatively as they were at the start and would have spent a good deal of money to no actual purpose. The Secretary said that while the technical point with respect to new ships might be well taken there was really a practical distinction between building what everybody expected to be built and making changes which it was not supposed would be made in the existing ships.

The Secretary wished to emphasize that it might be decided by this Government to proceed with the changes in gun elevation on its ships; that was a matter which was not within his Department, but he had sought to make the inquiry so that all phases of the question could be before the President when the final decision was made. The Secretary merely wished to know whether, as the question was up, there would be a disposition on the part of the Japanese Government to consider the matter as a broad question of economic policy. The Ambassador said that he fully understood the way in which the question was brought up by the Secretary and greatly appreciated the opportunity to have it considered and would not fail to report what the Secretary had said to Count Uchida.

REFUSAL BY THE UNITED STATES TO RATIFY THE CONVENTION FOR THE CONTROL OF THE TRADE IN ARMS AND AMMUNITION, SIGNED SEPTEMBER 10, 1919[27]

511.3 B 1/115

The Acting President of the Council of the League of Nations (Wood) to the Secretary of State

LONDON, *1 May, 1923*.
[Received May 15.]

SIR: I have the honour to inform you that the Council of the League of Nations at its meeting of the 21st April adopted the following resolution:

"The Council, on the proposal of the Temporary Mixed Commission for the Reduction of Armaments, requests its President to ascer-

[27] Continued from *Foreign Relations*, 1922, vol. I, pp. 543–556.

tain whether the Government of the United States would be disposed to state its views as to the manner in which it would be willing to co-operate with other Governments in the control both of the traffic in arms and the private manufacture of arms."

You are perhaps aware that both the question of the private manufacture of arms and that of the international control of the arms traffic have engaged the continuous attention of the Assembly and of the Council of the League.

The Convention of Saint-Germain [28] was framed, as you will recall from the records of the American Peace Commission which co-operated in its drafting, with a view to an adequate solution of the Arms Traffic question on a world-wide basis. As it is obvious that this Convention could not fulfil its aim unless ratified by all the manufacturing powers, the Assembly and the Council, when they first took up the question in 1920, directed their efforts towards this end and an enquiry was accordingly conducted by the Secretary-General.

The Temporary Mixed Commission, in the Report which it submitted to the Assembly on September 7th, 1922, summed up the results of this enquiry in the following terms:

"The following States have ratified or adhered to the Convention:

Brazil,	Finland,	Haiti,
Chile,	Greece,	Peru,
China,	Guatemala,	Siam,
		Venezuela.

Great Britain, as well as Spain, Canada, New Zealand and South Africa, are prepared to ratify the Convention as soon as all the other principal Powers are willing to do so.

France has announced that the President of the Republic has been authorised by the Chamber of Deputies and the Senate to ratify the Convention and that ratification will be carried out as soon as the principal Signatory Powers shall themselves have taken steps to ratify the Convention.

Italy has expressed her readiness to ratify the Convention as soon as it has been approved by Parliament, and Japan has promised to ratify it with as little delay as possible after its ratification by the other Powers.

A certain number of States, such as Denmark, India, Sweden and Norway, make their ratification conditional on that of all the Signatory Powers, whereas Roumania, Luxemburg, Colombia, Uruguay and Persia declare their willingness to adhere to the Convention.

It will be seen from this statement that the principal Powers which have replied to the enquiry make their ratification depend on that of the other principal Signatory Powers. This reservation would seem to refer especially to the United States of America, which are signatory to the Convention and which had not, up to the present, replied to the invitation addressed to them."

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[28] *Foreign Relations*, 1920, vol. I, p. 180.

In reply to the note addressed to the United States on November 21st, 1921,[29] you were good enough to inform the Secretary-General, under date of July 28th, 1922,[30] that "while the Government of the United States was in cordial sympathy with efforts to restrict traffic in arms and munitions of war, it found itself unable to approve the provisions of the Convention and to give any assurance of its ratification."

The Third Assembly which met shortly afterwards, in September, had therefore to consider the situation thus created.

The Third Committee of the Assembly, referring to this reply, expressed the following opinion:

"This reply puts an end to the hopes that the Convention of Saint-Germain in its present form would receive general acceptance.

As has already been said, it is most desirable that some treaty should be universally accepted for the control of the international trade in arms, and that all civilised countries should co-operate in a common policy of regulation.

Whether that can be done, however, depends on the attitude of the United States of America. It is important, therefore, that the Members of the League should endeavour in every way to meet the views of the United States Government and to secure their co-operation in a common policy."

In the meantime the work carried out by the Permanent Advisory Commission on Military, Naval and Air Questions, and by the Temporary Mixed Commission for the Reduction of Armaments, had led these bodies to the conclusion that the two problems of the private manufacture of arms and the international control of the arms traffic were too closely connected to be dealt with separately, and that the solution of both had to be sought at the same time and by the same methods. The Third Assembly therefore adopted the following resolutions:

"The Assembly, having noted the proposal of the Temporary Mixed Commission for an international agreement for the control of the manufacture of arms by private companies, urges on the Council to consider the advisability of summoning at an appropriate moment a conference of the Members of the League to embody this agreement in the form of a convention. The Assembly is further of the opinion that States not Members of the League should be invited to participate in this conference and to co-operate in the policy on which it may agree."

"The Assembly considers it highly desirable that the Government of the United States should express the objections which it has to formulate to the provisions of the Convention of Saint-Germain, as well as any proposals which it may care to make as to the way in which these objections can be overcome."

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[29] *Foreign Relations*, 1922, vol. I, p. 544.
[30] *Ibid.*, p. 550.

Since these resolutions were taken, the Council and the Temporary Mixed Commission have given their attention to this matter with the result that the Council passed at its last session the resolution quoted at the beginning of this letter. In virtue of this resolution I have the honour to ask you whether the United States Government would be ready to inform the Members of the League of Nations as to the general lines on which it would be willing to co-operate in an attempt to solve on a universal and permanent basis the two problems of the private manufacture of arms and the international control of the arms traffic.

In order to enable you to form an accurate opinion of the scope and nature of the work carried out in this connection by the organs of the League, I beg to enclose the Report of the Temporary Mixed Commission to the Council and that of the Third Committee to the last Assembly,[31] in each of which two chapters are devoted to these questions.

I have [etc.] EDWARD WOOD

511.3 B 1/124

The Acting Secretary of Commerce (Drake) to the Secretary of State

WASHINGTON, *August 3, 1923.*

MY DEAR MR. SECRETARY: I beg to acknowledge your letter of July 23[32] in which you have asked for an expression of the views of this Department concerning a communication forwarded to you under date of May 1, 1923 by the Acting President of the Council of the League of Nations, regarding the private manufacture of arms and the international control of the traffic in arms. I feel that prior communications forwarded by you to the League of Nations under date of July 28, 1922 and to the Chargé d'Affaires *ad interim* of Great Britain under date of August 5, 1922,[33] have covered the situation so far as this Department is concerned.

In addition to the points you have mentioned, you may be interested in knowing that this Department has issued special instructions that no assistance is to be given by the Department of Commerce to private organizations in this country in selling to foreign governments or citizens thereof, or to foreigners in acquiring surplus American war material or any material of a similar nature, which might be used by governments of foreign countries or their nationals for the purpose of carrying on or encouraging warfare in any part of the world. The instructions of this Department are based on the

[31] Neither printed.
[32] Not printed.
[33] *Foreign Relations*, 1922, vol. I, pp. 550 and 554.

President's letter of April 23, 1923 [34] to the Secretary of War and the Secretary of the Navy, and on the covering memorandum forwarded by your Department to me in communicating to the Department of Commerce the instructions of the President to the War and Navy Departments.

I may also add that this Department has received information of the sale of war materials on the part of the nationals of several of the countries which have either ratified or have indicated their willingness to ratify the Saint Germain Convention to other governments on a basis which would seem to indicate that the objects of the Convention itself were being nullified or at least weakened.

Yours faithfully,

J. WALTER DRAKE

511.3 B 1/125

The Secretary of the Navy (Denby) to the Secretary of State

WASHINGTON, *September 7, 1923.*

SIR: In accordance with the request in your letter of July 23, 1923, No. NE 511.3 B 1/115,[35] for an expression of my views on the suggested cooperation of the United States with other governments in the control of the private manufacture and international trade in arms, I have given careful consideration to this subject and can not see any useful result that would come from an attempt to enter into a general treaty limiting the manufacture or exportation of arms.

The conditions throughout the world are so various and complex that any attempt to apply general legislation is likely to fail of its object. I believe that no general treaty of this kind should be negotiated.

Respectfully,

EDWIN DENBY

511.3 B 1/115 : Telegram

The Acting Secretary of State to the Minister in Switzerland (Grew)

WASHINGTON, *September 12, 1923—5 p.m.*

53. Department's 37, July 23.[35]

You are instructed to transmit the following communication to the Secretary General of the League in the usual informal manner:

"The Secretary of State of the United States of America has given most careful study to the communication from the Acting President

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[34] Quoted in telegram no. 61, Sept. 27, to the Minister in Switzerland, p. 42.
[35] Not printed.

of the Council of the League of Nations dated May 1, 1923, asking the views of the United States regarding the control of the traffic and private manufacture of arms set forth in the Convention of Saint-Germain, and to inform you that the Government of the United States is in cordial sympathy with efforts suitably to restrict traffic in arms and munitions of war.

As evidence of its interest in the matter, it may be recalled that by a joint resolution approved April 22, 1898,[36] as amended March 12 [*14*], 1912,[37] the following provision was made with respect to the regulation of the shipment of arms from the United States

'That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.'

By a resolution approved January 31, 1922,[38] this provision of law was extended so as to include any country in which the United States exercises extraterritorial jurisdiction. It is also the policy of the Government to restrict the sale of Government supplies of arms and munitions.

After a careful examination of the terms of the Convention, it has been decided that the objections found thereto render impossible ratification by this Government.

While the application of the Convention to certain designated areas or zones, extending in effect the Brussels Convention,[39] may fulfill a useful object, the plan of the present Convention is much broader. The distinctive feature of this plan is not a provision for a general limitation of armament, but the creation of a system of control by the signatory powers of the traffic in arms and munitions, these signatory powers being left free not only to meet their own requirements in the territories subject to their jurisdiction but also to provide for supplying each other with arms and munitions to the full extent that they may see fit.

There is particular objection to the provisions by which the contracting parties would be prohibited from selling arms and munitions to states not parties to the Convention. By such provisions, this Government would be required to prevent shipments of military supplies to such Latin American countries as have not signed or adhered to the Convention, however desirable it might be to permit such shipments, merely because they are not signatory powers and might not desire to adhere to the Convention.

It should be observed also that the acceptance by the United States of an agreement of the nature and scope of the Convention of Saint Germain would call for the enactment of legislation to make it operative, and particularly for the imposition of penalties appli-

[36] 30 Stat. 739.

[37] 37 Stat. 630.

[38] 42 Stat. 361.

[39] General Act for the Repression of African Slave Trade, signed at Brussels, July 2, 1890; 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. 1964.

cable to private arms-producing concerns as a means of establishing an effective control. This Government is not in a position to undertake to obtain the enactment of such legislation.

Finally, it may be observed that the provisions of the Convention relating to the League of Nations are so intertwined with the whole Convention as to make it impracticable for this Government to ratify, in view of the fact that it is not a member of the League of Nations."

PHILLIPS

511.3 B 1/128

The Secretary of War (Weeks) to the Secretary of State

WASHINGTON, *September 26, 1923.*

MY DEAR MR. SECRETARY: With reference to your letter of July 23, 1923, (NE 511.3, B 1/115)[41] in which you request an expression of my views in regard to an enclosed communication of May 1, 1923, from the Acting President of the Council of the League of Nations regarding the private manufacture of and the international traffic in arms, and with further reference to your letter of August 16, 1923,[41] transmitting copies of certain reports from the League of Nations for my consideration in connection with the communication of May 1, 1923, referred to above, I am pleased to advise you as follows.

The views of the War Department in the premises center chiefly about the effect that any action taken by the Government of the United States in this connection might have upon our munitions industry and therewith on our national preparations for defense.

The United States has already complied with the spirit of the Arms Traffic Convention signed on September 10, 1919, at Saint Germain-en-Laye and of the proposal to control the private manufacture of arms and munitions, in that it has consistently favored reduction in armament and control of the manufacture and traffic in arms and munitions, and has given practical proof of its sincerity by drastically reducing its armed forces, by dismantling its armament industry, by passing legislation designed to curtail the shipment of arms and munitions, and by prohibiting the sale of all surplus war materials to all foreign powers.

The United States in time of war is dependent almost entirely upon private manufacture of munitions while other great powers maintain large enough government-owned and subsidized plants to much more nearly meet their war needs. Curtailment of private manufacture would therefore work directly to the disadvantage of the United States.

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[41] Not printed.

To exist in time of peace, private manufacture must have outlet for its products. Such outlet is found in—

(1) The needs of Government military forces.
(2) Domestic needs.
(3) Export to other countries.

Obviously a nation which maintains a comparatively small military establishment and has few dependencies and colonies to increase domestic demands must depend more on international traffic to insure the existence of such plants.

The combined production capacity of our Government arsenals and private arms and munitions plants is so small compared with that of each of the great arms and munitions producing powers that any action tending to decrease that capacity would seriously endanger our national preparedness.

It is likewise undesirable to further discourage our foreign trade in arms and munitions, since such trade is absolutely essential to the maintenance of the capacity mentioned in the preceding paragraph.

In fact, conditions as regards munitions production and traffic of the United States are so different from those of the great arms and munitions producing powers that it would seem useless for this Government to attempt to cooperate, as desired by the League of Nations, so long as such nations find it necessary to maintain military forces and armaments so out of proportion to those of the United States and so long as they possess facilities for maintaining private munitions production capacities to meet demands of colonies and dependencies not possessed by the United States.

The War Department would offer no objections to the cooperation of the United States in any attempt to solve, on a universal and permanent basis, the two problems of private manufacture of arms and the international control of the arms traffic, if something concrete could be accomplished thereby. Since the principal arms and munitions producing powers have not taken any steps heretofore commensurate with those taken by the United States in that connection, it appears to be safe to conclude that they are not likely to do so even in case the United States were to go still further in curtailing its already dangerously small industry and export trade in arms and munitions.

From what has been said, it is apparent that it would be undesirable from a military point of view for the United States to take any steps, the logical consequence of which would be to impose upon it the obligation—

(*a*) To restrict its present private arms and munitions producing industry; and

(*b*) To curtail the present export trade in arms and munitions of its private arms and munitions plants.

In view of the foregoing, it would accordingly serve no useful purpose to comply with the request contained in the letter of May 1, 1923, hereinbefore referred to, from the Acting President of the Council of the League of Nations and in accordance therewith to formulate and to dispatch to the League of Nations a statement indicating the general lines on which the United States would be willing to cooperate in an attempt to solve, on a universal and permanent basis, the two problems of the private manufacture of arms and the international control of the arms traffic.

Finally, from the sole viewpoint of national defense, it is believed to be highly desirable that the United States reserve to itself full freedom of action both as regards the private manufacture of arms and munitions and the control of the arms traffic.

Sincerely yours,

JOHN W. WEEKS

511.3 B 1/128a : Telegram

The Secretary of State to the Minister in Switzerland (Grew)

WASHINGTON, *September 27, 1923—6 p.m.*

61. For your information only.

In making public this afternoon the text of the note transmitted to the League of Nations with regard to the Arms Traffic Convention, see Department's 52 [*53*], September 12, 5 p.m., the following statement was issued to the press:

"In making public the text of the communication to the League of Nations with regard to the Arms Traffic Convention, it was pointed out that the refusal to ratify the Convention for the reasons therein stated did not indicate that this Government was less anxious than other powers suitably to control the traffic in arms. Quite the contrary is the case as is shown by the action of the Executive under existing legislation and by the policy which has actually been adopted in taking the measures for the proper restraint of this traffic which lay within the authority of the executive departments of the Government.

In a letter from the late President to the Secretary of War, dated April 23rd, which was made public on April 24th, Mr. Harding stated:

' . . .[42] I hope it will be the policy of the War Department not only to make no sales of war equipment to any foreign power, but that you will go further and make certain that public sales to our own citizens will be attended by proper guarantees that such supplies are not to be transferred to any foreign power. I would gladly waive aside any financial advantage that might attend

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[42] Omission indicated in the original telegram.

such sales to make sure that none of our surplus equipment is employed in encouraging warfare any place in the world. I am writing a similar note to the Secretary of the Navy and shall confidently expect the cooperation of both Departments in adhering to this policy.'

The Executive branch of the Government is not in a position to intervene in transactions which are wholly within the law; but not desiring to encourage other powers to arm themselves for conflict, which is deemed contrary to the spirit of the country, this Government, in addition to adopting a strict policy with regard to the sale of surplus government army stores, has replied to the recent inquiries which it has received that it does not encourage the shipment of war material to the troubled areas of the world. This stand has been taken although this Government was not unmindful of the fact that intending purchasers would no doubt resort to other markets to supply their wants. It may also be added that under present conditions the Department would not favor the flotation of a foreign loan in this country for which the proceeds would be utilized for armament.

The objections made by this Government to the ratification of the Convention of Saint Germain dealt with matters which were believed to be fundamental and which did not lend themselves to suggestions of modifications which would be consistent with the structure of the Convention."

Mail text of Department's note, as well as press statement to London, Paris and Rome for their information only.

HUGHES

511.3 B 1/134

The Acting President of the Council of the League of Nations (Branting) to the Secretary of State

GENEVA, *14 December, 1923.*
[Received December 27.]

SIR: I have the honour to acknowledge the receipt of your letter of September the 12th, 1923, forwarded by the Legation of the United States in Berne, in answer to the communication sent you by the Acting President of the Council, dated May 1st.

In that letter the Acting President of the Council outlined the development of this question. After having recalled the fact that the Convention of St. Germain had been framed with the co-operation of the American Peace Commission, as an adequate solution of the Arms Traffic question on a world-wide basis and pointed out that this Convention could not fulfil its aim, unless ratified by all the manufacturing Powers, the letter went on to summarise the efforts that were made by the League of Nations to bring about this ratification. It then recalled that, unfortunately, the Government of the United States had found itself unable to ratify the Convention, thereby putting an end to all hopes of ratification by the other

chief manufacturing powers which had been conditional on a general ratification by all of them.

The letter addressed by the Council of the League to the Government of the United States on November 21st, 1921, was then mentioned, as well as your answer of July 28th, 1922, in which you were good enough to inform the Secretary General that: "while the Government of the United States was in cordial sympathy with efforts to restrict traffic in arms and munitions of war, it found itself unable to approve the provisions of the Convention and to give any assurance of its ratification".

The letter of the Acting President of the Council quoted the Resolution of the Third Assembly to the effect "that the Assembly considers it highly desirable that the Government of the United States should express the objections which it has to formulate to the provisions of the Convention of St. Germain, as well as any proposals which it may care to make as to the way in which these objections can be overcome".

Your reply of September the 12th, 1923, was received at the moment when the Fourth Assembly was dealing with the question. The Assembly, while noting the objections which the Government of the United States raised in connection with the Convention of St. Germain, as outlined in your letter, was, however, confronted with the fact that no proposals were made therein for the solution of the problem on a fresh basis. The first, or negative side of the Assembly's Resolution was therefore met, but not its second or positive part.

Having, however, in mind, the fact that, in a previous letter quoted above, the Government of the United States had expressed itself "in cordial sympathy with efforts to restrict the traffic in arms and munitions of war" the Assembly, in its session of 1923, adopted the following resolution:

"IV. *a*).—The Assembly recommends that the Temporary Mixed Commission should be invited to prepare a new Convention or Conventions to replace that of St. Germain for the control of the Traffic in Arms.

The Temporary Mixed Commission should be requested to draw up the draft Convention, or Conventions, in such a form that they might be accepted by the Governments of all countries which produce arms or munitions of war.

The Temporary Mixed Commission should, however, also make alternative proposals for a Convention or Conventions which might be adopted by some of the producing Powers, even if others refused their co-operation.

The Assembly recommends that the Council should invite the United States Government to appoint representatives to co-operate

with the Temporary Mixed Commission in preparing the draft Convention or conventions".

Acting upon this Resolution of the Assembly, with which the Council is in entire agreement, I have the honour, on behalf of my colleagues of the Council to invite the Government of the United States to co-operate with the Temporary Mixed Commission in the preparation of the draft convention, or conventions, suggested by the Assembly.

In sending this invitation to the Government of the United States, the Council has felt that the problem of the control of the traffic in arms—a problem which the Federal Government will agree has an eminently moral and humanitarian character—cannot be entirely solved except with the help of all the great producing countries.

I have the honour to enclose, not only the Report of the Temporary Mixed Commission to the Council, and the Report of the Third Committee to the Assembly, both of which deal with the question raised in this letter, but also the resolution of the Council, setting out the constitution and character of the Commission.[43]

I have [etc.] H. J. Branting

511.3 B 1/135

The Minister in Switzerland (Grew) to the Secretary of State

No. 1290 Berne, *December 15, 1923.*
L.N. No. 432 [Received January 2, 1924.]

Sir: With reference to a letter dated December 1923, said to have been addressed to you by the Acting President of the Council of the League of Nations concerning a recommendation by the Assembly to the Council of the League that the Government of the United States should be invited to appoint representatives to cooperate with the Temporary Mixed Commission in the preparation of the new Convention for the regulation of the traffic in arms, to supersede the Convention of St. Germain, I have the honor to transmit herewith a copy of an informal letter, dated December 14, 1923, received from the Secretary General of the League in this connection. In this letter Sir Eric Drummond advances certain suggestions with regard to possible methods of procedure for the appointment of one or more American members to the Commission, in case this should be found practicable.

I have [etc.] Joseph C. Grew

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[43] Enclosures not printed.

[Enclosure]

The Secretary General of the League of Nations (Drummond) to the Minister in Switzerland (Grew)

GENEVA, *December 14, 1923.*

MY DEAR MR. GREW: May I write to you with regard to the letter which the President of the Council is sending to the Secretary of State in Washington and of which I enclose a copy. It refers to the Resolution of the Assembly, recommending to the Council that the Government of the United States should be invited to appoint representatives to co-operate with the Temporary Mixed Commission in the preparation of the new convention for the regulation of the Traffic in Arms, to supersede the Convention of St. Germain.

The letter to the Secretary of State is accompanied by a copy of the Resolution of the Council, setting out the character and constitution of the Commission. The Council are anxious that, should the United States send experts to cooperate with the Commission in regard with this matter, your Government should fully realize that, while the Commission has been entrusted with the task of preparing a new Convention, its Members sit in a purely individual capacity, free from any Government instructions, and therefore, without in the slightest degree engaging the responsibility of the Government of the countries of which they are nationals. They are appointed by the Council of the League and not by their Governments.

Should the Government of the United States feel that this fact would create between the members of the Commission and the representative, or representatives, who might be nominated by it, a difference which it would prefer to avoid, I would venture to suggest two possible methods by which this difficulty might be met. A specific declaration might be made, to the effect that the nominees of the American Government, would, in no way, engage the responsibility of their Government, in their dealings with the Commission. Alternatively should your Government so prefer, the Council might, in accordance with a practice followed in other cases, appoint one or more American members to the Commission from names suggested unofficially by the United States administration. This method would give the necessary independence, both to the person appointed and to the Government of the United States, while securing the best possible guarantee to the Council as to the qualifications of the person so selected.

Believe me [etc.] ERIC DRUMMOND

AMERICAN REPRESENTATION ON THE INTERNATIONAL COMMISSION FOR THE REVISION OF THE RULES OF WARFARE

700.00116/32b

The Acting Secretary of State to the Secretary of War (Weeks)[44]

WASHINGTON, *September 5, 1922.*

SIR: I have the honor to inform you that in accordance with the provisions of the Resolution establishing a Commission of Jurists to consider amendment of the laws of war, adopted on February 4, 1922, at the Sixth Plenary Session of the Conference on the Limitation of Armament, a copy of which is enclosed,[45] the President has appointed as Commissioner of the United States, on the aforesaid Commission, the Honorable John Bassett Moore, member of the Permanent Court of International Justice at The Hague.

It is now proposed that this Commission, comprised of the delegates of Great Britain, France, Italy, Japan and the United States, shall meet at The Hague on December 10, 1922. I have now been advised that the British, French and Italian Governments have each made elaborate preparatory studies and that in all probability Japan has taken a similar course. These studies, the primary object of which is to set forth systematically and comprehensively the attitude of each government towards the various questions under consideration, apparently have not been conducted by the delegates composing the Commission but by persons in or in immediate contact with their respective military and naval establishments. It would therefore appear highly advisable that this Government should enter upon a similar course of study, with a view to instructing Judge Moore of its attitude towards the subjects to be discussed.

The questions to be considered by the Commission comprise the following:

Do the existing rules of international law adequately cover new methods of attack or defense resulting from the introduction or development, since The Hague Conference of 1907, of new agencies of warfare? If not, what changes in existing rules ought in consequence to be adopted as a part of the law of nations?

The Commission is to be at liberty to request the assistance and advice of experts in international law and in land, naval and aerial warfare, and is to report its conclusions to each of the Powers represented in its membership, and those Powers are then to confer, with a view to the acceptance of the report and the course to be fol-

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[44] The same, *mutatis mutandis*, to the Secretary of the Navy.
[45] *Foreign Relations*, 1922, vol. I, p. 288.

lowed to secure the adoption of its recommendations by the other civilized Powers.

This Department is prepared to lend the services of one of its appropriate officials to confer with competent officials of your Department and of the Navy Department, with a view to studying the questions above-mentioned and embodying the views of the War, Navy and State Departments in a report to be transmitted to Judge Moore for his guidance. If this suggestion meets with your approval, the appropriate officer of this Department will be glad to confer immediately with whomever you may designate for such a purpose.

A similar communication is being addressed to the Acting Secretary of the Navy.

I have [etc.] WILLIAM PHILLIPS

700.00116/51

The Secretary of the Navy (Denby) to the Secretary of State

3809–959:190–1 WASHINGTON, *November 1, 1922.*

SIR: In connection with the coming conference at the Hague on the Laws of War, there is transmitted herewith a paper by the General Board regarding the use of radio in war, which paper has been approved by me.

Sincerely yours,

EDWIN DENBY

[Enclosure]

The Senior Member Present of the General Board, Navy Department (Rodgers) to the Secretary of the Navy (Denby)

G. B. No. 438
(Serial No. 1125) WASHINGTON, *November 1, 1922.*

SUBJECT: Laws of War.

References: (*a*) Navy Department's letter 3809–959:190, Op–12 B of April 29, 1922.

(*b*) Resolutions Nos. 1 and 2 adopted by the Conference on the Limitation of Armament at the Sixth Plenary Session, February 4, 1922.

The General Board has considered the above subject in accordance with the Department's order of April 29, 1922, reference (*a*). Since the date of the order an international commission has been appointed to meet at The Hague December 10, 1922, and the Secretary of State has requested that a representative of the Navy Department be appointed to confer with representatives from the War Department and from the State Department to report to the State Depart-

ment as to suitable rules of warfare to be supported by the American delegate at The Hague. The Secretary of the Navy appointed a member of the General Board, Rear Admiral W. L. Rodgers, U.S.N., as the Navy Department representative. There have been frequent meetings of the inter-departmental committee. The General Board has thus had the advantage of becoming acquainted with the views of the War Department on the subject and has profited thereby.

2. The General Board recommends the following international rules for the use of radio in war:—

1. The erection or operation of radio stations within neutral jurisdiction by a belligerent is a violation of neutrality.

Neutral governments are under obligation to use due diligence in preventing radio stations within their jurisdiction from rendering unneutral service to either belligerent.

2. Belligerents may regulate or prevent radio messages, even from a neutral source:

(*a*) On the high seas within the zone of military operations, and
(*b*) Within their own territory and within the areas under their military control.

Such regulations to be binding upon neutrals, must have been seasonably notified to the neutral governments.

3. Neutral ships or neutral aircraft that send radio messages in violation of the belligerent radio regulations made in virtue of the preceding paragraph are liable to seizure and condemnation as for unneutral service at any time during the war.

4. Violation of belligerent radio regulations is not in itself an act of espionage.

5. Radio operators shall have the same status as bearers of dispatches.

6. The perversion of emergency signals of distress to any other purpose is prohibited.

3. The Board submits as an appendix the rules for radio above proposed, together with the most recent tentative draft of rules for radio brought forward by the War Department representatives to the inter-departmental committee, arranged in parallel columns, together with the General Board's comments upon and comparison of the two drafts.[46]

W. L. Rodgers

700.00116/54

The Secretary of War (Weeks) to the Secretary of State

WPD 375–10 Washington, *November 6, 1922.*

My Dear Mr. Secretary: In further reply to your letter of September 5, 1922, in which you request the views of the War De-

[46] Not printed.

partment on the questions to be taken up by the Commission of Jurists appointed by the United States and certain other countries to consider amendment of the laws of war, and to meet at The Hague on December 10, 1922, I transmit herewith a draft of rules to govern the use of radio in war, as proposed by the War Department. These rules were formulated by duly appointed Army representatives, after careful study and conference with officials of your Department and of the Navy Department, and they meet with my approval.

I shall be pleased to transmit in a few days the views of the War Department regarding the rules that should govern the use of aircraft in war.

Sincerely yours,

John W. Weeks

[Enclosure]

Rules to Govern the Use of Radio in War as Proposed by the War Department

1. A neutral government is bound to employ the means at its disposal (*a*) to prevent the erection or operation by a belligerent of radio stations within its jurisdiction and (*b*) to prevent the transmission from its jurisdiction of radio messages of military value with reference to the existing war and not required for the conduct of the legitimate commerce or business of such neutral nation.

2. A belligerent government may regulate or prevent the transmission of radio messages (*a*) by all persons within its own territorial jurisdiction, (*b*) by all persons within land areas under its military control and within the territorial waters adjacent thereto, under its military control and (*c*) by all private craft, including neutral craft, on the high seas within the zone or sphere of action of its military operations.

Such regulations, to be binding upon neutrals, must have been seasonably notified to the neutral governments.

3. A neutral ship or neutral aircraft, whose government has been seasonably notified of belligerent radio regulations made in virtue of the preceding paragraph, is liable to condemnation for violation of such regulations if captured before her next arrival in her home country. Should an offending vessel not be so captured, notice of her offense may be given to her government. In the event of a second offense against the radio regulations of the same belligerent being committed by the same vessel on a voyage begun after the giving of said notice, the vessel is liable to capture throughout the war.

4. The personnel of neutral vessels captured for violation of radio regulations are entitled to unconditional release, except in cases falling within the scope of paragraph 7 hereof.

5. Acts not otherwise constituting espionage are not espionage by reason of their involving violation of radio regulations. Operators of radio apparatus and bearers of radio dispatches have like status as telegraph and cable operators and bearers of dispatches in general.

6. Neutral craft that send by radio military information from a zone of military activity may be removed therefrom by a belligerent and their radio apparatus may be sequestered, even where no violation of belligerent radio regulations or of the duties of neutrality has been committed.

7. Neutral private craft, possession or control of which has been vested by their owners in the enemy for the purpose of transmitting military information by radio, receive the same treatment as is applicable to enemy private craft.

8. So far as actual military operations permit, belligerents will observe the same regulations as are, by international agreement, prescribed for peace, in respect of facilitating radio messages of distress from, or for persons at sea, in the polar regions or in similar inaccessible places. The perversion of such signals to any other purpose is forbidden.

700.00116/67

The Acting Secretary of War (Wainwright) to the Secretary of State

WPD 375–15 WASHINGTON, *November 14, 1922.*

MY DEAR MR. SECRETARY: In further reply to your letter of September 5, 1922, in which you request the views of the War Department on the questions to be taken up by the Commission of Jurists appointed by the United States and certain other countries to meet at The Hague on December 10, 1922, to consider amendment of the laws of war, I transmit herewith a draft, dated November 13, 1922, of rules to govern aircraft in war. These rules were formulated by duly appointed Army representatives, after careful study and conference with officials of your Department and of the Navy Department; they meet with my approval and, as an expression of War Department opinion, are intended to supersede the draft of similar rules transmitted to you with my letter of November 29, 1921, (WPD 165–4).[47]

Sincerely yours,

J. M. WAINWRIGHT

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[47] Not printed.

[Enclosure]

Rules of Warfare for Aircraft as Proposed by the War Department

November 13, 1922.

I. Definition, Nationality, Marking

1. An aircraft is a vehicle designed for or capable of the aerial transportation of persons or material. An aircraft permanently assigned to a vessel of war and usually accompanying the vessel may be regarded as a part of the vessel as long as it remains in physical contact therewith.

2. Aircraft may be public aircraft, belonging to or under the control of the state or its officers; or private aircraft, belonging to and under the control of private persons.

3. No aircraft may possess more than one nationality. Every aircraft shall bear marks, visible from all sides and so affixed as not to be capable of being altered while in flight through the air; which marks shall indicate (1) the nationality of the aircraft, and (2) her public or private character. Private aircraft shall be registered under national registration laws and shall bear internal or other identification marks conformable with her registration and also the name and residence of her owner.

4. The personnel of public aircraft shall carry with them uniforms and proper papers to show that they are in the public service. Unless under compelling necessity, they shall not leave the aircraft except in uniform.

5. The use of false external marks of nationality or character is forbidden. If, by any means thereof, a public belligerent aircraft simulates a private aircraft or a belligerent aircraft simulates a neutral aircraft, the aircraft and her personnel are outside the protection of the law.

II. Aerial Jurisdiction

6. A state has complete and exclusive jurisdiction in the air space above its territory and above its jurisdictional waters: provided, however, that nothing herein contained shall be deemed to exclude the application of the civil or criminal laws of the country of nationality of an aircraft to the fixing of the rights or liabilites consequent upon such acts done by, or such occurrences affecting persons on board said aircraft while in flight as do not affect persons or things external to said aircraft.

7. In time of war, any state, neutral or belligerent, may forbid the entrance, or regulate the entrance, movement, or sojourn of aircraft within its jurisdiction.

8. Within the immediate vicinity of naval or military operations, but outside of neutral jurisdiction, a belligerent commanding officer may forbid the passage of aircraft of any kind or prescribe the conditions of entrance.

9. The liability of an aircraft for violations of the laws of war is contingent upon her actual or constructive knowledge of the existence of the war.

III. Neutral Powers and Duties

10. A neutral government is obligated to intern such aircraft of belligerent nationality alighting within its jurisdicton (1) as are armed, equipped, or supplied so as to be capable of committing hostile acts, or (2) as are manned by members of the combatant forces of a belligerent.

11. Belligerent aircraft are bound to respect the rights of neutral powers and to abstain within neutral jurisdiction from all acts which, if knowingly permitted by a neutral power, would constitute a nonfulfilment of its neutrality.

12. A neutral government may intern any aircraft of belligerent nationality not conforming to its regulations.

13. The action of a neutral power in using the means at its disposal to prevent the violation of its neutrality by aircraft or to enforce its regulations concerning aircraft is not to be regarded as hostile.

14. A neutral government is bound to use the means at its disposal (1) to prevent the departure from its territorial jurisdiction of any aircraft of belligerent nationality in condition to make a hostile attack or carrying parts or materials which, when utilized, would make her fit for hostile attack; (2) to prevent the departure of any aircraft manned by members of the combatant forces of a belligerent; and (3) to prevent work upon any aircraft designed to prepare her to depart in contravention of the purpose of this paragraph.

IV. Neutral Aircraft

15. A neutral, public aircraft within belligerent jurisdiction or in the neighborhood of belligerent operations must respect belligerent instructions.

16. A neutral, private aircraft, found in a belligerent's territorial jurisdiction or in the immediate vicinity of its military operations, must obey any order given it by the belligerent. Failure to obey justifies the use of necessary force. A neutral, private aircraft which, contrary to prohibitions, enters a belligerent's territorial jurisdiction or the area of a belligerent's actual military operations, is liable to confiscation and its personnel to treatment as prisoners of war, unless its entrance was made in ignorance of the prohibitions.

17. Neutral, private aircraft found by a belligerent in the territorial jurisdiction of the enemy may be requisitioned.

18. *Bona fide* and unconditional transfers of title to a neutral of public or private aircraft of a belligerent shall be respected by the opposing belligerent in each of the following cases, to wit:

(1) in case a title, valid under the municipal law of the state of which the purchaser is a national, was acquired by such neutral either before the rupture of diplomatic relations between the belligerents concerned or more than 30 days before the outbreak of hostilities between them; and

(2) in case the neutral purchaser of an aircraft, not subject to internment in the purchaser's country, takes actual possession therein of such aircraft and, according to the laws thereof, the title so acquired is absolute.

V. Belligerent Aircraft

19. Enemy public aircraft are, on and after the outbreak of war, liable to seizure and confiscation, except as provided in paragraph 21 hereof.

20. Enemy, private aircraft found within the jurisdiction of a belligerent on the outbreak of war are exempt from confiscation. They are not entitled to days of grace, but may be sequestered or requisitioned.

21. Public aircraft, exclusively used in assisting the wounded and the sick are exempt from attack or capture and their pilots, medical personnel and the wounded and sick on board are inviolable, provided the following conditions are satisfied:

(*a*) Aircraft privileged hereunder and their personnel shall conform, in respect of arming and of weapons and substances carried, with the requirements for private aircraft, as specified in paragraph 22 hereof.

(*b*) Aircraft privileged hereunder shall not fly at an altitude greater than 3000 feet above the ground, nor shall they approach within 10 miles of the military lines of the enemy's ground forces.

(*c*) Aeroplanes and heavier-than-air craft privileged hereunder shall be painted white and marked on fuselage, on upper and lower surfaces of wings and on tail surfaces with a red cross, such as is mentioned in Art. 18 of the 1906 Geneva Convention; and lighter-than-air craft shall display, so as to be visible from above, from below, and from each direction of approach, a like red cross upon a white ground painted or otherwise indelibly marked upon their structure, such marks to be of such size and location as will admit of their being seen from great distances. The pilots and medical personnel of aircraft privileged hereunder shall wear brassards such as those specified in Art. 20 thereof.

(*d*) Heavier-than-air craft privileged hereunder shall be of such type or types of construction as will distinguish them from the aircraft of war of the same belligerent. A photograph or sketch of the

distinguishing silhouette of such heavier-than-air craft shall be sent to the opposing belligerent as soon as possible after the outbreak of hostilities and in any event before use of such privileged aircraft is made.

22. Private aircraft of belligerent or neutral nationality shall not be armed, but each of their personnel may be supplied with a sword or saber, a pistol and ammunition therefor. Except as aforesaid, a private aircraft shall not, in time of war, be so equipped or supplied as to be capable of committing a hostile act and, to that end, shall not carry arms, weapons, ammunition, projectiles, explosives, bombs, injurious liquids, or noxious gases heavier than air. Any belligerent aircraft so equipped or supplied and displaying the external marks of a private aircraft may be dealt with as an aircraft of war and her personnel are outside the protection of the law.

23. Private aircraft of belligerent nationality, flying either (1) over the territory possessed by the adversary nations, or (2) in sight thereof and outside the territory possessed by their own nation, or (3) in sight of the military operations, on land or on the high seas of the opposing belligerent, may, without warning, be dealt with as enemy aircraft of war, provided that neutral jurisdiction may, in no event, be violated.

24. Private aircraft of belligerent nationality flying over the territory possessed by their own nation must make the nearest available landing upon the approach of public aircraft of the opposing belligerent; else the former may be treated as aircraft of war.

VI. Personnel of Aircraft

25. The personnel of a captured, private, belligerent aircraft not guilty of violation of the laws of war, will be released, if they promise formally in writing not to undertake, while hostilities last, any service connected with the operations of the war. The personnel of a captured, public, belligerent aircraft are entitled to like treatment as that accorded to other members of the combatant forces of the enemy nation.

26. Upon capture of a neutral aircraft, such of her personnel as have not violated their duties as neutrals shall be released unconditionally.

27. Any member of the personnel of a belligerent or neutral aircraft is to be deemed a spy only if, acting clandestinely or on false pretenses, he obtains or seeks to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the government or combatant forces of the enemy. The entire personnel of an aircraft displaying false marks in violation of the terms of paragraph 5 may also be treated as spies.

28. Acts of the personnel of correctly marked enemy aircraft, public or private, done or performed while in the air, are not to be deemed espionage.

29. If the sick or wounded members of the combatant forces of a belligerent are brought to a neutral country by an aircraft enjoying the privileges mentioned in paragraph 21 hereof, and are left therein, such persons upon the departure of the aircraft that brought them shall be interned.

30. If a public, belligerent aircraft alights in neutral territory in order to escape pursuit, its personnel shall be interned, together with the aircraft. In other cases of internment of the public or private aircraft of a belligerent nation, such of the members of its personnel as are not guilty of personal fault, in violating the laws or regulations of the interning state, shall be released if they promise in writing not to undertake, while hostilities last, any service connected with the operations of the war.

VII. Bombardment

31. Bombardment includes the dropping or discharging of a projectile or of any explosive or noxious substance. Bombardment by aircraft for the purpose of injuring noncombatants or of destroying or damaging private property not of a military character, as defined in paragraph 36 hereof, or of terrorizing the civilian population is forbidden.

32. Bombardment by aircraft of neutral and noncombatant vessels in enemy territorial waters or at sea is forbidden except under circumstances indicated by paragraphs 33 to 39 and by paragraphs 44 and 45 hereof or under circumstances under which attack upon such vessels by the surface warships of a belligerent is permitted.

33. Bombardment by aircraft of objects on enemy land areas and of vessels in the territorial waters in vicinity thereof is limited to bombardment (1) of combat areas, (2) of routes of communication leading thereto, and (3) of special military targets or objectives, and (4) to bombardment designed to enforce requisitions. The right of bombardment recognized in this paragraph is restricted by the following paragraphs hereof.

34. A combat area and the routes of communication leading thereto, within the meaning of the preceding paragraph, include (1) the land area within the actual range of such artillery of the bombarding belligerent as accompany its mobile land forces, (2) the territorial waters contiguous to said area and within the range aforesaid, and (3) the railways, highways, and reasonably expected routes of march or of advance of the combatant forces of the enemy to a distance of one hundred miles from the military lines of such enemy.

35. Bombardment of all objects within the areas mentioned in the preceding paragraph is permitted; except that neutral vessels, sacred edifices and buildings dedicated to religion or public worship, buildings used for artistic, scientific, or charitable purposes, and historic monuments, unless they are in use for the military purposes of the enemy, must be spared if identifiable; as must, also, military and other hospitals and hospital ships, used exclusively as such and places where the sick or wounded are collected. Such buildings, objects, and places may be indicated by marks visible to aircraft, the nature of which marks shall be notified to the opposing belligerent. The use of marks so notified to indicate other buildings, objects, or places than those specified above, is to be deemed an act of perfidy. The marks used as aforesaid shall be of uniform shape or design throughout the territory controlled by the notifying belligerent and shall be of two sorts, viz: (1) marks to indicate hospitals, hospital ships and places where the sick or wounded are collected and (2) marks to indicate other places and objects.

36. Outside the areas mentioned in paragraph 34, all bombardment by aircraft is forbidden except the bombardment of buildings or objects of the following nature, to wit: bodies of troops of the combatant forces of the enemy, military supply trains, and the vehicles composing the same, fortresses and military works, military or naval posts and establishments, warships, naval stations, dry docks, dock-yards, barracks, military encampments, military and naval warehouses and bases of supply, arsenals, depots of arms or war *materiel*, guns, weapons and ammunition and such implements, appliances and materials as are intended for, or peculiarly adapted to warfare, munitions plants, factories in use for making guns, rifles and the implements and materials peculiar to war, steel mills or factories, iron foundries, aqueducts, bridges, railway lines and railway stations, canals and their locks, gas works, electric light or power plants, halls or buildings in use by the legislature of the war-making government and office buildings used by the military or naval departments of such government.

37. In conducting a bombardment, the obligation of a belligerent is discharged if due care is exercised not to injure objects exempt from attack which happen to be in the vicinity of the permitted target. So far as practicable, the destruction of permitted targets shall not involve injury to persons or to things that are not essential parts or appurtenances of such targets. When canals or railway lines are bombarded, vessels, trains, and cars other than those which carry troops or objects that are themselves legitimate targets, shall, so far as practicable, be spared. No object shall be bombarded on mere suspicion or conjecture of its being a legitimate target. In case of the bombardment of an object other than a legitimate target, it shall

be deemed a friendly and commendable act for a neutral government to inquire into the circumstances that may have afforded to the bombarding belligerent reasonable cause to believe that the objective of the bombardment was a legitimate target.

38. Bombardment to enforce payment of money contributions is forbidden. Requisition by an air force upon a town or place of materials and supplies of a military nature or capable of subserving the needs of a military force, not exceeding those which the requisitioning air force is able to use therein or presently to carry away therefrom in their aircraft, is permitted, if not out of proportion to the resources of the town or place. Failure to comply with a permitted requisition may be punished by bombardment.

VIII. Visit, Search and Capture of Private Craft

39. Outside of neutral jurisdiction, enemy, private craft, including surface and sub-surface vessels, as well as aircraft, are liable to capture by aircraft and otherwise and are liable to condemnation.

40. A neutral, private aircraft is liable to capture and condemnation:

(*a*) if it resists a public, belligerent aircraft or flees the exercise of belligerent rights
(*b*) if it carries contraband
(*c*) if it is engaged in an enterprise in the course of which it has assisted the enemy or otherwise violated its duties as a neutral
(*d*) if it is within a prohibited war area, after knowledge of the prohibition.

41. A neutral, private aircraft is liable to capture:

(*a*) if its papers are lacking, insufficient or irregular
(*b*) if it conceals or suppresses material documents or information asked for by a belligerent examining officer
(*c*) if it is manifestly out of the area justified by its papers.

42. Outside of neutral jurisdiction, belligerent aircraft of war have the right to visit and search private craft, including surface and sub-surface vessels and aircraft. Visit and search by aircraft of war shall be conducted in the nearest practicable place to that in which the craft liable thereto were encountered. A belligerent aircraft of war may, by suitable signal seasonably notified by the belligerent government, require a private aircraft to follow and alight where indicated.

43. If the circumstances make visit and search by an aircraft of war impracticable, craft liable to visit and search may be ordered to proceed under escort as directed, in order to enable other examination to be made.

44. Refusal to submit to visit and search or to afford such means and facilities therefor as are available or comply with the proper direction of a belligerent aircraft of war justifies bombardment or other attack by the aircraft of war.

45. Enemy craft and such neutral craft as are found, upon visit and search, to be liable to capture and condemnation by reason of having assisted the enemy in violation of their duties of neutrality, may be destroyed in case taking them into port for adjudication would be impossible or would imperil the safety of the capturing aircraft or the success of the operations then being conducted by the latter; provided, nevertheless, that no craft shall be destroyed unless her personnel have first been placed in safety. Neutral craft found, after visit and search, to be liable on other grounds to capture or condemnation must either be taken into port or must be released; the destruction or injury of such craft being forbidden. Contraband cargo and enemy cargo on neutral craft may be destroyed in cases in which such craft are found, upon visit and search, to have been justly subject to seizure, but in which it is impossible or impracticable, on grounds specified above, to take such craft into port for adjudication.

46. Destruction of a neutral aircraft entitles the owner of such aircraft and of the property on board to compensation, even when such aircraft is justly subject to condemnation, unless destruction is authorized by the preceding paragraph hereof.

47. In the event of the condemnation, as prize, of a belligerent or neutral aircraft, all merchandise on board may also be condemned; except that, upon the condemnation of a neutral aircraft, merchandise thereon, not contraband, the property of a neutral other than the owner or operator of the captured aircraft, is entitled to release.

700.00116/108

The Secretary of the Navy (Denby) to the Secretary of State

Op-12B
3809-959:190 WASHINGTON, *November 20, 1922.*

SIR: By reason of Resolution No. 1, adopted by the United States of America, the British Empire, France, Italy, and Japan at the Conference on the Limitation of Naval Armament and of subparagraphs (*a*) and (*b*) thereof which read as follows:

"(*a*) Do existing rules of International Law adequately cover new methods of attack or defense resulting from the introduction or development, since the Hague Conference of 1907, of new agencies of warfare?

(*b*) If not so, what changes in the existing rules ought to be adopted in consequence thereof as a part of the law of nations?"

the General Board was directed to give full consideration to the questions raised in the above quoted subparagraphs.

There are quoted below the results of the General Board's study of Laws of War as applied to Aircraft:

"PROPOSED AIRCRAFT RULES (NAVY DEPARTMENT)

I. DEFINITION, NATIONALITY, MARKING

1. An aircraft is a vehicle designed for or capable of the aerial transportation of persons or material. An aircraft permanently assigned to a vessel of war and usually accompanying the vessel may be regarded as a part of the vessel as long as it remains in physical contact therewith.

2. Aircraft may be public aircraft, belonging to or under the control of the state or its officers; or private aircraft, belonging to and under the control of private persons.

3. No aircraft may possess more than one nationality. Every private aircraft shall bear the nationality and registration marks and the name and residence of the owner, in accordance with the laws of its own nation. Every public aircraft shall be unmistakably marked to show nationality and its personnel shall be in uniform and provided with proper papers to prove that they are in the public service. Nationality marks shall be visible from all sides, and shall be so affixed as not to be capable of being replaced by other marks while in flight through the air.

4. The use of the special identification marks of a neutral aircraft by a belligerent aircraft is strictly forbidden and puts the aircraft and its personnel outside the protection of the law.

5. Aircraft and their personnel shall enjoy no immunities incident to employment in hospital or sanitary formations except such immunities as may be mutually agreed upon by the belligerents concerned.

II. GENERAL AERIAL JURISDICTION

6. A state has complete and exclusive jurisdiction in the air space above its territory and above its jurisdictional water.

7. In time of war, any state, neutral or belligerent, may forbid the entrance or regulate the entrance, movement, or sojourn of aircraft within its jurisdiction.

8. Within the immediate vicinity of naval or military operations but outside of neutral jurisdiction a belligerent commanding officer may forbid the passage of aircraft of any kind or prescribe the conditions of entrance.

9. The liability of an aircraft for violation of the laws of war is contingent upon her actual or constructive knowledge of the existence of the war.

10. In time of war, in absence of special stipulations, public aircraft within the jurisdiction of a state are subject to the same regulations as public vessels, and private aircraft are subject to the same regulations as private vessels.

III. NEUTRAL JURISDICTION

11. A neutral may intern belligerent aircraft entering or alighting within its jurisdiction.

12. Belligerent aircraft are bound to respect the rights of neutral powers and to abstain within neutral jurisdiction from all acts which, if knowingly permitted by a neutral power, would constitute a nonfulfilment of its neutrality.

13. A neutral government may intern any aircraft of belligerent nationality and its personnel not conforming to its regulations.

14. The action of a neutral power in using the means at its disposal to prevent the violation of its neutrality by aircraft or to enforce its regulations concerning aircraft is not to be regarded as hostile.

15. A neutral is bound to use the means at its disposal to prevent the fitting out within its jurisdiction of aircraft which it has reason to believe are to be used against either belligerent; and also to prevent the departure of any aircraft intended for such use which has been acquired or fitted out in whole or in part within its jurisdiction. Exportation of parts of an aircraft is not a nonfulfilment of neutrality.

IV. NEUTRAL AIRCRAFT

16. A neutral public aircraft within belligerent jurisdiction or in the neighborhood of belligerent operations must respect belligerent instructions.

17. A neutral private aircraft found in a belligerent's own jurisdiction or in the immediate vicinity of naval or military operations, contrary to prohibitions, must obey any order given it by the belligerent. If it does not obey, it is liable to the use of necessary force.

18. A neutral private aircraft entering a belligerent's jurisdiction, contrary to prohibitions, is liable to confiscation and its personnel to treatment as prisoners of war unless its entrance was due to *force majeure* or was made in ignorance of the prohibitions.

19. Neutral private aircraft found by a belligerent in the jurisdiction of the enemy may be requisitioned.

20. A neutral private aircraft is liable to capture and condemnation:

(*a*) if it resists or flees the exercise of belligerent rights;
(*b*) if its papers are lacking, insufficient or irregular;
(*c*) if it carries contraband;
(*d*) if it has engaged, or is engaged, in unneutral service;
(*e*) if it is within a prohibited war area;
(*f*) if it is manifestly out of the area justified by its papers.

A neutral private aircraft resisting or attempting to escape after being summoned is subject to the use of necessary force, but should be given an opportunity to land if practicable.

21. Transfer of public or of private aircraft from a belligerent to a neutral to be respected by the opposing belligerent must be:—

(*a*) *Bona fide* and unconditional.
(*b*) Valid under the municipal law of the neutral state in question.

(*c*) Accomplished prior to the rupture of diplomatic relations and not less than 30 days prior to the outbreak of hostilities between the belligerents concerned.

V. BELLIGERENT AIRCRAFT

22. Enemy public aircraft are, on and after the outbreak of war, liable to seizure and confiscation.
23. Enemy private aircraft found within the jurisdiction of a belligerent on the outbreak of war are not entitled to days of grace but may be retained or requisitioned.
24. Enemy private aircraft outside of neutral jurisdiction are liable to capture and condemnation.
25. Enemy private aircraft within or in sight of the jurisdiction of an opposing belligerent, within or in sight of the area of operations of an opposing belligerent, or within their own national jurisdiction may be dealt with without warning as aircraft of war.
26. Belligerent aircraft of war, if permitted to leave neutral jurisdiction, may take only such fuel and supplies as will enable them to reach their own country.

VI. PERSONNEL OF AIRCRAFT

27. The personnel of captured, belligerent aircraft, have a right to be treated as prisoners of war.
28. The neutral personnel of a captured neutral aircraft, if not guilty of unneutral acts, shall be released.
29. The personnel of neutral aircraft are guilty of espionage if, acting clandestinely or under false pretenses, they obtain or seek to obtain information within, above or in the immediate vicinity of the civil, naval or military jurisdiction of a belligerent.
30. Acts of the personnel of correctly marked enemy aircraft, public or private, done or performed while in the air are not to be deemed espionage.
31. The personnel of enemy aircraft falsely marked to conceal their enemy character may be treated as spies.
32. If belligerent aircraft are interned by a neutral state, their personnel shall likewise be interned.

VII. BOMBARDMENT

33. The bombardment by aircraft of cities, towns, villages, dwellings or buildings is forbidden.
34. The bombardment by aircraft of enemy forces, communication and transportation centers, lines of communication and transportation, military or naval establishments, depots of arms or war material workshops, plants and factories used for the manufacture of war material wherever situated is not prohibited.
35. Injuries to non-combatants and to places excluded by Article 33 from bombardment which is incidental to legitimate bombardment can not be regarded as unlawful, but it shall be the duty of the belligerent conducting a bombardment to exercise due care to confine the injury as much as possible to the objectives not prohibited.

36. In bombardment by aircraft, all necessary steps must be taken, by the commander, to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided they are not at the time used for military purposes. It is the duty of inhabitants to indicate such monuments, edifices, or places by signs visible from above, which shall consist of large rectangular panels divided diagonally into two painted triangular portions, one black and the other white. The use of such marks to indicate other buildings or objects than those specified shall be deemed an act of perfidy.

VIII. VISIT AND SEARCH

37. Outside of neutral jurisdiction, belligerent aircraft of war have the rights of visit, search and seizure accorded to vessels of war."

These proposed "Aircraft Rules" meet with the sanction of the Navy Department.

Respectfully,

EDWIN DENBY

700.00116/107b

The Secretary of State to the American Representative on the Commission of Jurists (Moore)

WASHINGTON, *November 20, 1922.*

SIR: There are transmitted herewith for your information and for your guidance in the conferences of the Commission of Jurists, appointed under Resolution No. 1, adopted at Washington by the Conference on the Limitation of Armament, at the Sixth Plenary Session, February 4, 1922, to consider what changes may be desirable in existing rules of international law because of the introduction or development of new agencies of warfare since The Hague Conference of 1907, copies of drafts of rules proposed respectively by the War and Navy Departments of this Government for the regulation of belligerent and neutral aircraft and radio activities in time of war.[48]

In view of Resolution No. 2, also adopted by the Conference on the Limitation of Armament, at the Sixth Plenary Session, February 4, 1922, that it is not the intention of the Powers agreeing to the appointment of the Commission that the Commission shall review or report upon the rules or declarations relating to submarines or the use of noxious gases and chemicals already adopted in that con-

[48] *Ante*, pp. 48 ff.

ference, it is my opinion that the Commission should not consider the rules of law relating to these agencies and that its discussions and report should be confined to aviation and radio. The American Ambassadors at London, Paris, Rome and Tokyo were informed of this view by telegram on November 6, 1922,[49] and were instructed to bring it to the attention of the respective Governments and inquire whether they concur in it.

By telegram, dated November 15, 1922,[49] Ambassador Harvey reported that the British Foreign Office informed him that topics relative to the agenda and limitation of the discussions and report of the Commission would have to be submitted to the new cabinet and that no decision with regard to them could be expected before the end of November. Ambassador Harvey suggested that the American delegation pass through London enroute to The Hague for the purpose of having an opportunity to confer with the British delegates. I did not consider it to be desirable to instruct you to proceed to London for this purpose or to authorize your military and naval advisers who were on the eve of sailing to engage in a conference on these questions with the advisers of the British representatives. No replies have been received from the Ambassadors at Paris, Rome or Tokyo as to the views of the French, Italian and Japanese governments with regard to the topics which shall be considered and reported upon by the Commission. Whatever information as to the views of those governments is received will be communicated to you.

The proposals for rules for the regulation of aircraft and radio activities in time of war which are transmitted herewith were drafted in consultation by officers of the War and Navy Departments duly accredited to study the questions to be discussed and reported upon by the Commission of Jurists. The drafts emanating from each Department were approved by the Secretary of that Department and were transmitted to me by him.

While the drafts proposed by the two Departments are in general accord they differ in several particulars as to substance. The corresponding rules of the two drafts on each subject are stated in different form throughout as well with respect to the points on which there is no difference of opinion between the Army and the Navy Departments concerning the rule which is desirable as with respect to the points on which their views do not harmonize. The military and naval advisers are prepared to indicate these differences to you and to inform you of the advantages of the rules proposed by their respective Departments.

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[49] Not printed.

In the conferences of the Commission, you will support the proposals with respect to the points on which there is no material difference between the Army and Navy drafts as representing the views of this Government unless these proposals appear to you to be objectionable or are so irreconcilable with the proposals of the Representatives of other powers that an agreement on the point seems impossible of attainment. In the event that any of the proposed rules with respect to aviation and radio upon which the military and naval advisers have agreed seem to you to be seriously objectionable, you will endeavor to obtain their concurrence to such a rule as you consider desirable with respect to the point.

As you inform yourself of the trend of the views of the Representatives of the other powers with respect to rules on the several points on which the proposals of the Army and Navy draft differ in substance and with respect to proposals of your own made in accordance with the preceding paragraph, for necessary modifications in the rules on points on which the drafts prepared by the War and Navy Departments are in agreement, you will be in a position to determine which of the divergent views in such cases most closely accords with the collective opinion of the Commission. Upon further consultation with your military and naval advisers you will endeavor to reach a decision in which they will concur as to the position which this government should adopt with regard to these points. In the event that in either situation you are unsuccessful in proposing a different rule to which they offer no forcible objection, you will report the point to me by telegram with your recommendations.

In each case in which points of serious difference exist between the rules which you support as a member of the Commission in pursuance of this instruction and the collective opinion of the Commission, you are requested to submit the facts with your recommendations to me by telegram for instructions before ceding any point of this Government's position.

Having the purpose to rely largely on your experience and judgment for the determination of the policy of this government and on your tact and talent in persuading others to agree with your decisions, I desire that the questions which you refer to me should be limited if possible to such as involve a change from the rules on which the proposals of the Army and Navy drafts are in accord, or a surrender of your own views to the collective judgment of the Commission.

Expressing the hope that your mission and its duties may be pleasant and the results gratifying to yourself, your colleagues, and the governments which you represent,

I am [etc.] CHARLES E. HUGHES

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700.00116/129

The American Delegates on the Commission of Jurists (Moore, Washburn) to the Secretary of State

[Extract]

THE HAGUE, *February 26, 1923.*
[Received March 15.]

SIR: We beg leave herewith to transmit in printed form, in English and in French, the General Report of the Commission of Jurists appointed to consider and report upon the revision of the rules of warfare.[50] This report, which bears the signatures of all the members of the Commission, contains the codes of rules prepared by the Commission to regulate, respectively, the use of Aircraft and of Radio in time of war.

The Commission of Jurists, as the Department is aware, was appointed under a resolution adopted at the Washington Conference on the Limitation of Armament on February 4, 1922, by the United States of America, the British Empire, France, Italy and Japan. This resolution provided for the constitution of a commission to be composed of not more than two members representing each of the Powers above mentioned. The Hague was subsequently chosen as the place of meeting, and the Dutch Government accepted an invitation to be represented on the Commission.

The Commission held thirty plenary sessions, the first of which took place on Monday, December 11, 1922, and the last on Monday, February 19, 1923. All the sessions were held in the Peace Palace. The first session was formally opened by His Excellency Jonkheer H. A. van Karnebeek, who, as Minister of Foreign Affairs of the Netherlands, attended and made in behalf of his Government an address of welcome. This formal opening was succeeded on the same day by a business meeting, at which Mr. Moore, the delegate of the United States, was named as president of the Commission.

The Commission, when it first assembled, was composed of ten members, each of the six governments being represented by two delegates except the United States and Italy, which had only one each. On December 23d, however, Mr. Moore, whose labors and responsibilities the presidency of the Commission had necessarily somewhat increased, suggested to the Department that the United States appoint a second delegate, and the President was so good as to name for the post Mr. Washburn, Envoy Extraordinary and Minister Plenipotentiary at Vienna. Mr. Washburn reached The Hague on January 10, 1923, and immediately entered upon the discharge of his duties. He attended the meetings of the Subcommittee on

[50] French text not printed.

Aircraft, which was then sitting, and later advised with our member of the Subcommittee on Radio; and for a time the demands upon him were exceptionally heavy by reason of a special session of the Permanent Court of International Justice, whose meetings Mr. Moore was obliged to attend. Mr. Washburn later served as the United States member of the Drafting Committee (*Comité de Rédaction*), which supervised the final text of the codes of rules and drew up the General Report.

By the Washington Resolution it was provided that the Commission might be advised and assisted by experts in international law and in land, naval and aerial warfare. As a result each delegation came to comprise a number of technical experts, especially in military and naval matters. The official list of the personnel of the various delegations contained a total of fifty-five names. This list did not include clerical employees.

The delegation of the United States, as finally constituted, was as follows:

Members of the commission

John Bassett Moore, Ambassador Extraordinary, Judge of the Permanent Court of International Justice;
Albert Henry Washburn, Envoy Extraordinary and Minister Plenipotentiary of the United States at Vienna.

Technical advisers

Rear-Admiral William Ledyard Rodgers, Naval Adviser;
Brigadier-General William H. Johnston, Military Adviser;
Captain Samuel W. Bryant, Naval Adviser (Radio);
Colonel Frederick M. Brown, Military Adviser;
Colonel George S. Gibbs, Military Adviser (Radio);
Commander Forde A. Todd, Naval Adviser;
Major William C. Sherman, Military Adviser (Aviation);
Lieutenant Frederic W. Neilson, Naval Adviser (Aviation) and Aide to Admiral Rodgers.

Secretary to delegation

George R. Merrell, Jr., Third Secretary of Legation.

. . . .

We have [etc.]

John Bassett Moore
Albert Henry Washburn

[Enclosure—Extracts]

General Report of the Commission of Jurists to Consider and Report upon the Revision of the Rules of Warfare

The Conference on the Limitation of Armament at Washington adopted at its sixth Plenary Session on February 4, 1922, a resolution for the appointment of a Commission representing the United

States of America, the British Empire, France, Italy and Japan to consider the following questions:

(*a*) Do existing rules of international law adequately cover new methods of attack or defence resulting from the introduction or development, since The Hague Conference of 1907, of new agencies of warfare?
(*b*) If not so, what changes in the existing rules ought to be adopted in consequence thereof as a part of the law of nations?

The Commission was to report its conclusions to each of the Powers represented in its membership.

The resolution also provided that those Powers should thereupon confer as to the acceptance of the report and the course to be followed to secure the consideration of its recommendations by the other civilised Powers.

By a second resolution adopted at the same session it was agreed to exclude from the jurisdiction of the Commission the rules or declarations relating to submarines and to the use of noxious gases and chemicals already adopted by the Powers in the said Conference.

With the unanimous concurrence of the Powers mentioned in the first of the above resolutions an invitation to participate in the work of the Commission was extended to and accepted by the Netherlands Government. It was also agreed that the programme of the Commission should be limited to the preparation of rules relating to aerial warfare, and to rules relating to the use of radio in time of war.

The United States Government proposed that the Commission should meet on December 11, 1922, at The Hague, and the representatives of the six Powers mentioned above assembled on that date in the Palace of Peace. At the second meeting of the Commission the Honourable John Bassett Moore, First Delegate of the United States, was elected President of the Commission.

The Commission has prepared a set of rules for the control of radio in time of war which are contained in Part I of this Report, and a set of rules for aerial warfare which are contained in Part II of this Report.[51]

The Commission desires to add that it believes that if these sets of rules are approved and brought into force, it will be found expedient to make provision for their reexamination after a relatively brief term of years to see whether any revision is necessary.

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[51] The ellipses indicated in parts I and II which follow indicate merely the omission of the Commission's comments on the rules; the rules themselves are complete. For complete text of the report, see *Commission of Jurists to Consider and Report upon the Revision of the Rules of Warfare* (The Hague, National Printing Office, 1923), p. 230; or Great Britain, Cmd. 2201, Miscellaneous No. 14 (1924).

PART I.—RULES FOR THE CONTROL OF RADIO IN TIME OF WAR

The regulation of the use of radio in time of war is not a new question. Several international conventions already contain provisions on the subject, but the ever increasing development of this means of communication has rendered it necessary that the whole matter should be reconsidered, with the object of completing and co-ordinating existing texts. This is the more important in view of the fact that several of the existing international conventions have not been ratified by all the Powers.

The articles of the existing conventions which deal directly or indirectly with radio telegraphy in time of war are as follows.

The Land War Neutrality Convention (No. V of 1907) prohibits in article 3 the erecting of radio stations by belligerents on neutral territory and also the use by belligerents of any radio station established on neutral territory before the war for purely military purposes and not previously opened for the service of public messages. Article 5 obliges the neutral Power not to allow any such proceeding by a belligerent.

Under article 8 a neutral Power is not bound to forbid or restrict the employment on behalf of belligerents of radio stations belonging to it or to companies or private individuals.

Under article 9 the neutral Power must apply to the belligerents impartially the measures taken by it under article 8 and must enforce them on private owners of radio stations.

Article 8 of the Convention for the Adaptation of the Geneva Convention to Maritime Warfare (No. X of 1907) provides that the presence of a radio installation on board a hospital ship does not of itself justify the withdrawal of the protection to which a hospital ship is entitled so long as she does not commit acts harmful to the enemy.

Under the Convention concerning Neutral Rights and Duties in Maritime Warfare (No. XIII of 1907) belligerents are forbidden, as part of the general prohibition of the use of neutral ports and waters as a base of naval operations, to erect radio stations therein, and under article 25 a neutral Power is bound to exercise such supervision as the means at its disposal permit to prevent any violation of this provision.

The unratified Declaration of London of 1909, which was signed by the Powers represented in the Naval Conference as embodying rules which corresponded in substance with the generally recognised principles of international law, specified in articles 45 and 46 certain acts in which the use of radio telegraphy might play an important part as acts of unneutral service. Under article 45 a neutral vessel was to be liable to condemnation if she was on a voyage specially

undertaken with a view to the transmission of intelligence in the interest of the enemy. Under article 46 a neutral vessel was to be condemned and receive the same treatment as would be applicable to an enemy merchant vessel if she took a direct part in hostilities or was at the time exclusively devoted to the transmission of intelligence in the interest of the enemy. It should be borne in mind that by article 16 of the Rules for Aerial Warfare an aircraft is deemed to be engaged in hostilities if in the interests of the enemy she transmits intelligence in the course of her flight.

The following provisions have a bearing on the question of the control of radio in time of war, though the conventions relate principally to radio in time of peace. These provisions are articles 8, 9 and 17 of the International Radio Telegraphic Convention of London of 1912. Of these provisions article 8 stipulates that the working of radio telegraph stations shall be organised as far as possible in such a manner as not to disturb the service of other radio stations. Article 9 deals with the priority and prompt treatment of calls of distress. Article 17 renders applicable to radio telegraphy certain provisions of the International Telegraphic Convention of St. Petersburg of 1875. Among the provisions of the Convention of 1875 made applicable to radio telegraphy is article 7, under which the High Contracting Parties reserve to themselves the right to stop the transmission of any private telegram which appears to be dangerous to the security of the State or contrary to the laws of the country, to public order or to decency. Under article 8, each Government reserves to itself the power to interrupt, either totally or partially, the system of the international telegraphs for an indefinite period if it thinks necessary, provided that it immediately advises each of the other contracting Governments.

Regard has also been given to the terms of the Convention for the safety of life at sea, London, 1914.

With regard to the radio telegraphy conventions applicable in time of peace, it should be remembered that these have not been revised since 1912 and that it is not unlikely that a conference may before long be summoned for the purpose of effecting such revision.

The work of the Commission in framing the following rules for the control of radio in time of war has been facilitated by the preparation and submission to the Commission on behalf of the American Delegation of a draft code of rules. This draft has been used as the basis of its work by the Commission.

. . . .

ARTICLE 1

In time of war the working of radio stations shall continue to be organised, as far as possible, in such manner as not to disturb the

services of other radio stations. This provision does not apply as between the radio stations of opposing belligerents.

. . . .

ARTICLE 2

Belligerent and neutral Powers may regulate or prohibit the operation of radio stations within their jurisdiction.

. . . .

ARTICLE 3

The erection or operation by a belligerent Power or its agent of radio stations within neutral jurisdiction constitutes a violation of neutrality on the part of such belligerent as well as on the part of the neutral Power which permits the erection or operation of such stations.

. . . .

ARTICLE 4

A neutral Power is not called upon to restrict or prohibit the use of radio stations which are located within its jurisdiction, except so far as may be necessary to prevent the transmission of information destined for a belligerent concerning military forces or military operations and except as prescribed by article 5.

All restrictive or prohibitive measures taken by a neutral Power shall be applied impartially by it to the belligerents.

. . . .

ARTICLE 5

Belligerent mobile radio stations are bound within the jurisdiction of a neutral State to abstain from all use of their radio apparatus. Neutral Governments are bound to employ the means at their disposal to prevent such use.

. . . .

ARTICLE 6

1. The transmission by radio by a vessel or an aircraft, whether enemy or neutral, when on or over the high seas of military intelligence for the immediate use of a belligerent is to be deemed a hostile act and will render the vessel or aircraft liable to be fired upon.

2. A neutral vessel or neutral aircraft which transmits when on or over the high seas information destined for a belligerent concerning military operations or military forces shall be liable to capture. The Prize Court may condemn the vessel or aircraft if it considers that the circumstances justify condemnation.

3. Liability to capture of a neutral vessel or aircraft on account of the acts referred to in paragraphs (1) and (2) is not extinguished by the conclusion of the voyage or flight on which the vessel or aircraft was engaged at the time, but shall subsist for a period of one year after the act complained of.

. . . .

ARTICLE 7

In case a belligerent commanding officer considers that the success of the operation in which he is engaged may be prejudiced by the presence of vessels or aircraft equipped with radio installations in the immediate vicinity of his armed forces or by the use of such installations therein, he may order neutral vessels or neutral aircraft on or over the high seas:

1. to alter their course to such an extent as will be necessary to prevent their approaching the armed forces operating under his command; or

2. not to make use of their radio transmitting apparatus while in the immediate vicinity of such forces.

A neutral vessel or neutral aircraft, which does not conform to such direction of which it has had notice, exposes itself to the risk of being fired upon. It will also be liable to capture, and may be condemned if the Prize Court considers that the circumstances justify condemnation.

. . . .

ARTICLE 8

Neutral mobile radio stations shall refrain from keeping any record of radio messages received from belligerent military radio stations, unless such messages are addressed to themselves.

Violation of this rule will justify the removal by the belligerent of the records of such intercepted messages.

. . . .

ARTICLE 9

Belligerents are under obligation to comply with the provisions of international conventions in regard to distress signals and distress messages so far as their military operations permit.

Nothing in these rules shall be understood to relieve a belligerent from such obligation or to prohibit the transmission of distress signals, distress messages and messages which are indispensable to the safety of navigation.

. . . .

ARTICLE 10

The perversion of radio distress signals and distress messages prescribed by international conventions to other than their normal and legitimate purposes constitutes a violation of the laws of war and renders the perpetrator personally responsible under international law.

. . . .

ARTICLE 11

Acts not otherwise constituting espionage are not espionage by reason of their involving violation of these rules.

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ARTICLE 12

Radio operators incur no personal responsibility from the mere fact of carrying out the orders which they receive in the performance of their duties as operators.

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Part II.—Rules of Aerial Warfare

. . . .

Chapter I.—*Applicability: Classification and Marks*

. . . .

ARTICLE 1

The rules of aerial warfare apply to all aircraft, whether lighter or heavier than air, irrespective of whether they are, or are not, capable of floating on the water.

. . . .

ARTICLE 2

The following shall be deemed to be public aircraft:

(*a*) military aircraft;
(*b*) non-military aircraft exclusively employed in the public service.

All other aircraft shall be deemed to be private aircraft.

. . . .

ARTICLE 3

A military aircraft shall bear an external mark indicating its nationality and military character.

. . . .

ARTICLE 4

A public non-military aircraft employed for customs or police purposes shall carry papers evidencing the fact that it is exclusively employed in the public service. Such an aircraft shall bear an external mark indicating its nationality and its public non-military character.

. . . .

ARTICLE 5

Public non-military aircraft other than those employed for customs or police purposes shall in time of war bear the same external marks, and for the purposes of these rules shall be treated on the same footing, as private aircraft.

. . . .

ARTICLE 6

Aircraft not comprised in articles 3 and 4 and deemed to be private aircraft shall carry such papers and bear such external marks as are required by the rules in force in their own country. These marks must indicate their nationality and character.

. . . .

ARTICLE 7

The external marks required by the above articles shall be so affixed that they cannot be altered in flight. They shall be as large as is practicable and shall be visible from above, from below and from each side.

. . . .

ARTICLE 8

The external marks, prescribed by the rules in force in each State, shall be notified promptly to all other Powers.

Modifications adopted in time of peace of the rules prescribing external marks shall be notified to all other Powers before they are brought into force.

Modifications of such rules adopted at the outbreak of war or during hostilities shall be notified by each Power as soon as possible to all other Powers and at latest when they are communicated to its own fighting forces.

. . . .

ARTICLE 9

A belligerent non-military aircraft, whether public or private, may be converted into a military aircraft, provided that the conver-

sion is effected within the jurisdiction of the belligerent State to which the aircraft belongs and not on the high seas.

. . . .

ARTICLE 10

No aircraft may possess more than one nationality.

Chapter II.—*General Principles*

. . . .

ARTICLE 11

Outside the jurisdiction of any State, belligerent or neutral, all aircraft shall have full freedom of passage through the air and of alighting.

. . . .

ARTICLE 12

In time of war any State, whether belligerent or neutral, may forbid or regulate the entrance, movement or sojourn of aircraft within its jurisdiction.

. . . .

Chapter III.—*Belligerents*

. . . .

ARTICLE 13

Military aircraft are alone entitled to exercise belligerent rights.

. . . .

ARTICLE 14

A military aircraft shall be under the command of a person duly commissioned or enlisted in the military service of the State; the crew must be exclusively military.

. . . .

ARTICLE 15

Members of the crew of a military aircraft shall wear a fixed distinctive emblem of such character as to be recognisable at a distance in case they become separated from their aircraft.

. . . .

ARTICLE 16

No aircraft other than a belligerent military aircraft shall engage in hostilities in any form.

The term "hostilities" includes the transmission during flight of military intelligence for the immediate use of a belligerent.

No private aircraft, when outside the jurisdiction of its own country, shall be armed in time of war.

. . . .

ARTICLE 17

The principles laid down in the Geneva Convention, 1906, and the Convention for the adaptation of the said Convention to Maritime War (No. X of 1907) shall apply to aerial warfare and to flying ambulances, as well as to the control over flying ambulances exercised by a belligerent commanding officer.

In order to enjoy the protection and privileges allowed to mobile medical units by the Geneva Convention, 1906, flying ambulances must bear the distinctive emblem of the Red Cross in addition to the usual distinguishing marks.

Chapter IV.—*Hostilities*

. . . .

ARTICLE 18

The use of tracer, incendiary or explosive projectiles by or against aircraft is not prohibited.

This provision applies equally to States which are parties to the Declaration of St. Petersburg, 1868, and to those which are not.

ARTICLE 19

The use of false external marks is forbidden.

. . . .

ARTICLE 20

When an aircraft has been disabled, the occupants when endeavouring to escape by means of a parachute must not be attacked in the course of their descent.

. . . .

ARTICLE 21

The use of aircraft for the purpose of disseminating propaganda shall not be treated as an illegitimate means of warfare.

Members of the crews of such aircraft must not be deprived of their rights as prisoners of war on the charge that they have committed such an act.

. . . .

ARTICLE 22

Aerial bombardment for the purpose of terrorising the civilian population, of destroying or damaging private property not of military character, or of injuring non-combatants is prohibited.

. . . .

ARTICLE 23

Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money is prohibited.

. . . .

ARTICLE 24

(1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

(2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation used for military purposes.

(3) The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighbourhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph 2 are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

(4) In the immediate neighbourhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

(5) A belligerent State is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article.

. . . .

ARTICLE 25

In bombardment by aircraft, all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to

public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided such buildings, objects or places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft. The use of marks to indicate other buildings, objects, or places than those specified above is to be deemed an act of perfidy. The marks used as aforesaid shall be in the case of buildings protected under the Geneva Convention the red cross on a white ground, and in the case of other protected buildings a large rectangular panel divided diagonally into two pointed triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

. . . .

ARTICLE 26

The following special rules are adopted for the purpose of enabling States to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special régime for their inspection.

(1) A State shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.

(2) The monuments round which a zone is to be established shall be notified to other Powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.

(3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 metres in width, measured from the circumference of the said area.

(4) Marks clearly visible from aircraft either by day or by night will be employed for the purpose of ensuring the identification by belligerent airmen of the limits of the zones.

(5) The marks on the monuments themselves will be those defined in article 25. The marks employed for indicating the surrounding zones will be fixed by each State adopting the provisions of this article, and will be notified to other Powers at the same time as the monuments and zones are notified.

(6) Any abusive use of the marks indicating the zones referred to in paragraph 5 will be regarded as an act of perfidy.

(7) A State adopting the provisions of this article must abstain from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organisation, or from committing within such monument or zone any act with a military purpose in view.

(8) An inspection committee consisting of three neutral representatives accredited to the State adopting the provisions of this article, or their delegates, shall be appointed for the purpose of ensuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the State to which has been entrusted the interests of the opposing belligerent.

. . . .

ARTICLE 27

Any person on board a belligerent or neutral aircraft is to be deemed a spy only if acting clandestinely or on false pretences he obtains or seeks to obtain, while in the air, information within belligerent jurisdiction or in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

. . . .

ARTICLE 28

Acts of espionage committed after leaving the aircraft by members of the crew of an aircraft or by passengers transported by it are subject to the provisions of the Land Warfare Regulations.

. . . .

ARTICLE 29

Punishment of the acts of espionage referred to in articles 27 and 28 is subject to articles 30 and 31 of the Land Warfare Regulations.

CHAPTER V.—*Military Authority over Enemy and Neutral Aircraft and Persons on Board*

. . . .

ARTICLE 30

In case a belligerent commanding officer considers that the presence of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment, he may prohibit the passing of neutral aircraft in the immediate vicinity of his forces or may

oblige them to follow a particular route. A neutral aircraft which does not conform to such directions, of which it has had notice issued by the belligerent commanding officer, may be fired upon.

. . . .

ARTICLE 31

In accordance with the principles of article 53 of the Land Warfare Regulations, neutral private aircraft found upon entry in the enemy's jurisdiction by a belligerent occupying force may be requisitioned, subject to the payment of full compensation.

. . . .

ARTICLE 32

Enemy public aircraft, other than those treated on the same footing as private aircraft, shall be subject to confiscation without prize proceedings.

. . . .

ARTICLE 33

Belligerent non-military aircraft, whether public or private, flying within the jurisdiction of their own State, are liable to be fired upon unless they make the nearest available landing on the approach of enemy military aircraft.

. . . .

ARTICLE 34

Belligerent non-military aircraft, whether public or private, are liable to be fired upon, if they fly (1) within the jurisdiction of the enemy, or (2) in the immediate vicinity thereof and outside the jurisdiction of their own State, or (3) in the immediate vicinity of the military operations of the enemy by land or sea.

. . . .

ARTICLE 35

Neutral aircraft flying within the jurisdiction of a belligerent, and warned of the approach of military aircraft of the opposing belligerent, must make the nearest available landing. Failure to do so exposes them to the risk of being fired upon.

. . . .

ARTICLE 36

When an enemy military aircraft falls into the hands of a belligerent, the members of the crew and the passengers, if any, may be made prisoners of war.

The same rule applies to the members of the crew and the passengers, if any, of an enemy public non-military aircraft, except that in the case of public non-military aircraft devoted exclusively to the transport of passengers, the passengers will be entitled to be released unless they are in the service of the enemy, or are enemy nationals fit for military service.

If an enemy private aircraft falls into the hands of a belligerent, members of the crew who are enemy nationals or who are neutral nationals in the service of the enemy, may be made prisoners of war. Neutral members of the crew, who are not in the service of the enemy, are entitled to be released if they sign a written undertaking not to serve in any enemy aircraft while hostilities last. Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerents so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

The names of individuals released after giving a written undertaking in accordance with the third paragraph of this article will be notified to the opposing belligerent, who must not knowingly employ them in violation of their undertaking.

. . . .

ARTICLE 37

Members of the crew of a neutral aircraft which has been detained by a belligerent shall be released unconditionally, if they are neutral nationals and not in the service of the enemy. If they are enemy nationals or in the service of the enemy, they may be made prisoners of war.

Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

. . . .

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ARTICLE 38

Where under the provisions of articles 36 and 37 it is provided that members of the crew or passengers may be made prisoners of war, it is to be understood that, if they are not members of the armed forces, they shall be entitled to treatment not less favourable than that accorded to prisoners of war.

CHAPTER VI.—*Belligerent Duties towards Neutral States and Neutral Duties towards Belligerent States*

. . . .

ARTICLE 39

Belligerent aircraft are bound to respect the rights of neutral Powers and to abstain within the jurisdiction of a neutral State from the commission of any act which it is the duty of that State to prevent.

. . . .

ARTICLE 40

Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral State.

. . . .

ARTICLE 41

Aircraft on board vessels of war, including aircraft-carriers, shall be regarded as part of such vessel.

. . . .

ARTICLE 42

A neutral government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

A neutral government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any.

. . . .

ARTICLE 43

The personnel of a disabled belligerent military aircraft rescued outside neutral waters and brought into the jurisdiction of a neutral State by a neutral military aircraft and there landed shall be interned.

. . . .

ARTICLE 44

The supply in any manner, directly or indirectly, by a neutral government to a belligerent Power of aircraft, parts of aircraft, or material, supplies or munitions required for aircraft is forbidden.

. . . .

ARTICLE 45

Subject to the provisions of article 46, a neutral Power is not bound to prevent the export or transit on behalf of a belligerent of aircraft, parts of aircraft, or material, supplies or munitions for aircraft.

. . . .

ARTICLE 46

A neutral government is bound to use the means at its disposal:

(1) to prevent the departure from its jurisdiction of an aircraft in a condition to make a hostile attack against a belligerent Power, or carrying or accompanied by appliances or materials the mounting or utilisation of which would enable it to make a hostile attack, if there is reason to believe that such aircraft is destined for use against a belligerent Power;
(2) to prevent the departure of an aircraft the crew of which includes any member of the combatant forces of a belligerent Power;
(3) to prevent work upon an aircraft designed to prepare it to depart in contravention of the purposes of this article.

On the departure by air of any aircraft despatched by persons or companies in neutral jurisdiction to the order of a belligerent Power, the neutral government must prescribe for such aircraft a route avoiding the neighbourhood of the military operations of the opposing belligerent, and must exact whatever guarantees may be required to ensure that the aircraft follows the route prescribed.

. . . .

ARTICLE 47

A neutral State is bound to take such steps as the means at its disposal permit to prevent within its jurisdiction aerial observation of the movements, operations or defences of one belligerent, with the intention of informing the other belligerent.

. . . .

This provision applies equally to a belligerent military aircraft on board a vessel of war.

. . . .

ARTICLE 48

The action of a neutral Power in using force or other means at its disposal in the exercise of its rights or duties under these rules cannot be regarded as a hostile act.

CHAPTER VII.—*Visit and Search, Capture and Condemnation*

. . . .

ARTICLE 49

Private aircraft are liable to visit and search and to capture by belligerent military aircraft.

. . . .

ARTICLE 50

Belligerent military aircraft have the right to order public non-military and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon.

. . . .

ARTICLE 51

Neutral public non-military aircraft, other than those which are to be treated as private aircraft, are subject only to visit for the purpose of the verification of their papers.

. . . .

ARTICLE 52

Enemy private aircraft are liable to capture in all circumstances.

. . . .

ARTICLE 53

A neutral private aircraft is liable to capture if it:

(*a*) resists the legitimate exercise of belligerent rights;
(*b*) violates a prohibition of which it has had notice issued by a belligerent commanding officer under article 30;
(*c*) is engaged in unneutral service;
(*d*) is armed in time of war when outside the jurisdiction of its own country;
(*e*) has no external marks or uses false marks;
(*f*) has no papers or insufficient or irregular papers;
(*g*) is manifestly out of the line between the point of departure and the point of destination indicated in its papers and after such enquiries as the belligerent may deem necessary, no good cause is

shown for the deviation. The aircraft, together with its crew and passengers, if any, may be detained by the belligerent, pending such enquiries.

(*h*) carries, or itself constitutes, contraband of war;

(*i*) is engaged in breach of a blockade duly established and effectively maintained;

(*k*) has been transferred from belligerent to neutral nationality at a date and in circumstances indicating an intention of evading the consequences to which an enemy aircraft, as such, is exposed.

Provided that in each case, (except (*k*)), the ground for capture shall be an act carried out in the flight in which the neutral aircraft came into belligerent hands, i. e. since it left its point of departure and before it reached its point of destination.

. . . .

ARTICLE 54

The papers of a private aircraft will be regarded as insufficient or irregular if they do not establish the nationality of the aircraft and indicate the names and nationality of the crew and passengers, the points of departure and destination of the flight, together with particulars of the cargo and the conditions under which it is transported. The logs must also be included.

. . . .

ARTICLE 55

Capture of an aircraft or of goods on board an aircraft shall be made the subject of prize proceedings, in order that any neutral claim may be duly heard and determined.

. . . .

ARTICLE 56

A private aircraft captured upon the ground that it has no external marks or is using false marks, or that it is armed in time of war outside the jurisdiction of its own country, is liable to condemnation.

A neutral private aircraft captured upon the ground that it has disregarded the direction of a belligerent commanding officer under article 30 is liable to condemnation, unless it can justify its presence within the prohibited zone.

In all other cases, the prize court in adjudicating upon any case of capture of an aircraft or its cargo, or of postal correspondence on board an aircraft, shall apply the same rules as would be applied to a merchant vessel or its cargo or to postal correspondence on board a merchant vessel.

. . . .

ARTICLE 57

Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved.

. . . .

ARTICLE 58

Private aircraft which are found upon visit and search to be neutral aircraft liable to condemnation upon the ground of unneutral service, or upon the ground that they have no external marks or are bearing false marks, may be destroyed, if sending them in for adjudication would be impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. Apart from the cases mentioned above, a neutral private aircraft must not be destroyed except in the gravest military emergency, which would not justify the officer in command in releasing it or sending it in for adjudication.

. . . .

ARTICLE 59

Before a neutral private aircraft is destroyed, all persons on board must be placed in safety, and all the papers of the aircraft must be preserved.

A captor who has destroyed a neutral private aircraft must bring the capture before the prize court, and must first establish that he was justified in destroying it under article 58. If he fails to do this, parties interested in the aircraft or its cargo are entitled to compensation. If the capture is held to be invalid, though the act of destruction is held to have been justifiable, compensation must be paid to the parties interested in place of the restitution to which they would have been entitled.

. . . .

ARTICLE 60

Where a neutral private aircraft is captured on the ground that it is carrying contraband, the captor may demand the surrender of any absolute contraband on board, or may proceed to the destruction of such absolute contraband, if sending in the aircraft for adjudication is impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. After entering in the log book of the aircraft the delivery

or destruction of the goods, and securing, in original or copy, the relevant papers of the aircraft, the captor must allow the neutral aircraft to continue its flight.

The provisions of the second paragraph of Article 59 will apply where absolute contraband on board a neutral private aircraft is handed over or destroyed.

CHAPTER VIII.—*Definitions*

. . . .

ARTICLE 61

The term "military" throughout these rules is to be read as referring to all branches of the forces, i.e. the land forces, the naval forces and the air forces.

. . . .

ARTICLE 62

Except so far as special rules are here laid down and except also so far as the provisions of Chapter VII of these Rules or international conventions indicate that maritime law and procedure are applicable, aircraft personnel engaged in hostilities come under the laws of war and neutrality applicable to land troops in virtue of the custom and practice of international law and of the various declarations and conventions to which the States concerned are parties.

. . . .

700.00116/171

The Secretary of the Navy (Denby) to the Secretary of State

S C 226–110 WASHINGTON, *May 19, 1923.*

SIR: This Department is in receipt of your letter of April 6th[52] enclosing for my "information and comment" a copy of a dispatch dated February 26, 1923, from the American Delegates on the Commission of Jurists to Consider and Report upon the Revision of the Rules of Warfare, at the Hague, accompanied by several other pertinent documents.

In reply the Navy Department desires to state that the draft of an aviation code and of a radio code are in general accord with the views of the Navy Department as to the necessities and demands of naval warfare of the future, so far as can now be laid down.

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[52] Not printed.

It has reached the Navy Department from sources other than the papers referred that at the first meeting of the Commission the delegate of one of the Powers recommended that the first question before the Commission should be to decide whether any rules whatever were needed. There is, therefore, some reason for suspecting that one or more of the Powers represented may be willing to permit the work of the Commission to be forgotten. Whether or not the draft as presented ever becomes a treaty, it will, if published, have a value for guidance in the use of new implements of warfare, as being the expression of the views of accredited representatives of the principal nations of the world after careful and laborious investigation and discussion.

I therefore venture to suggest to you the desirability of now publishing the General Report of the Commission as it stands and of embodying the two proposed codes in suitable treaty form with the least possible revision or amendment, for acceptance by the Powers represented on the Commission.

More extended comment from a naval point of view on the aviation draft code follows as Appendix A, and on the radio draft code as Appendix B.[53]

Very respectfully,

EDWIN DENBY

700.00116/187

The Secretary of War (Weeks) to the Secretary of State

WPD 375-33 WASHINGTON, *September 27, 1923.*

MY DEAR MR. SECRETARY: With reference to your letter of April 5, 1923,[54] (WE), enclosing a copy of a despatch from the American Delegates on the Commission of Jurists to Consider and Report upon the Revision of the Rules of Warfare at The Hague, accompanied by a General Report of the Commission together with other pertinent documents, and my reply thereto of April 14, 1923,[54] I am pleased to advise you that the radio and aerial warfare rules embodied in the Commission's General Report are in general accord with the views of the War Department.

It is realized, of course, that not all of the articles or sub-paragraphs thereof, of the General Report, are framed in language our delegates would have selected had they had a free hand in drafting the code of rules finally adopted. The necessity for concession and compromise in order that the general aims of the United States might be accomplished is fully understood and appreciated by me.

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[53] Neither printed.
[54] Not printed.

On the whole it would seem that the Commission's General Report meets the need of the situation so far as it is possible now to determine, and the War Department has no objection to embodying the articles contained therein in any treaty that might be drafted between the United States and the other Powers represented on the Commission.

I am enclosing for your information, under Appendix "A", a detailed comparison of the War Department Draft of Rules with the United States' Proposals to the Commission, and under Appendix "B", the comments of the War Department upon the individual articles of the Commission's General Report.[55]

Sincerely yours,

JOHN W. WEEKS

PARTICIPATION BY DELEGATES FROM THE UNITED STATES IN THE DELIBERATIONS OF THE LEAGUE OF NATIONS ADVISORY COMMITTEE ON TRAFFIC IN OPIUM

511.4 A 1/1687

The Secretary General of the League of Nations (Drummond) to the Secretary of State

12A/23596/10346 GENEVA, *14 October, 1922.*
[Received October 26.]

SIR: I have the honour to draw your attention to the following resolution unanimously adopted on September 19th, 1922, by the Third Assembly of the League of Nations on the recommendation of the Advisory Committee on Traffic in Opium:

"The Assembly, convinced of the urgent necessity of securing the fullest possible co-operation in the work of the Advisory Committee on Traffic in Opium and other Dangerous Drugs, and considering the fact that the United States of America is one of the most important manufacturing and importing countries, recommends to the Council of the League that it should address a pressing invitation to the Government of the United States to nominate a member to serve on the Committee."

The Council, acting on this recommendation, at its meeting on September 26th, 1922, adopted the following resolution:

"The Council of the League of Nations, having taken cognisance of the resolutions on the subject of the traffic in opium and other dangerous drugs, adopted by the Assembly on September 19th, 1922, decides:

"To instruct the Secretary-General to address, in its name, a pressing invitation to the Government of the United States of America, to nominate a member to serve on the Advisory Committee on Traffic in Opium."

[55] Neither printed.

It will be remembered that in accordance with the resolution adopted by the First Assembly on December 15th, 1920, an Advisory Committee was appointed by the Council consisting of representatives of the following countries, which may be said to be those most intimately interested in the opium problem:

China	France	Great Britain
India	Japan	Netherlands
Portugal	Siam	

and three assessors, appointed for their special knowledge of the question, including Mrs. Hamilton Wright, an American citizen who had long been identified with this work.

This Committee was charged with "the general supervision over the execution of agreements with regard to the traffic in opium and other dangerous drugs" and the consideration of all such international questions relative to the traffic in opium which may be submitted to it for consideration.

The Committee held its First Meeting from May 2-5, 1921, with the following membership:

China	His Excellency Tang Tsai-Fou.
France	Monsieur Gaston Kahn.
Great Britain	Sir Malcolm Delevingne, K.C.B.
Netherlands	Monsieur W-G van Wettum.
India	Mr. John Campbell.
Japan	His Excellency A. Ariyoshi.
Portugal	His Excellency B. Ferreira.
Siam	His Excellency Prince Charoon.
Assessors	Monsieur Henri Brenier.
	Sir John Jordan, G.C.I.E. etc.
	Mrs. Hamilton Wright.

and it will no doubt be of interest to the Government of the United States of America to know what work it has accomplished and dealt with since this meeting.

In order to ensure universal agreement on the only plan then existing for combatting the opium traffic, the first action of the Committee was to issue an appeal to all countries to become Parties, if they had not already done so, to the Opium Convention of 1912.[62] Since this appeal was issued, nine Governments, in addition to those who had already done so, have signed or ratified this Convention.

In order to express the problem in terms of figures, the Advisory Committee, also at its First Meeting, drew up a Questionnaire on the cultivation, production, and manufacture of opium and other dangerous drugs, which was sent out to all States. Replies were received from the following 39 Governments, a summary of which

[62] Malloy, *Treaties*, 1910-1923, vol. III, p. 3025.

formed the basis of discussion at the Second Meeting of the Advisory Committee held from April 19th to 29th, 1922:

Abyssinia
Union of South Africa
Albania
Australia
Austria
Belgium
Canada
China
Czecho-Slovakia
Danzig
Denmark
Dominican Republic
France & Colonies
Germany
Great Britain & Colonies
Greece
Haiti
Hungary
India
Italy
Japan
Latvia
Liechtenstein
Luxemburg
Monaco
Netherlands & Dutch East Indies
New Zealand
Norway
Panama
Poland
Portugal
Roumania
Salvador
Serb-Croat-Slovene State
Siam
Switzerland
Turkey
Venezuela

At this Second Meeting, a draft Importation Certificate, which the Committee recommended should be used by all countries to ensure adequate control of exports and imports, was drawn up and all States were invited to adopt this form and to bring it into force with as little delay as possible. Twenty-six Governments, namely,

Union of South Africa
Albania
Australia
Austria
Bulgaria
China
Cuba
Czecho-Slovakia
Denmark
Germany
Great Britain
Greece
Haiti
India
Italy
Japan
Latvia
Lithuania
Luxemburg
New Zealand
Norway
Peru
Poland
Siam
Sweden
Switzerland

have already notified the League of their willingness to accept the principle of the system, which it is hoped will come into force on January 1st, 1923.

In order to collate all pertinent information on the opium problem and to ensure this information being kept up-to-date, the Committee also prepared a comprehensive form of Annual Report which it recommended to all States for adoption. In this Report each country is asked to furnish detailed information as to the general control of the traffic in its territories, the regulation of imports and exports,

the control of particular drugs and all prepared opium. It also asks that information may be forthcoming as to production, manufacture, import and export of morphine, cocaine, heroin and other drugs.

As the most effective method of ascertaining how much opium should be produced for legitimate consumption, governments have also been requested in separate communications, to state their requirements for domestic consumption of opium and its derivatives.

Apart from the question of opium, the Committee gave special attention to the daily increasing abuse of cocaine. They asked that the Governments might be invited to furnish as close an estimate as possible of the annual requirements of cocaine in their respective countries. It may be of interest to quote from the Report of the Committee:

"it is notorious that a large illicit traffic is being carried on in the countries of Western Europe and America as well as in the Far East, particularly in morphine and cocaine. In spite of the activity of the police and the heavy penalties imposed, the traffic is extremely difficult to check on account of the ease with which the drugs can be secretly conveyed, and so far it appears to have proved impossible to discover the means by which the drugs are obtained or the persons by whom the traffic is organised. Here too it seems clear that the most effective method of putting a stop to the traffic is to control production. In the case of cocaine, this should not be a difficult matter. The manufacture of cocaine is an elaborate process and can only be undertaken by expert chemists. Cocaine also is employed to a much smaller extent and for a much more limited number of purposes than morphine, and it should accordingly be easier to arrive at an approximate estimate of the world's requirements."

The Committee forwarded to all States a list of drugs which produce similar effects as those mentioned in the Convention of 1912, with a request that the Administrative Departments concerned should give careful study and consideration to the question as to whether these drugs should be subject to the same restrictions as the drugs at present specifically mentioned in the Opium Convention.

It was agreed that the Committee should form with the International Commission for Communications and Transit, a sub-committee for the consideration of how best the passage of drugs through Free Ports and Free Zones could be controlled. It was also decided that, in conjunction with the Health Committee of the League, an extensive enquiry into the drug requirements for world medical and scientific purposes should be made.

The Committee has considered from time to time the advisability of the calling of an International Conference, but it was of opinion that a logical sequence of action must be followed and that certain information, which it is in process of obtaining, should be made available before such a Conference is held, if it is to serve a useful purpose.

The extent to which cultivation is carried on, the world's production and the requirements of each country for domestic consumption must first be ascertained. When these facts are known, the next steps may be, it is hoped, the framing of a comprehensive policy which will make it possible for the various governments to co-operate in striking at the root of the evil by limiting the world's supply to its legitimate purposes, by the control of exports and imports and finally by effective national legislation in all countries. The Advisory Committee laid great stress on the fact that if this plan of action is to be carried out effectively, the co-operation of all countries of the world (and particularly those countries which either cultivate opium or manufacture its derivatives) is a necessity.

Germany is already co-operating and has appointed a member to the Advisory Committee. The United States of America is not only one of the most important manufacturing and importing countries, but has always been one of the prime movers in the struggle against this evil and has recently taken active legislative steps in her efforts to control production and export in drugs in her own country.

At the recent meeting of the Committee, questions arose, the discussion of which, the Committee stated, was hampered by the lack of official information from the United States of America. The presence of a representative of that Government would not only be of the greatest possible assistance to the Committee, but, by the collaboration of America with the efforts of other nations, would help to make effective the measures the United States of America has already taken.

In view of the special circumstances and of the need for the co-operation of all countries if the existing abuse of drugs is to be successfully stamped out, it is earnestly hoped that the United States of America may find it possible to appoint an expert to take part in the work of the Committee. As the next meeting of the Committee is to take place in the first fortnight of January, an early answer would be much appreciated.

I have the honour to enclose with this letter, copies of the Report of the Second Session of the Advisory Committee, the Report of the Fifth Commission to the Assembly and the Report to the Council.[63]

I have [etc.] ERIC DRUMMOND

511.4 A 1/1664 : Telegram

The Secretary of State to the Minister in Switzerland (Grew)

WASHINGTON, *December 9, 1922—5 p.m.*

74. Your 80, September 20, noon.[63]

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[63] Not printed.

You are requested to notify the Secretariat-General of the League of Nations in the sense of the following and referring to his communication addressed to the Secretary of State dated October 14, 1922.

"The Government of the United States being desirous of cooperating in a work which has for its object the suppression of the Traffic in habit-forming drugs is pleased to inform the Secretariat-General of the League of Nations that Dr. Rupert Blue, former Surgeon-General of the United States Public Health Service, has been selected to cooperate in an unofficial and consultative capacity with the Advisory Committee on Traffic in Opium, the next meeting of which it is understood will take place in the first fortnight of January."

Formal reply[64] is being mailed you for transmission. Inform Department of exact date of meeting.

HUGHES

511.4 A 1/1707a

The Secretary of State to the Secretary of the Treasury (Mellon)

WASHINGTON, *December 14, 1922.*

SIR: I have the honor to refer to my letter of December 1, 1922,[64] informing you that the President is agreeable to the designation of Surgeon General Blue to serve in an unofficial and consultative capacity with the Advisory Committee of the League of Nations in the study of ways and means to deal with the traffic in opium, and to communicate as follows for your information and the guidance of Dr. Blue in his work at Geneva a statement of this Government's attitude on the subject of opium and its control which has been prepared in consultation with the Federal Narcotics Control Board.

I. This Government's primary interest in the question of narcotics and the control thereof is in the protection of its own citizens.

II. This Government secondarily is interested in preventing the illegitimate participation of its nationals in the international traffic in narcotics as distinguished from a carefully controlled trade in narcotics for scientific and medicinal purposes.

III. This Government, thirdly, reiterates its historic interest in the efforts of the Chinese Government to suppress the traffic in opium and the cultivation of the poppy within its own borders.

IV. This Government, fourthly, recognizes the general interest of its nationals in all efforts to regulate the traffic in drugs containing narcotics, measures to that end having been the object of conferences and conventions in which this Government has participated.

In connection with Paragraph I, this Government's primary concern is with domestic regulations to prevent drugs containing nar-

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[64] Not printed.

cotics reaching its nationals, except for medicinal and scientific purposes, and secondarily with the regulations of various producing or manufacturing countries governing the export of the raw or manufactured product, and thirdly with the prevention of such accumulation of the raw material and products thereof, within any given territory, as would tend to frustrate efforts to suppress illegitimate traffic between the countries.

The fact should be borne in mind that there is a tendency for opium, or harmful drugs however produced, to reach channels of illegal traffic. While this Government is theoretically interested in the production of narcotics, in other countries, only in so far as such production serves the legitimate needs of the world for medicinal and scientific purposes, yet it cannot ignore the practical danger that accumulated surplus supplies of narcotics—over and beyond the quantities required for local consumption and for exportation for medicinal and scientific purposes—tend inevitably to create a seepage into the illegitimate traffic in such drugs; and it therefore considers that there is a point beyond which such over-production in any territory becomes a matter of general international concern.

Under paragraph II, this Government is concerned, apart from any question of the position hitherto taken by other governments, with the control of the manufacture of habit-forming drugs with the end in view of persuading the interested Powers to bring their domestic and export regulations up to standards which the United States has adopted and proposes. In this connection, American manufacturers have pointed out the tendency of American legislation (Narcotics Act of May, 1922 [65]) to handicap the American trade by reason of its more stringent provisions.

In connection with Paragraph III, this Government is not unmindful of the existence of two distinct programs for the control of the production of and traffic in narcotic drugs; one involving the legitimization of the traffic by the establishment of a governmentally controlled monopoly for the purpose of a gradual diminution of the production of, and traffic in, narcotic drugs, accompanied by a simultaneous production of revenue for governmental purposes; the other, aiming at a complete suppression and prohibition of the production of and traffic in narcotics, except for scientific and medicinal purposes, with consequent sacrifice of revenue.

This Government has from the beginning been committed to the latter of these two programs in dealing with the question within its own territories, notably in the Philippine Islands; and having cooperated sympathetically with the efforts of the Chinese Govern-

[65] 42 Stat. 596.

ment to deal in the same manner with the opium question in China, it would view with concern any measures which might now be proposed in contravention to the policy which was inaugurated in 1908 by the Chinese Government with the effective coöperation of the interested Powers, and which has already resulted in a very considerable progress towards the desired conditions.

As regards Paragraph IV, it is proper to emphasize the interest of the people of the United States in this question, as shown in their sympathetic recognition of the efforts of the oriental peoples to control the narcotic evil, through the insertion of prohibitory articles in the earliest of our treaties with China, Japan and Siam. It should be recalled also that this Government took a leading part in the proceedings of the International Commission in China in 1909, and in the Conferences at The Hague. For these reasons it has been deemed advisable to participate, although unofficially, at the meeting of the Advisory Committee on Narcotics of the League of Nations.

It is desired that Dr. Blue, acting unofficially and in a consultative capacity in accordance with his designation, will carefully avoid apparent acquiescence in any action of the Advisory Committee that does not conform to this Government's traditional policies. Should circumstances in Dr. Blue's opinion require the formal statement of this Government's position as herein outlined, the Department of State desires that a draft of such a statement be submitted by Dr. Blue before being given out by him, although this Department in no way desires to restrict the informal discussions of Dr. Blue with his colleagues. It should be remembered at the same time that it is not this Government's intention or desire to interfere in any way with the internal and purely domestic measures which the several governments may deem it advisable to take with respect to the control of this evil in their own territories, unless a condition is brought about in which an accumulation of narcotics may create a danger of their diversion into the channels of illegitimate international traffic.

The production of opium as referred to in the Hague Convention is understood by this Government to mean not merely the manufacture and refining of the raw product but also the growing of the poppy for the purpose of producing raw opium.

It is hoped that Dr. Blue will communicate freely with the Department of State, both for the purpose of keeping it currently informed of the developments of the subject during the progress of the Committee's deliberations, and for the purpose of obtaining such information and views as he may from time to time find necessary; and that he will transmit to the Department of State, for its archives, a full set of such documents as have come into his hands in connection with the work of the Committee.

I venture to request that the views above expressed, if satisfactory and agreeable to you, may be communicated to Dr. Blue, together with the enclosures[67] herewith for his guidance.

I have [etc.] CHARLES E. HUGHES

511.4 A 1/1708

The Secretary of the Treasury (Mellon) to the Secretary of State

WASHINGTON, *December 15, 1922.*

SIR: I have the honor to acknowledge receipt of your letter of December 14th communicating certain instructions for my information and the guidance of Assistant Surgeon General Rupert Blue in his work at Geneva in connection with his designation by the President to serve in an unofficial and consultative capacity with the Advisory Committee of the League of Nations in the study of ways and means to deal with the traffic in opium.

In reply I take pleasure in stating that these views are entirely satisfactory and agreeable to me and will be communicated to Doctor Blue together with the enclosures therewith for his guidance, in accordance with your request.

Respectfully,

A. W. MELLON

[A record of the meeting of the Advisory Committee at Geneva, January 8–14, 1923, may be found in the League of Nations publications, *Advisory Committee on Traffic in Opium: Minutes of the Fourth Session Held at Geneva from January 8th to 14th, 1923* (C. 155. M. 75. 1923, XI) and *Advisory Committee on the Traffic in Opium and Other Dangerous Drugs: Report to the Council on the Work of the Committee During Its Fourth Session Held at Geneva January 8th–14th, 1923* (C. 37. M. 91. 1923, XI).]

511.4 A 1/1777a

The Secretary of State to the American Delegation[68] at the Meeting of the Advisory Committee on Traffic in Opium

WASHINGTON, *May 10, 1923.*

GENTLEMEN: You have been selected to attend, on behalf of the United States and in a consultative capacity, a meeting of the Advisory Committee on Traffic in Opium of the League of Nations to be held on May 24, 1923, at Geneva, Switzerland. The United States has been invited to attend these sessions because it is a country which is vitally interested in the control of narcotic drugs and because it

[67] Not printed.

[68] Congressman Stephen G. Porter, Bishop Charles H. Brent, and Dr. Rupert Blue.

is a party to the Hague Opium Convention of 1912 which forms the basis of our present international control of the traffic in opium, coca leaves and their narcotic derivatives.

There are enclosed (1) a statement of the American position in regard to narcotic control with a special reference to this Government's understanding of the obligations which the Hague Convention imposes upon the adhering Powers, and (2) a series of Resolutions which it is suggested should be placed before the Committee as embodying, in concrete form, the position set forth in the proposed statement.

The United States is quite convinced that the only basis for control of the traffic in narcotics is by means of international cooperation. The only instrument at this time common to all the Powers is the Hague Opium Convention. This Convention was concluded in 1912 and other nations were invited to adhere thereto by signing a protocol which was opened in 1914 at the Hague. The international upheaval attendant upon the great war prevented normal procedure in accordance with the Hague Convention, and in the Treaty of Versailles it was included as one of the agreements of whose execution the League of Nations was entrusted with the general supervision. The United States, however, can cooperate only on the basis of the Hague Convention because it is the only general international instrument touching the subject to which the United States is party.

The League of Nations invited this Government to participate in the meetings of the Committee, which had been appointed for the purpose of advising on the execution of the Convention, and the United States has decided to have representatives at these Committee meetings in a consultative capacity because it desires to cooperate to the fullest extent possible in the execution of the Hague Convention and in efforts to put a stop to the evils of the traffic in narcotic drugs.

The United States is convinced, however, that in interpreting the Hague Convention there should be no misunderstanding of its position. For this reason it cannot be a party to any interpretation of the Hague Convention which weakens the force of that instrument as a means for controlling the traffic in narcotic drugs. The statement which you are to present to the Committee represents, it is felt, the attitude of this Government, and it is quite certain that American public opinion will be satisfied with no weaker interpretation of the Hague Convention than is contained in that statement. Further if the Hague Convention is limited, or if for any reason it cannot be made an adequate instrument for the purposes in question, it should be properly supplemented in order to make it effective.

In regard to the Resolutions which it is suggested to introduce, if opportunity is offered to you, this Government is convinced that no effective cooperation can be expected unless the first two are accepted. Resolution No. 1 declares the use of raw opium and coca leaves for non-medical or non-scientific purposes to be illegitimate; Resolution No. 2 urges those nations in whose territory these drugs are produced to reduce their production to a point where there is no surplus available for export for non-medicinal or non-scientific purposes. Resolution No. 3 which urges the adoption of the Hague Convention by nations not now party thereto, represents action which it is understood has already been recommended by the Committee. Resolutions Nos. 4 and 5 recommending that the importation of all narcotic drugs except crude opium and coca leaves be prohibited, and that the exportation of narcotic drugs be restricted to nations party to the Hague Convention, represent legislation which is already in force in the United States. The two latter resolutions represent, however, the conviction of the American public that the best method of controlling the traffic in narcotic drugs is to do so by means of control at the source: that is to say, that control should begin with the raw product and should be carried on through all the processes of manufacture so as to prevent illicit or non-medical use of narcotic products at any stage of their manufacture.

You should take every occasion to assure the representatives of other governments that the United States is deeply concerned in the problem of narcotic control; that we desire to cooperate with other nations in obtaining adherence to the Hague Opium Convention and urging legislation to make that instrument effective. As instances of this interest you may cite the Resolution which was adopted by the Pan American Conference at the initiative of this Government,[69] and you may state that this Government has also been indefatigable in its efforts to induce opium growing or narcotic producing states not members of the Hague Convention to join in the work of narcotic suppression. It would also be proper, in the view of this Government, to draw attention to our legislation and to Resolutions of Congress bearing on the subject of the traffic in narcotic drugs.

This Government has not been furnished with a copy of the agenda of the meeting, but it understands that two subjects of primary importance will be discussed. One, the question of the legitimate use of opium, and the other the question of refusing to import narcotics from those countries which are not party to the Convention and its final protocol of 1914.[70] In regard to the first question the attitude

[69] *Report of the Delegates of the United States of America to the Fifth International Conference of American States, Held at Santiago, Chile, March 25 to May 3, 1923*, with Appendices (Washington, Government Printing Office, 1924), p. 210.

[70] Malloy, *Treaties*, 1910–1923, vol. III, p. 3039.

of the United States is unmistakable and is discussed in the statement which you are requested to present to the Committee. In regard to the second question the United States is of the opinion that it would be better to obtain the adherence of producing countries to the Convention than to attempt a boycott. The principal sources of the opium used by the manufacturers of the United States are the Balkans and Asia Minor. Political conditions in these regions are in a state of flux; treaties restoring peace and fixing territorial boundaries there are not yet determined and the immediate effect of the adoption of this policy is likely to be very confusing, without, so far as this Government is able to see, reducing the supply of raw opium, which, it is believed, should be the ultimate aim of the Powers adhering to the Convention.

The United States believes that a better method of control is by reducing the traffic to its lowest terms; and for that reason suggests that all nations who can do so should absolutely prohibit the importation of opium or coca leaf products, leaving only the raw drugs as proper subjects for international commerce. This is the principle laid down in our own Narcotics Import and Export Act. It is realized of course that many nations are not in a position, because of the undeveloped state of their pharmaceutical industries, to adopt this policy. They should, however, permit importations of this character only upon license and for medical and scientific purposes. On the export side, nations should prevent the exportation of any narcotic drug except for medical and kindred legitimate purposes, and permit it only to those countries that have effective means for controlling distribution in accordance with the Hague Convention.

I am [etc.] CHARLES E. HUGHES

[Enclosure 1]

Statement of the Position of the United States in regard to the Traffic in Narcotic Drugs, To Be Read before the Advisory Committee of the League of Nations

The United States is of the opinion that there should be complete acceptance of and compliance with the terms and spirit of the Hague Opium Convention in dealing with the traffic in narcotic drugs. That Convention defines raw opium, prepared opium and medicinal opium, as well as morphine, cocaine and heroin. The Convention further binds the contracting parties (Chapter I) to control the production and distribution of raw opium, to limit the number of ports through which the importation and exportation shall be permitted; to prevent the exportation of raw opium to countries which shall have limited the importation thereof, to mark packages containing more than five kilos of opium and not to permit the importation and exportation except through duly au-

thorized persons. The Convention binds the contracting powers (Chapter II) to take measures for the gradual and efficacious suppression of the manufacture, the internal traffic in and the use of prepared opium so far as conditions allow and to prohibit the importation and exportation of prepared opium as soon as possible, (Chapter III) to limit the manufacture, sale and use of medicinal opium, cocaine and their alkaloids and derivatives to medical and legitimate uses only; (Chapter IV) to cooperate with the Chinese Government to prevent the smuggling of opium, cocaine or their derivatives, to adopt necessary measures for the restraint and control of the opium smoking habit in their leased territories, settlements, and concessions in China and to prohibit the illegal importation into China of opium and cocaine or their derivatives through the post. China is bound to enact pharmacy laws regulating the sale or distribution of opium, cocaine or their derivatives which the contracting powers will, if acceptable, make applicable to their nationals residing in China. Finally, (Chapter V) the contracting powers are bound to examine into the possibility of enacting laws and regulations making the illegal possession of opium, cocaine, their salts and derivatives liable to penalties; and to communicate to each other (*a*) the text of laws and administrative regulations which concern matters arrived at by the Convention and (*b*) statistical information in respect to that which concerns the traffic in raw opium, prepared opium, morphine, cocaine and their respective salts as well as other drugs or their salts or preparations aimed at by the Convention.

It has seemed necessary to set forth the provisions of the Hague Convention at some length, in so far as they call for legislation by the adhering powers, in order to demonstrate how far the United States has gone in putting the Convention into effect.

Under Chapters I, III and V the United States has legislation which controls the manufacture, distribution and sale of narcotic drugs and renders illegal the possession of narcotic drugs by an unregistered or unlicensed person except upon prescription from a physician, or other practitioner, written for legitimate medicinal uses. Raw opium and coca leaves are not produced in the United States, but there is legislation which prohibits the importation of all narcotic drugs except such quantities of crude opium or coca leaves as the Federal Narcotics Control Board shall find necessary. By regulation, it is provided that only manufacturers actually engaged in manufacturing may import—and then only through the ports of New York, Philadelphia, St. Louis, San Francisco, Detroit and Indianapolis. Exports of narcotic drugs may be made with the permission of the Federal Narcotic Control Board to a country which has ratified and become a party to the Hague Opium Conven-

tion and its final protocol and then only when such country has instituted and maintains in conformity with that convention a system (which the Federal Narcotics Control Board deems adequate) of permits or licenses for the control of imports of such narcotic drugs.

Under Chapter II the United States prohibits absolutely the importation and exportation of prepared opium and by means of prohibitory taxation makes it impossible to conduct establishments for the manufacture, sale or use of this type of opium.

Under Chapter IV the United States has a treaty with China, supplemented by domestic legislation, antedating the Convention, which prohibits American citizens from importing opium into China or engaging in the opium traffic in China. Copies of the legislation, regulations and statistical material available have been transmitted to the signatory powers through the Netherlands Government, (Chapter V).

The United States makes this statement in order to demonstrate that it has endeavored to carry out its obligations under the Hague Opium Convention.

The United States has no wish to enter into a discussion of the powers and duties of this Committee, but feels that it is due to itself and to the Governments here assembled to state clearly what it understands the Hague Convention to mean. The United States condemns, and understands the Hague Opium Convention to bind the contracting powers to suppress, the traffic in and use of prepared or smoking opium in any form. Further, the United States regards the manufacture and use of narcotic drugs, i.e., alkaloids or other narcotic derivatives of opium or coca leaves, for other than medicinal or scientific purposes as an abusive use under the Convention. In regard to raw opium, the production, distribution, importation and exportation of which the Convention binds the adhering Powers to control, the attitude of the United States, as shown by its legislation, is that it is a dangerous drug and that its use for other than strictly medicinal or scientific purposes is unlawful. The United States feels that the unrestricted production of raw opium inevitably results in a surplus of the drug over and above that required for medicinal and scientific purposes, and the diversion of it or its derivatives—morphine, heroin and codeine—into illicit channels of international traffic, thereby creating a problem of universal international concern, and making impossible the execution of laws adopted by the several Governments under the terms of the Convention. The United States believes, therefore, that the unrestricted production of opium should not be permitted, and that the cultivation of the opium poppy should be limited to a point where there is no danger that the product will be available for other than medicinal and scientific purposes.

The production of coca leaves presents a problem similar to that of raw opium, and the attitude of the United States in this respect is the same as that stated in regard to the production of opium.

The United States has made a sincere effort to comply with the terms of the Hague Opium Convention, and is prepared to consider seriously any further measures which may be suggested for stricter control of the traffic in narcotic drugs. It feels, however, that the adoption of the foregoing principles, and their realization in legislative measures that will prevent the international traffic in raw opium and coca leaves, (as well as their derivatives) for non-medicinal or non-scientific purposes, constitute a minimum of what can be considered a compliance with the spirit of the Convention. The United States trusts that the principles set forth above will commend themselves to the Powers who are parties to the Hague Opium Convention. The United States suggests therefore, that the Committee adopt the principles set forth and embody them in its report and recommendations, as the basis upon which effective international cooperation can be expected.

[Enclosure 2]

Resolutions To Be Introduced by the United States

The resolutions proposed by Representative Porter in behalf of the United States are as follows:

1. If the purpose of The Hague Opium Convention is to be achieved according to its spirit and true intent, it must be recognized that the use of opium products for other than medicinal and scientific purposes is an abuse and not legitimate.

2. In order to prevent the abuse of these products it is necessary to exercise the control of production of raw opium in such a manner that there will be no surplus available for non-medicinal and non-scientific purposes.

3. The nations which are parties to the Hague Opium Convention are urged to bend every effort to induce the nations which are not parties to the Convention, or which have not yet enacted legislation to put it into effect, to do so at once.

4. Those nations which have well developed chemical and pharmaceutical industries are urged to prohibit the importation of all narcotic drugs except such quantities of crude opium and coca leaves as may be necessary to provide for medicinal and scientific needs.

5. All nations are urged to prohibit the exportation of narcotic drugs, including opium in whatever form and coca leaves and derivatives of these drugs, to those countries which are not parties to the Hague Opium Convention and which do not have domestic systems of control—including import and export certificates.

511.4 A 1/1787 : Telegram

The Chief of the American Delegation at the Meeting of the Advisory Committee on Traffic in Opium (Porter) to the Secretary of State

GENEVA, *May 25, 1923—1 p.m.*
[Received 1:06 p.m.]

Statement of position[71] with cabled addition in support of resolutions numbers one and two[72] delivered this morning. Bishop Brent made a forceful and brilliant statement preceding my statement of the United States position.[73] He discussed the moral aspects of the opium traffic and called upon the nations to suppress it without regard to the revenue derived therefrom, referring to our course in the Philippines.

PORTER

511.4 A 1/1788 : Telegram

The Chief of the American Delegation at the Meeting of the Advisory Committee on Traffic in Opium (Porter) to the Secretary of State

LAUSANNE, *May 27, 1923—11 p.m.*
[Received May 28—1:47 a.m.]

Upon arrival we sent a note to the Secretary-General of the League informing him of our arrival in response to their invitation and our desire to present our proposals at the Committee's convenience. In reply we were requested to be present at the meeting and to present our proposals on the morning of the 25th. The meetings on the 24th were devoted to organization and we did not appear as we had not received an answer to our communication. The Committee decided upon public sessions. After our presentation the chairman requested the views of the Committee on the principles advocated. The representatives of Germany, Portugal, Siam and China approved without reservations. The representatives of Japan, the Netherlands and India declared against them. The representatives of Great Britain and France did not definitely commit themselves. The question was set down for final decision on the agenda under the head of the legitimate needs of opium probably on Monday or Tuesday. It is worth noting that the only objections to our proposals come from representatives of governments which derive a

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[71] Enclosure 1 to instruction to the American Delegation, May 10, *supra*.
[72] Enclosure 2 to instruction to the American Delegation, May 10, *supra*.
[73] The complete texts of the statements by Bishop Brent and Mr. Porter may be found in the League of Nations publication, *Advisory Committee on Traffic in Opium and Other Dangerous Drugs: Minutes of the Fifth Session*, etc. (C. 418. M. 184. 1923. XI), pp. 10 ff.

substantial revenue from opium monopolies. We have carefully avoided any act which could be construed as an acknowledgment that we were a constituent part of the Committee holding ourselves and the Committee as separate entities. This prevents our being placed in an embarrassing position as we cannot be expected to vote upon questions that are the concern of the League of Nations. The British are in the position of having two votes. India has no more right to be represented on a question of contractual treaty relations between United States and the British Empire than has the Philippine Islands, and yet India's vote in the Committee may be decisive. In case this arises we intend to challenge the right of India to vote on the ground that she is a stranger to the Hague opium convention.

PORTER

511.4 A 1/1788 : Telegram

The Secretary of State to the Consul at Geneva (Haskell)

WASHINGTON, *May 29, 1923—4 p.m.*

For Congressman Porter. Your May 27, 11 p.m. Inasmuch as the Hague Opium Convention has not been and cannot be modified without the consent of the parties including the United States, you are of course fully warranted in urging that the Government of India (which in view of the reservation to the British signature of the Opium Convention cannot be considered as having any independent relationship thereto) should not maintain a position contrary to that of the signatory Powers. Let me however caution you against incurring the embarrassment which might well result from actually challenging India's right to vote in the deliberations of a committee of the League in which this Country is represented only in a consultative capacity and without a vote of its own.

HUGHES

511.4 A 1/1793 : Telegram

The Consul at Geneva (Haskell) to the Secretary of State

GENEVA, *June 6, 1923—5 p.m.*
[Received June 7—2:43 a.m.]

The Advisory Committee adopted a resolution in four paragraphs[74] regarding the two American proposals which were submitted by the American representatives.

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[74] League of Nations, *Advisory Committee on Traffic in Opium and Other Dangerous Drugs: Minutes of the Fifth Session*, etc. (C. 418. M. 184. 1923. XI), p. 118.

Paragraph 1 reads as follows:

"That the Advisory Committee on Traffic in Opium accepts and recommends to the League of Nations the proposition[s] of the United States representatives as embodying the general principles by which the governments should be guided in dealing with the question of the abuse of dangerous drugs and on which in fact the international convention of 1912 is based subject to the fact that the following reservation has been made by the representatives of the Government[s] of France, Germany, Great Britain, Japan, Netherlands, Portugal, and Siam: the use of prepared opium and the production, export and import of raw opium for that purpose are legitimate so long as that use is subject to and in accordance with the provisions of chapter II of the convention."

Paragraph 2 expresses the belief that all the governments concerned will be desirous of cooperating with the United States in giving the fullest possible effect to the convention.

Paragraph 3 reviews the work of the Opium Committee during the past two years.

Paragraph 4 reads as follows:

"That as a means of giving effect to the principles submitted to [*by*] the representatives of the United States and the policy which the League on the recommendation of the Committee has adopted and having regard to the information now available, the Committee recommends to the Council the advisability of inviting (*a*) the governments of the above [75] states in which morphine, heroin, cocaine and their respective salts are manufactured and the governments of the states in which raw opium or the coca leaf are produced for export for the purpose of such manufacture, (*b*) the governments having territories in which the use of prepared opium is temporarily continued under the provisions of chapter II of the convention of [*and*] the Government of the Republic of China, to enter into immediate negotiations (by nominating representatives to form a committee or committees or otherwise) to consider whether with a view to giving the fullest possible effect to the convention of 1912 agreements could not now be reached between them (*a*) as to a limitation of the amounts of morphine, heroin or cocaine and their respective salts to be manufactured, as to a limitation of the amounts of raw opium and the coca leaf to be imported for that purpose and for other medicinal and scientific purposes, and as to a limitation of the production of raw opium and the coca leaf for export to the amount required for such medicinal and scientific purposes. The latter limitation is not to be deemed to apply to the production and export of raw opium for the purpose of smoking in those territories where that practice is temporarily continued under the provisions of chapter II of the convention, [*b*] as to a reduction of the amount of raw opium to be imported for the purpose of smoking in those territories where it is temporarily continued and as to the measures

[75] The word "above" does not appear in the text cited in the preceding footnote.

which should be taken by the Government of the Republic of China to bring about a suppression of the illegal production and use of opium in China."

Germany, India and Great Britain insisted that the use of raw opium in accordance with the established practice in India was legitimate under the convention but finally all of them abandoned the contention except India which made the following reservation: "The use of raw opium according to the established practice in India and its production for such use are not illegitimate under the convention."

The reservation in paragraph 1 appears to be merely a reaffirmation of chapter II of the convention and as such raises no question. Paragraphs 2 and 3 require no comment. Paragraph 4 is quoted above. Until yesterday the situation seemed to be hopeless and the acceptance of the American proposals came unexpectedly. We have informed the Committee that we were without instructions in regard to paragraph 4 but would report its substance to our Government for favorable consideration. The public meeting materially aided in bringing about this satisfactory result. Throughout the negotiations we have followed the procedure outlined in our previous telegram with gratifying results and our report will show the corresponding proposals and counter proposals and final result in a way that leaves no doubt as to our position with reference to the Committee and prevents any question of fact being raised hereafter in regard to the negotiations. Signed Porter.

HASKELL

511.4 A 1/1793 : Telegram

The Secretary of State to the Consul at Geneva (Haskell)

WASHINGTON, *June 8, 1923—5 p.m.*

For Congressman Porter:

I am much gratified by the results reported in your telegram of June 6, 5 p.m.

HUGHES

511.4 A 1/1821 : Telegram

The Minister in Switzerland (Grew) to the Secretary of State

BERNE, *August 9, 1923—7 p.m.*
[Received 7:30 p.m.]

57. Under date of August 7 Acting Secretary General of League, referring to proposals presented by American delegation at the last meeting of the Advisory Committee on the Traffic in Opium and

other Dangerous Drugs which were accepted by the Committee and embodied in its report to the Council which subsequently on July 7th referred report to the Assembly in the hope that action would be taken to make recommendations effective, requests following be telegraphed to Department:

"The report of the Advisory Committee and the minutes of the Council thereon have been forwarded to all states members of the League and the question inscribed on the agenda of the fourth Assembly opening at Geneva on September 3rd. The Fifth Committee of the Assembly which is entrusted with the further study of the question[s] involved will doubtless devote an important part of its discussion to the proposals of the American delegation.

In view of the very important part which the representatives of the United States played as regards the report of the Advisory Committee the Council felt that it would be right to afford the Government of the United States the fullest opportunity of explaining its views on a question in which it has shown such deep interest. At the same time it felt that it would be very helpful to the members of the Fifth Committee to have the possibility of consulting with the representatives of the United States in accordance with the practice of the various committees of the Assembly in past years of having at hand the president or other representative[s] who have taken an important part in the work of the various technical commissions.

To this end therefore I am directed by the Acting President of the Council to state that the members of the Council are in agreement that the presence of an American representative in Geneva at the time of the meetings of the Fifth Committee of the Assembly would be of great value and to extend to the Government of the United States an invitation in this sense."

For the Minister.
MAGRUDER

511.4 A 1/1821 : Telegram

The Secretary of State to the Minister in Switzerland (Grew)

WASHINGTON, *August 17, 1923—3 p.m.*

39. Your 57 August 9, 7 p.m. The United States Government accepts the invitation received from the Acting Secretary-General of the League of Nations to have representatives present at Geneva to act in a consultative capacity in connection with the Fifth Committee when it considers the recommendations of the Opium Advisory Committee. This Government hopes to be represented by Representative Porter, Bishop Brent and Dr. Blue.

Can you ascertain informally and report the approximate date the Committee will consider this question?

HUGHES

511.4 A 1/1832a

The Secretary of State to the American Delegation at the Meeting of the Fifth Committee of the Assembly of the League of Nations

WASHINGTON, *August 24, 1923.*

GENTLEMEN: You have been appointed to represent, in a consultative capacity, the Government of the United States in connection with the forthcoming meeting of the Fifth Committee of the Assembly of the League of Nations at Geneva, Switzerland, to consider the recommendations of the Opium Advisory Committee. Mr. Edwin L. Neville, of the Department of State, will accompany you.

In view of your familiarity with the problems to be discussed and the full instructions which were given to you when you attended the meeting of the Opium Advisory Committee in May of this year, the Department believes that it is unnecessary to set forth in detail the attitude of this Government in regard to the traffic in narcotic drugs. You should, however, make clear that your position has not altered, and you should make every effort, consistent with your instructions and with the attitude of the United States, to obtain approval of the recommendations of the Advisory Committee and the furtherance of the policy of this Government.

I am [etc.] CHARLES E. HUGHES

511.4 A 1/1841: Telegram

The Chief of the American Delegation at the Meeting of the Fifth Committee of the Assembly of the League of Nations (Porter) to the Secretary of State

GENEVA [*undated*].
[Received September 21, 1923—9 p.m.]

Fifth Committee adopted following three resolutions.

Resolution 1. The Assembly expresses its deep appreciation of the very valuable work done by the Advisory Committee on Traffic in Opium and other Dangerous Drugs, adopts its report and resolutions taking note of the reservations contained therein, and asks the Council to take the necessary steps to put these resolutions into effect.

Resolution 2. The Assembly approves the proposal of the Advisory Committee that the governments concerned should be invited to enter into negotiations with a view to the conclusion of an agreement as to a reduction of the amount of raw opium to be imported for the purpose of smoking [in] those territories where it is temporarily continued and as to the measures which should be

taken by the Government of the Republic of China to bring about the suppression of the illegal production and use of opium in China and requests the Council to invite those governments to a conference for the purpose and to report to the Council at the earliest possible date.

Resolution 3. The Assembly having noted with satisfaction that in accordance with the hope expressed in the fourth resolution adopted by the Assembly in 1922 the Advisory Committee has reported that the information now available makes it possible for the governments concerned to examine with a view to the conclusion of an agreement the question of the limitation of the amounts of morphine, heroin or cocaine and their respective salts to be manufactured, of the limitation of the amounts of raw opium and the coca leaf to be imported for that purpose and for other medicinal and scientific purposes, and of the limitation of the production of raw opium and the coca leaf for export to the amount required for such medicinal and scientific purposes, requests the Council as a means of giving effect to the principles submitted by the representatives of the United States of America and the policy which the League on the recommendation of the Committee has adopted to invite the governments concerned to a conference for this purpose to be held if possible immediately after the conference mentioned in resolution 2.

The Assembly also suggests for the consideration of the Council the advisability of enlarging this conference so as to include within its scope all countries which are members of the League or parties to the convention of 1912 with a view to securing their adhesion to the principles that may be embodied in any agreements arrived at.

PORTER

APPROVAL BY THE UNITED STATES OF A PROJECT FOR COOPERATION BETWEEN THE INTERNATIONAL OFFICE OF PUBLIC HEALTH AND THE HEALTH COMMISSION OF THE LEAGUE OF NATIONS

512.4 A 1a/180

The French Ambassador (Jusserand) to the Secretary of State

[Translation]

WASHINGTON, *April 20, 1921.*

MR. SECRETARY OF STATE: In compliance with instructions from my Government I have the honor to forward herewith to Your Excellency the text of a resolution passed on December 10, 1920, by the First Assembly of the League of Nations looking to the creation of

an international health organization.[75a] The project, as Your Excellency will notice, contemplates placing under the League of Nations the International Public Health Office established in Paris under the arrangement signed at Rome on December 9, 1907.[76] But this cannot be done without the approval of the International Public Health Office. The Secretary General of the League of Nations has just asked the French Government to gather adhesions to that effect.

Although the hints that have already been made to me today do not permit of hoping that the American Government will adhere to the project, I, nevertheless, deem it my duty to submit the said paper to Your Excellency's examination and to add that so far as it is concerned the Government of the Republic is inclined to give its assent to the proposed measure conditioning such assent only on a few unimportant modifications in the text of the resolution. Your Excellency will please find the purport of such modifications in a memorandum[77] which I also append to this note.

Please accept [etc.] JUSSERAND

512.4 A 1a/180

The Secretary of State to the French Ambassador (Jusserand)

WASHINGTON, *May 12, 1921.*

EXCELLENCY: I have the honor to acknowledge the receipt of your communication of the 20th ult., transmitting the resolutions adopted by the First Assembly of the League of Nations with regard to the creation of an International Health Organization which contemplates placing under the League of Nations the International Public Health Office established in Paris, in accordance with the Convention signed at Rome, December 9, 1907.

It is noted that this cannot be done without the approval of the International Public Health Office, and that the Secretary General of the League of Nations has requested the French Government to gather adhesions of the signatory states to that effect.

In reply, I have the honor to inform Your Excellency that any affirmative action of this Government in the premises would be a departure from the Rome Convention and would, therefore, necessarily require the sanction of the President and the Senate. This sanction has not been given.

Accept [etc.] CHARLES E. HUGHES

[75a] *Journal of the First Assembly of the League of Nations, Geneva, 1920,* no. 24, p. 194.

[76] *Foreign Relations,* 1908, p. 493.

[77] Not printed.

512.4 A 1a/222½

The French Chargé (De Laboulaye) to the Secretary of State

[Translation]

WASHINGTON, *August 7, 1923.*
[Received August 11.]

MR. SECRETARY OF STATE: By a note dated May 12, 1921, Your Excellency was pleased to inform the Embassy that propositions from the Assembly of the League of Nations looking to the placing of the International Office of Public Hygiene under that institution were not acceptable either to the President or the Senate of the United States.

As a result of the action of several Governments which belong to the Office in objecting to the proposition of the League of Nations and for the purpose of lessening the objections that are found to the co-existence of two international agencies handling hygiene questions, namely, the International Office of Public Hygiene and the Permanent Committee of Hygiene of the League of Nations, a mixed commission met in Paris to consider the organization of a collaboration between the sanitary services of the League of Nations and the International Office.

As Your Excellency will see from a perusal of the draft, of which a copy is enclosed in this note,[78] the solution considered in this respect by the mixed commission would entirely safeguard the independence and autonomy of the Office, which would only take with the League of Nations, if the last named institution should see fit, the part of a general advising board of hygiene.

Under the circumstances the Government of the Republic fails, in so far as it is concerned, to see any objection to the Office being allowed to perform those duties which as it seems could only increase the prestige enjoyed by that international agency throughout the world. Furthermore, there seems to be no doubt that the Governments represented in the Office will share that view. I am, therefore, instructed by my Government to ask Your Excellency kindly to let me know in an answer to this note, whether the Government of the United States will agree to let the International Office of Public Hygiene discharge the duties described in the enclosed draft which will in all likelihood be assigned to it by the League of Nations and if so, kindly instruct accordingly its representative at the International Office of Public Hygiene, so that the American delegate may know what are the intentions of the Federal Government when the next October session opens.

Be pleased [etc.] ANDRÉ DE LABOULAYE

[78] Enclosure not printed; it is summarized in letter to President Coolidge, *infra*.

512.4 A 1a/222½

The Secretary of State to President Coolidge

WASHINGTON, *August 21, 1923.*

MY DEAR MR. PRESIDENT: As you are aware, in response to an invitation from the President of the Health Committee of the League of Nations Surgeon General H. S. Cumming of the United States Public Health Service was appointed by this Government on January 20, 1923, to cooperate with the Health Committee of the League in an advisory and consultative capacity.

As you are also aware an international arrangement was concluded at Rome on December 9, 1907, providing for the establishment of an International Office of Public Health with headquarters at Paris, under the authority of a Committee composed of delegates of the contracting governments. The United States was a party to the arrangement and is a member of the organization created thereby.

In June, 1923, the Surgeon General attended a mixed meeting of the International Office of Public Health and the Health Committee of the League of Nations at Paris, assembled to draw up a scheme for the cooperation of the two bodies. The Surgeon General was nominated as one of the seven members to represent the League Health Committee, but in accordance with directions of this Department, he informed the Mixed Committee that he would be unable to represent the League in that capacity, whereupon he was appointed a Delegate of the International Office. I attach the scheme as drawn up by this Special Mixed Committee, according to which the cooperation of these two bodies may be summarized as follows:

(1) A general Advisory Health Council consisting of the Committee of the International Office. The International Office will remain autonomous and retain its seat in Paris without any modification of its constitution or functions.

(2) A Standing Health Committee to consist of the President of the Committee of the International Office and fifteen other members. Nine of these will be appointed individually for three years by the Committees [*Committee*] of the International Office in such a way that each State, which is a permanent member of the Council of the League, is represented on the Standing Health Committee. The remaining six members will be appointed also for a period of three years by the Council of the League of Nations after consultation with the Standing Health Committee. This Committee may be supplemented by the addition of not more than four public health experts as assessors; these assessors will be appointed by the Council of the League on the nomination of the Standing Health Committee and will be considered as fully effective members.

(3) A Health Section of the Secretariat of the League will form the Secretariat of the Health Organization of the League. The functions and duties of the Health Sections will be those laid down by

the Standing Health Committee subject to approval by the Secretary General of the League.

This Government naturally would oppose any scheme which would destroy the independence of action of the International Office or which would place its activities under the control of the League of Nations. In my opinion, however, the present independent status of the International Office will not be impaired by the scheme which it is now contemplated to put into effect. It is true that nine of the members of the Standing Health Committee provided for by this scheme must be directly appointed by the States which are permanent members of the Council of the League, but there are six remaining members who will be appointed by the Council after consultation with the Standing Health Committee and this will permit a satisfactory American representation. Furthermore, not being a member of the League of the Nations, the United States is not bound by any final decision of the Council of the League or of the Health Section of the Secretariat of the League. Vessels and commerce of the United States might, however, be affected by the measures adopted in pursuance of the decisions of the League by other States thereof and in this way questions of maritime commerce, American shipping and commercial interests might be affected by decisions as to sanitary procedure in any part of the world. This, nevertheless, would be the case irrespective of whether the contemplated plan is approved by this Government or not.

I am now in receipt of a note from the French Chargé d'Affaires in Washington inquiring whether or not this Government would perceive any objection to making effective the scheme in question. As pointed out above, it is my view that the scheme will not adversely affect American interests nor will it impair the independent activities of the International Office which have in the past been of great service to sanitary improvement throughout the world. Before informing the French Chargé d'Affaires, however, that this Government perceives no objection to the proposed scheme, I beg to request an expression of your views.

Faithfully yours,

Charles E. Hughes

512.4 A 1a/229½

President Coolidge to the Secretary of State

Washington, *August 21, 1923.*

My Dear Mr. Secretary: I have noted your letter of August 21st in regard to the International Office of Public Health and will be

glad to have you act favorably in the matter you present if your judgment approves.

Very truly yours,

CALVIN COOLIDGE

512.4 A 1a/222½

The Acting Secretary of State to the French Chargé (De Laboulaye)

WASHINGTON, *August 31, 1923.*

SIR: I beg to refer to your note of August 7, 1923, wherein you inform me that at a meeting held at Paris in June, 1923, by a Mixed Committee composed of members of the Committee of the International Office of Public Health and the Health Commission of the League of Nations, a project was drawn up looking to the cooperation of the two bodies in health questions; and you inquire whether the Government of the United States would agree to the Committee of the International Office performing the duties which would fall to it under the project.

It appearing in the project that the autonomy of the International Office of Public Health is not thereby to be in anywise affected and that no modification of the Constitution or functions of the International Office is involved, I have the honor to inform you, in reply to your inquiry, that, with this understanding, no objection exists on the part of this Government to the Committee of the International Office of Public Health performing the duties outlined in the enclosure to your note. The United States member of the International Office will be advised accordingly.

Accept [etc.] WILLIAM PHILLIPS

APPOINTMENT OF AMERICAN DELEGATES TO THE INTERNATIONAL EMIGRATION AND IMMIGRATION CONFERENCE TO BE CONVENED AT ROME

555.H1/–

The Italian Embassy to the Department of State [79]

The International Organization of Labor, setting to carry out its broad program, has taken into consideration also the problem of emigration. An International Commission was appointed for the study of these questions which were to be submitted to and deliberated upon by the International Conference of Labor; but the Commission was dissolved after a few meetings and the International

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[79] Notation on margin of original memorandum reads: "Left with the Secretary by the Italian Ambassador April 9, 1923."

Organization does not seem disposed to earnestly undertake the study of the emigration problem.

Without casting a reflection upon the efforts of the International Organization of Labor, and without discussing the possibility that it may eventually succeed in promoting an international control of emigration, one must admit that its action in this field will necessarily be very slow.

The emigration and immigration phenomenon affects, it is true, all nations, but it does so in a different degree. For some countries— on account of demographic, geographic and social conditions,—the problem of emigration or immigration has a fundamental importance. Those which are mostly concerned, see clearly the necessity of a common effort which may lead either to direct agreements and to a coordination of action with regard to emigration and immigration.

It is therefore evident that a Conference among the Governments of the nations distinctly interested in either emigration or immigration would be the best means to reach a practical solution of these problems and to bring forth suggestions which may prove most valuable in leading to an efficient international regulation of this complex question.

The emigration and immigration Conference should, however, be strictly technical. The various problems should be examined under their technical aspects in view of elaborating a cooperation of the different countries which would give mutual satisfaction and meet the emigration and immigration needs of all.

Such a Conference which, as said before, should be a technical, not in any way a diplomatic one, should not have for purpose the conclusion of a general convention, but should limit itself to formulate some of the leading principles which may serve later as a basis for general or particular international conventions to be stipulated, or of administrative agreements which the various Governments could enter into for the respective services.

The Conference could, for the sake of order, be carried out by sections as customary in similar international conventions; each section would study certain questions incident to a particular feature of the problems.

For instance there could be the following sections:

1) Transportation of emigrants;
2) Hygiene and sanitary services;
3) Co-operation among emigration and immigration services of the various countries;
4) Assistance to emigrants at the port of embarkation, of immigrants upon their landing and of the emigrated on the part of private institutions.

5) Means to adapt immigration to the labor demand (labor information service, employment agencies, colonizations);
6) Development of cooperation and mutuality among emigrants;
7) General principles that should govern emigration treaties.

The Governments of the Countries invited to take part to the Conference should have the right to propose, within certain limits of time to be established, the particular questions they wish to have examined.

The Conference in its general assembly would, upon the proposal of a specially appointed Committee, decide which of the questions presented by the various countries should be submitted to the discussion of the various sections.

555.H1/-

The Department of State to the Italian Embassy

MEMORANDUM

The Government of the United States has given careful and attentive consideration to the proposal contained in the Memorandum, dated April 9, 1923,[80] of His Excellency the Royal Italian Ambassador, projecting a strictly technical International Conference to exchange and clarify views on questions touching immigration, such as transportation of emigrants; hygiene and sanitary services, and assistance to emigrants at the port of embarkation, to immigrants upon their landing and to the emigrated on the part of private institutions.

In connection with any discussion of matters relating to immigration, in which representatives of this Government might participate, it has already been indicated that there would be necessarily certain limitations of such participation. The reception of Immigrants within the United States is regarded wholly as a domestic matter, and the exclusive authority of Congress must be recognized. Consequently, when participating in a conference of the proposed nature, certain restrictions, obviously, would be incumbent upon any American delegates.

The Government of the United States, with due regard to these limitations, will nevertheless be happy to have its representatives attend the conference as projected and to participate so far as practicable in a discussion of the technical problems presented.

WASHINGTON, *May 10, 1923.*

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[80] *Supra.*

555.H1/3

The Italian Ambassador (Caetani) to the Secretary of State

WASHINGTON, *June 22, 1923.*

MR. SECRETARY OF STATE: With reference to the conversations that I have had the honor to hold with Your Excellency on the subject, and referring also to the Memorandum which the Department of State has directed to me under date May 10th, I have the honor to communicate to Your Excellency the formal invitation that the Government of Italy extends to the Government of the United States to be represented to an International Emigration and Immigration Conference, which is to take place in Rome on a date later to be determined, within the first months of the coming year.

I have already had the occasion to explain to Your Excellency the aims of the proposed Conference which—as it appears from the enclosed program—is intended to be of an eminently technical nature.

On the other hand, I have not failed to communicate to my Government the reserves contained in the above mentioned Memorandum, due note of which has been taken.

The Italian Government has been particularly gratified by the adhesion that the American Government has in general granted to the contemplated Conference. And as all other Governments previously approached, have equally manifested themselves favorable to the initiative, I now have the honor, in conformity with His Excellency Mussolini's instructions, to ask Your Excellency to be so kind as to confirm to me the participation of the Federal Government to the Conference in question, and to communicate to me, as soon as possible, the names of the members of the American Delegation.

Thanking in advance, I have [etc.] CAETANI

555.H1/9

The Secretary of State to the Chargé in Italy (Gunther)

No. 409 WASHINGTON, *October 13, 1923.*

SIR: The Department has received a note from the French Embassy in Washington,[81] proposing, prior to the assembling of the International Conference on Emigration and Immigration which is to take place at Rome within the first months of the coming year, a meeting at Paris of a Conference where besides the American Government those of Great Britain, Canada, South Africa, Australia,

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[81] Not printed.

Brazil, the Argentine Republic, and other countries, which might have a direct interest in defining the principles of a policy concerning immigration, might be represented. The note in translation further stated that it occurred to the French Government that there would probably be occasion prior to the Italian Conference "to establish between the immigration countries a contact like that which has been closely maintained among themselves for several years by the emigration European countries, particularly through the permanent liaison agency which is functioning at Rome under the auspices of the Italian General Commissioner of Immigration."

While the Department has long understood that in Italy emigration is strictly controlled, it has not been informed concerning the activities of the above-mentioned permanent liaison agency. You are, therefore, requested to report to the Department as promptly as possible any pertinent information which you may be able discreetly to obtain.

You are advised that the Department has informed the Italian Ambassador in Washington that, with due regard to certain limitations, the Government of the United States would be glad to have its representatives attend the Conference to be held at Rome and to participate, in so far as possible, in a discussion of the technical problems as presented.

In replying to the note from the French Embassy, the Department stated that since the Rome Conference—in which certain restrictions will be incumbent upon the American representatives due to the fact that the reception of immigrants within the United States is regarded wholly as a domestic matter in which the exclusive authority of Congress must be recognized—is to be a strictly technical one to exchange and clarify views on pertinent questions, this Government is unable to perceive the need for a preliminary conference, and that, therefore, it would not send its representatives to the proposed Conference in Paris.

I am [etc.]

For the Secretary of State:
William Phillips

555.H1/13

The Italian Embassy to the Department of State [82]

Aide Memoire

The International Conference for emigration and immigration to be held in Rome during the first months of 1924 is assuming

[82] Handed to the Secretary on Oct. 18, 1923.

considerable importance on account of the large number of States that have accepted to participate.

In consideration of this it would perhaps be advisable to have a preliminary meeting of the experts of the Countries most interested in view of determining the technical questions to be discussed by the several sections of the Conference in Rome.

The meeting could take place in December or January in Genoa, Pallanza, Geneva or Ouchy.

The Italian Government would like to know if such a proposal would be agreeable to the Government of the United States and which date and locality would be considered most convenient.

555.H1/13

The Department of State to the Italian Embassy

AIDE MEMOIRE

Replying to the inquiry contained in the Aide-Memoire of the Royal Italian Embassy handed to the Secretary of State on October 18, 1923,[82a] concerning the proposal of a preliminary meeting of experts of the countries most interested with a view to determining the technical questions to be discussed by the several sections of the Conference which is to be held in Rome, the Secretary of State informs His Excellency the Italian Ambassador that it would be inconvenient for the Government of the United States to send experts to this preliminary meeting; and, therefore, in view of the circumstances, it regrets that it is not in a position to accept the courteous invitation.

WASHINGTON, *October 26, 1923.*

555.H1/16

The Secretary of State to the Italian Ambassador (Caetani)

WASHINGTON, *December 26, 1923.*

EXCELLENCY: In further reply to Your Excellency's Note of June 22, 1923, communicating a formal invitation from the Government of Italy to the Government of the United States to be represented at an International Emigration and Immigration Conference, to take place in Rome within the first months of the coming year,[83] I have

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[82a] *Supra.*

[83] The proceedings of the conference, which was held May 15–31, 1924, were printed in English and Italian by the Italian Government.

the honor to advise you that the American Delegation will consist of the following members:

Mr. Edward J. Henning, Assistant Secretary of Labor;
Mr. Walter W. Husband, Commissioner General of Immigration;
Mr. Homer M. Byington, American Consul General, Naples, Italy;
Surgeon General Hugh S. Cumming, United States Public Health Service.

Accept [etc.] CHARLES E. HUGHES

DECISION BY THE UNITED STATES TO ADOPT AN UNCONDITIONAL MOST-FAVORED-NATION POLICY IN THE NEGOTIATION OF NEW COMMERCIAL TREATIES

611.0031/162

The Acting Chairman of the Tariff Commission (Culbertson) to the Secretary of State[84]

WASHINGTON, *December 14, 1922.*

MY DEAR MR. SECRETARY: In view of our present consideration of the drafts of several proposed commercial treaties, I venture to bring to your attention some problems presented by the most-favored-nation principle, now universally recognized as the basis of the commercial treaty structure of nations. Our policy, as you know, differs widely from that of almost all other leading commercial nations and the new economic situation in which we find ourselves raises serious doubt as to the wisdom of continuing a policy which, however well adapted to its original purpose, is now an obstacle to the consistent and effective development of our commercial policy.

Our traditional most-favored-nation policy dates from 1778. It is based upon the idea that treaty bargaining concerns primarily only the contracting states and that a reduction, made upon the "condition" that certain reductions be made by the other party, is not to be granted to any third power unless that power gives an "equivalent" concession. This "conditional" interpretation of the most-favored-nation principle extends to country B the concessions we granted to country A for a consideration only if country B makes

[84] In a letter of Dec. 15, 1925 (file no. 611.0031/162) to the Chief of the Division of Publications of the Department of State, Mr. Culbertson wrote with respect to his letter of Dec. 14, 1922, to the Secretary of State: "This letter was preceded by a number of interviews with Mr. Hughes in which we discussed at length the proposed change in policy. This letter of December 14 was written at Mr. Hughes' request and for the purpose which appears in the subsequent correspondence." The correspondence referred to is that printed on the following pages.

concessions to us equivalent to those made by country A. At first glance this principle seems eminently fair. It has the appearance of equality and was adopted with the idea that it offered, if not equality of treatment, at least the opportunity to secure equality of treatment on a reasonable basis. It was inaugurated at a time when tariff rates were of minor importance as compared to the right to trade at all and to the right of equal treatment for national vessels. Trading and navigation rights in those days were bargained for as entities without too narrow an examination of the question whether the rights exchanged were not perhaps somewhat more valuable to the one than to the other country. But the old navigation laws are now a thing of the past, and international commercial policies are dominated by tariff rates and regulations. Most of the European powers have two column tariffs and except in a few cases tariff negotiations have developed into statistical controversies over the relative value of the concessions to be made. This has rendered it almost impossible to arrive at any agreement upon the equivalent concessions to be made by the third party. In practice, therefore, the conditional interpretation of the most-favored-nation clause has broken down. In some cases the United States has taken the extreme position of asserting that the third country could offer no equivalent concession because the value of the original concession consisted in its being exclusive. Our most-favored-nation policy, therefore, which may once have been justifiable and effective, has become sterile, or insofar as it is effective its results are quite different from those originally sought. Instead of contributing to equality of commercial opportunity among nations, it has become the support of discriminatory reciprocity treaties,—a policy again rejected by Congress within the last few months.

We have, it is true, received most-favored-nation treatment in most of the countries which have double column tariffs. We owe this almost exclusively, however, to other causes than to our conditional most-favored-nation policy. We owe it to our political importance, to certain old treaties of long standing, and to the interpretation of these treaties by other powers as granting to us unconditionally concessions to which most-favored-nations were entitled, to the predominance, until very recently, of unmanufactured articles in our export trade, and finally to our actual policy of establishing a single tariff schedule applicable impartially to all countries. So far as we have benefited by most-favored-nation treatment in foreign countries, therefore, the benefit has not been due to the conditional most-favored-nation pledges in our commercial treaties. On the contrary it has resulted from the quiescence of such a principle in our tariff policy and from the fact that other nations have not applied the logic of our position to our trade.

The conditional most-favored-nation principle affords us no security against discriminations in foreign countries and in this period of reconstruction, when many countries are revising their treaties and reconsidering their grants of most-favored-nation treatment, the conditional most-favored-nation principle is liable to be applied against us, as it has been on one or two occasions in the past. Moreover, since 1914 our interests in the commercial policies of other nations has increased. Our export trade has grown in volume and variety. We have become more and more dependent on foreign sources of raw material. The volume of our foreign investment has expanded. Our selfish national interest, therefore, indicates this as the time when we should adopt an active policy to safeguard our interests in markets and in sources of raw material in foreign countries. This active policy, as contrasted with our passive and negative attitude in the past, should consist of a frank abandonment of the conditional most-favored-nation policy and the adoption of a program of revising and completing our commercial treaties on the basis of the unconditional most-favored-nation principle, that is, the principle of embodying in commercial treaties reciprocal pledges that concessions made by either party to a third power should be immediately and automatically extended to the other party to the treaty.

This policy is clearly in line with recent legislation. Section 317 of the Tariff Act of 1922 [85] empowers the President to make effective the principle of equality of treatment in our foreign trade relations. In the words of the conferees, who gave final shape to this act:

> The United States offers, under its tariff, equality of treatment to all nations, and at the same time insists that foreign nations grant to our external commerce equality of treatment.

Manifestly, this equality-of-treatment policy is entirely in line with America's well-known attitude toward the "open door" in certain far-eastern countries and in mandated areas, a policy which has been generally recognized as a distinct contribution to commercial stability and to peace. Indeed, the principle underlying these policies is one and the same, for the term "open door," as used in international politics, means simply equality of treatment in trade for all trading nations, as opposed to any policy which allows discriminations in favor of one or more nations.

The more carefully one examines the principle of the open door, the clearer it becomes that the problem is one which relates not merely to a few countries whose treaties bind them to collect no import duties in excess of 3, 5, 10 or 11 per cent ad valorem, not merely to economically backward countries and undeveloped colonies,

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[85] 42 Stat. 858.

but also to the markets of the great industrial powers themselves. No really satisfactory state of international relationships, no assured peace, can be established until all countries feel secure in a guarantee of equality of treatment in all the markets of importance throughout the world. Many of the European nations before 1914 had already made considerable progress toward this goal and this progress was made by the usual unconditional most-favored-nation clause in commercial treaties.

Now that Congress has taken a definite stand for the policy of equality of treatment, it would seem to follow logically that in the revision of our commercial treaties we should adopt the unconditional form of the most-favored-nation clause. Thereby we should establish a treaty basis on which to insist upon equality of treatment for our citizens and products in foreign markets. The unconditional form of the most-favored-nation clause is the simplest application to commercial intercourse between nations of the equality-of-treatment principle and tends powerfully to prevent discriminations against third countries and all the ill-feeling, distrust, retaliation, and international friction incident thereto.

Whatever the merits of our conditional most-favored-nation practice may have been in days gone-by, it is of no value now under the present economic conditions of the world and under the tariff policy adopted by Congress. On the contrary, it has serious disadvantages among which may be mentioned the following:

1. The conditional most-favored-nation clause in order to be effective implies an active policy of tariff bargaining. Insofar as the conditional principle is logically followed out, we become entitled to the concessions which other powers grant to each other only after we negotiate and make concessions in return. Congress, however, has, as I have said, only recently rejected a policy providing "for special negotiations whereby exclusive concessions may be given in the American tariff in return for special concessions from foreign countries." Congress does not favor agreements which involve reductions in protective rates on one or both sides and which, when brought before the Senate for ratification, result in long debate in which it is necessary to reopen all the issues involved in tariff legislation. The unavoidable delay of final action incident to this procedure on both sides is likely to render this method of tariff negotiations wholly ineffective. Tariff bargaining with other nations for concessions is at best complicated and dilatory and seldom, if ever, produces results which are commensurate with the irritation which it engenders among excluded nations.

2. An effective pursuit of the conditional most-favored-nation policy is practically certain to result in a series of rates of duty upon the same article differing with the country of origin. Such a com-

plication of tariff rates, however, is expensive to administer and lends itself more easily to fraud. Moreover, it means discriminations against certain countries in favor of others and the present certainly is no time to increase the prejudice of foreigners against the United States.

3. Under our new tariff the President is authorized to impose additional duties on the whole or on any part of the commerce of any country which discriminates in any manner against American commerce. Consistency, therefore, requires that we do not ourselves initiate discriminatory rates. But so long as the conditional most-favored-nation principle dominates our commercial negotiations we can not pursue an active policy without introducing discrimination into our tariff schedules.

By way of contrast the general effect upon international commercial relations of the unconditional form of the most-favored-nation principle is indeed quite different. For example, under the unconditional form when country X has pledged most-favored-nation treatment in its treaties with other countries (as in fact all the other leading commercial nations have done), a new concession made at any time or in a later treaty by country X to any country is automatically and immediately extended to all the nations having most-favored-nation treaties with country X. The result is that every such country is assured that so long as its treaty stipulations are honestly carried out its commerce with treaty countries will never be placed at a disadvantage. Thus, when all countries follow the unconditional most-favored-nation practice, equality of treatment is guaranteed generally and tendencies are set in motion contributing to commercial stability, simplicity and uniformity of tariff rates, mutual confidence and international good will.

Contrasting unfavorably with this result are the results which follow upon the adoption of the conditional most-favored-nation practice. Under the latter any new concession made by country X to some other country in exchange for a real or alleged equivalent concession may not be claimed by the other nations to which country X has pledged most-favored-nation treatment unless they give what country X may deem an equivalent. The result under this practice is that no nation on earth can ever be certain that its commerce with any third nation will not be placed at a disadvantage as compared with competing countries. The tendency is toward inequality of treatment, complexity of tariff rates, commercial insecurity, perpetual suspicion and mutual distrust with the consequent international ill-will and more or less a consistent attempt at retaliation by injured countries.

It may be fairly said that our conditional most-favored-nation practice has hindered more than it has helped the development of

our foreign trade. Now since Congress has abandoned the policy of separate tariff bargaining and adopted instead equality of treatment of all nations as the guiding principle of our foreign policy in commercial relations, nothing is to be gained and possibly much is to be lost by continuing to apply to our commercial treaty relations the conditional form and interpretation of most-favored-nation treatment. Conditions during the next decade require that we should now incorporate in our commercial treaty structure the unconditional most-favored-nation principle and thereby establish a treaty basis upon which we may claim equality of treatment for our citizens and products in foreign markets and in addition, help to restore, so far as commercial relations are concerned, mutual trust and good-will.

Once the old principle is abandoned and the new adopted many details will naturally require consideration. Means should be adopted to make the new principle effective in removing not only open but also concealed discriminations. Exceptions, such as our treaty with Cuba, justified by geographical relationships may be provided for. Consideration will have to be given to the application in the new principle to differential export duties and colonial preferences. But the consideration of such details and the adoption of safeguards will be comparatively simple once we decide to introduce consistency into our commercial policy by adopting as a policy parallel to our open-door policy, the unconditional most-favored-nation principle.

Just a word by way of summary. Our present policy is quiescent and ineffective. Advantages have come to us because it has not been carried out. To carry it out would involve us in inconsistencies, create discriminations, and result in retaliation. Finally, taking a large view of the situation, the adoption of the unconditional most-favored-nation policy with certain safeguards can be made to support an open-door policy not only in the Far East but throughout the world.

Very respectfully,

W. S. Culbertson

611.0031/163

Senator Henry Cabot Lodge[86] *to the Secretary of State*

Washington, *January 8, 1923.*

My Dear Mr. Secretary: I have read the enclosed statement[87] which you kindly lent me with great interest. It seems very con-

[86] Chairman of the Senate Committee on Foreign Relations.

[87] Apparently refers to letter of Dec. 14, 1922, from the Acting Chairman of the Tariff Commission to the Secretary of State, *supra*.

vincing and very well put and I think that Mr. Culbertson makes a very strong case. I shall be glad to talk with you further in regard to it.

With kind regards [etc.] H. C. LODGE

611.0031/163

The Secretary of State to President Harding

WASHINGTON, *January 15, 1923.*

MY DEAR MR. PRESIDENT: The importance to the United States of establishing a satisfactory system of treaties of commerce and navigation already has come to your attention. With the new states established as a result of the Peace Conference as well as with former enemy countries, the United States has no treaties of commerce and navigation. The same situation exists with respect to Bulgaria, Greece, Rumania, Russia and Sweden in Europe, six of the ten countries of South America, five of the Central American countries, Canada, Newfoundland and Mexico in North America, and Australia, India, New Zealand and the Union of South Africa. Treaties of commerce and navigation are in force between the United States and about thirty countries. The treaty in force with Great Britain was concluded in 1815 [88] and is therefore more than a hundred years old, the treaty in force with France was concluded in 1822,[89] and the treaties with several other countries are nearly as old. These treaties as well as treaties of somewhat more recent date with other countries are unsatisfactory at the present time, both because they contain provisions which have become obsolete and because some problems which are of the highest importance in present day commerce were almost unknown at the time the old treaties were negotiated.

An important question which has arisen in connection with the conclusion of new treaties or the revision of old ones relates to the most favored nation clause as applied to commerce and navigation. The policy of the United States, as you readily will recall, to which there have been but few exceptions, since the foundation of the Government has been to stipulate for a conditional most favored nation clause, whereas an unconditional clause has been popular with European countries for the past sixty or more years. Under the conditional clause favors which either party to the treaty grant to a third country accrue to the other party to the treaty when the favor to the third country is granted freely, but do not accrue if

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[88] Hunter Miller (ed.), *Treaties and Other International Acts of the United States of America*, vol. 2, p. 595.
[89] *Ibid.*, vol. 3, p. 77.

the favor be granted for a consideration unless the other party to the treaty proffer an equivalent consideration: under the unconditional clause all favors granted by either party to third countries accrue to the other party irrespective of questions of consideration or equivalents.

There is an opinion among many that for the future the United States should adopt the unconditional form of most favored nation clause in its treaties of commerce and navigation. I have been giving considerable study to this question recently and a decision with respect to it is desirable in view of the importance to the United States of establishing a complete and insofar as possible consistent system of commercial treaties with other maritime countries.

I desire to bring to your attention a letter on the subject from Mr. W. S. Culbertson of the Tariff Commission and a letter from Senator Lodge with whom I have discussed the questions presented by Mr. Culbertson.

Faithfully yours,

CHARLES E. HUGHES

611.0031/164

President Harding to the Secretary of State

WASHINGTON, *February 27, 1923.*

MY DEAR MR. SECRETARY: You wrote me under date of January 15th, relative to the policy to be followed in the negotiation of commercial treaties with newly established states, and the revision of long-standing treaties which have become obsolete or impracticable, because of changed conditions. You enclosed to me with your letter the communication of Mr. W. S. Culbertson, of the Tariff Commission, in which he commended, very impressively, the adoption of the unconditional clause in the most favored nation treatment in all our commercial relations. I have gone over your letter and the argument of Mr. Culbertson with some considerable deliberation, and I am pretty well persuaded that the negotiation of the unconditional provision is the wise course to pursue. I am wondering at the moment what this change of policy would effect in our relationship with Cuba, whose very existence seems more or less dependent upon a favoring provision in our tariff law. Our peculiar relation to Cuba apparently imposes something of an obligation, but I assume that if that favoring arrangement is going to disarrange the conditions of our entire foreign trade it would be better to cancel the Cuban provision. This relationship does not seem to be touched upon by either your letter or that of Mr. Culbertson and I may be

attaching to it a greater importance than the situation actually justifies.

I am well convinced that the adoption of the unconditional favored nation policy is the simpler way to maintain our tariff policy in accordance with the recently enacted law and is probably the surer way of effectively extending our trade abroad. If you are strongly of this opinion you may proceed with your negotiations upon the unconditional policy. If this commitment is not sufficient I shall be glad to have you take up the matter with me in a personal interview.

Very truly yours,

WARREN G. HARDING

611.0031/164

The Secretary of State to President Harding

WASHINGTON, *March 2, 1923.*

MY DEAR MR. PRESIDENT: I have your letter of February 27, informing me that it is your view that the adoption of the unconditional favored nation policy by the United States in the commercial treaties which are about to be negotiated or revised is the simpler way to maintain our treaty policy in accordance with the recently enacted tariff law and probably the surer way to extend American foreign trade and authorizing me to proceed with negotiations upon the unconditional policy.

The relation of the Reciprocity Convention of 1902 with Cuba [90] to the unconditional most favored nation policy has been given consideration by this Department. The importance which Congress attaches to the preservation of this reciprocity arrangement is shown by the fact that in each of the three tariff laws, Acts of 1909, 1913 and 1922, enacted since the Convention was concluded a special provision was made saving the Convention from abrogation or impairment by the tariff legislation. With a view to recognizing the expressed will of Congress in regard to the Reciprocity Convention with Cuba, it is my purpose to ask countries with which we enter into negotiations to include in the treaties which they sign with the United States an Article which will except the Reciprocity Treaty with Cuba from the operation of the unconditional most favored nation clause.

I apprehend that other powers will not make serious objection to an agreement of this sort in regard to Cuba, although it may be that certain of them will ask on their own part for similar excep-

[90] *Foreign Relations*, 1903, p. 375.

tions to the unconditional clause. It would seem to me that such demands should be judged by the particular circumstances of each case, and that we might agree to those which involve an intimate geographical, political and economic relationship such as exists between the United States and Cuba. I may mention that Latvia recently has proposed to conclude a treaty of commerce and navigation with the United States and in connection with this proposal has indicated a desire that a qualification be admitted to the most favored nation clause permitting Latvia to make special commercial arrangements with its immediate neighbors, Esthonia and Lithuania, and possibly with Russia without extending identical treatment to the commerce of the United States.[91]

The result of negotiations in situations of the kind presented by the proposal from Latvia should be that the treaties would provide for the exception of the Reciprocity Convention with Cuba from the operation of the most favored nation clause and for the exception of such of the special reciprocity agreements of the other party as may fairly be regarded as involving a political and economic relationship equivalent to that on which the Convention between the United States and Cuba rests.

I should be pleased to be informed whether the policy indicated by this illustration would receive your approval.

Faithfully yours,

Charles E. Hughes

611.0031/165

President Harding to the Secretary of State

Washington, *March 5, 1923.*

My Dear Mr. Secretary: Replying to yours of March 2d, in which you make further reference to the unconditional favored nation policy in the negotiation of commercial treaties, you may proceed along the lines already approved. I take it that the preservation of the reciprocity arrangement with Cuba will lead to some embarrassment before we may on our part accept special reciprocity agreements on the part of other nations, where there exist such peculiar relationships as those existing between Cuba and the United States.

Very truly yours,

Warren G. Harding

[91] See par. 6 of the provisional commercial agreement between the United States and Latvia, signed Feb. 1, 1926, printed by the Department of State as Treaty Series No. 740.

611.0031/197a

The Secretary of State to American Diplomatic Officers

WASHINGTON, *August 18, 1923.*

GENTLEMEN: The Department desires to inform you confidentially and for such comment as you may care to make that the President has authorized the Secretary of State to negotiate commercial treaties with other countries by which the contracting parties will accord to each other unconditional most-favored-nation treatment.

It has long been the view of this Government that it has fulfilled its obligations under its pledges to accord most-favored-nation treatment when it has accorded to a country to which it has guaranteed such treatment the lowest rates of customs duty which it has freely and without special compensation accorded to a third country. In the view heretofore maintained by the American Government, other Governments to which the United States has pledged most-favored-nation treatment have not been entitled to claim the extension to them of tariff concessions accorded by the United States to a third country in return for reciprocal tariff concessions, unless they offer to accord to the United States equivalent concessions. Most of the treaties to which the United States has been or is a party, for example, the Treaty of February 6, 1778, with France[92] and the Treaty of February 21, 1911, with Japan,[93] contain most-favored-nation clauses that are in this respect expressly conditional. Others such as the Treaty of July 3, 1815, with Great Britain,[94] in which the most-favored-nation clause is not expressly conditional, have nevertheless been interpreted as though the condition were specified.

When the conditional most-favored-nation policy was first formulated, discrimination in commercial matters was the general rule among nations, and it was deemed advisable for the United States to adopt a policy of making concessions only to such states as granted in each case some definite and equivalent compensation. Since that time, however, the principle of equality of treatment has made great progress, and it is now considered to be in the interest of the trade of the United States, in competing with the trade of other countries in the markets of the world, to endeavor to extend the acceptance of that principle. The enlarged productive capacity of the United States developed during the World War has increased the need for assured equality of treatment of American commerce in foreign markets.

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[92] Miller, *Treaties*, vol. 2, p. 3.
[93] *Foreign Relations*, 1911, p. 315.
[94] Miller, *Treaties*, vol. 2, p. 595.

Today in a large majority of commercial countries most-favored-nation treatment is considered to connote equality of treatment irrespective of concessions that may have been granted by third countries. The convenience of having one uniform practice for the entire commercial world together with the comparatively greater liberality of unconditional most-favored-nation treatment have frequently been urged as reasons for a change of policy on the part of the United States.

A further consideration in favor of the change has been presented by the inclusion of Section 317 in the Tariff Act of 1922.[95] Under this section the President is directed, if he finds such action to be in the public interest, to levy additional import duties upon the products of countries that impose differential customs duties unfavorable in fact to the commerce of the United States. Nothing is said in this section concerning the process by which the discriminations are or shall have been effected, and it may reasonably be assumed that the exception of reductions of duties made in return for reciprocal concessions has not been intended.

In connection with the negotiation of new commercial treaties, therefore, the Department of State has decided to propose a most-favored-nation clause under which the United States will guarantee and expect to be guaranteed unconditional equality of treatment. The United States, in making this proposal, will offer nothing more than a guarantee of the treatment which, in practice, it already accords to the commerce of other countries. Concerning the reduced duties which the United States, under the Treaty of 1902,[96] levies upon the products of Cuba, the relations between which country and the United States, both political and economic, are exceptional, and also concerning the free importation of goods from American dependencies, it is proposed to make specific exception. It is not considered that the exception of Cuba is inconsistent with or a deviation from the general principle adopted.

It may be added for your further confidential information that the Government of the United States has already commenced negotiation of treaties embodying the idea of unconditional most-favored-nation treatment with the Governments of Spain, Germany, Austria, Hungary and Czechoslovakia, and that the initiation of negotiations with a number of other countries at an early date is contemplated. The Department desires to receive as soon as possible any comments that you may be in a position to submit with respect to the desirability of undertaking negotiations with the Government of the country to which you are accredited, and in particular with respect to its probable attitude in connection with such negotiations. However, any

[95] 42 Stat. 858.
[96] *Foreign Relations*, 1903, p. 375.

investigations on this subject should be most discreet, and, in the absence of express instructions from the Department, you should not in any way suggest, directly or indirectly, to officials of the Government to which you are accredited the possibility of negotiation of a treaty with the United States.

I am [etc.]

CHARLES E. HUGHES

PREVENTION OF THE ILLEGAL IMPORTATION OF LIQUOR INTO THE UNITED STATES[97]

Proposal by the United States to Other Powers to Sanction by Treaty the Right to Search Foreign Ships within 12 Miles from Shore for the Prevention of Liquor Smuggling

811.114/1400

The Secretary of State to the Chiefs of Foreign Missions in the United States

The Secretary of State presents his compliments to their Excellencies and Messieurs the Chiefs of Missions, and has the honor to communicate to them the following notice issued by the Secretary of the Treasury:

"*To Shipping Everywhere:*

"The Supreme Court of the United States in an opinion rendered April 30[98] construing the National Prohibition Act holds[99] that it is unlawful for any vessel, either foreign or domestic, to bring within the United States or within the territorial waters thereof any liquors whatever for beverage purposes. Treasury regulations are now being prepared for carrying this decision into effect and will be promulgated at an early date and become effective June 10, 1923. All shipping, both foreign and domestic will be subject to such regulations on and after that date without further notice."[1]

WASHINGTON, *May 3, 1923.*

811.114/1441

The Spanish Ambassador (Riaño) to the Secretary of State

[Translation]

No. 44-07

WASHINGTON [*undated*].
[Received May 11, 1923.]

MR. SECRETARY: In having the honor to answer the Department of State's *note verbale*, dated the third instant, announcing that on

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[97] Continued from *Foreign Relations*, 1922, vol. I, pp. 558-593.

[98] *Cunard Steamship Company, Ltd., et al.* v. *Mellon, Secretary of the Treasury, et al.;* 262 U.S. 100.

[99] 41 Stat. 305.

[1] This notice was sent as Department's circular telegram of May 3, 6 p.m., to all American diplomatic officers, with instructions to repeat it to all consuls.

and after the tenth of June next no vessel either national or foreign will be allowed to enter territorial waters of the United States with alcoholic beverages on board, I take the liberty of reminding Your Excellency of the contents of my note of October 20, 1922,[2] in which I pointed out the particular situation in which the new regulations place the vessels of some of the Spanish companies whose transit service will be so affected as to possibly compel them to do away with them entirely thereby causing enormous and unwarranted injuries. Apart from the statements which I made to Your Excellency on that occasion, I am now, by special direction of my Government, protesting against the prohibition laid upon Spanish vessels carrying alcoholic beverages for ship consumption or intended for other countries to enter or cross territorial waters of the United States.

Neither the spirit of the Treaty between Spain and the United States, nor the universally accepted principles of international law in any way permit of such measures being adopted as they encroach upon the sovereignty of Spain over her ships.

I trust that Your Excellency will consider the justice of this protest and will attend to it in the same friendly spirit by which I have always been animated and to which Your Excellency has responded.

I avail myself [etc.] JUAN RIAÑO

811.114/1441

The Secretary of State to the Spanish Ambassador (Riaño)

WASHINGTON, *May 18, 1923.*

EXCELLENCY: I have the honor to acknowledge the receipt on May 11, 1923, of your note concerning the announcement that on and after the tenth of June next, no vessel either national or foreign will be allowed to enter territorial waters of the United States with alcoholic beverages on board. You refer to your note of October 20, 1922, dealing with the particular situation in which the new regulations will place the vessels of some of the Spanish steamship companies whose transit services will be so affected that they may possibly be compelled to stop them entirely, thereby causing large losses. You state that by direction of your Government you desire to protest particularly against the prohibition to which Spanish vessels will be subjected when they enter or cross territorial waters of the United States and which prevents them from carrying alcoholic beverages intended for ship consumption or for other countries.

I have the honor to state that a copy of Your Excellency's note has been forwarded to the appropriate authority of this Govern-

[2] *Foreign Relations*, 1922, vol. I, p. 582.

ment for consideration. I may state, for your information, that I have been informed that although the regulations relative to the treatment of liquors on foreign vessels have not yet been issued, due consideration will be given to the fact that vessels arriving with liquor on board cleared from a foreign port prior to the date of the promulgation of the Supreme Court decision, and seizure will not be made if the liquor is kept under customs seal while in American territorial waters.

I shall not fail to communicate with you again as soon as I receive further information respecting the provisions that will be contained in the regulations when issued.

Accept [etc.] CHARLES E. HUGHES

811.114/1488

The British Ambassador (Geddes) to the Secretary of State

No. 410 WASHINGTON, *May 25, 1923.*

SIR: In your note of the 4th instant[8] you were good enough to communicate to me a copy of the Decision of the Supreme Court of the United States, dated the 30th ultimo, respecting the application to vessels entering American territorial waters of certain provisions of the National Prohibition Act.

The situation created by this decision has been engaging the earnest attention of His Majesty's Government. They do not contend that a ship entering the territorial waters of a country does not subject itself to the jurisdiction of that country, but the extent to which each country should compel observance of its laws on the ships of another and the nationals on board of those ships is of primary importance in the regular intercourse between nations. In the opinion of His Majesty's Government, jurisdiction should not be exercised except to restrain acts calculated to disturb public order and safety. Upon this point the comity and practice of nations appears to be aptly defined in the judgment of the Supreme Court in the *Wildenhus* case, with which you are, no doubt, familiar. (See United States Reports, Volume No. 120, October term 1886, Pages 1–19). In this case the jurisdiction of the United States was extended to cover an act committed on a foreign ship. Yet, even so, the Supreme Court recognised the existing international doctrine on the subject to be as follows:—

"And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her,

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[8] Not printed.

and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require".

The regulations proposed to be issued in accordance with the Supreme Court judgment afford an example of the kind of issue that may be raised all over the world if the existing comity and practice is abandoned. Ships of all nations frequently pass through the jurisdiction of other nations even when not entering their ports. For example, to reach Antwerp a vessel must pass through Dutch territorial waters, to reach the Baltic through Danish or Swedish waters, to reach the Black Sea through Turkish waters.

It is true that national laws, in so far as they regulate the rights and obligations of those on board national ships, are becoming more and more uniform. They do, however, still conflict on many points. It follows, therefore, that if the precedent now proposed were generalised, conflicting national laws could be imposed by each nation on foreign shipping within its territorial jurisdiction. This would create an impossible situation in international voyages, for interference might then be exercised on foreign ships entering ports:—

(1) to load or discharge that part of their cargoes, the export or import of which is permitted;
(2) to take on board bunkers or stores;
(3) to receive orders.

In extreme cases indeed such interference might even extend to ships which had not entered any port.

His Majesty's Government feel that such instances as those suggested above would be the occasion of an exercise of national authority, marking so great a departure from accepted custom as to amount to the adoption of a new principle. I have the honour, therefore, urgently to request that the United States Government, before departing so materially from the former common practice of all nations, will enter into a discussion of this matter with the other maritime powers.

I have [etc.] A. C. Geddes

811.114/1537

The Belgian Ambassador (de Cartier) to the Secretary of State

Washington, *May 28, 1923.*

Sir: I have the honor to acknowledge the receipt of Your Excellency's note of May 3, 1923, by which you communicated to me the

notice issued by the Secretary of the Treasury to inform shipping everywhere that the Supreme Court of the United States holding that it is unlawful for any vessel, either foreign or domestic, to bring within the United States or within the territorial waters thereof, any liquors whatever for beverage purposes, regulations, to which all shipping will be subject, will be promulgated for carrying this decision into effect, and will become effective June 10, 1923.

The Belgian Government, to the knowledge of which I have brought the contents of Your Excellency's note, has directed me to draw the kind attention of the American Government to the difficulties resulting from the regulations proposed to be issued in accordance with the Supreme Court's opinion, for Belgian shipping which is obliged, by Belgian regulations, to have alcoholic beverages on board for medicinal purposes. Old established custom requires likewise, certain amount as beverage for the crew.

The Belgian Government does not contend that a ship, being in the territorial waters of a country, is not subject to the jurisdiction of that country, but it believes that that jurisdiction should not extend beyond restricting acts which might disturb public order. Upon this point, comity and practice of nations have seemed, so far, to agree.

The Belgian Government is also of the opinion that the proposed regulations may establish a dangerous precedent which might be referred to in support of any measure which might be taken by other governments to prohibit having on board various other articles such as tobacco, coffee, tea, etc.

In the opinion of the Belgian Government, the proposed regulations might also lead to difficulties derived from the fact that ships pass through jurisdiction of different nations even when not entering their ports, and that an impossible position would be created in international voyage if conflicting domestic laws were thus imposed by each successive country on vessels of other nations within their jurisdiction.

The Belgian Government cannot but think that the rules at present in force according to which liquors on board a ship finding herself in the territorial waters of the United States are kept under seal, are sufficient to prevent any fraud. It would, therefore, appreciate it if you would give the matter your kind consideration with a view to reconciling the rights involved in the question raised by the proposed regulations.

Please accept [etc.] E. DE CARTIER

811.114/1491

The Italian Embassy to the Department of State

MEMORANDUM

The Italian Ambassador has been directed by his Government to draw the attention of the Government of the United States to the serious inconveniences that might arise in connection with the enforcement of the decision rendered on April 30th by the Supreme Court on the question of ship liquor.

The Italian Government emphasizes the general principle of international Law and Comity according to which the exercise of the jurisdictional power by a Nation in its territorial waters finds an adequate limitation in the right of other Countries to the freedom of commerce and navigation.

In the opinion of His Majesty's Government such a limit is clearly indicated by the existing practice among Nations, according to which a country does not exercise its jurisdictional power on foreign ships entering its territorial waters unless in matters involving questions of peace or dignity for the country or disturbing public order.

On the strength of this point of principle and practice, the Italian Government fails to see how the fact of an Italian ship carrying on board a certain amount of alcoholic beverages could affect the peace or dignity or the public order of the United States, while an interference on the part of the United States authorities would result for Italy in a detrimental limitation of her freedom of commerce and navigation.

Moreover, the Italian Government desires to point out the conflicting situation which would be created by such an interference on Italian vessels, on account of the existing Italian laws and regulations providing for the supply of wine to crew and passengers.

By provisions adopted and enforced since October 1920 the Italian Authorities have already taken some action to meet the legitimate desire of the United States Government to prevent elusion of the prohibition law by the action of foreign vessels at anchor in American ports, and His Majesty's Government is still willing to give further consideration to the matter, in cooperation with the American Government.

WASHINGTON, *May 29, 1923.*

811.114/1489 : Circular telegram

The Secretary of State to American Diplomatic Officers

WASHINGTON, *May 29, 1923—6 p.m.*

Department's circular telegram May 3, 6 p.m.[4]

Give widest publicity and inform Foreign Office that Treasury Decision establishing regulations carrying Supreme Court decision into effect will contain following paragraph:

"If any foreign vessel leaves a foreign port before June 10, 1923, for an American port, having liquor on board for beverage purposes, such liquor shall not be seized under section 19 of the above regulations."

Repeat to Consuls with instructions to give it widest publicity.

HUGHES

811.114/1521

The Swedish Legation to the Department of State

MEMORANDUM

In the opinion of the Swedish Government, the extent to which each country should compel observance of its laws on ships of another is of primary importance in regular intercourse between nations. To judge from existing comity and practice of nations, jurisdiction should not be exercised except to restrain acts calculated to disturb public order.

The regulations proposed to be issued in accordance with the Supreme Court judgment afford an example of the kind of issue that may be raised all over the world, if existing comity and practice is abandoned. Ships of all nations pass through jurisdiction of other nations, even when not entering their ports; for example, to reach Antwerp a vessel must pass through Dutch territorial waters; to reach the Baltic through Danish and Swedish waters; to reach the Black Sea through Turkish waters.

It would appear as if certain friction would be inevitable in international voyages, if precedent now proposed were generalized and conflicting national laws were imposed by each nation on ships of other nations within its territorial jurisdiction, even though such vessels may enter ports solely for the purpose of loading or discharging part of cargoes, import of which was permitted, or for the purpose of taking on board bunkers or stores, or even for receiving orders, and, in an extreme case, even although no port was entered at all.

WASHINGTON, *May 31, 1923.*

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[4] See footnote 1, p. 133.

811.114/1520

The Portuguese Legation to the Department of State

MEMORANDUM

The Legation of Portugal did not fail to transmit to the Foreign Office at Lisbon the Department of State's communication announcing that a recent decision of the Supreme Court of the United States would make it in future unlawful for foreign commercial vessels to carry within American territorial waters alcoholic liquors.

Instructions have now been received from the Portuguese Government enjoining the Legation to call the attention of the Department of State to the serious inconvenience that the unqualified enforcement of such a provision would entail through the conflict it would establish with the national regulations governing conditions on board Portuguese mercantile vessels.

The hope is expressed that some means will be found to harmonize the requirements of existing American legislation with the underlying principle that, by common consent, has up to the present determined the legal status of commercial vessels in the territorial waters of foreign states.

WASHINGTON, *May 31, 1923.*

811.114/1526

The Danish Minister (Brun) to the Secretary of State

No. 151 WASHINGTON, *June 1, 1923.*

SIR: By a circular note of May 3d 1923 you were good enough to inform me of a notice issued by the Secretary of the Treasury as follows:

[Here follows the text of the notice, which is printed on page 133.]

This information was, I understand, also communicated to the Danish Government through the American Minister at Copenhagen, Dr. John Dyneley Prince.

After careful consideration of the whole matter the Danish Minister of Foreign Affairs has directed me to state to you, that to prohibit Danish vessels from carrying alcoholic liquors (not intended for importation into the United States) inside American territorial waters would in their opinion be contrary to the international usage and practice, as heretofore acknowledged and followed, which not only have recognized any mere passage through territorial waters as inoffensive but also consecrated the non-exercise of jurisdiction within territorial waters over foreign merchant ships which call there, as long as these vessels do not disturb the peace and order inside the foreign territory.

In this connection you are no doubt acquainted with the opinions of numerous authorities on international law and practice confirming the opinion of the Danish Government as set forth above, and I need only recall that in his *Digest of International Law* II p. 292 the American professor and former Assistant Secretary of State, Honorable John Bassett Moore, in conformity with Attorney General Cushing's opinion given in 1856 (8 Op. Attys. Gen. 73), says: "The local port authority has jurisdiction of acts committed on board of a foreign merchant ship while in port, provided those acts affect the peace of the port, but not otherwise, and this jurisdiction does not extend to acts internal to the ship, or occurring on the high seas".

I also venture to mention the well known and leading case in this question called the *Wildenhus* Case in which Chief Justice Waite said:

"From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require."

The Danish Government attaches great importance to the maintenance of this principle which has heretofore been conceded by international comity and which it deems essential for the free and unhindered intercourse between nations. It ventures to point out the disturbance and oppression of international trade and commerce which would unavoidably take place, if other maritime nations were to abandon the principle of non-interference with foreign merchant ships on the point under discussion here or in other directions.

The Danish Government also trusts that it will be found possible to carry out the American National Prohibition to the fullest extent intended without preventing a Danish vessel from complying with Danish laws, especially as soon as the vessel leaves American territorial waters, and it hopes that before the contemplated new regulations are decided upon, the United States Government will be pleased to consider the adoption of provisions to that effect.

In placing this subject before you I beg to express the hope that you will be able to see your way to recommend the request of the Danish Government to the favorable consideration and decision of the proper Department of the United States Government.

I may add that under certain circumstances alcoholic liquors form part of the ration of the crews of Danish merchant vessels pursuant to our Merchant Marine Act of April 1, 1892 §45 and the Regulations of December 10, 1892.

A carbon copy of my present letter is herewith enclosed for your convenience.

I have [etc.]

C. BRUN

811.114/1515

The Netherland Minister (De Graeff) to the Secretary of State

No. 1763

WASHINGTON, *June 1, 1923.*

SIR: Referring to your note of the 3rd ultimo I have the honor to inform you that I have been directed by my Government to invite your earnest attention to the situation which with regard to the navigation between the United States and the Netherlands has been created by the National Prohibition Act, construed in accordance with the opinion rendered by the Supreme Court on April 30th last, which opinion holds that it is unlawful for foreign vessels to bring intoxicating liquors within the territorial waters of the United States.

The Royal Government readily admits the jurisdictional power of a nation on foreign ships entering its territorial waters but is of the opinion that international comity and the exigencies of international intercourse require that the exercise of this power virtually is limited to matters which involve or might involve the peace or dignity of the country or the public order or safety of the port at which the vessel has arrived.

If this principle had not been universally accepted the present development of international navigation would not have been possible. Conflicting national laws imposed on ships which frequently have to pass through the territorial waters of other countries would render international voyages almost impossible. Moreover departure from the said principle would seriously affect the right which each country has to freedom of its commerce and navigation.

Whereas it is clear that liquor as cargo or as seastore on board of a foreign vessel within the territorial waters of the United States never can affect the public order and safety of the port nor the peace and dignity of the country, and whereas interference on the part of the United States with such cargo or stores would bring about a serious limitation of our freedom of commerce and navigation, the Royal Government feels itself obliged to request the United States Government to take such steps as might be in its power to harmonize the National Prohibition Act with the above mentioned principle

of international law and comity and in the meantime to abstain from enforcing any provisions of this Act which are in conflict with this principle.

Please accept [etc.] DE GRAEFF

811.114/1529

The Netherland Minister (De Graeff) to the Secretary of State

No. 1764 WASHINGTON, *1 June 1923.*

SIR: In pursuance of my note No. 1763 of the 1st instant, I have the honour, by order of my Government, to draw your attention to the fact that the National Prohibition Act as it has been construed by the Supreme Court in its opinion rendered on April 30th, prohibits foreign vessels sailing from their home ports via an United States port to ports outside the United States territory, from carrying liquor as cargo destined to the latter ports. For instance the steamers of the Netherlands West Indian Mail Steamship Company, which Company maintains a regular service via New-York to ports of the Netherlands West Indies and of Central America, usually carry beer as cargo from the Netherlands to Panama and in future they would be obliged to discontinue this traffic unless New York and other United States ports were to be eliminated from their itinerary.

The situation thus arises that an United States law places a foreign steamship company in the dilemma either to refuse liquor as cargo between the Netherlands and non-American ports or to omit New York and other United States ports from its regular service, and that therefore this company is caused to suffer considerable damage in one way or the other.

In my above mentioned note I pointed out that the Royal Government objects in principle to interference on the part of the United States Government with cargo on board of Dutch ships within United States territorial waters, if such cargo of itself does not affect the public order or safety of an American port or the peace or dignity of the country.

Thereto I may add that the Royal Government also fails to see how United States domestic legislation which can be construed so as to hamper the Netherlands in its lawful trade with other countries could be in harmony with international law and comity and it expresses the hope that the United States Government will justify my Government's expectations that a satisfactory solution may yet be arrived at.

Please accept [etc.] DE GRAEFF

811.114/1488

The Secretary of State to the British Ambassador (Geddes)

WASHINGTON, *June 6, 1923.*

EXCELLENCY: I have the honor to acknowledge the receipt of your communication of May 25, 1923, in which you were kind enough to express the views of your Government with respect to the operation of the National Prohibition Act as interpreted by a recent decision of the Supreme Court of the United States.

You will of course understand that this Government cannot well discuss the legality, in an international sense, of the operation of an Act of Congress the scope of which, within the territorial limits of the United States, has been authoritively determined by the Supreme Court of the United States. While, therefore, I am not indisposed to consider in a friendly spirit views such as those expressed in your letter with respect to the operation of the Act upon the vessels of foreign governments, I could not accept any suggestion questioning the competency of the Congress to enact the legislation to which you refer.

I have been interested in the extract from the decision in the *Wildenhus* case, to which you kindly called my attention. Without discussing in any way the views of the Court set forth therein, I would, nevertheless, call your attention to another excerpt from the same opinion in which Chief Justice Waite said:

"It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for, as was said by Chief Justice Marshall in 'The Exchange', 7 Cranch, 116, 144, 'it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such . . .[5] merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country.'" (120 U.S. 1, 11).

As the question is one of the exercise of legislative discretion, I assume that the operation of the National Prohibition Act will receive the attention of the Congress when it next convenes, and that all pertinent matters will have the most careful consideration.

Accept [etc.] CHARLES E. HUGHES

[5] Omission indicated in the original opinion.

811.114/1552

The Norwegian Chargé (Steen) to the Secretary of State

WASHINGTON, *June 7, 1923.*

MR. SECRETARY OF STATE: With reference to the regulations adopted by the United States Government declaring it unlawful for foreign vessels to bring within the United States' territorial waters any liquors for beverage purposes I have the honour, acting under instructions from my Government, to inform Your Excellency that the Norwegian Government, without seeing occasion to express its opinion as to the right of the United States to exercise jurisdiction on board foreign vessels entering American territorial waters, wishes to point out that in the opinion of the Norwegian Government the regulations concerned seem to constitute a breach with former common practice which until now has regulated the international intercourse viz. that a country should not attempt to exercise jurisdiction on board foreign vessels within its territorial waters except to restrain acts calculated to disturb public order.

My Government further wishes to point out the grave consequences which this abandon[ment] of the existing comity and practice will create for the shipping all over the world and the serious inconveniences for the intercourse between countries with conflicting national laws, and therefore expresses the desirability of these regulations not being put into force before the question can be discussed between the Government of the United States and the other Maritime Powers, including Norway.

I beg to add that my Government takes it for granted that the regulations concerned do not include liquors which the ships only carry for medicinal purposes according to Norwegian laws now in force which prescribes for each ship four bottles of spirits and four bottles of wine.

I avail [etc.] DANIEL STEEN

811.114/1537

The Secretary of State to the Belgian Ambassador (de Cartier) [6]

WASHINGTON, *June 9, 1923.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note dated May 28, 1923, in which you expressed the views of your Government with respect to the operation of the National Prohibi-

[6] The same, *mutatis mutandis,* to the Netherland Minister and to the Norwegian Chargé.

tion Act as interpreted by the recent decision of the Supreme Court of the United States in the case of the *Cunard Steamship Company, Limited,* versus *Mellon et al.*

You will, of course, understand that this Government cannot well discuss the legality, in an international sense, of the operation of an Act of Congress the scope of which, within the territorial limits of the United States, has been authoritatively determined by the Supreme Court of the United States. While, therefore, I am not indisposed to consider in a friendly spirit views such as those expressed in your note with respect to the operation of the Act upon the vessels of foreign governments I could not accept any suggestion questioning the competency of the Congress to enact the legislation to which you refer.

As the question is one of the exercise of legislative discretion I assume that the operation of the National Prohibition Act will receive the attention of the Congress when it next convenes and that all pertinent matters will have the most careful consideration.

Accept [etc.] CHARLES E. HUGHES

811.114/1521

The Department of State to the Swedish Legation[7]

The Department of State has received the memorandum dated May 31, 1923, from the Legation of Sweden expressing the views of the Swedish Government with respect to the operation of the National Prohibition Act as interpreted by the recent decision of the Supreme Court of the United States in the case of the *Cunard Steamship Company, Ltd.,* v. *Mellon et al.*

The Legation of Sweden will understand that the United States Government cannot well discuss the legality, in an international sense, of the operation of an Act of Congress the scope of which, within the territorial limits of the United States, has been authoritatively determined by the Supreme Court of the United States. While, therefore, the Department of State is not indisposed to give consideration in a friendly spirit to views such as those expressed in the memorandum of the Legation of Sweden with respect to the operation of the Act upon vessels of foreign governments, the Department could not accept any suggestion questioning the competency of the Congress to enact such legislation.

As the question is one of the exercise of legislative discretion, it is assumed that the operation of the National Prohibition Act will

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[7] The same, *mutatis mutandis,* to the Italian Embassy and to the Portuguese Legation.

receive the attention of the Congress when it next convenes, and that all pertinent matters will have the most careful consideration.

WASHINGTON, *June 9, 1923.*

811.114/1573

The Chargé in Mexico (Summerlin) to the Secretary of State

No. 7509 MEXICO, *June 9, 1923.*
[Received June 16.]

SIR: With reference to the Department's Circular telegram, dated May 3, 6 P.M.,[8] the substance of which, in regard to the Supreme Court decision, construing the National Prohibition Act, was communicated informally to the Foreign Office on May 4th, I have the honor to enclose herewith a copy in translation of Mr. Pani's informal note No. 8120 of June 5, 1923, in friendly protest against the Supreme Court Decision in reference.

I have the honor to enclose also a copy in translation of Mr. Pani's informal note No. 8148, of June 6, 1923,[9] received today, in acknowledgment of my informal note No. 840 of the 2nd instant, in which I transmitted to the Foreign Office the substance of the Department's Circular telegram of May 29, 6 P M, regarding the paragraph included in the Treasury Department's Regulations, exempting from seizure liquors for beverage purposes on board foreign vessels which leave foreign ports for American ports before June 10, 1923.

I have [etc.] GEORGE T. SUMMERLIN

[Enclosure—Translation]

The Mexican Secretary of Foreign Relations (Pani) to the American Chargé (Summerlin)

No. 8120 MEXICO, *June 5, 1923.*

MY DEAR MR. SUMMERLIN: I am pleased to acknowledge receipt of your courteous communication No. 790, dated May 4th last, in which you were so kind as to notify this Department that the Supreme Court of the United States, in a recent decision, sustained that it is illegal for any vessel, either national or foreign, to enter the territorial waters of the United States with intoxicating beverages on board.

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[8] See footnote 1, p. 133.
[9] Not printed.

To this proposition, the Government of Mexico permits itself to make the following friendly representation to the United States of America:

The decision taken by the Supreme Court of the United States will certainly react in prejudice to international commerce, restricting the facilities of Mexican merchant ships in arriving within the waters or ports of the United States of America. As in Mexico there exists no law similar to that which prohibits the use of intoxicating beverages in the territory of the United States, Mexican vessels commonly carry such beverages for the convenience of their passengers and crews. It will, then, be truly difficult for these vessels to discharge their stores of wines and liquors before arriving within the territorial waters of the United States, and it will be much more difficult for them to sail from Mexican ports or from other ports without such wines or liquors. This which places an obstacle in the way of commerce should be enough to cause one friendly nation to make certain exceptions, which deal with customs of another nation, in favor of the interchange of commerce; but, furthermore, the procedure contemplated appears to result, as it is especially intended, that it is prejudicial to the commerce of the United States in no way. The fact of the Mexican vessels being admitted into North American waters carrying stores of wines and liquors could affect the public order of the United States in no way provided these wines and liquors are not taken off the ship nor given to any persons on board other than those who pertain to it. As to the granting of the exemption mentioned, allow me to call your attention to the practice of nations and the modern tendency of always giving all classes of facilities to foreign merchant marine and to the fact that in many cases nations renounce their jurisdiction over foreign vessels within their waters. The formation of opinion in this respect has been so strong that it has given place to the practice, which is almost general, of exempting merchant ships from criminal jurisdiction, which is the most strict, when the crimes committed on board do not affect the tranquility of the port wherein they lie.

In the particular case to which we refer, it might be alleged in the same order of ideas that even while the introduction and consumption of intoxicating liquors may be lawless in the United States of America, if these acts are effected on board a foreign ship anchored in territorial waters, as they in no way disturb the tranquility of the port, exemption from territorial jurisdiction would be justified.

Finally, permit me to invite your attention to the recent case of the S. S. *Harvester*[10] over which Mexico claimed jurisdiction because of certain criminal acts committed on board that ship, and which juris-

[10] Correspondence not printed.

diction was disputed by the United States, Mexico finally agreeing not to exercise it in view of a declaration of reciprocity on the part of the United States. The declaration the United States made was that it would not claim jurisdiction over crimes committed on board Mexican ships anchored in its waters provided that the tranquility of the port be not disturbed.

Such is the present case and Mexico hopes that the Government of the United States of America will find a way in order that the decision of the Supreme Court be not applied to Mexican ships, which disposition is but a law or municipal disposition without force, therefore, to annul international principles and conventions.

I have [etc.] A. J. PANI

711.529/a : Telegram

The Secretary of State to the Ambassador in Spain (Moore)

[Paraphrase]

WASHINGTON, *June 9, 1923—3 p.m.*

26. Your no. 43, June 6, 6 p.m., and your no. 45, June 8, 4 p.m.[11]

The Department has had under consideration the advisability of negotiating treaties with maritime powers to provide for sealed stores of liquor on foreign vessels destined to our ports and for cargoes of liquor not destined for ports of the United States but merely carried through American waters, this arrangement to be in connection with the granting by the maritime powers of the right of visit and search within the limit of 12 geographical miles of coasts so as to make more effective the enforcement of the prohibitory laws and to put an end to the rum running vessels which now hover off our coasts under the protection of foreign flags. The Embassy will understand that the Supreme Court's decision on the applicability of the prohibitory statute to foreign merchant vessels coming within our territorial waters leaves no option to the enforcing authorities until the Act has been modified by Congress or by a duly ratified treaty. Several nations, while they do not dispute the jurisdictional authority of the United States within its territorial limits, have, however, made representations based on former practice and on comity between nations regarding regulations which relate to internal economy of vessels which does not affect local peace and safety. These considerations are necessarily addressed, however, to the discretion of Congress, not to that of the Executive, who can not change the existing law except upon its modification by act of Congress or by a superseding treaty. It is likely that the question will come before Congress at the next

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[11] Vol. II, pp. 847 and 848.

session and the Department hopes that the present inconvenience will be relieved, but what action Congress will take is necessarily in doubt. Much would be done in accomplishing the desired results, that is, the promotion of the convenience of commerce, while preventing at the same time the introduction of liquors into the United States in violation of the real purpose of the Eighteenth Amendment, if it could be shown that the powers concerned, as a *quid pro quo* for the privilege of bringing in sealed stores of liquor and cargo liquors not consigned to any persons within the United States but merely passing through our waters, were to engage themselves to grant the United States a reasonable opportunity to enforce its existing laws against smugglers who are abusing their flags. The Government of the United States assumes, in making this suggestion, that foreign governments have no desire to encourage either such illegal traffic as exists, or the use of their flags to cover the smugglers which hover off our coasts, and that these governments would be glad to give aid in proper manner to put an end to this abuse in consideration of the convenience of their own shipping in the manner suggested. The point may also be indicated that Spain has endeavored to uphold, as against other governments, the privilege of search and visit for the enforcement of her own laws outside of the three-mile limit.

In making the above proposal the Government of the United States is not intending to extend or to ask that any other nation extend the territorial waters of each, but to supply a rule governing on the part of one and the other their own intercourse by an appropriate treaty. You are doubtless aware that there are historic precedents for such action as is proposed.

You will be sent at once the text of the proposed treaty in a separate message. Although the foregoing is for your confidential information, Hackworth and you may emphasize the points that are presented in your discussions with the Foreign Office. The negotiations should be kept as confidential as practicable.

Hughes

711.529/b : Telegram

The Secretary of State to the Ambassador in Spain (Moore)

Washington, *June 9, 1923—4 p.m.*

27. Your 43 June 6, 6 P.M., and 45 June 8, 4 P.M., Department's 26 June 9, 3 P.M.

This Government proposes as a separate convention to be submitted at once to Spanish Government the following Articles:

"Article I. The High Contracting Parties, without attempting to extend as between themselves the limits of their respective territorial

waters adjacent to the high seas, agree that the authorities of either High Contracting Party may, within the distance of 12 geographical miles from its coasts, board the private vessels of the other and make inquiry of the masters thereof as to whether such vessels or the person or persons controlling them are engaged in any attempt, either with or without the cooperation of other vessels, or persons on board the same, to violate the laws of the High Contracting Party making the inquiry, and prohibiting or regulating the unlading near, or importation into its territories of any articles.

An officer of one High Contracting Party boarding a private vessel of the other may examine the manifest of the vessel and make inquiry of the master with respect to the cargo and destination thereof. If such officer has reason to believe from the statements of the master or from documents exhibited by him or otherwise, that the vessel or the person or persons controlling it, either with or without the cooperation of other vessels, or persons on board the same, is or are engaged in the willful commission of acts which constitute a violation of the laws of the State of which such boarding officer is an official, with respect to the unlading or importation of any article or articles, he shall impart his belief to the master of the vessel, and thereupon may with the aid of the master, institute a search of the vessel and an examination of any articles on board. The search shall be conducted with the courtesy and consideration which ought to be observed between friendly nations. If the result of the search gives [12] reasonable cause for belief that the vessel or the person or persons controlling it is or are willfully engaged, with or without the cooperation of other vessels or persons on board the same, in the commission of acts which constitute a violation of the laws of the State whose officer has conducted the search, forbidding or regulating the unlading near, or importation into its territories of any article or articles, the vessel, cargo and the person or persons controlling it or them may be seized and brought in for an adjudication, and subjected to the imposition of the penalties established by law by the Party whose laws and regulations are found to have been violated.

Article II. Any article or articles the importation of which into the territories of either High Contracting Party is or are for any purposes prohibited by its laws, but which is or are listed as sea stores, or as cargo destined for a port foreign to either High Contracting Party, on board a private vessel of either High Contracting Party destined for a port of the other High Contracting Party, may be brought within the territorial waters of such other High Contracting Party on condition that upon arrival of the vessel so destined within 12 geographical miles of the coasts of such High Contracting Party whose territorial waters are about to be entered, such article or articles may be placed under seal by the appropriate officer of that Party and shall be kept sealed continuously thereafter until the vessel enters and during the entire stay of the vessel within

[12] On June 11 the Ambassador was instructed to strike out in this sentence the words "the result of the search gives" and insert the words "there is", so that the sentence would begin: "If there is reasonable cause for belief", etc. (File no. 711.529/1a.)

those waters, and no part of such article or articles shall, during that period, be removed from under seal for any purposes whatsoever. Upon the departure of the vessel from such territorial waters destined for a foreign port, such article or articles under seal may be released therefrom either by an officer of the vessel or by an officer of the Party affixing the seal.

ARTICLE III. The present treaty shall begin to take effect in all of its provisions from the date of exchange of ratifications. It shall remain in full force and effect for a period of 1 year after the exchange of ratifications.

If within 6 months before the expiration of the aforesaid period of 1 year neither High Contracting Party notifies to the other an intention of modifying, by change or omission, any of the provisions of this treaty, or of terminating it on the expiration of the aforesaid period, the treaty shall remain in full force and effect after the aforesaid period of 1 year and until 6 months from such a time as either of the High Contracting Parties shall have notified to the other an intention of modifying or terminating the treaty.

The present treaty shall be ratified, and the ratifications thereof shall be exchanged in the City of Madrid as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same and have affixed their seals hereto." [13]

HUGHES

711.519/a : Circular telegram

The Secretary of State to the Ambassador in France (Herrick) [14]

[Paraphrase]

WASHINGTON, *June 12, 1923—3 p.m.*

The Department has had under consideration the advisability of negotiating treaties with maritime powers to provide for sealed stores of liquor on foreign vessels destined to our ports and for cargoes of liquor not destined for ports of the United States but merely carried through American waters, this arrangement to be in connection with the granting by the maritime powers of the right of visit and search within the limit of 12 geographical miles of coasts so as to make more effective the enforcement of the prohibitory laws and to put an end to the rum running by vessels which now hover off our coasts under the protection of foreign flags. The Embassy will understand that the Supreme Court's decision on the applicability of the National Prohibition Act to foreign merchant ves-

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[13] This draft treaty was submitted to the Spanish Foreign Office on June 13.

[14] See last paragraph for instructions to repeat to London and Rome. On June 15 the Ambassador was instructed to repeat the telegram, with the exception of the last two paragraphs, to Belgium, Denmark, and the Netherlands, and on June 16 to Norway, Sweden, and Portugal (file nos. 711.519/a supp., b supp.).

sels coming within our territorial waters leaves no option to the enforcing authorities until the act has been modified by Congress or by a duly ratified treaty. Several nations, while they do not dispute the jurisdictional authority of the United States within its territorial limits, have, however, made representations based on former practice and on comity between nations regarding regulations which relate to internal economy of vessels which does not affect local peace and safety. These considerations are necessarily addressed, however, to the discretion of Congress, not to that of the Executive, who can not change the existing law except upon its modification by an act of Congress or by a superseding treaty. It is likely that the question will come before Congress at the next session and the Department hopes that the present inconvenience will be relieved, but what action Congress will take is necessarily in doubt. Much would be done in accomplishing the desired results, that is the promotion of the convenience of commerce, while safeguarding at the same time against the introduction of liquor into the United States in violation of the real purpose of the Eighteenth Amendment, if the powers concerned, as a *quid pro quo* for the privilege of bringing in sealed stores of liquor and cargo liquors not consigned to any persons within the United States but merely passing through our waters, were to engage themselves to grant the United States a reasonable opportunity to enforce its existing laws against smugglers who are abusing their flags. The Government of the United States assumes, in making this suggestion, that foreign Governments have no desire to encourage either such illegal traffic as exists, or the use of their flags to cover the smugglers that hover off our coasts, and that these Governments would be glad to give aid in proper manner to put an end to this abuse in consideration of the convenience of their own shipping in the manner suggested. The point may also be indicated that certain maritime states have endeavored to uphold, as against other Governments, the privilege of search and visit for the enforcement of their own laws outside the three-mile limit.

In making the above proposal the Government of the United States is not intending to extend or to ask that any other nation extend the territorial waters of each, but to supply a rule governing on the part of one and the other their own intercourse by an appropriate treaty. You are doubtless aware that there are historic precedents for such action as is proposed.

No legitimate trade of foreign vessels would be interfered with by the proposed agreement. Vessels bound for ports of the United States would of course be subject to search upon arrival in any event. Vessels that are not bound for ports of the United

States would not normally come within the twelve-mile limit but if they did, in exceptional instances, but were not engaged in smuggling they would suffer no inconvenience through the agreement. On the other hand, it is possible that the agreement would enable us to suppress the rum-running which has frankly been admitted to be an abuse of foreign flags. It may be noted further that if the maritime powers insist upon the right of vessels flying their flags to hover off American coasts where they engage in facilitating the smuggling of liquors into this country, Congress would be unlikely to make any relaxation in their favor of the stringency of the present regulations with respect to the introduction of liquors within the territorial waters of the United States. Furthermore, the agreement proposed does not purport to enlarge territorial jurisdiction but confers only a limited right of search, and to grant this right by reciprocal consent would not in any way be derogation of sovereignty. The right would not be inconsistent with the rule asserted regarding the three-mile limit as it would be granted by treaty.

Text of proposed draft treaty will be communicated to you at once separately.

Repeat to London and Rome.

HUGHES

711.519/b : Telegram

The Secretary of State to the Ambassador in France (Herrick)[15]

WASHINGTON, *June 12, 1923—6 p.m.*

228. Department's Circular message June 12, 3 p. m. I have presented the subject and articles of proposed treaty to Ambassadors of Great Britain,[15a] France, Italy and Japan, and have also presented the matter to Spain through the Embassy at Madrid in connection with proposed commercial treaty now under negotiation there.[16] Will await replies from Governments mentioned above before approaching other governments.

HUGHES

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[15] The same, June 13, to Great Britain (no. 139); Italy (no. 49); and to Japan (no. 55), except that introductory sentence was changed to refer to Department's telegram no. 56, June 13, noon (not printed). On June 15 the Ambassador was instructed to repeat this telegram to Belgium, Denmark, and the Netherlands, and on June 16 to Norway, Sweden, and Portugal (file nos. 711.519/a supp., b supp.).

[15a] In the absence of the British Ambassador the draft treaty was handed to Mr. H. G. Chilton, the British Chargé.

[16] See vol. II, pp. 831 ff.

711.519/c : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, *June 12, 1923—7 p.m.*

229. Department's circular telegram of June 12, 3 pm.

This Government is proposing to Spanish Government at Madrid as a convention distinct from Treaty of Amity and Commerce, and is also proposing to Great Britain, France, Italy and Japan through their Missions at Washington, as a special convention, the following Articles:

"ARTICLE I. The High Contracting Parties, without attempting to extend as between themselves the limits of their respective territorial waters adjacent to the high seas, agree that the authorities of either High Contracting Party may, within the distance of 12 geographical miles from its coasts, board the private vessels of the other and make inquiry of the masters thereof as to whether such vessels or the person or persons controlling them are engaged in any attempt, either with or without the cooperation of other vessels, or persons on board the same, to violate the laws of the High Contracting Party making the inquiry, and prohibiting or regulating the unlading near, or importation into its territories of any articles.

An officer of one High Contracting Party boarding a private vessel of the other may examine the manifest of the vessel and make inquiry of the master with respect to the cargo and destination thereof. If such officer has reason to believe from the statements of the master or from documents exhibited by him or otherwise, that the vessel or the person or persons controlling it, either with or without the cooperation of other vessels, or persons on board the same, is or are engaged in the willful commission of acts which constitute a violation of the laws of the State of which such boarding officer is an official, with respect to the unlading or importation of any article or articles, he shall impart his belief to the master of the vessel, and thereupon may with the aid of the master, institute a search of the vessel and an examination of any articles on board. The search shall be conducted with the courtesy and consideration which ought to be observed between friendly nations. If there is reasonable cause for belief that the vessel or the person or persons controlling it is or are willfully engaged, with or without the cooperation of other vessels or persons on board the same, in the commission of acts which constitute a violation of the laws of the State whose officer has conducted the search, forbidding or regulating the unlading near, or importation into its territories of any article or articles, the vessel, cargo and the person or persons controlling it or them may be seized and brought in for an adjudication, and subjected to the imposition of the penalties established by law by the Party whose laws and regulations are found to have been violated.

ARTICLE II. Any article or articles the importation of which into the territories of either High Contracting Party is or are for any purposes prohibited by its laws, but which is or are listed as sea

stores, or as cargo destined for a port foreign to either High Contracting Party, on board a private vessel of either High Contracting Party destined for a port of the other High Contracting Party, may be brought within the territorial waters of such other High Contracting Party on condition that upon arrival of the vessel so destined within 12 geographical miles of the coasts of such High Contracting Party whose territorial waters are about to be entered, such article or articles may be placed under seal by the appropriate officer of that Party and shall be kept sealed continuously thereafter until the vessel enters and during the entire stay of the vessel within those waters, and no part of such article or articles shall, during that period, be removed from under seal for any purposes whatsoever. Upon the departure of the vessel from such territorial waters destined for a foreign port, such article or articles under seal may be released therefrom either by an officer of the vessel or by an officer of the Party affixing the seal."

Any minor changes in phraseology proposed or accepted by this Government will be communicated to you without delay.

Repeat to London as Depts 138 and Rome as 47.

HUGHES

811.114/1568½

Memorandum by the Secretary of State of a Conversation with the Japanese Ambassador (Hanihara), June 12, 1923

[Extract]

Liquor on Merchant Ships.—The Ambassador called at the Secretary's request. The Secretary said that he desired to take up the question of liquor on merchant ships as the case stood under the regulations promulgated by the Treasury Department.[16a] The Secretary reviewed the enactment of the Volstead Act and its interpretation by the Supreme Court. He said that he fully appreciated the inconvenience which the legislation had caused, but that questions of convenience and comity lay within the discretion of Congress so far as the bringing of liquor within the territorial waters of the United States was concerned. The Secretary emphasized the fact that the question did not lie within the Executive's discretion. He said that the matter would undoubtedly be brought before Congress when it convened, but that the issue was doubtful. . . . The Secretary said that he had been giving close consideration to the question and had concluded that the best way of meeting the situation was by the negotiation of a treaty. Such a treaty, however, would necessarily have to have reciprocal advantages. The Maritime Powers were complaining of the inconvenience of the legislation of

[16a] Printed in Treasury Decisions, Internal Revenue, vol. 25, p. 144.

Congress, but in the view of the United States this Government was exercising its undoubted right within its territorial boundaries. The Maritime Powers were desirous that the exercise of this right should be limited in the interest of their convenience. On the other hand, the United States was suffering from the smuggling of liquors and the abuse of foreign flags extending their protection to ships hovering off our coasts and facilitating a vast smuggling trade. Objection had been made to seizures outside the three-mile limit upon the ground that ships had the right to ply the waters outside these limits without interference from the American authorities although it was freely admitted that the hovering off our coasts for the purpose stated was an abuse of the foreign flag. The Secretary felt that without attempting to extend the territorial jurisdiction this formed a proper subject for an agreement and therefore suggested that there should be an international agreement to the effect that liquor in sealed stores or cargoes of liquor not destined for American ports might be brought within our territorial waters on foreign merchant ships and the United States in turn would have the right of search of foreign ships lying off our coasts up to a limit of twelve geographical miles. The Secretary pointed out that this would not interfere with any legitimate trade of foreign vessels; that if foreign vessels were bound for our ports in legitimate trade they would come not only within twelve miles but within three miles and would, of course, be subject to search and our present rules would be enforced. Vessels that were not bound for our ports would not normally come within twelve miles, but if *bona fide* vessels should happen to do so they would suffer a minimum of inconvenience from the search while the rum runners would be put out of business. The Secretary felt that if in this way foreign Governments were willing to aid the United States with respect to their claim of technical right outside the three-mile limit and up to twelve geographical miles, the United States, on the other hand, could forego its right within its territorial waters in the interest of the convenience of foreign ships. This the Secretary believed might make an appeal to the American public and he believed that the Senate would give its assent to such a treaty. It would do no harm to other nations and it would give a desired assurance of protection to the United States. The Secretary also said that it was perfectly plain that if such an agreement would not receive the assent of the Senate certainly without any such reciprocal arrangement it would be idle to hope that Congress would relieve the stringency of the present law. Further, the Secretary said that if the American people gained the idea that foreign Powers were unwilling to aid the United States in preventing this illicit introduction of liquor through rum runners

off our coasts they would not be disposed in favor of such Powers to grant a relief from the present situation.

The Secretary read to the Ambassador articles 1 and 2 of the proposed treaty and gave the Ambassador a copy. The Ambassador asked what other countries had been approached and the Secretary said Great Britain, France, Italy and Spain. The Secretary said he had no objection to dealing with the other Powers but supposed they would be naturally interested in knowing what the great Powers were inclined to do. The Ambassador said he would at once communicate with his Government.[17]

811.114/1552

The Secretary of State to the Norwegian Chargé (Steen)

WASHINGTON, *June 13, 1923.*

SIR: I have the honor to refer to your note of June 7, 1923, expressing the views of your Government with respect to the operation of the National Prohibition Act, and to my note in reply dated June 9, 1923.[18] You stated that your Government assumed that the new regulations did not include liquors which the ships only carry for medicinal purposes according to Norwegian laws now in force, which prescribe for each ship four bottles of spirits and four bottles of wine. I have forwarded a copy of your note to the appropriate authority of this Government for consideration.

I shall be grateful if you will furnish me, for the use of the appropriate authority of this Government, copies of the Norwegian laws in question, together with any regulations that have been adopted pursuant to them.

Accept [etc.] CHARLES E. HUGHES

811.114/1526

The Secretary of State to the Danish Minister (Brun)

WASHINGTON, *June 16, 1923.*

SIR: I have the honor to acknowledge the receipt of your note of June 1, 1923, setting forth the views of your Government with respect to the operation of the National Prohibition Act as interpreted by the decision of the Supreme Court of the United States in the case of the *Cunard Steamship Company, Ltd.*, v. *Mellon et al.*

You will, of course, understand that this Government cannot well discuss the legality, in an international sense, of the operation

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[17] The remainder of the memorandum deals with other matters. No further communications were received from the Japanese Embassy in regard to a liquor treaty until 1928.

[18] See footnote 6, p. 145.

of an Act of Congress the scope of which, within the territorial limits of the United States, has been authoritatively determined by the Supreme Court of the United States. While, therefore, I am not indisposed to consider in a friendly spirit views such as those expressed in your note with respect to the operation of the Act upon the vessels of foreign governments, I could not accept any suggestion questioning the competency of the Congress to enact the legislation to which you refer.

I have been interested in the extract from the opinion of the Supreme Court of the United States in the *Wildenhus* case, to which you kindly called my attention. Without discussing in any way the views of the Court set forth therein, I would nevertheless invite your attention to another extract from the same opinion in which Chief Justice Waite said:

"It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for, as was said by Chief Justice Marshall in 'The Exchange', 7 Cranch, 116, 144, 'it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such . . .[19] merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country.'" (120 U.S. 1, 11).

I have forwarded a copy of your note to the appropriate authority of this Government, and attention has been invited to your statement that the Danish Merchant Marine Act of April 1, 1892, § 45, and the Regulations of December 10, 1892, require under certain circumstances that alcoholic liquors form a part of the ration of the crews of Danish merchant vessels. I shall be grateful if you will send me copies of the Danish laws and regulations to which you refer in order that complete information on the subject may be available.

Accept [etc.] CHARLES E. HUGHES

811.114/1599

The Panaman Minister (Alfaro) to the Secretary of State

[Translation]

WASHINGTON, *June 20, 1923.*

MR. SECRETARY: I have the honor to refer to Your Excellency's courteous communication dated the 3d of May last and to the *note*

[19] Omission indicated in the original opinion.

verbale from this Legation of the 5th of the same month,[20] relative to the application of the Volstead Act to foreign merchant vessels while they are in territorial waters of the United States. The Government of Panama has taken careful note of the notice given by the Department of the Treasury which Your Excellency quotes in the aforesaid note and has instructed me to say to the Department of State that the Panaman Government cannot regard as a violation of the Volstead Act and of the 18th Amendment of the Constitution the carrying of wines, liquors and fermented beverages by vessels navigating territorial waters of the United States under the Panaman flag, provided that such wines, liquors or fermented beverages be not offered for sale or public consumption and be kept under lock and key while they are in territorial waters, subject only to the exceptions of the said law and amendment as to their medicinal or sacramental use. At the same time it has instructed me to say, as I now respectfully do through this note, that Panama protests against the application of the national prohibition law in the form stated and to ask in the most earnest manner of the Government of Your Excellency that it will kindly reconsider the matter and take measures that will insure the operation of the law without causing injury to foreign merchant vessels.

The Government of Panama declares in conclusion that it is most willing to cooperate with the Government of the United States for the purpose of insuring the operation of the national prohibition law, in so far as executive orders which the Panaman Government is in position to enforce upon the owners, officers and sailors of national vessels may contribute to such a result.

I avail myself [etc.] R. J. ALFARO

811.114/1599

The Secretary of State to the Panaman Minister (Alfaro)

WASHINGTON, *June 28, 1923.*

SIR: I have the honor to acknowledge the receipt of your note dated June 20, 1923, setting forth the views of your Government with respect to the effect upon Panaman vessels of the decision of the Supreme Court of the United States construing the National Prohibition Act in the case of the *Cunard Steamship Company, Ltd.*, v. *Mellon et al.*

You will, of course understand that this Government cannot well discuss the legality, in an international sense, of the operation of an Act of Congress the scope of which, within the territorial limits of the United States, has been authoritatively determined by the Su-

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[20] Not found in Department files.

preme Court of the United States. While, therefore, I am not indisposed to consider in a friendly spirit views such as those expressed in your note with respect to the operation of the Act upon the vessels of foreign governments, I could not accept any suggestion questioning the competency of the Congress to enact the legislation to which you refer.

I have forwarded a copy of your note to the appropriate authority of this Government, and I have invited attention to your statement that the Government of Panama is most willing to cooperate with the Government of the United States for the purpose of insuring the operation of the National Prohibition Law, in so far as executive orders which the Panaman Government is in a position to enforce upon the owners, officers and sailors of national vessels may contribute to such a result.

I desire to express my appreciation for the offer of cooperation contained in your note, and to assure you that this matter is receiving very careful consideration by the authorities of this Government.

Accept [etc.] CHARLES E. HUGHES

711.519/1 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *June 28, 1923—noon.*
[Received June 28—11:43 a.m.]

300. I am informed that the proposed treaty has been very sympathetically received at the Foreign Office and that the only modifications their legal advisers have suggested relate to a reduction of the twelve-mile limit for the English Channel so that an international waterway will be left up the lane established. The draft of the treaty has now been sent to the French customs officials for their examination.

HERRICK

811.114/1634

The British Chargé (Chilton) to the Secretary of State

No. 543 WASHINGTON, *June 30, 1923.*

SIR: In connection with the United States regulations in regard to the carriage of liquor on foreign ships in United States territorial waters, I have the honour under instructions from His Majesty's Principal Secretary of State for Foreign Affairs to inform you that His Majesty's Government understand that the United States author-

ities are allowing wine to be carried on Italian ships on east-bound voyages in accordance with the Italian medical laws and that this concession is being granted to the White Star Line S. S. *Arabic* which is in the Italian trade. It appears on the other hand that in similar circumstances in the case of the Cunard S. S. *Tuscania* which is due to leave New York for Naples on July 2nd with about two hundred and fifty Italian steerage passengers, the United States authorities have refused this concession and have thus prevented the *Tuscania* from complying with the Italian law under which her license to carry passengers is granted.

I have accordingly been instructed by my Government to draw your urgent and serious attention to this matter and to protest against this discrimination between British and Italian vessels and even between British vessels in the same trade.

I have the honour to ask you to be so good as to draw the urgent attention of the competent authorities to the circumstances explained above and I trust that through your good offices they will see their way to issue immediate instructions with a view to the accordance of the same treatment to the *Tuscania* as has already been granted to the *Arabic* and to Italian vessels in this matter.

I have [etc.] H. G. CHILTON

811.114/1573

The Secretary of State to the Chargé in Mexico (Summerlin)

No. 2472 WASHINGTON, *July 3, 1923.*

SIR: The Department has received your despatch No. 7509 dated June 9, 1923, enclosing copies of communications you have received from the Mexican authorities concerning the effect of the decision of the Supreme Court construing the National Prohibition Act in the case of the *Cunard Steamship Company, Ltd.* v. *Mellon et al.* Copies of your despatch and of its enclosures have been forwarded to the Secretary of the Treasury for his information.

You are instructed informally to state to the appropriate authorities of the administration now functioning in Mexico that this Government cannot undertake to discuss the legality, in an international sense, of the operation of an Act of Congress the scope of which, within the territorial limits of the United States, has been authoritatively determined by the Supreme Court of the United States. You may say that this Government is not indisposed to consider in a friendly spirit views such as those expressed in the communication which you forwarded dealing with the operation of the Act upon Mexican vessels. You will state that this Government is giving very careful consideration to the measures which might be taken to re-

move any results of a serious character arising from the operation of the Act in question.

You will also state that this Government does not perceive that the case of the S. S. *Harvester*, referred to in the penultimate paragraph of Mr. Pani's note of June 5, is relevant since the understanding reached provided reciprocally for jurisdiction over criminals who committed crimes on board a ship after the ship had entered the territorial jurisdiction of the United States or Mexico, whereas the effect of the regulations issued under the Prohibition Act is to exclude from transportation within the territorial waters of the United States intoxicating liquors for beverage purposes, and involves the seizure of such liquors when "transported, sold or possessed in violation of the National Prohibition Act, as amended and supplemented, and the regulations thereunder."

You will refer to Section 19 of the Regulations contained in Treasury Decision No. 3484, approved June 2, 1923, which reads as follows: [20a]

"SEC. 19. All liquors found by customs officers on board any vessel, either foreign or American, in ports or territorial waters of the United States, and which shall be transported, sold or possessed in violation of the National Prohibition Act, as amended and supplemented, and the regulations thereunder, as distinguished from the customs laws, shall be *seized* by the said customs officers under the prohibition laws and a receipt given the master or other person in charge of the vessel, showing the name of the vessel and master, the date, the number of cases, bottles or other containers, with their unit capacity, and whether the liquors were carried as cargo or sea stores. This receipt shall be made in duplicate and a copy retained by the collector of customs."

I am [etc.]

CHARLES E. HUGHES

311.4153 H 39/47

The British Chargé (Chilton) to the Secretary of State

No. 578 WASHINGTON, *July 10, 1923.*

SIR: I have the honour to inform you that my attention has been drawn to certain comments in the press regarding the recent decision of the United States Circuit Court of Appeal in connection with the condemnation and forfeiture of the alleged British schooner *Henry L. Marshall* [20b] for smuggling liquor into the United States in contravention of the prohibition laws. You will recollect that this vessel was seized by United States Revenue Officials in July 1921 when

[20a] Treasury Decisions, Internal Revenue, vol. 25, p. 144.
[20b] 292 Fed. 486.

off the coast of New Jersey and outside the limit of United States territorial waters.

The general trend of these comments is to the effect that the view of many American legal experts that the United States Government has the right to seize rum-runners outside the three-mile limit is shared by the State Department, and it is hinted that the absence of a protest by His Majesty's Government against the condemnation of the *Henry L. Marshall* by the United States Circuit Court of Appeal not only makes the case a useful precedent for similar future action by the United States authorities outside the three-mile limit against British vessels suspected of rum-running, but also implies a change in the attitude of His Majesty's Government towards the principle of such seizures outside the three-mile limit.

In order to avoid the possibility of any misunderstanding on the part of the United States Government as to His Majesty's Government's attitude in this matter I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to inform you that any attempt on the part of the United States authorities to seize a British ship outside the three-mile limit would be regarded by His Majesty's Government as creating a very serious situation. In regard to the *Henry L. Marshall* case, I have been instructed to explain that the absence of a protest by His Majesty's Government against the condemnation of this vessel in no way implies any alteration in the views of His Majesty's Government with regard to the principle at stake, inasmuch as that vessel, owing to the circumstances in which she secured her British registry, was not recognized by His Majesty's Government as entitled to British registry. Consequently, His Majesty's Government have not felt called upon to assert the principle at stake on her behalf, since, as far as His Majesty's Government are concerned, the *Henry L. Marshall* remains an American vessel.

I have [etc.] H. G. CHILTON

711.419/16

The British Embassy to the Department of State

His Britannic Majesty's Chargé d'Affaires has received a telegraphic communication from His Majesty's Principal Secretary of State for Foreign Affairs pointing out that theoretically the international validity of the three-mile limit would be strengthened by the conclusion of a treaty making an exception for a special purpose. Practically however such a treaty would weaken the principle because it would form a precedent for the conclusion of further

similar treaties until finally the principle would become a dead letter. For this reason Lord Curzon felt bound to state when questioned in Parliament that His Majesty's Government could not accept the proposal of the Secretary of State of the United States.

In the opinion of Lord Curzon Mr. Hughes' proposed treaty would not provide for any immediate remedy for the present difficulties, seeing that it could not be ratified until Congress meets, when an amendment to the Volstead Act could equally well be introduced if the United States Government so desired. Moreover, even if the twelve-mile limit were accepted, cases would inevitably occur liable to cause serious friction between two countries, owing to the difficulty of deciding with any certainty the position of a limit usually out of sight of land, at any rate on the Atlantic coast.

Lord Curzon adds that the Hovering Acts in the United Kingdom were entirely superseded by the Customs Consolidation Act, 1876, by which British municipal legislation is made to conform with international law.

WASHINGTON, *July 14, 1923.*

311.4153 H 39/47

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *July 16, 1923.*

SIR: I have the honor to acknowledge the receipt of your communication No. 578 of July 10, last, in relation to the recent decision of the United States Circuit Court of Appeals in the case of the schooner *Henry L. Marshall*, and to certain American press comments thereon. You advert to the general trend of these comments and to the inferences which are drawn from the views of many American legal experts.

I note your statement that under instructions from your Government you inform me that any attempt on the part of the United States authorities to seize a British ship outside the three-mile limit would be regarded by your Government as creating a very serious situation. With respect to the case of the *Henry L. Marshall*, you state that you have been instructed to explain that the absence of a protest by His Majesty's Government against the condemnation of the vessel in no way implies any alteration in the views of your Government with respect to the principle at stake, inasmuch as the vessel was not recognized as entitled by your Government to British registry; and you add, that so far as your Government is concerned, the *Henry L. Marshall* remains an American vessel. The Department is pleased to receive this formal statement as to the status of

the vessel as it is recalled that your Embassy had made protests against the seizure of the vessel in your communications No. 623, of August 11, 1921, and No. 686, of September 9, 1921,[21] and that the Department had also been in receipt of communications from your Embassy in respect to the progress of the cause and the detention of certain members of the crew as witnesses.

In view of the emphasis placed in your last communication upon the principle deemed to be involved, it would seem appropriate to direct your attention to the precise import of the adjudications in the United States District Court for the Southern District of New York [21a] and, on appeal, in the United States Circuit Court of Appeals for the Second Circuit, from whose decrees it is not understood that the claimant has as yet sought by writ of certiorari to obtain a review in the Supreme Court of the United States. For this purpose I may refer to the pertinent facts as these have been judicially established and set forth in the statement of the case by the United States Circuit Court of Appeals. The vessel sailing under British registry in 1921 obtained clearance from West End, Bahama Islands, when actually laden with a cargo of intoxicating liquors. She received two clearances of the same date and signed by the same Collector of Revenue, one of which stated that she had cleared for Halifax with the cargo of liquor, the other that she had cleared for Gloucester, Massachusetts, in ballast. The same Collector furnished two bills of health, likewise differing as to destination. It was abundantly proved that the real object and only business of the *Henry L. Marshall* was to peddle liquor along the coast of the United States. "Particularly", states the official report of the decision, "did she pursue her vocation while lying some nine or ten miles off Atlantic City and there sent liquor on shore, pursuant to previous arrangement made in the United States, by motor boats", which, however, were not a part of the schooner's equipment, and, so far as appears, did not belong to her owner. When the *Marshall* was boarded more than three miles from the New Jersey coast it was found that she had no manifest and still had on board a quantity of liquor.

The United States Circuit Court of Appeals in affirming the decrees which were passed upon the libels for forfeiture, held that the act of unlading although beginning beyond the three mile limit continued until the liquor was landed; that the *Marshall's* cargo of whiskey was never manifested; that it was not unladen between the rising and setting of the sun and that no special license had been obtained for unloading at night; and that there was an unloading

[21] Notes not printed.
[21a] 286 Fed. 260.

without a permit,—all in violation of provisions of the Revised Statutes of the United States. The United States Circuit Court of Appeals concluded: (*a*) that there was an attempt to introduce all of the *Marshall's* cargo into the commerce of the United States, and that there was an actual introduction of a part of that cargo into that commerce; (*b*) that such attempt at introduction was by means of fraudulent practices, i.e., evasion of the provisions of the National Prohibition Act; (*c*) that there were wilful acts (i.e., rum running) by means whereof the United States was deprived of duties upon the merchandise (i.e., whiskey) affected by the said act.

The foregoing conclusions are deemed by this Government to be self explanatory. They relate to the conduct of a vessel which was far from exercising the normal right of passage on the high seas adjacent to American waters in the course of a voyage between two British ports. They show that the vessel and those controlling it started upon its sinister voyage with connivance and aid of British authority in British territory; that its direct and single effort was by fraudulent means to introduce the cargo, and all of it, within the territory of the United States; and that the vessel prior to and at the time of its actual seizure, even though more than three miles from the shore, was hovering off the coasts of the United States and was engaged in an attempt to violate the laws of the United States by the introduction of the liquor within its territory. It should be added that adequate judicial procedure, as already noted, was available and used, in order to determine these facts, and in these circumstances the competent judicial authority of the United States has sustained the seizure of the vessel.[22]

In view of this decision, and of the tenor of your communication, my Government hopes that it may be advised that His Majesty's Government does not consider, even in the case of a vessel admittedly of valid British registry, that such a vessel pursuing the course of conduct followed by the schooner *Henry L. Marshall* is making proper use of the British flag and that His Majesty's Government would not be disposed to espouse the cause of a British merchant vessel in an effort unlawfully to introduce intoxicating liquors into the territory of the United States in the manner adopted by the schooner *Henry L. Marshall*, or in such a case to oppose the enforcement of the laws of the United States by means of the procedure taken in the case of that vessel and judicially approved.

Accept [etc.] CHARLES E. HUGHES

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[22] The Supreme Court of the United States on Oct. 22, 1923, declined to grant the applications of the alleged owners of the *Henry L. Marshall* for writs of certiorari to review the decision of the Circuit Court of Appeals; 263 U. S. 712.

711.419/16: Telegram

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

WASHINGTON, *July 20, 1923—2 p.m.*

193. The following note was communicated to the British Embassy on July 19, 1923:

"The Secretary of State presents his compliments to the Chargé d'Affaires ad interim of Great Britain and acknowledges the receipt of the memorandum, under date of the 14th instant, expressing the views of His Majesty's Principal Secretary of State for Foreign Affairs, with respect to the proposed treaty relating to visit and search of vessels within 12 miles of the coasts of the parties, respectively, for the purpose of preventing the illegal introduction of articles into their territories, and also relating to the carriage, within territorial waters, of certain sealed stores and cargo destined for foreign ports.

Preliminarily, it should be observed that a draft treaty was submitted informally, simply for the purpose of avoiding misunderstanding and of making a concrete suggestion which could form the basis of discussion. It should also be said that it was not the purpose of the Secretary of State to propose an extension of the limits of territorial waters, and the draft proposal specifically negatived such an intention.

It is noted that Lord Curzon points out that the theory of the international validity of the 3-mile limit would be strengthened by the conclusion of a treaty making an exception for a special purpose, but that he is of the opinion that such a treaty would weaken the principle because it would form a precedent, the following of which would ultimately deprive the principle of force. It is not perceived that this would be the result as no Power would be under obligation to make any other agreements unless it saw fit to do so, or to treat the special agreement as a precedent except in a case precisely analogous, and there could be inserted in the special agreement any statement or qualification that might be deemed to be advisable to show that it was definitely limited to the particular situation in view.

In relation to Lord Curzon's further suggestion, it may be stated that while the proposed treaty could not be ratified until the Senate convenes, and while the Secretary of State is not in a position to give an assurance either with respect to the action of the Senate, or with regard to the prospect of securing from Congress an amendment to the Volstead Act in relation to ship liquor and cargo liquor destined for foreign ports, it is believed that the solution of the present difficulty through the making of a fair and reasonable agreement, such as is proposed, would be the most promising method of securing early action. Therefore, Mr. Hughes trusts that the suggestion will not be put aside upon the supposition that another course is equally feasible.

With respect to Lord Curzon's suggestion that even if the 12-mile limit were accepted, cases would inevitably occur liable to cause serious friction between the two countries owing to the difficulty of

deciding with any certainty the position of a vessel usually out of sight of land, at any rate on the Atlantic coast, it is believed by this Government that the proposed special agreement would do much to reduce, if indeed it would not wholly eliminate, the causes of friction due to the present efforts to evade the laws of the United States. In this connection, it must be emphasized that the proposed agreement would not interfere with British vessels engaged in legitimate commerce and bound for American ports. Such vessels will necessarily come not only within 12 miles but within 3 miles of the American coast and will hence in any event be subject to examination by American authorities, and will, of course, comply with the applicable laws of the United States. The proposed special agreement would bear only upon those vessels which come within 12 miles but hover off the 3-mile limit for the purpose of aiding in the smuggling of intoxicating liquor, or other prohibited articles, into the territory of the United States.

It is impossible for this Government not to take all proper and lawful measures to prevent this illicit traffic from being carried on. An illustration is afforded by the case of the schooner *Henry L. Marshall*, the conduct of which recently came under the scrutiny of the United States Circuit Court of Appeals for the Second Circuit, as stated in the memorandum of the Secretary of State delivered to the British Embassy on the 16th instant.[23] While it is understood that this vessel is not regarded as a British vessel, for the reason which His Majesty's Government has stated,[24] reference may be made to the practice of the vessel as showing the conditions with which the American Government is required to deal. The vessel did not come within the 3-mile limit, but she made her arrangements for the carriage of her illicit cargo to the shore of the United States in violation of its laws, and, as the court found, while the unloading was begun outside the 3-mile limit, it was continued within the territorial waters of the United States, and the vessel was engaged contrary to the laws of the United States in introducing her cargo of intoxicating liquors within the commerce of the United States.

This Government has already expressed the hope that the British Government will interpose no obstacles in such cases to the enforcement of the laws of the United States, but it is believed that an appropriate agreement which would not injure *bona fide* trade but would facilitate the enforcement of the laws of the United States in preventing the smuggling of liquor, would remove occasions for misunderstanding and eliminate the serious friction to which the Memorandum under consideration refers.

It may confidently be asserted that there would be no disposition on the part of the American authorities, and the special agreement would not justify any attempt, to seize a British vessel, save within the limits proposed, and when it was clear that the vessel concerned was directly involved in an attempt to introduce its illicit cargo into the territory of the United States. British vessels bound for the ports of the United States would encounter no additional obstacles to their trade, and vessels destined for foreign ports, which happened

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[23] *Ante*, p. 165.
[24] *Ante*, p. 163.

to pass on legitimate errands within 12 miles of the American coast, would suffer no inconvenience, while such vessels as were engaged in the unlawful conduct above described would not be able to create difficulties between the two countries, much less serious friction, by attempts to secure immunity for their operations by invoking the protection of the British flag.

Although the Government of the United States regards the proposed agreement as an appropriate setting forth of the proposal, it would cordially welcome the cooperation of the British Government in moulding the form of an arrangement which would reasonably serve a purpose which, it is firmly believed, may be found to be common to both countries."

As the British Embassy may not telegraph the text of this note to the Foreign Office you may deliver a copy with a statement that it is the note sent to the Embassy on July 19.

HUGHES

811.114/1752

The Portuguese Minister (Alte) to the Secretary of State

BAR HARBOR, MAINE, *July 25, 1923.*
[Received July 28.]

SIR: I have the honour to enclose a Memorandum stating the position of the Portuguese Government in respect to the principle involved in the question of the transportation of alcoholic beverages in American waters referred in the Department of State's Memorandum of June 9, 1923.[25]

Accept [etc.]

ALTE

[Enclosure—Translation]

The Portuguese Legation to the Department of State

The Legation of Portugal forwarded to its government the memorandum of June 9 last from the State Department relative to the execution of the laws concerning the transportation of alcoholic beverages in waters of the United States of America.

The Legation of Portugal has now received instructions to reply to the government of the United States that the Portuguese government animated by the same friendly spirit shown in the memorandum and without assuming to dispute the concrete point which the American government says that it is not at liberty to discuss, cannot with all that refrain from expressing its reservations to any alteration by the unilateral action of any country of the principles of international law that are generally accepted.

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[25] See footnote 7, p. 146.

The recognition of the absolute liberty of a country in the regulation of such matters unavoidably leads to the admission of the same liberty for all the others and that would lead to making it possible for each government to rescind through isolated acts the rules which have obtained by unanimous consent in the navigation all over the world. The Portuguese government confidently hopes that the government of the United States will find a way of reconciling the application of its own law with the uses and principles heretofore universally admitted with respect to the condition of facilities in foreign territorial waters.

JULY 25, 1923.

811.114/1634

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *July 27, 1923.*

SIR: I have the honor to refer to my note dated July 3, 1923,[26] in further reference to your note dated June 30, 1923, concerning the refusal of this Government to permit the Cunard Steamship *Tuscania*, which sailed July 2, 1923, from New York to Naples to carry the quantity of wine required by the laws of Italy for all vessels entering the ports of Italy with Italian steerage passengers aboard.

A communication has now been received from the competent authority of this Government stating that a general order has been addressed to the Surgeon General of the United States Public Health Service which reads in part as follows:

"You will advise the officers of the U. S. Public Health Service at the various ports that when the officers or authorities of any merchant vessel within the territorial waters of the United States shall make application for the privilege of using liquors for medicinal purposes under the provisions of T. D. 3484[27] (Form 1539), and the laws or regulations of the country of the home port or other competent authority governing such vessel shall prescribe a given quantity of liquor for medicinal purposes, such quantity shall be allowed by the U. S. Public Health officer in charge."

It is believed that this order will more satisfactorily cover the situation for foreign vessels which enter the ports of the United States.

Accept [etc.] CHARLES E. HUGHES

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[26] Not printed.

[27] Treasury Decisions, Internal Revenue, vol. 25, p. 144.

711.419/31a

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

No. 961 WASHINGTON, *August 25, 1923.*

SIR: The Department refers to your despatch No. 2585, of July 7, 1923,[28] submitting a report concerning the general situation in Great Britain from the point of view of politics, economics, et cetera, for the period June 25, to July 1, inclusive. On pages 2 and 3 of your despatch you refer to the discussion in British circles of the United States ruling regarding the carrying of liquor on British ships and state that the obligation of the Federal Executive to comply with a decision of the Supreme Court regarding an interpretation of existing law is not very generally understood and that it is generally felt that the Executive might have taken a less extreme attitude in this matter had it wished to do so. You add that it is felt that some way out of these difficulties should not be too hard to find particularly in view of the part of the court's decision which states that "the local sovereignty may, out of consideration of public policy choose to forego the execution of its jurisdiction or exert the same in only a limited way." Your attention is called to the fact that your despatch does not correctly quote the language used by the Supreme Court in its opinion. The language used by the court is as follows:

"Of course, the local sovereign may out of considerations of public policy choose to forego the exertion of its jurisdiction or to exert the same in only a limited way, but this is a matter resting solely in its discretion."

Reference is made in this connection to the Department's telegram No. 164 dated June 30, 1923,[28] stating the attitude of this Government toward the enforcement of the recent Supreme Court ruling concerning liquor on foreign ships. It was pointed out that the British Government apparently was mistaken in its understanding of the Supreme Court decision, that the misconception of the British Government was apparently based on Lord Birkenhead's [29] misconception of the above quoted extract from the decision. Lord Birkenhead apparently interpreted the word "sovereign" to mean the Executive branch of the Government. Actually, the term "sovereign" means the people of the United States and any discretionary power lies solely within the Congress which represents the sovereign people. Therefore, the only amelioration possible in the enforcement of the prohibition law would be through act of Congress by amendment of the Volstead Act or more simply by the ratification of treaties such

[28] Not printed.
[29] Frederick Edwin Smith, Viscount Birkenhead, Lord High Chancellor.

as that suggested to the British Government which would take precedence over the specific provisions of the Act.

When this mistaken understanding of the Supreme Court decision is removed, it should be clear that the Administration has no choice except to enforce the law irrespective of international practice or embarrassments with foreign powers. It is, therefore, clear that the Executive cannot "take advantage of this part of the decision as far as foreign shipping is concerned."

It is observed that you further state that "public opinion seems to be generally unfavorable to any extension of the 12 mile limit in so far as the right of search and seizure is concerned." It is assumed that a typographical error was made when you referred to "an extension of the 12 mile limit." The opinion of the Supreme Court of the United States in the case of *Cunard Steamship Company, Ltd.*, vs *Mellon* contains the following statement concerning the jurisdiction of the United States:

"It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles. *Church* v. *Hubbart*, 2 Cranch 187, 234; *The Ann*, 1 Fed. Cas., p. 926; *United States* v. *Smiley*, 27 Fed. Cas., p. 1132; *Manchester* v. *Massachusetts*, 139 U. S. 240, 257–258; *Louisiana* v. *Mississippi*, 202 U. S. 1, 52; 1 Kent's Com., 12th ed., *29; 1 Moore *International Law Digest*, § 145; 1 Hyde *International Law*, §§ 141, 142, 154; Wilson *International Law*, 8th ed. § 54; Westlake *International Law*, 2d ed., p. 187, *et seq;* Wheaton *International Law*, 5th Eng. ed. (Phillipson), p. 282; 1 Oppenheim *International Law*, 3rd ed., § 185–189, 252. This, we hold, is the territory which the Amendment designates as its field of operation; and the designation is not of a part of this territory but of 'all' of it."

The Government considered it desirable to obtain a special treaty arrangement with the British Government authorizing it to visit and search British vessels to a limit of 12 miles when it was believed they were engaged in smuggling liquor into the United States. A precedent for a treaty of this character is found in the Treaty of December 27, 1774, concluded between France and Spain whereby French and Spanish Customs authorities were permitted to seize, up to a distance of two leagues from the coasts, French and Spanish ships carrying forbidden goods. Article 8 of the Treaty, the French text of which (Martens, *Recueil de traités*, 2d ed., Vol. 1, p. 451), is translated in Crocker's *The Extent of the Marginal Sea*, Page 521, reads as follows:

ARTICLE 8. The customs employees and officials of the two crowns, whose duty it is to prevent the introduction of smuggled goods, shall

have the authority to stop all kinds of small boats of each nation weighing less than 100 ton, which they find laden wholly or partially with any contraband goods whatsoever, or with merchandise absolutely prohibited, at a distance of two leagues from the land, in the neighborhood of the ports, in the mouths of the rivers, the small bays, and anchoring places along the coasts."

Reference is made to the French regulation regarding customs search of August 19, 1726, which is found in Léon Béquet, *Répertoire du droit administratif* (Paris, 1896), Vol. 13, p. 207, note 4. This regulation is translated in Crocker's work, *The Extent of the Marginal Sea*, Page 520 as follows:

"Foreign and other small vessels, sailing along the sea coast within a distance of one or two leagues therefrom shall be stopped by the employees of custom-house tenders, barks, and sloops of contractors (*adjudicataires*), for verification and visit. We permit the said employees, in case of refusal or resistance, to compel by force the masters of the said vessels to allow them on board. We desire that in case of fraud or forged bills of lading, the said small seagoing craft which are laden with contraband goods or salt, in whole or in part, shall be confiscated, together with their cargoes, to the profit of the contractor; and that the masters of the said vessels, sailors, and others of the crews shall be condemned to pay the penalties provided by our ordinances, declarations and regulations for engaging in illicit salt trade or commerce in prohibited goods, in accordance with our Council's decision of March 9, 1719."

The Act of August 6–22, 1791, limited the extent of the coast waters to two leagues. Crocker translates this provision from the French text of Duvergier, *Collection complète des lois, décrets, ordonnances, réglemens, avis du Conseil d'Etat*, 1791, Vol. 3, p. 197. The translation reads as follows:

"Title XIII, Article 7. The officers of the said police boats shall be enabled to visit the boats below fifty ton, which are in the waters within a distance of two leagues of the shores, and shall be shown bills of lading regarding the cargo."

By the law of March 24, 1794, the extent of coastal waters was fixed at four leagues. The French text, which is found in Duvergier, Vol. 7, p. 115, is translated by Mr. Crocker, Page 522, of his book above mentioned as follows:

"Article 3. The captain, arriving within four leagues of the coast, shall, on request, display a copy of the manifest to the official who comes on board, who will visé the original.

"Article 7. The captains and officers and other customs officials, the officers of commerce and of the military marine can visit all boats below 100 ton, anchored or hovering within four leagues of the coasts of France, except in the case of *force majeure*."

The following statement from the *Columbia Law Review* for May, 1923, page 475, is quoted for your information:

"France admits the three mile zone for fisheries' control, but her customs and quarantine zone extends two myriameters (about twelve miles). She regulates the admission and sojourn of foreign vessels in war time within six miles and adopts a similar boundary for the enforcement of her neutrality laws. Germany seems to adopt the three mile rule. Italy requires customs manifests to be shown to her officers anywhere within ten kilometers (about six miles). The Court of Cassation in 1885 held that her territorial waters extend four or five miles. Her neutrality laws are enforced within a zone of six and her navigation laws within ten nautical miles. Norway and Sweden have always claimed four miles. Denmark in 1912 proclaimed a neutrality zone of four miles, Greece, in 1914, a zone of six miles, the Netherlands three miles, Uruguay five miles, Portugal six miles. Spain has sought to control fisheries within six miles, but actually enforces her laws only three miles out. Her laws against contraband trade and fraud apply to foreign ships, even when not destined for a Spanish port, two leagues out. Her neutral zone was set at six miles but was later changed to three. Belgium has a customs zone of six miles and a fisheries zone of three geographic miles. Argentine enforces her fishery laws within ten miles. Ecuador establishes her territorial waters for fiscal and police measures and as to neutrality at four naval leagues. Chile limits her territorial sea as a part of the national domain at one league but asserts a right of police to the distance of four leagues."

The seizure of rum runners beyond the three-mile limit has been construed as legal in certain circumstances by lower Federal courts even in the absence of a treaty extending the right to visit and search up to 12 miles. Three cases dealing with this phase of the matter have been decided by the courts.

The case of *United States* vs. *the British schooner Grace and Ruby* (283 Fed. 475) was decided by the United States District Court for the District of Massachusetts on September 18, 1922. In this case it was found that "a dory belonging to the schooner was towed along, presumably for use in landing the liquor or to enable the men to return to the schooner after the liquor was landed." At the time of seizure the ship was "about four miles from the nearest land." The court upheld the seizure of the *Grace and Ruby* and an appeal from the decision is now pending before the Supreme Court of the United States. In this connection there are enclosed for your information copies of a note dated December 30, 1922, received from the British Ambassador and of the Department's reply dated January 18, 1923, concerning this case.[29a] You will observe that the Department referred to the case of the British Columbian schooner *Araunah*, (Moore's *International Law Digest*, vol. 1, page 908; *Brit-*

[29a] *Foreign Relations*, 1922, vol. I, pp. 591 and 592.

ish and Foreign State Papers, Vol. 82, page 1058), as a precedent for the action taken in this case.

The case of United States vs 1250 cases of liquor and the schooner *Henry L. Marshall* (286 Fed. 260) involved the seizure of this British registered vessel and her cargo outside the three mile limit. The seizure of the vessel was upheld by the District Court for the Southern District of New York on October 14, 1922. The decision of the District Court was affirmed by the Circuit Court of Appeals for the Second Circuit in June, 1923. Copies of the notes recently exchanged with the British Embassy concerning this case were forwarded to you with the Department's instruction No. 941 of July 20, 1923.[30] From that correspondence you will observe that the *Henry L. Marshall* peddled liquor while lying some nine or ten miles off Atlantic City and sent liquor on shore, pursuant to previous arrangements made in the United States, by motor-boats which were not a part of the schooner's equipment and did not belong to her owner. The court held that the vessel was properly seized because it was engaged in an attempt to violate the laws of the United States by the introduction of liquor within its territory. Its judgment was not based on fraudulent British registry of the vessel. However, the British Chargé d'Affaires ad interim stated in his note of July 10, 1923, that his government would not intervene further with respect to this vessel since "owing to the circumstances in which she secured her British registry (she) was not recognized by His Majesty's Government as entitled to British registry" and that "as far as His Majesty's Government are concerned, the *Henry L. Marshall* remains an American vessel." In the Department's note of July 16, 1923, to the Embassy, inquiry was made whether the British Government considered that a vessel admittedly of valid British registry pursuing the course of conduct followed by the schooner *Henry L. Marshall* was making proper use of the British flag and whether the British Government would espouse the cause of a British merchant vessel engaged in an effort unlawfully to introduce intoxicating liquors into the territory of the United States in the manner adopted by the *Henry L. Marshall.* No reply has as yet been received to the Department's note.

The remaining case involves the right of this Government to forfeit bonds given by the United States Fidelity and Surety Company on behalf of the owner of the British schooner *Marion Mosher*. The schooner was seized outside the three mile limit off New York. The British Embassy protested against the seizure of the vessel and its cargo and they were released when the bonds guaranteeing that the

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[30] Instruction not printed.

cargo would be delivered at St. John, New Brunswick, the destination named in the ship's papers, were executed and filed. However, the cargo was not delivered at destination but was smuggled into the United States and proceedings were therefore brought on the bonds. A copy of the court's charge to the jury is enclosed. You will observe that the court held that the requirement that bonds be given was not improper, since it appeared that the vessel was "in contact with the shore" and was "hovering close to our shore for the purpose and intent of violating our law".

Referring again to the Department's note of July 16, 1923, to the British Embassy and to the inquiry contained therein whether the British Government considered that a vessel admittedly of valid British registry pursuing the course of conduct followed by the schooner *Henry L. Marshall* was making proper use of the British flag and whether the British Government would espouse the cause of a British merchant vessel engaged in an effort unlawfully to introduce intoxicating liquors into the territory of the United States in the manner adopted by the *Henry L. Marshall*, the Department invites your attention to the following statements made by distinguished British authorities with regard to international law governing cases of this character:

Sir Charles Russell, later Lord Chief Justice of England, in the course of his argument before the Bering Sea Arbitral Tribunal in 1893 made the following statement:

". . . take the case of the Revenue laws—the Hovering Acts. . . . Upon what principle do those Acts rest? On the principle that *no civilized State will encourage offences against the laws of another State the justice of which laws it recognizes. It willingly allows a foreign State to take reasonable measures of prevention within a moderate distance even outside territorial waters:* but all these offences, and all offences of the same class and character relating to revenue and to trade, are measures directed against a breach of the law contemplated to be consummated within the territory, to the prevention of an offence against the municipal law within the area to which the municipal law properly extends." (*Fur Seal Arbitration*, Vol. XIII, Sec. 1076, page 298.)

Hall, in discussing the revenue laws of Great Britain says:

"Whether the law represents a custom or a pretention, foreign nations, insofar as they are practically affected by it, have conceded to it their acquiescence. The powers taken are not put forward as a right: they merely formulate consent. Against a state which resisted their exercise they would not be maintained. But in their present shape, used with moderation, *they repose on an agreement which though tacit is universal. No civilized country encourages offences against the laws of a foreign state when it sees that the laws are just and necessary; and the justice and necessity of taking precautionary measures outside territorial waters, in order that infractions of reve-*

nue laws shall not occur upon the territory itself, is in principle uncontested. Under the Acts in question therefore no right to action is taken by Great Britain in the high seas, and no right to jurisdiction is assumed over subjects of foreign powers, apart from the acquiescence of the foreign state to which they belong." (*Foreign Jurisdiction of the British Crown*, p. 244.)

And in discussing the quarantine laws, Hall makes the following statements:

"*It is admitted as a principle of international law that motives of self-preservation, sufficiently grave and urgent, warrant a nation in overstepping the usual limits of its rights, and in taking exceptional measures for its security.* Though the legislation effected by the Quarantine Act is continuing, the occasions on which it is put in force are occasions of emergency when the attack of pestilence is to be fended off, and when in the view of the framers of the statute no measures less general than those prescribed would be adequate for the purposes of defence. *If therefore jurisdiction were exercised in respect of acts completed on the high seas, but calculated to produce effects upon the territory, its imposition would conflict with no principle governing the relations of states.*" (*Ibid.*, p. 245).

Westlake, in discussing Hovering Acts, makes the following statement:

". . . Questioned by one of the arbitrators as to what the executive authority of a state would do if it had notice that a foreign ship was crossing the ocean for the purpose of violating its revenue laws, Sir Charles said that it 'would probably do something before the vessel got within the three-mile limit, if it was proved to be necessary, relying upon the non-interference of the state to which that fraudulent vessel belonged not to make any complaint or raise any question whether the strict territorial limits had been exceeded.' He was attorney-general, and therefore, we may conjecture, did not speak without some knowledge of the practice." (*International Law*, 2nd Edition, Part I, page 176.)

Sir Travers Twiss, in discussing the right claimed by Spain under its customs laws to search British vessels on the high seas, makes the following statement:

"If, indeed, the Revenue Laws or the Quarantine Regulations of a State should be such as to vex and harass unnecessarily foreign commerce, foreign Nations will resist their exercise. If, on the other hand, they are reasonable and necessary, they will be deferred to *ob reciprocam utilitatem.* In ordinary cases indeed, when a merchant ship has been seized on the open seas by the cruizer of a Foreign Power, when such ship was approaching the coasts of that Power with an intention to carry on illicit trade, the Nation, whose mercantile flag has been violated by the seizure, waives in practice its right to redress, those in charge of the offending ship being considered to have acted with *mala fides* and consequently to have forfeited all just claims to the protection of their Nation." (*The Law of Nations: Rights and Duties in Time of Peace*, Sec. 190, 2d., 1884.)

Although these statements furnished grounds for the contention that the seizure outside the three mile limit of British ships engaged in smuggling liquor was proper, nevertheless this Government in the desire to avoid controversies with respect to cases of a doubtful character has acquiesced in requests submitted by the British Embassy for the release of certain British vessels. In a note No. 338 dated May 1, 1923,[32] the British Ambassador stated that he had "no feeling of sympathy for the owners, as such, of a ship engaged in violating the laws of any friendly power." Nevertheless, the Embassy has protested whenever the officers of this Government have seized a British ship outside the three mile limit on the ground that it was engaged in smuggling operations. You will make it clear in any conversations you may have on this subject that this Government feels that persons engaged in smuggling operations of this character in violation of the laws of a friendly power should not receive the support of their Government, and you may emphasize the class of transactions similar to the *Henry L. Marshall* case and my observations in my note of July 16. You will report fully the views expressed during your discussion of the matter.

The Department notes that press statements from London report that the proposal of this Government for a treaty covering the matter will be rejected by the British Government but that suggestions will be made respecting methods for suppressing smuggling operations. You are instructed to telegraph promptly any information you may obtain indicating the nature of the reply of the British Government on this subject.

I am [etc.] CHARLES E. HUGHES

711.519/2

The Secretary of State to the Chargé in France (Whitehouse)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's circular telegram of June 12, 1923, 3 P. M., and to its telegrams Nos. 228, 229, 232 and 235, dated June 12, 1923, 6 P. M., June 12, 1923, 7 P. M., June 15, 1923, 7 P. M.,[32] and June 16, 1923, 6 P. M.,[32] respectively, and to your telegram No. 300, dated June 28, 1923, noon, concerning the proposal for a treaty to be concluded between the United States and France with respect to the enforcement of prohibition on French vessels within American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American Embassy at Lon-

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[32] Not printed.

don dealing with the matter.[33] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[33a]

You are instructed to forward complete information concerning the practice followed by the French and Spanish authorities under Article 8 of the Treaty of December 27, 1774, concluded between France and Spain, and referred to on page four of the enclosed instruction, whereby French and Spanish customs authorities are permitted to seize, up to a distance of two leagues from the coast, French and Spanish ships carrying forbidden goods.

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding French laws that deal with the extent of territorial jurisdiction claimed by France:

"France admits the three-mile zone for fisheries' control, but her customs and quarantine zone extends two myriameters (about twelve miles). She regulates the admission and sojourn of foreign vessels in war time within six miles and adopts a similar boundary for the enforcement of her neutrality laws."

The foot-note cites the following authorities in support of this statement:

"See Crocker, *op. cit.*, p. 527; 18 Hertslet, *Commercial Treaties* (1893) 393.

"13 Béquet, *Répertoire du Droit Administratif* (1896) 409–410; Crocker, *op. cit.*, p. 523; Racouillat, *Des Diverses Utilisations des Eaux Territorials Neutres* (1907) 38.

"See *Journal officiel de la République Française*, June 14, 1913, 5097 in Crocker, *op. cit.*, p. 531. The limit was increased from three miles. Naval War College Topics, *op. cit.* (1914) p. 52.

"See J. A. Hall, *The Law of Naval Warfare* (1921) 129."

You will submit a report stating whether the French authorities cited support the statement in the text. You will also set forth any additional French laws, treaties, agreements or regulations that you consider of interest in this relation.

Reference is made to the following extract from the speech of Lord Curzon in the House of Lords on June 28, 1923, regarding instructions sent to the British Ambassador at Washington:

"At the same time we instructed our Ambassador to place himself in communication with his French, Spanish, Italian, Danish, Dutch, Swedish, and Norwegian colleagues, with a view to ascertaining what action they were taking. Although it was not found possible to

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[33] *Supra.*

[33a] *Ante*, pp. 163 and 165.

arrange for concerted representations—some of the other nations, notably the French, having already lodged a protest on their own account, on grounds similar to those advanced by us—all the Governments mentioned have since made representations."

You are instructed to submit a report setting forth any information concerning the views held by French officials on this subject which may come to your knowledge.

Similar instructions have been addressed to the American Embassies at Rome, Madrid, Brussels, and the American Legations at Stockholm, Christiania, Copenhagen, the Hague and Lisbon, as protests have been received from these Governments.

I am [etc.] CHARLES E. HUGHES

711.529/9a

The Secretary of State to the Ambassador in Spain (Moore)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's telegram No. 26 dated June 9, 1923, 3 P.M., and subsequent communications, concerning the proposal for a treaty to be concluded between the United States and Spain with respect to the enforcement of prohibition on Spanish vessels within American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American Embassy at London dealing with the matter.[34] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[35]

You are instructed to forward complete information concerning the practice followed by the French and Spanish authorities under Article 8 of the Treaty of December 27, 1774, concluded between France and Spain, and referred to on page four of the enclosed instruction, whereby French and Spanish customs authorities are permitted to seize, up to a distance of two leagues from the coast, French and Spanish ships carrying forbidden goods.

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding Spanish laws that deal with the extent of territorial jurisdiction claimed by Spain:

"Spain has sought to control fisheries within six miles, but actually enforces her laws only three miles out. Her laws against contra-

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[34] *Ante*, p. 172.
[35] *Ante*, pp. 163 and 165.

band trade and fraud apply to foreign ships, even when not destined for a Spanish port, two leagues out. Her neutral zone was set at six miles but was later changed to three."

The foot-note cites the following authorities in support of this statement:

"See Fulton, *op. cit.*, p. 667.
"56 *Coleccion legislativa de España* (1853) 194, art. 17, par. 10;[35a] see Crocker, *op. cit.*, p. 624.
"See Crocker, *op. cit.*, p. 530; Naval War College Topics, *op. cit.* (1913) p. 24.
"See J. A. Hall, *op. cit.*, p. 130."

[Here follows, *mutatis mutandis*, the same text as in instructions to the Chargé in France, September 10, 1923, beginning with "You will submit," printed on pages 180–181.]

I am [etc.] CHARLES E. HUGHES

711.559/3

The Secretary of State to the Ambassador in Belgium (Fletcher)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's circular telegram dated June 12, 1923, 3 P.M., forwarded from the American Embassy at Paris, concerning the proposal for a treaty to be concluded between the United States and Belgium with respect to the enforcement of prohibition on Belgian vessels within American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American Embassy at London dealing with the matter.[36] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[37]

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding Belgian laws that deal with the extent of territorial jurisdiction claimed by Belgium:

"Belgium has a customs zone of six miles and a fisheries zone of three geographic miles."

The foot-note cites the following authorities in support of this statement:

[35a] See memorandum by the second secretary of the Embassy in Spain, p. 227.
[36] *Ante*, p. 172.
[37] *Ante*, pp. 163 and 165.

"*Codes des Contributions directes douanes et accises de la Belgique en vigueur* [*au*] *1er Aout* (1852) p. 621, in Crocker, *op. cit.*, p. 511.
"See 19 Hertslet, *op. cit.* (1895) p. 115; Crocker, *op. cit.*, p. 512."

[Here follows, *mutatis mutandis*, the same text as in instructions to the Chargé in France, September 10, 1923, beginning with "You will submit," printed on pages 180–181.]

I am [etc.] CHARLES E. HUGHES

711.569/3

The Secretary of State to the Minister in the Netherlands (*Tobin*)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's circular telegram dated June 12, 1923, 3 P. M., forwarded from the American Embassy at Paris, and to subsequent communications concerning the proposal for a treaty to be concluded between the United States and the Netherlands with respect to the enforcement of prohibition on Dutch vessels within American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American Embassy at London dealing with the matter.[37a] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[37b]

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding Dutch laws that deal with the extent of territorial jurisdiction claimed by the Netherlands:

The Netherlands in 1914 proclaimed a neutrality zone of three miles.

The foot-note cites the following authorities in support of this statement:

"See 108 *B. & F. State Papers*, *op. cit.* (1914) 827; Fulton, *op. cit.*, p. 658. In 1895 an official invitation was issued from The Hague suggesting a conference to establish the six-mile limit. See Crocker, *op. cit.*, p. 150, 606; 25 *Annuaire de L'Institut de Droit International* (1912) 376." (Fulton, *The Sovereignty of the Sea* (1911).)

[Here follows, *mutatis mutandis*, the same text as in instructions to the Chargé in France, September 10, 1923, beginning with "You will submit," printed on pages 180–181.]

I am]etc.[CHARLES E. HUGHES

[37a] *Ante*, p. 172.
[37b] *Ante*, pp. 163 and 165.

711.589/4

The Secretary of State to the Minister in Sweden (Bliss)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's circular telegram dated June 12, 1923, 3 P.M., forwarded from the American Embassy at Paris, concerning the proposal for a treaty to be concluded between the United States and Sweden with respect to the enforcement of prohibition on Swedish vessels within American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American Embassy at London dealing with the matter.[38] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[39]

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding Swedish laws that deal with the extent of territorial jurisdiction claimed by Sweden:

"Norway and Sweden have always claimed four miles."

The foot-note cites the following authorities in support of this statement:

"See full discussion in Fulton, *op. cit.*, pp. 669–680; *Territorial Waters*, *op. cit.*, pp. 16 *et seq.;* Naval War College Topics, *op. cit.* (1918) p. 153. During the war Norway succumbed to British pressure and contracted her neutrality zone to three miles. Naval War College Topics, *op. cit.* (1918) p. 118." (Fulton, *The Sovereignty of the Sea* (1911).)

[Here follows, *mutatis mutandis*, the same text as in instructions to the Chargé in France, September 10, 1923, beginning with "You will submit," printed on pages 180–181.]

I am [etc.] CHARLES E. HUGHES

711.659/3

The Secretary of State to the Ambassador in Italy (Child)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's circular telegram dated June 12, 1923, 3 P.M., forwarded from the American Embassy at Paris, and to subsequent communications concerning the proposal for a treaty to be concluded between the United States and Italy with respect to the enforcement of prohibition on Italian vessels within

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[38] *Ante*, p. 172.
[39] *Ante*, pp. 163 and 165.

American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American Embassy at London dealing with the matter.[40] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[41]

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding Italian laws that deal with the extent of territorial jurisdiction claimed by Italy:

"Italy requires customs manifests to be shown to her officers anywhere within ten kilometers (about six miles). The Court of Cassation in 1885 held that her territorial waters extend four or five miles. Her neutrality laws are enforced within a zone of six and her navigation laws within ten nautical miles."

The foot-note cites the following authorities in support of this statement:

"See *Territorial Waters*, an Extract from the Fifteenth Annual Report of the Association for the Reform and Codification of the Law of Nations (1893) 84.

"See 14 *Journal du Droit International Privé* (1887) 241; Crocker, *op. cit.*, p. 598.

"See *Gazetta Officiale* [*sic*], August 16, 1914, Act No. 282, Royal Decree, No. 798 [41a]; J. A. Hall, *op. cit.*, p. 130. It was formerly set at cannon range. See 58 *B. & F. State Papers*, *op. cit.*, p. 307; Crocker, *op. cit.*, p. 530.

"See *Gazetta Officiale*, 27 Juin 1912, No. 11; Crocker, *op. cit.*, p. 603; Naval War College Topics, *op. cit.* (1913) p. 24."

[Here follows, *mutatis mutandis*, the same text as in instructions to the Chargé in France, September 10, 1923, beginning with "You will submit," printed on pages 180–181.]

I am [etc.] CHARLES E. HUGHES

711.599/3

The Secretary of State to the Minister in Denmark (Prince)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's circular telegram dated June 12, 1923, 3 P.M., forwarded from the American Embassy at Paris,

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[40] *Ante*, p. 172.
[41] *Ante*, pp. 163 and 165.
[41a] Reference apparently incorrect; see despatch no. 794, Oct. 13, 1923, from the Chargé in Italy, p. 195.

and to subsequent communications concerning the proposal for a treaty to be concluded between the United States and Denmark with respect to the enforcement of prohibition on Danish vessels within American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American Embassy at London dealing with the matter.[42] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[43]

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding Danish laws that deal with the extent of territorial jurisdiction claimed by Denmark:

"Denmark in 1912 proclaimed a neutrality zone of four miles."

The foot-note cites the following authorities in support of this statement:

"See Naval War College Topics, *op. cit.* (1913) p. 24. Denmark's fishery zone extends four miles against Norway and Sweden and three miles against other nations. See Fulton, *op. cit.*, p. 655; 21 Hertslet, *op. cit.* (1901) p. 355." (Fulton, *The Sovereignty of the Sea* (1911).)

[Here follows, *mutatis mutandis*, the same text as in instructions to the Chargé in France, September 10, 1923, beginning with "You will submit," printed on pages 180–181.]

I am [etc.] CHARLES E. HUGHES

711.539/2

The Secretary of State to the Chargé in Portugal (Carroll)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's circular telegram dated June 12, 1923, 3 P. M., forwarded from the American Embassy at Paris, and to subsequent communications concerning the proposal for a treaty to be concluded between the United States and Portugal with respect to the enforcement of prohibition on Portuguese vessels within American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American

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[42] *Ante*, p. 172.
[43] *Ante*, pp. 163 and 165.

Embassy at London dealing with the matter.[44] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[45]

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding Portuguese laws that deal with the extent of territorial jurisdiction claimed by Portugal:

Portugal in 1914 proclaimed a neutrality zone of six miles.

The foot-note cites the following authorities in support of this statement:

"See Naval War College Topics, *op. cit.* (1913) p. 24; Crocker, *op. cit.*, p. 530. Her revenue laws have a similar extension. Under protest she set her fishery zone at three miles. See Fulton, *op. cit.*, p. 667; Crocker, *op. cit.*, p. 619; 102 *B. & F. State Papers*, *op. cit.* (1908–9) p. 788." (Fulton, *The Sovereignty of the Sea* (1911).)

[Here follows, *mutatis mutandis*, the same text as in instructions to the Chargé in France, September 10, 1923, beginning with "You will submit," printed on pages 180–181.]

I am [etc.] CHARLES E. HUGHES

711.579/3

The Secretary of State to the Minister in Norway (Swenson)

WASHINGTON, *September 10, 1923.*

SIR: Referring to the Department's circular telegram dated June 12, 1923, 3 P.M., forwarded from the American Embassy at Paris, concerning the proposal for a treaty to be concluded between the United States and Norway with respect to the enforcement of prohibition on Norwegian vessels within American territorial waters and measures for stopping liquor smuggling, the Department encloses for your information a copy of an instruction, dated August 25, 1923, addressed to the American Embassy at London dealing with the matter.[44] Copies of the notes exchanged with the British Embassy concerning the *Henry L. Marshall* case referred to on page seven of the enclosed instruction are forwarded herewith for your information.[45]

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[44] *Ante*, p. 172.
[45] *Ante*, pp. 163 and 165.

You will observe that the extract from the *Columbia Law Review* quoted in the enclosed instruction contains the following statement regarding Norwegian laws that deal with the extent of territorial jurisdiction claimed by Norway:

"Norway and Sweden have always claimed four miles."

The foot-note cites the following authorities in support of this statement:

> "See full discussion in Fulton, *op. cit.*, pp. 669–680; *Territorial Waters*, *op. cit.*, pp. 16 *et seq.*; Naval War College Topics, *op. cit.* (1918) p. 153. During the war Norway succumbed to British pressure and contracted her neutrality zone to three miles. Naval War College Topics, *op. cit.* (1918) p. 118." (Fulton, *The Sovereignty of the Sea* (1911).)

[Here follows, *mutatis mutandis*, the same text as in instructions to the Chargé in France, September 10, 1923, beginning with "You will submit," printed on pages 180–181.]

I am [etc.] CHARLES E. HUGHES

711.419/32

The British Chargé (Chilton) to the Secretary of State

No. 797 WASHINGTON, *September 17, 1923.*

SIR: With reference to the *note verbale* which the Secretary of State addressed to me on July 19th last,[46] I have the honour to inform you, by instruction of His Majesty's Principal Secretary of State for Foreign Affairs, that Lord Curzon has had under careful consideration, in consultation with the other departments of His Majesty's Government concerned, Mr. Hughes' proposals for an extension of territorial jurisdiction in connection with the liquor traffic from the ordinary three mile limit of territorial waters to a distance of twelve miles from the coast, as embodied in the draft treaty handed to me by the Secretary of State on June 11th last.

The object of the United States Government in making these proposals is to secure the right to search and arrest ships from which spirituous liquors are sold just outside the present limit of territorial jurisdiction. The extent of this traffic seems, however, to His Majesty's Government to have been exaggerated, judging from the following statement published by Mr. Haynes, the United States Prohibition Commissioner in the *New York Times* of July 18th last.

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[46] See telegram no. 193, July 20, to the Chargé in Great Britain, p. 168.

"The moonshine-still is the bootlegger's chief source of supply. From what other place can he get his liquor in quantity? Surely not from the rigidly controlled bonded warehouses—they are eliminated at once. As to smuggled liquor, some it is true is brought into the country, but not one-tenth as much as the illegal traffic would have us believe.

"When reports of huge smuggling operations are circulated it should be remembered that the illicit liquor interests are conducting a great and elaborate propaganda campaign to discredit law enforcement and that the spreading of such reports is part and parcel of that campaign. No bootlegger, of course, is willing to admit that he can obtain only adulterated moonshine. Hence, fanciful tales of the wet wave sweeping in on our coasts and other related falsehoods pass from mouth to mouth to hide the real and dangerous origin of what the bootlegger has to sell".

In face of this authoritative pronouncement Lord Curzon feels additional hesitation in accepting proposals which, with all due respect to Mr. Hughes, cannot, in Lord Curzon's opinion, fail to weaken the authority of the general rule of international law, whereby three miles is regarded as the limit of territorial jurisdiction. Moreover, the Atlantic coast line of the United States, except the small part between Portland (Maine) and the Bay of Fundy, is so low that it is not as a rule visible twelve miles out at sea; the difficulty of deciding the exact position of the proposed new limit would in consequence be much increased, and there would be a constant risk of disputes arising between the two countries whenever a British ship was boarded or arrested by the United States preventive service, on or near the new line. In this connection Lord Curzon would observe that the ancient British Hovering Acts were modified in 1876 to bring them into harmony with the principles of international law, and His Majesty's Government cannot admit that the municipal legislation of any country can override those principles.

No spirituous liquors are cleared direct from the United Kingdom to United States ports and so far as British subjects are concerned, there is no violation of any law, British or international, in the sale of such liquors on the high seas to purchasers of any nationality; therefore there is no obligation upon His Majesty's Government to interfere with the prosecution of a perfectly legitimate trade. Nevertheless the whole question has been carefully examined with an earnest desire to afford the United States Government any proper assistance in the difficulties which they are encountering in the enforcement of the Volstead Act. In this spirit legislation was considered with a view to prohibiting the export of spirituous liquors to destinations adjacent to the United States except under license or

to rendering illegal the discharge of such liquors at ports other than those to which they were originally consigned. It became apparent, however, that such legislation would necessitate and could indeed only be made effective by rationing supplies not merely to countries adjacent to the United States, but to all countries, for which purpose powers would be required similar to those exercised for the control of trade during the war. The United States Government will probably agree that His Majesty's Government could hardly be expected to revive such powers, seeing that the United States Government themselves (in March 1920) explained their inability to ratify the convention for the control of the arms traffic on the very ground that they were not prepared to revive the war regulations by which alone a private trade could be regulated.[47]

Assuming, however, that measures could be devised for stopping the export from the United Kingdom of spirituous liquors which might ultimately reach the United States and that all other countries were prepared to take similar action so that the traffic would not merely be diverted into other channels, His Majesty's Government would still feel great hesitation in proposing such measures to Parliament so long as British ships are prevented from carrying liquor under seal in transit through United States waters. As far as His Majesty's Government are aware, it has never been alleged that any liquor at all has made its way into the United States from the stores of British ships calling at United States ports, so that this restriction, besides constituting in effect an interference with the liberty of British ships on the high seas, appears to be entirely superfluous.

His Majesty's Government do not deny the strictly legal right of the United States or any other country to impose its jurisdiction on all ships whether national or foreign within its territorial waters. His Majesty's Government themselves claim that right and it is even the case that some of the provisions of the British Merchant Shipping Acts are such that ships visiting ports in the United Kingdom must comply with them before entering and after leaving the jurisdiction. These provisions, however, relate solely to the safety and welfare of the ship, crew and passengers. Similar provisions exist in the legislation of the United States and other countries and they are generally recognised as reasonable.

It is, however, equally well recognised that the circumstances of ships, travelling as they do from port to port in many different countries, are peculiar and that to subject them to all the different and

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[47] *Foreign Relations*, 1920, vol. I, p. 205.

often conflicting requirements of the various jurisdictions which they may enter, would create an impossible situation. Consequently, as a matter of international comity and practice, the maritime Powers refrain from imposing their jurisdiction on foreign ships except for the purposes stated above, namely the safety and welfare of the ships, crews and passengers. The principle was well stated in the despatch of 28th October, 1852 from Mr. Conrad, when Acting Secretary of State, to the United States minister at Madrid,[48] wherein he writes:

"You will state that this government does not question the right of every nation to prescribe the conditions on which the vessels of other nations may be admitted into her ports. That nevertheless those conditions ought not to conflict with the received usages which regulate the commercial intercourse between civilized nations. That those usages are well known and long established and no nation can disregard them without giving just cause of complaint to all other nations whose interests would be affected by their violation".

The United States Government have indeed given recent proof of their fidelity to the same principle, in exempting ships trading between the United States and Italy from the strict application of the Volstead Act, on the ground that Italian law requires the provision of a certain amount of liquor on such ships.

In informing you of the above I am directed to express the earnest hope that means may be found to modify the present application of the Volstead Act to British ships, and thus to remedy what is, in effect, an unwarrantable interference with the domestic concerns of British ships on the high seas.

I am to add that in view of the difficulties of the case His Majesty's Government could not agree to an extension of the three mile limit, even for a limited purpose, until the matter has been submitted to the Imperial Conference, which will meet within a few weeks in London.

I have [etc.] H. G. Chilton

711.569/6

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 107 The Hague, *October 3, 1923.*
[Received October 15.]

Sir: I have the honor to refer to the Department's unnumbered Instruction of September 10, 1923, enclosing a copy of an Instruc-

[48] H. Ex. Doc. 86 (33d Cong., 1st sess., serial no. 724), p. 22.

tion, dated August 25, 1923, addressed to the American Embassy at London, dealing with the question of the enforcement of the Eighteenth Amendment in American territorial waters. In the next to the last paragraph on page 2 of this Instruction, the Department directed me to submit a report setting forth any information concerning the views held by Dutch officials on this subject which might come to my knowledge.

Pursuant to the Department's request, I now have the honor to report that, on October 2d, I had a favorable opportunity to discuss the matter in question with Jonkheer van Karnebeek, Netherlands Minister for Foreign Affairs, who showed a most gratifying desire of coöperating with the United States Government. In reply to my inquiry, Mr. van Karnebeek declared that whilst he would not like to use any expressions which might be construed into an endorsement of the present Prohibition Law, widely divergent as it is from Dutch feelings and convictions on this subject, he had at the same time not the least hesitation in expressing an assurance that the Dutch Government looked with complete disfavor upon any project of using the Dutch flag for the purpose of covering smuggling operations into America. The Dutch Government, he continued, would never consent to its authority being used for the purpose of violating the domestic regulations of a friendly nation. He expressed the hope that a way might be found for relieving the disadvantages that the present law inflicted upon the Dutch commercial marine. He felt it to be a blow to Dutch marine interests that Dutch ships were no longer permitted to carry, even under seal, sufficient liquors for their passengers to use in neutral waters. He referred, he said, not merely to ships plying directly between Dutch and American ports, but to others which were obliged to touch at American ports as part of an extensive commerce to other countries. A large traffic, he asserted, was carried on by Holland in the export of beer to Central and South American countries. Under the present law, it was impossible for ships carrying such merchandise to make a call, in passing, at any American port, without the danger of having their cargo, destined for other countries, confiscated.

I asked Mr. van Karnebeek how far the Dutch Government's claim of marine jurisdiction extended, and he answered: "One league from the shore line."

I inquired of the Minister if he considered it likely that the Dutch Government, in return for relief from the inconveniences which he described, would be willing to enter into an agreement for the extension of the right of search to the twelve mile limit. He answered "Yes", and repeated his strong conviction that his Government would

readily coöperate in measures to prevent the abuse of the Dutch flag by smugglers.

As the Department is aware, questions of Dutch foreign policy are largely determined by Mr. van Karnebeek himself, and his views are therefore of the utmost importance in judging what stand the Netherlands Government will take on any important question. I shall not fail to inform the Department promptly of any new developments in the matter in question, and shall submit a report regarding the attitude of Dutch legal authorities toward the question of the three mile limit in the near future.

I have [etc.] RICHARD M. TOBIN

711.519/5

The Chargé in France (Whitehouse) to the Secretary of State

No. 3585 PARIS, *October 6, 1923.*
[Received October 20.]

SIR: I have the honor to acknowledge the receipt of your unnumbered Instruction of September 10, 1923, concerning the proposal for a treaty to be concluded between the United States and France with respect to the enforcement of prohibition on French vessels within American territorial waters and measures for stopping liquor smuggling. I am instructed to forward complete information concerning the practice followed by the French and Spanish authorities under Article 8 of the Treaty of December 27, 1774, concluded between France and Spain, whereby French and Spanish customs authorities are permitted to seize, up to a distance of two leagues from the coast, French and Spanish ships carrying forbidden goods.

In reply, I beg leave to refer the Department to the Law of 4 Germinal, Year II (March 24, 1794), and the law of March 27, 1817, copies and translations of which are transmitted herewith enclosed (Enclosures Nos. 1, 2, 3 and 4).[51] It will be seen that Article 3 of the first law quoted above states that the captain of a ship arriving within four leagues of the shore will deliver when required a copy of the manifest to the officer in charge who boards his ship. Article 7 of the same law permits customs vessels to visit vessels of less than one hundred tons within four leagues of the shores of France. If contraband merchandise is found on board, the cargo and vessel are confiscated, with a fine of £500 against the captain of the vessel.

Article 13 of the law of March 27, 1817, provides that vessels may be searched within two myriameters, that is to say, four leagues,

[51] Not printed.

from the coast. In discussing the question of the practice followed by the French and Spanish authorities under the Treaty above referred to, I have learned from the French authorities that the whole spirit and tendency of French maritime law is to insist upon the right of French customs vessels to visit and search vessels for contraband up to a distance of four leagues or two myriameters.

In connection with the French authorities referred to in the Department's Instruction under reply, I have the honor to state that the reference: 13 Béquet, *Répertoire du Droit Administratif* (1896) 409–410," cited in the footnote referring to the extract from the *Columbia Law Review* quoted by the Department, contains an excerpt from the law of March 27, 1817 (transmitted with this despatch as Enclosures Nos. 3 and 4). Article 13, as already stated above, provides that vessels may be searched within two myriameters, that is to say, four leagues, from the coast.

There is also transmitted copy and translation of the text contained on page 38 of "Racouillat, *Des Diverses Utilisations des Eaux Territorials Neutres* (1907)" (Enclosures Nos. 5 and 6). [52] It will be seen that this reference states that "other states" accept in principle the three-mile limit, but extend it for customs and fisheries control. Reference is again made to the law of 4 Germinal, Year II, in which two myriameters (about twelve miles) are fixed as the limit of French territorial waters. A resolution of the Institute of International Law, made in its session at Paris in 1894, is then quoted, in which it is stated that a bordering neutral state has the right to extend its territorial waters to six marine miles from shore.

There is also transmitted herewith enclosed copy of an excerpt from the *Journal Officiel de la République Française* of June 14, 1913, page 5097 (Enclosure No. 7).[52] This contains a letter addressed by the Minister of Marine to the President of the Republic and a decree dated July 19, 1909, ruling the conditions in time of war of entry and sojourn of vessels other than French warships in French roadsteads and ports. This decree provides for a three-mile limit but extends it to six miles in the vicinity of bases of operation of the fleet, and names specifically the extent of the territorial waters outside of the naval bases of Cherbourg, Brest, Toulon and Bizerta.

With reference to the views held by French officials concerning the possibility of the French Government's entering into an agreement for the enforcement of prohibition on French vessels within American territorial waters, I beg to inform you that the view of the French authorities appears to be that while anxious to meet the desires of the United States Government as much as possible in

[52] Not printed.

regard to the searching of vessels suspected of transporting contraband goods, they would feel more in sympathy with the attitude of the United States Government if greater latitude were permitted French vessels in American ports carrying wines and liquors. It is pointed out as an example that at the present time a French vessel with a mixed cargo, part of which consists of wines and liquors destined for Central or South America, cannot enter an American port for the purpose of discharging such of its cargo as is destined for the United States. This, in the eyes of the French authorities, places needless difficulties in the way of French commerce and shipping.

It is also suggested by the French authorities that in the drawing up of a treaty along the lines above described, an endeavor should be made not to interfere with vessels of large tonnage. It is argued that the transportation of contraband is almost entirely carried on by vessels of smaller tonnage and therefore these alone should be subject to search outside the three-mile limit. To interfere in any way with larger vessels would inconvenience French shipping and would therefore arouse considerable opposition in France. It is also pointed out, as an example of the way in which such a treaty might operate, that all American vessels passing through the Channel to ports to the east of France might pass sufficiently close to the French coast to make them liable to be boarded and searched by the French authorities under the articles of the treaty. Such search at sea, if consistently carried out, might prove seriously inconvenient to American shipping bound for Central European ports.

I have [etc.] SHELDON WHITEHOUSE

711.659/6

The Chargé in Italy (Gunther) to the Secretary of State

No. 794 ROME, *October 13, 1923.*
[Received October 30.]

SIR: Referring to the Department's unnumbered instruction of September 10, 1923, file 711.659/3, in which the Embassy is instructed to submit a report stating whether the following Italian authorities:

"*Gazzetta Ufficiale*, August 16, 1914, Act No. 282, Royal Decree No. 7.
"*Gazzetta Ufficiale*, 27 June 1912, No. 151."

support the following statement:

"Italy requires customs manifests to be shown to her officers anywhere within ten kilometers (about six miles). The Court of Cassation in 1885 held that her territorial waters extend four or five miles. Her neutrality laws are enforced within a zone of six and her navigation laws within ten nautical miles."

and in which the Embassy is instructed to set forth any additional Italian laws, treaties, agreements or regulations that may be considered of interest, I have the honor to report, after consultation with an Italian lawyer in whose ability the Embassy has confidence, as follows:

It is necessary to discriminate between the extent of territorial jurisdiction for (1) customs purposes and (2) for purposes of protecting the safety and sovereignty of the nation.

(1) For customs purposes Italy claims that manifests must be shown to Italian officers at any point in a zone of 10 kilometers distant from the shore line. This distance of ten kilometers is calculated as provided in the fundamental customs law in force (Law of January 20, 1896, No. 20.).

(2) For purposes of protection to the national safety and sovereignty, Italy claims, at least in theory, a jurisdiction in accordance with the Hague Convention of October 18, 1907.[53] This Convention has not yet been ratified by Italy but has been actually applied. It is to be observed that in all Italian decrees and laws relating to the subject matter of this Convention mention has been specifically made of the fact that Italy has not ratified it.

For the protection of her national safety and sovereignty Italy has taken the following special measures, in times of emergency as follows:

(*a*) War against Turkey.—The law of June 16, 1912, No. 612, published in the *Gazzetta Ufficiale* of June 27, 1912, No. 151, states that in some localities, to be established by special decree, Italy has the privilege of preventing the transit of vessels within ten sea miles (about eighteen and a half kilometers, each sea mile being equal to about 1 kilometer, 851 meters), with special rules for measuring this distance in front of bays, gulfs, etc., and provides that ships not submitting to this control may be fined, retained until payment of fine or, in special circumstances, delivered to the competent judicial authority.

(*b*) The Great War.—By the Decree-Law No. 798 published in the *Gazzetta Ufficiale* of August 10, 1914, No. 190, promulgated on the occasion of the Italian declaration of neutrality, Italy claimed the privilege of enforcing her laws of neutrality within a zone of six sea miles (about 11 kilometers, 110 meters) from the shore line.

Both of these laws (*a*) and (*b*), although not specifically repealed, have fallen into disuse since the particular situations which they were intended to meet have passed.

The Embassy is informed that the Court of Cassation has nothing to do with these matters, and the only sources of a positive character

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[53] See footnote 62, p. 211.

are the laws above indicated; that Act No. 282 mentioned in the Department's instruction does not exist in the collection of the *Gazzetta Ufficiale* of August, 1914, the last number of that month being No. 234.

The lawyer whom the Embassy has been consulting remarks that without doubt each nation has the right of providing for its defense and safety; that an ancient principle of international law determined this point as extending to the maximum reach of a cannon; that although this principle cannot now be considered an absolute and invariable one, yet the reach of a cannon has been considerably extended in recent years, so that a distance of ten sea miles for the purpose of enforcing neutrality laws cannot be deemed to be an unreasonable distance.

I have [etc.] F. M. Gunther

711.419/39a : Telegram

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

Washington, *October 22, 1923—5 p.m.*

295. [Paraphrase.] The Department has received a despatch from the Legation at The Hague which indicates a favorable attitude on the part of the Netherland Minister for Foreign Affairs towards an arrangement with this Government to permit the right of search within 12 miles off shore, and I am telegraphing today to the Legation to submit to the Government of the Netherlands the text of an agreement duplicating in substance the agreement proposed to Great Britain and communicated to you June 12, 1923, through Paris. [End paraphrase.]

There are, however, minor changes in Article I. The words "on board the same" three times appearing are omitted. The words "willful" and "willfully" contained in second paragraph are omitted with a view to simplifying the evidential requirements preliminary to search.

The first sentence of Article II is modified to read as follows:

"In case any article or articles the importation of which into the territories of either High Contracting Party is or are for any purpose prohibited by its laws, but which is or are listed as sea stores, or as cargo destined for a port foreign to either High Contracting Party, on board a private vessel of either High Contracting Party destined for a port of the other High Contracting Party is or are brought within the territorial waters of such other High Contracting Party, no penalty or forfeiture imposed by its laws shall be applicable thereto or shall attach in respect thereof, and such transit within the territorial waters of the United States shall be as now provided by law with respect to the transportation of intoxicating liquor through the Panama Canal, on condition, however, that upon

arrival of the vessel so destined within 12 geographical miles of the coasts of such High Contracting Party whose territorial waters are about to be entered, such article or articles may be placed under seal by the appropriate officer of that Party and shall be kept sealed continuously thereafter until the vessel enters and during the entire stay of the vessel within those waters, and no part of such article or articles shall, during that period, be removed from under seal for any purposes whatsoever and that no part of such article or articles shall at any time or place be unladen for delivery or consumption within the territory of the Party whose waters are entered as aforesaid."

[Paraphrase.] There is no further change in Article II. You will observe that the foregoing text does not indicate any change in substance of the draft which has already been submitted to Great Britain. We are seeking, however, to indicate more extensively and with greater precision that articles which are not designed for consumption in the United States may, while they are in the waters thereof, be free from any penalty or forfeiture according to the theory that is applied by the National Prohibition Act regarding liquors in transit through the Panama Canal; the Supreme Court laid stress on this fact in the case of the *Cunard Steamship Company* vs. *Mellon*. We are also seeking to make it clear that no part of any articles concerned shall be unladen under any circumstances for delivery or consumption within the territory of the United States. In this way the entrance of articles not for consumption in the United States is further safeguarded without disregard to any Constitutional requirement, and the restriction against unloading for consumption in the United States is both broadened and accentuated. It will be obvious to you that there is no thought of making possible the admission into American territory of any article for use therein in violation of the Eighteenth Amendment.

If you have reached the stage in your negotiations of considering the text, these changes should be made in any text which you propose to the Foreign Office.

The Department will keep you informed of developments at The Hague. [End paraphrase.]

HUGHES

711.569/6 : Telegram

The Secretary of State to the Minister in the Netherlands (Tobin)

[Paraphrase]

WASHINGTON, *October 22, 1923—5 p.m.*

52. Your despatch no. 107, October 3.

The readiness of the Foreign Minister to cooperate to which you refer in the next to the last paragraph of your despatch is deemed to be of the utmost importance. The Department's circular telegram to Paris, June 12, reflects the policy of this Government; the Department appreciates your part in making it clear to Van Karnebeek. In view of your report you will submit forthwith to the Government of the Netherlands the following articles as the basis for a convention:[54]

"ARTICLE I. The High Contracting Parties, without attempting to extend as between themselves the limits of their respective territorial waters adjacent to the high seas, agree that the authorities of either High Contracting Party may, within the distance of 12 geographical miles from its coasts, board the private vessels of the other and make inquiry of the masters thereof as to whether such vessels or the person or persons controlling them are engaged in any attempt, either with or without the cooperation of other vessels or persons to violate the laws of the High Contracting Party making the inquiry, and prohibiting or regulating the unlading near or importation into its territories of any articles.

An officer of one High Contracting Party boarding a private vessel of the other may examine the manifest of the vessel and make inquiry of the master with respect to the cargo and destination thereof. If such officer has reason to believe from the statements of the master or from documents exhibited by him or otherwise, that the vessel or the person or persons controlling it, either with or without the cooperation of other vessels or persons, is or are engaged in the commission of acts which constitute a violation of the laws of the State of which such boarding officer is an official, with respect to the unlading or importation of any article or articles, he shall impart his belief to the master of the vessel, and thereupon may with the aid of the master, institute a search of the vessel and an examination of any articles on board. The search shall be conducted with the courtesy and consideration which ought to be observed between friendly nations. If there is reasonable cause for belief that the vessel or the person or persons controlling it is or are engaged, with or without the cooperation of other vessels or persons, in the commission of acts which constitute a violation of the laws of the State whose officer has conducted the search, forbidding or regulating the unlading near, or importation into its territories of any article or articles, the vessel, cargo and the person or persons controlling it or them may be seized and brought in for an adjudication, and subjected to the imposition of the penalties established by law by the Party whose laws and regulations are found to have been violated.

ARTICLE II. In case any article or articles the importation of which into the territories of either High Contracting Party is or are for any purpose prohibited by its laws, but which is or are listed as sea stores, or as cargo destined for a port foreign to either High Contracting Party, on board a private vessel of either High Contracting Party destined for a port of the other High Contracting

[54] Quotation not paraphrased.

Party is or are brought within the territorial waters of such other High Contracting Party, no penalty or forfeiture imposed by its laws shall be applicable thereto or shall attach in respect thereof, and such transit within the territorial waters of the United States shall be as now provided by law with respect to the transportation of intoxicating liquor through the Panama Canal, on condition, however that upon arrival of the vessel so destined within 12 geographical miles of the coasts of such High Contracting Party whose territorial waters are about to be entered, such article or articles may be placed under seal by the appropriate officer of that Party and shall be kept sealed continuously thereafter until the vessel enters and during the entire stay of the vessel within those waters, and no part of such article or articles shall, during that period, be removed from under seal for any purposes whatsoever and that no part of such article or articles shall at any time or place be unladen for delivery or consumption within the territory of the Party whose waters are entered as aforesaid. Upon the departure of the vessel from such territorial waters destined for a foreign port, such article or articles under seal may be released therefrom either by an officer of the vessel or by an officer of the Party affixing the seal."

If the articles quoted are accepted, the Department will also communicate to you an appropriate preamble and a final article providing for the date of taking effect, the period of duration, and the termination of the convention.

The Department deems it important to repeat the point which appears to have been obscured in many quarters, that the Government of the United States in making the above proposal does not seek to extend or to ask the Netherland Government to extend the limits of territorial waters, but instead is seeking to supply a rule to govern the intercourse of the signatory States through the convention which has been proposed.

HUGHES

711.569/7

The Minister in the Netherlands (Tobin) to the Secretary of State

No. 127 THE HAGUE, *October 22, 1923.*
[Received November 6.]

SIR: Referring to the Department's unnumbered Instruction of September 10, 1923 (File 711.569/3), and in continuation of my despatch No. 107, of October 3, 1923 (see last paragraph), I now have the honor to submit herewith a report regarding the attitude of the Dutch authorities towards the question of the extent of territorial waters.

The extracts from the *Columbia Law Review* quoted at the end of page 1 and the beginning of page 2 of the Department's Instruction under acknowledgment are correct.

On August 4, 1914, the Netherlands Government issued a proclamation relative to the preservation of neutrality during the European War. Article 17 of this proclamation reads as follows:

"The territory of the State includes the coastal sea to a distance of three nautical miles of 60 to the degree of latitude measured from the low-water line.

"In the case of bays, this distance of 3 nautical miles shall be measured from a straight line drawn across the bay as near as possible to the entrance, at the first point where the mouth of the bay does not exceed 10 nautical miles of 60 to the degree of latitude."

On October 22, 1895, the Netherlands Minister for Foreign Affairs addressed a communication to the Dutch Ministers at Washington, Brussels, Berlin, Paris, London, Rome, Vienna, Lisbon, St. Petersburg, Madrid and Stockholm, instructing them to sound the Governments to which they were respectively accredited as to whether they would participate in a conference which should have as its object the establishing of a distance of 6 miles as the limit of territorial waters. It appears from the diplomatic correspondence published by the Dutch Government in 1899 (copy and translations enclosed)[55] that the Governments of the United States, Russia and Portugal replied favorably to the overtures of the Dutch diplomatic representatives.[56] The Spanish and Austrian Governments declared that they would await the decision of the great sea Powers regarding this matter, the Belgian Government gave a rather evasive answer, and

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[55] Ministerie van Buitenlandsche Zaken, *Diplomatieke Bescheiden Behoorende bij de Staatsbegrooting voor het dienstjaar, 1899,* Zitting, 1898–1899—2, 111[de] Hoofdstuk: Bijlage der Memorie van Toelichting (Ingezonden bij brief van 7 October 1898), No. 7.

[56] On Feb. 15, 1896, in note no. 30, the Secretary of State, Richard Olney, wrote to the Netherland Minister at Washington, G. von Weckherlin, as follows (Ms., Notes to the Netherland Legation, vol. 8, p. 359):

"Sir: In conformity with your recent oral request . . .

"This Government would not be indisposed should a sufficient number of maritime Powers concur in the proposition, to take part in an endeavor to reach an accord having the force and effect of international law as well as of conventional regulation, by which the territorial jurisdiction of a state, bounded by the high seas, should henceforth extend six nautical miles from low watermark; and at the same time providing that this six-mile limit shall also be that of the neutral maritime zone.

"I am unable, however, to express the views of this Government upon the subject more precisely at the present time in view of the important consideration to be given to the question of the effect of such a modification of existing international and conventional law upon the jurisdictional boundaries of adjacent states and the application of existing treaties, in respect to the doctrine of headlands and bays.

"I will scarcely observe to you that an extension of the headland doctrine by making territorial all bays situated within promontories twelve miles apart instead of six would affect bodies of water now deemed to be high seas and whose use is the subject of existing conventional stipulations.

"Accept [etc.] Richard Olney"

the Governments of Great Britain and Germany openly opposed the meeting of such a conference. In view of the opposition manifested by Great Britain and Germany, the Dutch Government did not press the question, although, throughout the diplomatic correspondence in this matter, the Dutch Foreign Office showed much interest and activity in pushing the idea of a six mile limit.

So far as can be ascertained, the Dutch Government has never recognized a distance of more than three miles as constituting the limit of its territorial waters. Dutch writers on international law do not throw much illumination on this subject.

Judge Loder, President of the Permanent Court of International Justice, whom I consulted recently regarding the question of the three mile limit, informed me that, although the Netherlands Government has always recognized the three mile limit, he personally can see no objection to an extension of this limit. Judge Loder declared that, as is generally known, the three mile limit was adopted before modern guns were devised. Three miles is no longer the limit of effective gun shot, and he therefore believes that the three mile limit could well be extended.

The manifest desire of the Netherlands Government to extend the three mile limit in 1895 and the views recently expressed by Mr. van Karnebeek and Judge Loder seem to constitute some grounds for believing that the Netherlands Government may be favorably disposed towards entering into an agreement with the United States for a reciprocal extension of the three mile limit for the purposes desired by the United States Government.

I have [etc.] RICHARD M. TOBIN

711.539/7

The Minister in Portugal (Dearing) to the Secretary of State

No. 555 LISBON, *24 October, 1923.*
[Received November 9.]

SIR: With reference to my despatch No. 551 of October 18, 1923,[56a] I have the honor to enclose to the Department herewith a copy of a letter I addressed to Doctor Mario Pinheiro Chagas on the 19th instant, and a copy of Doctor Chagas' reply.[56b]

With reference to the statement made in the *Columbia Law Review* that Portugal had established a neutrality zone of six miles, the

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[56a] Not printed.
[56b] Neither letter printed.

Department will note that Doctor Chagas (whom I regard as one of the best informed lawyers in Portugal) positively states that no proclamation nor declaration whatever providing for a neutrality zone of six miles was made by Portugal.

Doctor Chagas sends me, as additional information pertinent to the matter of Portuguese practice with regard to sea limits, a copy of Law No. 735, of July 10, 1917, stating in its second article that "the limits of such waters for fishing purposes is [*are*] determined, so far as foreign fishermen are concerned, by the limits adopted in the legislation in force in their respective countries upon the date of the promulgation of the present law."

This law bears out the statement made in my despatch under reference that the Portuguese practice with regard to maritime limits has been based upon reciprocity.

I have [etc.] FRED MORRIS DEARING

711.419/42

The British Chargé (Chilton) to the Secretary of State

No. 921 WASHINGTON, *October 29, 1923.*

SIR: In view of the press report from New York published in the London papers of the 27th instant that Great Britain has accepted in principle your proposal for establishing a twelve-mile limit for the purpose of extending the right of search, I am instructed by His Majesty's Principal Secretary of State for Foreign Affairs to inform you as follows.

The Imperial Conference have appointed a special committee to consider the question of prohibition and liquor smuggling through United States territorial waters. While His Majesty's Government are in entire agreement with the United States Government as to the undesirability of any alteration of the general rule whereby territorial waters extend to three miles only from low water mark, it is hoped that on the conclusion of the Imperial Conference's consideration of the circumstances now existing outside of United States territorial waters, His Majesty's Government will be in a position to make a definite proposal to the United States Government generally favourable to their interest in the suppression of the liquor traffic. As a matter of fact, however, the Committee have not yet reported to the Imperial Conference; and any statements such as those which have been telegraphed from New York are both inaccurate and premature.

I have [etc.] H. G. CHILTON

711.559/6

The Ambassador in Belgium (Fletcher) to the Secretary of State

No. 419

BRUSSELS, *November 5, 1923.*
[Received November 17.]

SIR: With reference to the Department's unnumbered instruction of September 10 last, in regard to the proposal for a treaty to be concluded between the United States and Belgium with respect to the enforcement of prohibition on Belgian vessels within American territorial waters and measures for stopping smuggling of liquor, I have the honor to report as follows:

The extract from the *Columbia Law Review* quoted in the Department's instruction regarding the extent of territorial jurisdiction claimed by Belgium seems to have been misconstrued. The six mile limit, or, more properly, the one myriameter (ten kilometer) limit, of the Belgian customs zone referred to does not extend beyond Belgian territory but rather from the Belgian frontier into Belgium. This limit has not been established to allow Belgian customs officials to exercise their right of visit but to prevent any person circulating in this zone from being in possession of new goods. It has likewise been established to prevent the erection within the zone in question of such buildings as might facilitate the smuggling of goods into Belgium.

The *Pandectes Belges*, "Douanes & Accises—Paragraph 1112", reads as follows:

"Measures taken by the legislator to prevent smuggling by forbidding transport and circulation of merchandise within the restricted area unless furnished with justifying documents . . . [57] Law of April 6, 1843, Articles 3, 4, 5 and 6. These laws would have been inefficacious if, at the same time, the storing of merchandise within the area in question had not been forbidden. In reality, buildings erected in the territory might serve for the concealment of the smuggled articles and might thus facilitate illegal enterprises designed to introduce merchandise into the country without paying the duties owing to the Treasury.

"Article 177 of the general law forbade any depôt within the customs line. According to Article 177, modified by the law of June 7, 1832, covering the creation of a single customs section, it is forbidden to have or to establish stores or depôts of merchandise within a distance of one myriameter (10 kilometers) from the furthest land frontier and a half myriameter (5 kilometers) on the coast border. This distance was to be very exactly indicated in order to meet the provisions of the law and a Royal Decree covering the delimitation of this territory was issued on March 4, 1851."

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[57] Omission indicated in the original despatch.

This Royal Decree of the 4th March 1851, which appeared in the *Moniteur Belge* of the 23rd March, 1851, describes "all the villages and places of Belgium where this custom limit has been established". The line runs almost parallel to the frontier, of course, within the territory of Belgium. It is, therefore, obvious that the extract of the *Columbia Law Review* contains a mistake as it compares the custom limit to the fisheries limit and gives the impression that both of these limits are an extension of the Belgian territory.

According to Belgian Laws and Treaties and all authors on Belgian Public Law, without exception, the only extension of the Belgian territory by legal enactment is the three-mile limit. The waters within these three miles are, therefore, considered as an extension of the Belgian territory and called "territorial waters". The greatest number of Belgian authors on Public Law state that this limit is calculated from the sea-shore at low-tide and extends to a distance of three miles, or about five kilometers. This limit has been accepted by Belgium in the Hague Convention of May 6, 1882 in regard to fisheries in the North Sea.[57a]

According to Paragraph 2 of this Convention, Belgian fishermen have the sole right of fishing in Belgian territorial waters, that is to say, within a limit of three miles along the Belgian coast. Paragraph 3 of this Convention states that the miles mentioned are geographical miles, (60 to a degree).

This Convention is embodied in the Belgian Law of August 19, 1891.

I have not discussed with officials of the Belgian Government the possibility of a treaty with the United States similar to that which is under discussion with England, as I have no doubt that if Great Britain and the United States are able to conclude a treaty on this subject which will give English ships the right to carry liquor under seal into our ports it will be very easy to conclude a similar treaty with Belgium, especially as few rum-runners will use Belgium as a base of operations, whereas there are legitimate shipping interests operating vessels to the United States.

I have [etc.] HENRY P. FLETCHER

711.519/5 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, *November 7, 1923—9 p.m.*

413. [Paraphrase.] Embassy's despatch no. 3585, October 6.

[57a] *British and Foreign State Papers*, 1881–1882, vol. LXXIII, p. 39.

From your statements on page 4 it is apparent that the French Government has failed to understand the precise nature of the proposal made by this Government which was set forth in the Department's circular telegram of June 12, 3 p.m.

In article II provision is made in substance that vessels whose cargoes are not destined for consumption in the United States may, while they are within the waters of the United States, be free from penalty or forfeiture in accordance with the theory applied by the National Prohibition Act regarding liquors in transit through the Panama Canal; in this way latitude is given to French vessels which are in American ports en route to Central America or South America with sealed cargoes of wines and liquors that are not under any circumstances to be unladen for either delivery or consumption in the territory of the United States. Under the proposed agreement there would be no interference with French vessels of any tonnage which are engaged in legitimate commerce and are bound for American ports. These vessels on coming not only within 12 miles but also within 3 miles of our coasts would be subject in any event to examination by American authorities, and would, it must be admitted, comply with the applicable laws of the United States. The agreement which has been proposed would bear only on those vessels which came not only within the 12 miles but which also hovered off the 3-mile limit to aid in the smuggling of prohibited articles into territory of the United States. Vessels of large tonnage approaching or entering American waters would, therefore, be subjected to no unusual interference.

The treaty has not been designed with the purpose of encouraging interference with vessels passing on customary voyages through waters that are adjacent to the territories of a contracting State, for example, those passing through the English Channel to ports east of France. As made apparent in the proposed text, it is not planned to obstruct the movements of a vessel which is passing in innocent voyage along the ocean coast whether it is within or without the 3-mile limit. We seek rather to make easier to stop any vessel which is hovering off a coast intending to introduce fraudulently articles which are prohibited within the adjacent territory. In order to leave no question about the matter, a change has been incorporated in article I which clarifies the point as noted below. To institute searches at sea of vessels which are in transit on commercial enterprises between other countries is not contemplated by us. In any discussions with the Foreign Office you will express the substance of the foregoing.

The following changes should be made in the text communicated to you in the Department's no. 229, June 12, should your negotia-

tion reach the stage of considering the text. These changes have also been submitted to Great Britain and to the Netherlands. [End paraphrase.]

Respecting Article I, the words "on board the same" three times appearing are omitted. Following the words contained in paragraph 1 "board the private vessels of the other" insert the words "which are hovering off said coasts". The words "willful" and "willfully" contained in second paragraph are omitted with a view to simplifying the evidential requirements preliminary to search.

The first sentence of Article II is modified to read as follows:

"In case any article or articles the importation of which into the territories of either High Contracting Party is or are for any purpose prohibited by its laws, but which is or are listed as sea stores, or as cargo destined for a port foreign to either High Contracting Party, on board a private vessel of either High Contracting Party destined for a port of the other High Contracting Party is or are brought within the territorial waters of such other High Contracting Party, no penalty or forfeiture imposed by its laws shall be applicable thereto or shall attach in respect thereof, and such transit within the territorial waters of the United States shall be as now provided by law with respect to the transportation of intoxicating liquor through the Panama Canal, on condition, however, that upon arrival of the vessel so destined within 12 geographical miles of the coasts of such High Contracting Party whose territorial waters are about to be entered, such article or articles may be placed under seal by the appropriate officer of that Party and shall be kept sealed continuously thereafter until the vessel enters and during the entire stay of the vessel within those waters, and no part of such article or articles shall, during that period, be removed from under seal for any purpose whatsoever and that no part of such article or articles shall at any time or place be unladen for delivery or consumption within the territory of the Party whose waters are entered as aforesaid."

[Paraphrase.] There is no further change in article II.

You will see that the foregoing text does not indicate any change in substance of the treaty draft already submitted to France. We are seeking, however, to indicate more extensively and with greater precision that articles which are not designed for consumption in the United States may, while they are in the waters thereof, be free from any penalty or forfeiture according to the theory that is applied by the National Prohibition Act regarding liquors in transit through the Panama Canal; the Supreme Court laid stress on this fact in the case of the *Cunard Steamship Company* vs. *Mellon*. We are also seeking to make it clear that no part of any articles concerned shall be unladen under any circumstances for delivery or consumption within the territory of the United States.

In this way the entrance of articles not for consumption in the United States is further safeguarded without disregard to any Constitutional requirement, and the restriction against unloading for consumption in the United States is both broadened and accentuated. It will be obvious to you that there is no thought of making possible the admission into American territory of any article for use therein in violation of the Eighteenth Amendment. [End paraphrase.]

HUGHES

711.419/50a : Telegram

The Secretary of State to the Ambassador in Great Britain (Harvey)[58]

WASHINGTON, *November 7, 1923—9 p.m.*

329. [Paraphrase.] Department's no. 295, October 22, 5 p.m. The French authorities have raised the point at Paris that vessels which pass through the English Channel to ports east of France might be subjected, under the proposed treaty, to embarrassing searches. As the proposed text of the treaty shows, this Government has no plan to obstruct the movements of any vessel in innocent voyage along either the ocean or channel coast whether within or without the three-mile limit. We seek rather to make easier the right to check the vessel which is hovering off a coast to introduce in fraudulent manner articles which are prohibited within the adjacent territory. In order to leave no question about the matter, a change has been incorporated in article I, which clarifies the point as noted below. To institute searches at sea of vessels which are in transit on commercial enterprises between other countries is not contemplated by this Government. [End paraphrase.]

Following the words contained in paragraph 1, article I, of text which you have, "board the private vessels of the other", insert the words "which are hovering off said coasts".

[Paraphrase.] You are instructed to submit the above change to the Foreign Office if you have already communicated to it the text of the draft as changed by Department's no. 295. Repeat this instruction to The Hague as Department's no. 54 as containing amendment of text in Department's no. 52, October 22, to the Minister in the Netherlands. [End paraphrase.]

HUGHES

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[58] See last paragraph for instructions to repeat to The Hague as no. 54.

841.01 Im 7/69 : Telegram

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

LONDON, *November 10, 1923—2 p.m.*
[Received November 12—6:50 p.m.]

503. The official summary of the work of the Imperial Conference now being circulated although not yet made a public document contains the following paragraphs.

"The conference after careful consideration of the policy which has been pursued was of the opinion that the European situation could only be lifted on the plane of a possible settlement by the cooperation of the United States of America and that if the scheme of common inquiry to be followed by common action were to break down the results would be inimical both to the peace and to the economic recovery of the world.

"It felt that in such an event it would be desirable for the British Government to consider very carefully the alternative of summoning a conference itself in order to examine the financial and the economic problem in its widest aspect.

"During the session of the conference the question of the regulation of the liquor traffic off the American coasts and of the measures to be taken to avoid a serious conflict either of public opinion or of official action was seriously debated. The conference arrived at the conclusion that while affirming and safeguarding as a cardinal feature of British policy the principle of the 3-mile limit it was yet both desirable and practicable to meet the American request for an extension of the right of search beyond this limit for the above purpose, and negotiations were at once opened with the United States Government for the conclusion of an experimental agreement with this object in view."

WHEELER

711.599/7

The Chargé in Denmark (Harriman) to the Secretary of State

No. 606 COPENHAGEN, *November 19, 1923.*
[Received December 3.]

SIR: With reference to the Department's unnumbered instruction, dated September 10, 1923, and to this Legation's despatch No. 572, of October 11th last,[59] in reply thereto, I have the honor to inform the Department that, according to advices received from Mr. K. Monrad-Hansen, Chief of the Legal Department of the Danish Foreign Office, the maritime territory of Denmark in olden times ex-

[59] Not found in Department files.

tended to four miles, and that in recent years this limit was still considered justified. However, in certain cases the three mile limit has been adopted. Also, during the late war this calculation formed the basis of Denmark's territorial jurisdiction as regards the right of neutrality.

For references to Danish authorities, who have expressed opinions on this subject, I have the honor to cite the following:

1. Matzen, "Den danske Statsforfatningsret" (1910) I, page 36 ff., and

2. Berlin, "Den danske Statsforfatningsret" (1918) I. page 84 ff.

Copies of the above-mentioned texts are unavailable at present, but an effort will be made to procure these, which same, if obtainable, will be forwarded as soon as possible.

I have also the honor to enclose, herewith attached, as of possible interest to the Department, a translation of a memorandum from Mr. Monrad-Hansen relative to the restrictions and regulations enacted by the Government of Denmark for the control of illicit liquor traffic.[60]

I have [etc.] OLIVER B. HARRIMAN

711.659/6

The Secretary of State to the Chargé in Italy (Gunther)

No. 429 WASHINGTON, *November 21, 1923.*

SIR: The Department has received your despatch No. 794 dated October 13, 1923, in which you report concerning certain Italian authorities that were cited in an article appearing in the *Columbia Law Review* regarding the extent of territorial jurisdiction claimed by Italy in respect to the enforcement of its customs and neutrality laws. You state that "it is necessary to discriminate between the extent of territorial jurisdiction for (1) customs purposes, and (2) for purposes of protecting the safety and sovereignty of the nation." You further state that "for purposes of protection to the national safety and sovereignty, Italy claims, at least in theory, a jurisdiction in accordance with the Hague Convention of October 18, 1907. This Convention has not yet been ratified by Italy but has been actually applied. It is to be observed that in all Italian decrees and laws relating to the subject matter of this Convention, mention has been specifically made of the fact that Italy has not ratified it."

A careful examination has been made of the Convention concluded between the several governments at The Hague on October 18, 1907, and it has not been possible to determine definitely to which

[60] Not printed.

treaty you refer as the basis of the position adopted by the Italian Government with respect to the extent of its territorial jurisdiction for the purposes of protection to the national safety and sovereignty.

It is possible that the Italian Government has interpreted The Hague Convention of October 18, 1907, concerning the Rights and Duties of Neutral Powers in Naval War [61] as granting the power to determine the extent of territorial jurisdiction, and has applied the interpretation to its territorial limits. However, as this Convention does not appear to contain any provision that might be susceptible to an interpretation of this nature, you are instructed to endeavor to ascertain the exact title of the Convention referred to in your despatch in this connection. You will submit a report stating the result of your endeavors in the matter.[62]

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

711.589/7

The Chargé in Sweden (Meyer) to the Secretary of State

No. 72 STOCKHOLM, *November 21, 1923.*
[Received December 15.]

SIR: With reference to the Department's unnumbered instruction of September 10, 1923, regarding the extent of territorial jurisdiction claimed by Sweden, I have the honor to submit herewith enclosed, in conformity with the first part of the said instruction, a memorandum [63] in which there is enumerated certain decrees regulations and a convention, all of which confirm the statement quoted in the instruction from the *Columbia Law Review*, i.e. "Norway and Sweden have always claimed 4 miles".

I beg leave to point out as relating to this subject the last paragraph of the memorandum in which is quoted Article 7 of the Treaty of Friendship, Commerce and Navigation between Sweden and Mexico, ratified the 28th of May, 1886, at Stockholm and the 1st of July, 1886, at Mexico, wherein is provided the mutual right of the signatory governments to enforce their customs regulations

[61] *Foreign Relations*, 1907, pt. 1, p. 1239.
[62] On Jan. 26, 1924, the Chargé reported that the lawyer whose investigations had been embodied in the Embassy's despatch of Oct. 13 was unable to answer the Department's inquiry and that all efforts to identify the convention in question had been unavailing (file no. 711.659/10).
[63] Not printed.

and patrol service against the introduction of contraband articles to a distance of approximately 10 miles from their shore line.[63a]

Additional information on this subject will be forwarded to the Department as it becomes available to the Legation.

I have [etc.] CORD MEYER

711.569/10 : Telegram

The Minister in the Netherlands (Tobin) to the Secretary of State

[Paraphrase]

THE HAGUE, *November 22, 1923—6 p.m.*
[Received 4:07 p.m.]

64. Department's no. 52, October 22, 5 p.m. This afternoon I had an interview with the Minister for Foreign Affairs over the proposed convention on the 12-mile limit. The Minister informed me that the Cabinet had considered the proposed convention and had decided unanimously to recommend its acceptance. Action by the Cabinet is delayed because of the uncertainty regarding the progress of the pending negotiations between the American and the British Governments on the same matter. The Minister asks for information on the status of these negotiations. He believes that the Government of the Netherlands will take action as soon as the definite and final result of the American and British negotiations is known. He has requested that the information requested be given to him at the earliest possible moment.

TOBIN

711.569/10 : Telegram

The Secretary of State to the Minister in the Netherlands (Tobin)

[Paraphrase]

WASHINGTON, *November 23, 1923—3 p.m.*

58. Your no. 64, November 22, 6 p.m. The Department is gratified to learn that the Cabinet has decided unanimously to recommend the acceptance of the proposed convention. You are informed confidentially that our negotiations with Great Britain are believed to be proceeding favorably; the Department will advise you promptly regarding the progress of those negotiations.

In your own negotiations with the Government of the Netherlands you will be sure that the change amending the text contained in the

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[63a] Treaty signed July 29, 1885; see *Sverges och Norges Traktater med Främmande Makter jämte andra dit hörande Handlingar Fjärde Delen 1878–1890*, Utgifven af Carl Sandgren (Stockholm, 1905), p. 414 (text of treaty, p. 418); and *British and Foreign State Papers*, 1884–1885, vol. LXXVI, p. 197.

Department's no. 52, October 22, (see Department's no. 34 [*54*], November 7, repeated to you from London [64]) is incorporated.

HUGHES

711.419/61

The British Chargé (Chilton) to the Secretary of State

No. 1005 WASHINGTON, *November 23, 1923.*

SIR: In my note to the Acting Secretary of State, No. 797, of September 17th, I had the honour to explain some of the serious difficulties felt by His Majesty's Government in agreeing to the proposals embodied in the draft treaty for the regulation of the liquor traffic which you handed to me on June 11th.

I informed Mr. Phillips in that note that various Departments of His Majesty's Government who would be concerned with the changes which such a treaty must necessarily bring about were engaged in exploring every avenue by which they might lend assistance to the Government of the United States in the obstacles they were encountering in the enforcement of the Volstead Act.[64a]

Further sympathetic consideration has been given to the whole matter in the meantime but I am instructed to state that the attention of His Majesty's Government has been called to an important judgment of the Supreme Court of the United States handed down on April 23rd [*30th*] last, which seems to raise an additional difficulty that must be overcome before a treaty can be drafted in final form. In delivering that judgment Mr. Justice [Van] Devanter said:—

"While the construction and application of the National Prohibition Act is the ultimate matter in controversy, the Act is so closely related to the eighteenth Amendment, to enforce which it was enacted, that a right understanding of it involves an examination and interpretation of the Amendment. The first section of the latter declares,

"SECTION 1. After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes is hereby prohibited."[65]

He then proceeded to show that the Volstead Act correctly carries out the intention of the eighteenth Amendment, and then that the proper interpretation of the Act is that no ship, domestic or foreign, can carry liquor in transit within United States territorial

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[64] See footnote 58, p. 208.
[64a] National Prohibition Act; 41 Stat. 305.
[65] 262 U.S. 121.

waters. That is to say, such carriage of liquor appears to be not merely illegal but unconstitutional.

Lord Curzon was glad to receive and has weighed with the greatest care the communications you have been good enough to make to him both through the late United States Ambassador in London and through me regarding the constitutionality of the proposed treaty, and he has not overlooked the announcement made to the Press on November 2nd by the President of the United States to the effect that, as Congress specifically exempted from the operation of the Act liquor in transit through the Panama Canal,[65a] it thereby recognised that the right of foreign ships to transport liquor in United States waters is not prohibited by the Constitution but merely by the Act, and that the Act can be modified by a treaty. In view, however, of the great importance of this point Lord Curzon would be glad to receive information as to whether the right to carry liquor through the Panama Canal has ever been challenged on constitutional grounds and confirmed in the United States Courts. It has been represented to him that in the absence of such confirmation the precedent set by the legislators in the Volstead Act can not be regarded as entirely conclusive.

Resolutions adopted at recent important gatherings in the United States of business men interested in the American Mercantile Marine give foundation for the belief that legal steps may be taken in the future to question the constitutional validity of the concession which the treaty proposes to grant to British ships trading with United States ports. Should that concession be so questioned and not confirmed by the Courts, His Majesty's Government would lose the privilege in return for which they are asked to make a very important concession in relation to the right of arrest and search.

As at present advised it appears to Lord Curzon impossible to proceed with the treaty or any similar arrangement until His Majesty's Government have been favoured with authoritative assurances on this point by the Government of the United States.

I have [etc.] H. G. Chilton

711.419/61

The Secretary of State to the British Chargé (Chilton)

Washington, *November 26, 1923.*

Sir: I have the honor to acknowledge the receipt of your note, No. 1005, of November 23, 1923, and I am gratified to observe the

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[65a] 41 Stat. (pt. 1) 322.

sympathetic consideration that His Majesty's Government is giving to the proposals embodied in the draft treaty.

It is hardly necessary to say that in these proposals there has been no intention to violate in any respect the provisions of the Eighteenth Amendment of the Federal Constitution. On the contrary, the purpose is to aid their enforcement.

In the case of the *Cunard Steamship Company, Ltd. et al.* v. *Mellon, Secretary of the Treasury, et al.* (decided April 30, 1923), to which you refer, the question of the validity of an Act of Congress, or a treaty, excepting from penalty or forfeiture intoxicating liquor carried as cargo or sealed stores not destined for delivery or consumption within the territory of the United States, but carried under seal while in transit through territorial waters, was not involved, and that decision cannot be regarded as determining that question. In that case it was held that Congress, acting within its authority, had actually imposed penalties upon such carriage, and an injunction restraining the officers of the Government from proceeding against the complaining steamship companies and their ships, under the Act of Congress as thus construed, was denied.

While the precise question raised in your note has not been decided, there are certain applicable principles which are deemed to be controlling. The Eighteenth Amendment provides:

> I. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.
> II. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

It is apparent that the first section provides no penalties and that these are left to appropriate legislation. As the Supreme Court of the United States has recognized, a constitutional provision "is self-executing only so far as it is susceptible of execution". (*Davis* v. *Burke*, 179 U. S. 399, 403). As no penalties or forfeitures are prescribed in the Eighteenth Amendment itself, and Congress is empowered to enforce that Amendment by appropriate legislation, it is manifest that to the sound discretion of Congress is confided the determination of what are appropriate penalties and forfeitures. In the judgment of this Government there is no reason to doubt that in the exercise of this authority Congress may consider all the pertinent circumstances and the best means of enforcing the constitutional provision, and may thus consider it entirely appropriate not to impose penalties or forfeitures with respect to intoxicating liquor which is not destined for consumption or delivery

within the United States but is simply carried in transit through territorial waters.

The authority which is thus deemed to be possessed by Congress has already been exercised with respect to the transit of intoxicating liquors through the Panama Canal. There is a special provision in the Volstead Act dealing with the Canal Zone which excepts "liquor in transit through the Panama Canal or on the Panama Railroad". It is true that the validity of this exception has not been the subject of precise adjudication, but it is believed to have been fully recognized by the Supreme Court in the decision which you have cited in your note. The Supreme Court there said:

"Much has been said at the bar and in the briefs about the Canal Zone exception, and various deductions are sought to be drawn from it respecting the applicability of the Act elsewhere. Of course the exception shows that Congress, for reasons appealing to its judgment, has refrained from attaching any penalty or forfeiture to the transportation of liquor while 'in transit through the Panama Canal or on the Panama Railroad'. Beyond this it has no bearing here, save as it serves to show that where in other provisions no exception is made in respect of merchant ships, either domestic or foreign, within the waters of the United States, none is intended.

"Examining the Act as a whole, we think it shows very plainly, first, that it is intended to be operative throughout the territorial limits of the United States, with the single exception stated in the Canal Zone provision; secondly, that it is not intended to apply to domestic vessels when outside the territorial waters of the United States, and, thirdly, that it is intended to apply to all merchant vessels, whether foreign or domestic, when within those waters, save as the Panama Canal Zone exception provides otherwise".[66]

It will be observed that the exception is not criticized nor is it said to lie beyond the power of Congress, but it is stated that the exception shows "that Congress, for reasons appealing to its judgment, has refrained from attaching any penalty or forfeiture" to the transportation described.

It is the view of this Government that Congress has the same authority to except from penalties or forfeitures intoxicating liquor in transit through territorial waters not destined for delivery or consumption within the United States that it has to except from penalty or forfeiture intoxicating liquor in transit through the Panama Canal. Moreover, if Congress made such an exception, it is manifest that there would be no penalty or forfeiture attaching to such transit.

It is also the view of this Government that as the Constitution does not deal with penalties or forfeitures, and these remain within the law-making power, this subject cannot be regarded as withdrawn

[66] 262 U.S. 128.

from the treaty-making power. The treaty-making power is deemed to be quite as broad in this respect as the legislative power. As was said by the Supreme Court of the United States in the case of *Missouri* v. *Holland*, 252 U. S. 416, 433:

"Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States. It is open to question whether the authority of the United States means more than the formal acts prescribed to make the convention. We do not mean to imply that there are no qualifications to the treaty-making power; but they must be ascertained in a different way. It is obvious that there may be matters of the sharpest exigency for the national well being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found".

You will not fail to observe that the part of the proposed treaty above mentioned relates only to exception from penalties and forfeitures in the particular circumstances described in the treaty and that the treaty as a whole is clearly intended to secure the better enforcement of the Eighteenth Amendment by facilitating measures to prevent the operations which have seriously interfered with that enforcement. The provisions with respect to arrest and search are to be considered in connection with the exception from penalty or forfeiture in case of liquors merely in transit. I have, therefore, no hesitation in saying that while this Government is clearly of the opinion that the proposed treaty would have constitutional validity, there would be no attempt on the part of this Government to insist upon the provisions as to arrest and search in opposition to the desire of His Majesty's Government to abrogate the treaty in case the proposed exception from penalty and forfeiture should either by final judicial decision or by Act of Congress become inoperative. Such abrogation would, of course, not be deemed to impair any rights possessed by this Government irrespective of the treaty.

Accept [etc.] CHARLES E. HUGHES

711.419/133

British Draft of a Treaty to Extend the Right of Search at Sea[67]

1. The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles measured

[67] Left with the Secretary of State by the British Chargé on Dec. 3, 1923.

from low water mark constitute the proper limits of territorial waters.

2. (1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavouring to import or have imported alcoholic beverages into the United States in violation of the laws in force in that country. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offence against the laws of the United States prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States than can be traversed in one hour by the vessel suspected of endeavouring to commit the offence. In cases however in which the liquor is intended to be conveyed to the United States by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

3. The United States agrees to allow British vessels voyaging to or from the ports or passing through the waters of the United States to have on board alcoholic liquors listed as sea stores or as cargo destined for a foreign port, provided that such liquor is kept under seal while within the jurisdiction of the United States.

4. Any claim by a British vessel for compensation on the ground that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by article 2 of this treaty or on the ground that it has not been given the benefit of article 3 shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Claims Commission established under the provisions of the Agreement for the Settlement of Outstanding Pecuniary Claims signed at Washington on August 18, 1910,[68] but

[68] *Foreign Relations*, 1911, p. 266.

the claim shall not, before submission to the Tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.

5. This treaty shall be subject to ratification and shall remain in force for a period of one year from the date of the exchange of ratifications.

Three months before the expiration of the said period of one year, either of the High Contracting Parties may give notice of its desire to propose modifications in the terms of the treaty.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the treaty shall lapse.

If no notice is given on either side of the desire to propose modifications, the treaty shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the treaty, and to the provision that if such modifications are not agreed upon before the close of the period of one year, the treaty shall lapse.

6. In the event of either of the High Contracting Parties being prevented by difficulties of a constitutional nature from giving full effect to the provisions of the present treaty, the said treaty shall automatically lapse.

711.569/11: Telegram

The Minister in the Netherlands (Tobin) to the Secretary of State

[Paraphrase]

THE HAGUE, *December 5, 1923—9 p.m.*
[Received December 6—10:50 a.m.]

66. I quote literally a letter in English I have received from Van Karnebeek, the Minister for Foreign Affairs, in which the Minister expresses his desire to point out informally certain alterations that might be made in the draft convention for a 12-mile limit proposed by the United States:[68a]

"A slight modification in the beginning of article II seems to be desirable in order to make the disposition applicable to transport of stores or cargo from the Netherlands to a Dutch colonial port as for instance Curaçao. Therefore, article II might be read as follows:

'In case the article or articles, the importation of which into the territories of one High Contracting Party, is or are for any purpose prohibited by its laws but which is or are listed as sea stores or as cargo destined for a port

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[68a] Quotation not paraphrased.

foreign to that High Contracting Party on board a private vessel of the other High Contracting Party destined for a port of the first High Contracting Party is or are brought [into] the territorial waters of that first High Contracting Party no penalty of forfeiture imposed by its laws shall be applicable thereto or shall attach in respect thereof and such transit shall be free, within the territorial waters and harbors of the first Contracting Party, on condition, however, etc.'

"It has further been pointed out to me, that it would be desirable to add the following words after the first sentence of article II, viz., 'unlading for transshipment to parts outside that territory, provided local rules have been complied with, being allowed.'

"And last it seems necessary to make quite clear that, as the wording of the convention would apply to all sorts of forbidden articles, the local authorities have the right to prescribe for instance certain measures as to explosives on board the vessels when being in a harbor. Therefore, a sentence might be usefully added 'the arrangements of this paragraph leaves intact the right of either party to order, within her territory or territorial waters, such measures concerning weapons, munitions, explosives, etc., on board, the putting in temporary safe keeping outside, the vessel included, as long as seems necessary.'

"I shall be glad to learn from you what reception your country's proposition has found in England and what probably will be the final wording of the convention to be concluded between your country and Great Britain.

"As I had the pleasure of telling you at our last meeting, that knowledge will be necessary to me, in order to be able to arrive at a definite decision. When I will have received your answer on this I hope to be in a position to write you officially about the above-mentioned alterations. Then also we will have to examine the form of the convention and we will have to consider for what term it is to be concluded."

The Minister repeated to me in a personal interview his assurance that the convention was in substance entirely agreeable to the Queen's Government, and I am very sure that only motives of policy are holding up the formal acceptance of the convention proposed.

The Minister would like to have the approval of the Government of the United States to a semi-official publication of the opening of negotiations to establish this maritime convention between the two countries. He has suggested the following: "Negotiations are in progress between the two countries with a view to settling the question of the transportation of alcohol on Dutch vessels in American territorial waters." The Minister requests the consent of the Government of the United States to the publication of this statement at the earliest date possible, and suggests December 8. He believes that it would be a wise move to make an inspired announcement in the press in order to anticipate any unauthorized announcement. Please cable reply.

TOBIN

711.419/133

The Secretary of State to the British Chargé (Chilton)[69]

AIDE-MÉMOIRE

The Secretary of State has carefully considered the draft proposed by His Majesty's Government of the treaty relating to alcoholic liquors. While the Government of the United States would have preferred that the distance for the purposes of search and seizure be more definitely delimited, it has been concluded, in view of the evident desire of the British Government to attain the object in view and of the importance of an early disposition of the matter, not to raise objections to the provisions contained in Articles 2, 4 and 5 of this draft, save to add the words, "its territories or possessions" after the words "United States" in Article 2.

There are, however, certain modifications in the other articles which are deemed to be important.

ARTICLE 1

In order to avoid a detailed statement with respect to ports, bays, harbors, et cetera, it is desired that in Article 1 after the words "three marine miles" there should be inserted the words "extending from the coast line outward and", so that Article 1 shall read as follows:

1. The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coast line outward and measured from low water mark constitute the proper limits of territorial waters.

ARTICLE 3

In the communication addressed by the Secretary of State to the British Chargé d'Affaires ad interim under date of November 26, 1923, the question of the constitutional validity of the proposed treaty was considered and it was pointed out that the law-making power of Congress and the treaty-making power were deemed to extend under the Eighteenth Amendment of the Federal Constitution to the determination of penalties or forfeitures and such exceptions thereto as might be deemed to be appropriate in view of all the pertinent circumstances and after consideration of the best means of enforcing the constitutional provision. It is important, however, that the provision of the treaty upon this point should clearly reflect this view and should relate to an exception from penalties and forfeitures.

[69] Handed to the British Chargé on Dec. 7.

To leave no room for question as to the intent, it is deemed advisable to refer to the existing exception in the case of transit through the Panama Canal. For these reasons the Government of the United States proposes that Article 3 of the proposed treaty shall be amended to read as follows:

3. No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors, or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States its territories or possessions on board British vessels voyaging to or from ports of the United States or its territories or possessions, or passing through the territorial waters thereof, and such transit through such waters shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

ARTICLE 6

While the Government of the United States would have preferred that the treaty should be subject to denouncement in the event under consideration, it is understood that His Majesty's Government strongly desire not to have a provision for denouncement but instead to have a provision for the automatic lapsing of the treaty in the event described. The Government of the United States will not oppose this view; but it is deemed that there should be a modification of the text of the proposed article in the following particulars. The expression "difficulties of a constitutional nature" is thought to be too indefinite. Such difficulties, if they arose, would be presented by a judicial decision upon the question and it is desired that the reference should be not to "constitutional difficulties" but to "judicial decision" which would prevent giving full effect to the provisions of the treaty. Moreover, there is also the question of legislation subsequently enacted by Congress and this contingency, while deemed to be remote, should be covered by the article. It is also desired to have a specific statement as to the full retention of rights on the termination of the treaty. For these reasons it is proposed that Article 6 shall read as follows:

6. In the event that either of the High Contracting Parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present treaty, the said treaty shall automatically lapse, and, on such lapse or whenever this treaty shall cease to be in force, each High Contracting Party shall enjoy all the rights which it would have possessed had this treaty not been concluded.

It is hoped that with these modifications the treaty as proposed may be concluded at an early date.

WASHINGTON.

711.569/11: Telegram

The Secretary of State to the Minister in the Netherlands (Tobin)

[Paraphrase]

WASHINGTON, *December 7, 1923—3 p.m.*

61. Your No. 66, December 5, 9 p.m. The Department has no objection to the announcement of the opening of negotiations but the form of the announcement as it has been suggested by the Minister for Foreign Affairs is not adequate. It goes no further than the question of the transportation of alcohol on Dutch vessels. The announcement should be broadened to state that

"Negotiations are in progress between the two countries with respect to the search and seizure of vessels carrying alcoholic liquors in violation of the laws of the United States Government and to the transit of alcoholic liquors on Dutch vessels through territorial waters of the United States when consisting of sealed stores or of cargo not destined for ports of the United States."

This announcement will be made for publication here on December 10. Please arrange for like publication at The Hague.

Negotiations with the British Government are being concluded, and you should postpone further proceedings at The Hague for a few days. You will be instructed as promptly as possible regarding this matter and also regarding the letter sent you from the Minister for Foreign Affairs. HUGHES

711.419/68b: Telegram

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

WASHINGTON, *December 8, 1923—1 p.m.*

370. British Chargé d'Affaires submitted on December 3 British draft liquor treaty. Yesterday I handed British Chargé memorandum of proposed modifications. It is apparent intent of Foreign Office to conclude the matter here, but if questions should arise in your interviews you may say that modifications I have suggested are deemed absolutely necessary. They do not affect substance. The principal modification seeks to make it clear that provision relating to transit through territorial waters of liquor and cargo under seal not destined for delivery or consumption within the United States is to constitute exception from penalty or forfeiture.

HUGHES

711.579/6

The Minister in Norway (Swenson) to the Secretary of State

No. 309 CHRISTIANIA, *December 11, 1923.*
[Received December 28.]

SIR: Referring to the Department's unnumbered instruction of September 10th last, relative to the extent of territorial jurisdiction claimed by Norway, I have the honor to enclose herewith a copy, together with translation, of a note from the Foreign Office, dated the 26th ultimo, giving authentic information on the subject.[70] The report of the Territorial Waters Commission transmitted in the note is forwarded herewith.[70a] This print contains an exhaustive treatment of the whole subject in question.

You will observe that the statement from the *Columbia Law Review* quoted in the Department's despatch is incorrect, no revision of the Norwegian rules governing territorial waters having been made during the World War.

The misapprehension may have arisen from the fact that during the war English war ships patrolled along the Norwegian coast up to the three mile limit. Norway was helpless in the matter and made no attempt to oppose this trespass by force. The Government protested, however, standing on its claim of a four mile limit.

The special regulations regarding certain specified territorial waters has [*have*] reference to some of the large bays and inclosed waters, such as the Varangerfjord and the Vestfjord.

Great Britain has not formally recognized the territorial rights claimed by Norway in these waters. In 1911 the British trawler *Lord Roberts* was arrested by the Norwegian patrol boat *Heimdal* for fishing in the Varangerfjord within the line Kibergnes–Grense–Jakobselv. The trawler was taken to Vardö and attached by order of the local court. The British Minister at Christiania thereupon addressed a note to the Norwegian Foreign Office stating that his Government could not recognize the Norwegian territorial claims as to the Varangerfjord and Vestfjord. The hope was expressed that the Norwegian Government would compensate the owners of the *Lord Roberts* for the loss they had sustained and remit or refund the fines demanded. In a later note the British Minister stated, however, that his Government would take no further steps in the matter before the Supreme Court of Norway had passed on the question, provided this was done within a reasonable time, in view of the fact that it was not customary to treat such a case as a

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[70] Not printed.

[70a] *Indstilling fra Sjøgrænsekommissionen av 1911, avgit 29 de februar 1912* (Kristiania, Grøndahl & Søns boktrykkeri, 1912), I: Almindelig del.

Diplomatic question until after the aggrieved parties had resorted to all the available judicial remedies.

The following year the captain of the *Lord Roberts* was adjudged by the circuit court to have fished unlawfully, holding that the entire Varangerfjord within the line Kibergnes–Jakobselv is to be considered as Norwegian territory. Captain Murlin appealed the case to the Supreme Court but requested that consideration of the same be postponed.

In 1916 he withdrew the appeal "without prejudice to the general question raised in this case".

On October 12th last the British trawler *Kanuck* was apprehended by the Norwegian authorities for operating within territorial waters. The incident was recently referred to in a speech delivered in the House of Commons. The British Government has made no representations, however, to the Norwegian Foreign Office.

It is not likely that any complaint will be lodged inasmuch as the location at the time of arrest has been ascertained to be within three miles from the basic line drawn from Kavringen to Harbaken. The basic lines drawn from headland to headland, and island to island along the extensive coast of Norway are, of course, accepted by foreign powers. The territorial limit is measured from such basic line. Exceptions are taken as stated above with reference to large bodies of water.

I have [etc.] LAURITS S. SWENSON

711.529/12

The Chargé in Spain (Johnson) to the Secretary of State

No. 271 MADRID, *March 4, 1924.*
[Received March 20.]

SIR: With reference to the Department's unnumbered Instruction of September 10th last directing this Embassy to report in detail concerning the extent of the territorial waters over which the Spanish Government claims jurisdiction in connection with contraband and fisheries and as regards its bearing upon the enforcement of prohibition on Spanish vessels within American territorial waters, I have the honor to report as follows:

As regards the first section of the Instruction under acknowledgment, a note was sent to the Spanish Foreign Office upon receipt of the Department's Instruction, setting forth the quotations mentioned by the Department, asking for a statement as to the present practice of the Spanish authorities, their opinion as to the fisheries control and requesting citation of the dates and numbers and any data which might assist the Embassy in looking up Spanish laws,

agreements, treaties or regulations dealing with the extent of Spanish jurisdiction over the territorial waters claimed by Spain. The matter was urged by personal representations at the Foreign Office and a written reminder was eventually sent in. The answer, herewith enclosed in copy and translation, was received at this Embassy on February 28th last. The Royal Decree of November 23rd, 1914 mentioned in the Foreign Office's aforesaid note, was transmitted to the Department in duplicate in this Embassy's despatch No. 185 of December 8th, 1914.[70b] Article 2 of this Decree gives the extent of three miles for Spanish neutral waters in conformity with the 13th Convention of the Hague,[70c] approved by the Decree.

As regards the second part of the Instruction under acknowledgment, there is enclosed herewith a memorandum written after a careful study of the matter by a member of the staff, and from which it appears that there is only one Spanish citation amongst the footnotes mentioned; this citation does support the statement in the text as far as the *de jure* side of it is concerned. There is, however, no mention of the neutral zone. The changing of the neutral zone to three miles was sanctioned by the Royal Decree of November 23rd, 1914 above mentioned, but the note from the Spanish Foreign Office explicitly states that such reduction was only provisional and until the termination of the war; this leads to the obvious inference that the jurisdiction over territorial waters claimed by Spain for all purposes, now extends to within six miles of the coast.

As regards the 3rd part of the Instruction under acknowledgment, it has not been possible up to the present to secure any statement or expression of opinion which would carry weight, from any responsible Spanish official on this subject; but the matter is being borne in mind and supplementary information on this point will be forwarded as soon as it is possible to get the concrete and practical views of one or more Spanish officials.

I have [etc.] HALLETT JOHNSON

[Enclosure 1—Translation]

The Spanish Foreign Office to the American Embassy

No. 22 NOTE VERBALE

With reference to the courteous notes No. 70 and 118 from the Embassy of the United States, the Ministry of State has the honor to inform the Embassy that, after the disappearance of the causes

[70b] Not printed.
[70c] *Foreign Relations*, 1907, pt. 2, p. 1239.

which brought about the Royal Decree of November 23rd, 1914[70d] in which Spain accepted provisionally until the termination of the war and only as regards neutrality, the reduction of the territorial waters to three miles—its jurisdiction over such waters extends to six miles, in conformity with that which has always been its extent.

MADRID, *February 28th, 1924.*

[Enclosure 2]

Memorandum by the Second Secretary of the Embassy in Spain (Riggs) on the Department's Unnumbered Instruction of September 10, 1923 in re the Extent of Territorial Waters Over Which Jurisdiction Is Claimed by Spain

There is no Spanish Authority cited in support of the statement in the text. The only Spanish citation is from Vol. 56 of the "Coleccion Legislativa de Espana", of the year 1852, page 194, article 18, paragraph 10, of which copy and translation are attached and which is an extract from the Spanish Royal Decree of June 20th, 1852, countersigned by Juan Bravo Murillo, Minister of Hacienda,

"ordering the enforcement, with various changes, of the bill-of-law concerning the jurisdiction of the fiscal and revenue authorities and the repression of contraband and fraud, which has been approved by the Senate."

It should be noted that the data given in the Department's abovementioned Instruction concerning the year and the Article, are erroneous.

The Spanish of the above citation is as follows:

"ART. 18. Se incurre en delito de contrabando . . .[71]

SEC. 10. Por andar con buque nacional o extranjero de porte menor que el permitido por los reglamentos e instrucciones, conduciendo generos prohibidos o procedentes del extranjero en puerto no habilitado, o en bahia, cala o ensenada de las costas espanolas, o por bordear estos sitios dentro de la zona de dos leguas, o sean seis millas que se halla senalada, aun cuando lleve su carga consignada para puerto extranjero, a menos que no sea por arribada forzosa en los casos de infortunio de mar, persecucion de enemigos o piratas, o averia que inhabilite el buque para continuar su navegacion."

and the translation is as follows:

"ART. 18. The crime of contraband is constituted by . . .[71]

SEC. 10. Running a national or foreign vessel of smaller tonnage than permitted by the regulations or instructions, carrying

[70d] *Boletín de la Revista General de Legislación y Jurisprudencia* . . . , Tomo 156, 3º de 1914, Noviembre y Diciembre (Madrid, 1914), pp. 73–75.

[71] Omission indicated in the original memorandum.

prohibited or foreign goods, into an unauthorized port, bay, inlet or cove of the Spanish coasts; and by sailing along the coast in the vicinity of these places within the zone of two leagues, or six miles mentioned above, even though the cargo be consigned to a foreign port—unless it is a case of forced landing in distress, attack by enemies or pirates, or disablement preventing the ship from continuing its voyage."

The "mentioned above" refers to Section 7 of the same Art. 18, which reads as follows:

"Sec. 7. Por la extraccion del territorio espanol de efectos de cualquiera especie, cuya exportacion este prohibida por las leyes, reglamentos u ordenes vigentes, y por su conduccion dentro de la zona proxima a las costas y fronteras en que por las mismas leyes y reglamentos este prohibida su circulacion, o por su detentacion en la misma zona sin los requisitos que en aquellas disposiciones esten prescritos."

and in translation:

"Sec. 7. By the exportation from Spanish territory of any kind of goods of which the exportation is forbidden by the existing laws, regulations or orders, and by the conveyance thereof within the zone adjacent to the coasts and frontiers in which the circulation of such goods is prohibited by the same laws and regulations; or by the possession thereof within that same zone without the fulfilment of the prerequisites required by those regulations."

Hence it would seem that the text of the Spanish Royal Decree cited does support the statement cited in the extract from the *Columbia Law Review*, reproduced in the Department's Instruction.

Conference at Ottawa between American and Canadian Officials for the Discussion of Means for Preventing the Smuggling of Liquor

811.114/1223

The Secretary of State to the British Ambassador (Geddes)

Washington, *March 7, 1923.*

Excellency: I have the honor to state that I have received communications from the authorities of this Government stating that difficulties have been experienced in enforcing the prohibition laws of the United States along the Canadian border because small motor boats are permitted by the Canadian authorities to take on cargoes of liquor and to make a regular customs clearance to some port in the United States, thus complying with the Canadian law which prohibits the sale of liquors to persons in Canada but allows its exportation to a foreign country. Particular reference is made to the smuggling of liquor into the United States from Belleville and Corbyville, Canada. It is further stated that these boats are Amer-

ican owned. As they do not enter at an American port they do not make a customs entrance, the merchandise being landed at night and transported by automobiles to points of delivery.

As the importation of liquor into the United States without a permit is illegal, it would seem that the Canadian authorities might be disposed to decline to grant clearance papers to vessels with cargoes of liquor destined to ports in the United States, unless a permit authorizing its importation is presented. Such action would only result in the withdrawal of these facilities from persons engaged in attempts to violate the laws of the United States.

In your note No. 781 of October 13, 1922,[73] you stated that His Majesty's Government "are desirous of assisting the United States Government to the best of their ability in the suppression of the traffic". Under the circumstances I have the honor to inquire whether the Canadian Government would be disposed to issue instructions to its collectors of customs that they should not issue clearances to vessels carrying cargoes of liquor destined to ports in the United States unless a permit authorizing such importation is presented.

Accept [etc.] CHARLES E. HUGHES

811.114/1595

The British Ambassador (Geddes) to the Secretary of State

No. 494 WASHINGTON, *June 19, 1923.*

SIR: With reference to the note which you were so good as to address to me on March 7th last regarding the illegal traffic in liquor across the Canadian border, I have the honour to inform you that I am now in receipt of a communication from His Excellency the Governor-General of Canada relative to the issuing of clearance papers to small motor-boats and other vessels leaving Canadian ports, particularly Belleville and Corbyville, Ontario, with cargoes of liquor destined to ports in United States territory.

The Government of Canada have carefully investigated the matter and have ascertained that the provisions of the law as it stands are being properly observed. Owing to the fact that liquors in bond cannot be exported except upon the giving of a bond of a Guarantee Company in double duties to produce a foreign customs landing certificate, the liquors in question are all duty paid. The Dominion Government further state that the export of liquor is not prohibited from Canada and that there exists no provision in the customs laws or regulations which would warrant the refusal of clearance papers

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[73] *Foreign Relations*, 1922, vol. I, p. 578.

to vessels carrying liquor destined for a foreign port because of the fact that the entry of such liquors, without special permits, is prohibited at the foreign port in question.

In these circumstances the Government of Canada much regret their inability to adopt the suggestion put forward by the United States Government in regard to this matter.

I have [etc.]

(For the Ambassador)
H. G. Chilton

811.114 Ottawa Conference/1

The British Chargé (Chilton) to the Secretary of State

No. 593 Washington, *July 16, 1923.*

Sir: With reference to Sir Auckland Geddes' note No. 494 of the 19th ultimo relative to the illegal traffic in liquor across the Canadian border, I have the honour to inform you, by request of the Governor-General of Canada, that when a copy of the note which you were so good as to address to Sir A. Geddes on March 7th last was received by His Excellency, it was referred to and dealt with by the Departments of the Canadian Government especially concerned, and that the reply communicated to you in Sir Auckland Geddes' note under reference related exclusively to the observance of Canadian laws as they stand at present.

With regard to the general question whether the Canadian Government would be disposed to co-operate with the United States Government by prohibiting shipments of liquor from Canada to the United States unless a permit authorizing such shipments be first obtained from the competent United States authorities, I have to inform you that the Dominion Government have every desire to furnish such information to the American authorities as will assist them in securing observance of the United States law just as the Government of Canada would themselves welcome the co-operation of the United States Government in similar circumstances.

In this connection, I would add that Canadian Customs officers at frontier ports already make a practice of notifying American Customs officials in adjacent territory of the exportation of duty paid liquors by vessels and that in some instances American officials have been present at the time such shipments were made from Canada.

I have the honour further to inform you that the Dominion Government would be glad to receive at Ottawa a representative of the United States Government with a view to discussing the possible ways and means of furnishing additional assistance with a view to meeting the situation described in your note of March 7th last. The

Governor-General of Canada desires me to assure you that the attitude of the Canadian Government in this matter is entirely friendly, and is inspired by a desire to further as far as possible the most cordial relations with the United States.

I have [etc.] H. G. CHILTON

811.114 Ottawa Conference/1

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *July 19, 1923.*

SIR: I beg to acknowledge the receipt of your note No. 593 dated July 16, 1923, concerning the illegal traffic in beverage liquors across the Canadian border, in which you inform me of the desire of the Dominion Government to furnish such information to the American authorities as will assist the latter in securing observance of the United States laws.

The friendly and helpful disposition shown by the Canadian Government in this matter is deeply appreciated by this Government, which fully reciprocates the wish to further the most cordial relations between the two countries.

With reference to the offer of the Canadian authorities to receive at Ottawa a representative of the United States to discuss the possible ways in which additional assistance may be given United States officials in dealing with this matter, it gives me pleasure to assure you that this Government will be pleased to take advantage of this opportunity and to send an official to Ottawa in the near future to confer on this question.

The name of such representative will be sent to you as soon as possible, at which time the arrangements for his visit to Ottawa and his meeting the appropriate officials, will also be considered.

Accept [etc.] CHARLES E. HUGHES

811.114/1781

The British Chargé (Chilton) to the Secretary of State

No. 670 WASHINGTON, *August 9, 1923.*

SIR: At the request of His Excellency the Governor-General of Canada, I have the honour to draw your earnest attention to the difficulties encountered by the Government of the Yukon Territory in the matter of the importation of liquor into the Yukon Territory via the port of Skagway in United States Territory and the Yukon port of Whitehorse. The reason for these difficulties appears to be that the United States authorities consider that, under the recent Supreme Court decision in the case of the *United States Treasury*

versus *the Cunard Steamship Company*,[74] the transportation of liquor across any territory of the United States is prohibited.

In the view of the Government of the Dominion of Canada liquor shipments for the Territory of the Yukon Government cannot be considered to be analogous either to in-transit shipments across American Territory from Canada to Mexico or to liquor on board a vessel intended for consumption thereon. Shipments of liquor for the Yukon Territory appear rather to imply a question of principle similar to that of shipments through the Panama Canal zone, which latter were by Congress specially exempted from the operation of the United States prohibition laws.

I would further draw your attention to the fact that under the provisions of Article 26 of the Treaty of Washington[75] the Government of Canada possesses the right to transport liquor into the Yukon Territory via the Yukon River. In view of this treaty right the Government of Canada find it difficult to understand why the United States Government should be unwilling to take such steps as may be necessary to authorize the shipment of liquor via Skagway which affords a more convenient and less expensive route.

In these circumstances and having regard to the fact that such liquor is imported and dispensed exclusively by the Government of the Yukon Territory, and to the treaty rights of the Government of Canada in this question, I have the honour to ask your good offices with the competent authorities of the United States Government and I trust that they may see their way to take immediate steps to regulate this matter in the sense desired by the Dominion Government.

In view of the short season of navigation in the Far North West I would draw your attention to the importance of this question being settled at the earliest possible moment and I have the honour to request the favour of an early reply.

I have [etc.] H. G. CHILTON

811.114/1857

The Acting Secretary of State to the British Chargé (Chilton)

WASHINGTON, *September 13, 1923.*

SIR: I have the honor to refer to my note dated August 16, 1923,[76] replying to your note No. 670, dated August 9, 1923, concerning the difficulties arising in connection with the importation of liquor into Yukon Territory through Skagway, Alaska. You stated that the

[74] i. e., *Cunard S. S. Co.* v. *Mellon;* 262 U. S. 100.
[75] *Foreign Relations,* 1871, p. 516.
[76] Not printed.

reason for these difficulties appeared to be that the authorities of this Government consider, under the recent Supreme Court decision in the case of *The Cunard Steamship Company, Ltd.*, v. *Andrew W. Mellon et al*, that the transportation of liquor across any territory of the United States is prohibited. You also stated that in the view of the Government of the Dominion of Canada liquor shipments for the territory of the Yukon Government cannot be considered to be analogous either to in-transit shipments across American territory from Canada to Mexico or to liquor on board a vessel intended for consumption thereon. You state that shipments of liquor for Yukon Territory appear rather to imply a question of principle similar to that of shipments of liquor through the Panama Canal, which latter were by Congress specially exempted from the operation of the prohibition laws of this country.

A communication has now been received from the appropriate authority of this Government which states that several months ago Hon. George P. MacKenzie, Commissioner of Yukon Territory, called in person and expressed a desire for permission to transport liquors from Skagway, Alaska, across American territory into Yukon Territory. After full inquiry and lengthy consideration, it was decided, particularly in view of the decision of the U. S. Supreme Court in the case of *Cunard Steamship Company, Ltd.* v. *Mellon*, that there was no authority of law for granting such permission, and it was, therefore, refused.

It is believed that the decisions of the Supreme Court of the United States in the cases of *Grogan* v. *Walker*, 259 U.S. 80, and *Cunard Steamship Company, Ltd.*, v. *Mellon*, 14 Advance Opinions 552, support the conclusion reached.

Accept [etc.] WILLIAM PHILLIPS

811.114 Ottawa Conference/30

The Secretary of State to the Assistant Secretary of the Treasury (Moss)

WASHINGTON, *November 24, 1923.*

SIR: With regard to the conference to be held at Ottawa for the purpose of discussing ways and means of preventing the smuggling of liquor from Canada into the United States, suggested by the British Chargé d'Affaires ad interim in his note of July 16, 1923, I hereby designate you as the representative of this Government to have charge of the work of the conference so far as the interests of the United States are concerned. Your selection as the representative of this Government has been approved by the President. The

conference will be held at Ottawa, and meetings with the Canadian representatives will begin on November 27, 1923. You will be accompanied by the following expert assistants:

William R. Vallance, Assistant to the Solicitor, Department of State;
James J. Britt, General Counsel, Prohibition Unit, Treasury Department;
J. P. Crawford, of the Customs Legal Force, Treasury Department;
Nathaniel G. Van Doren, Head, Special Agency, Customs Service, Treasury Department;
George E. Boren, Special Assistant to the Attorney General, Department of Justice;
William J. Donovan, United States Attorney, Buffalo, New York.

The enforcement of the National Prohibition Laws has become a matter of considerable difficulty and of great importance to this Government. As you are in charge of the agencies of the Treasury Department engaged in the enforcement of the prohibition laws and of the customs laws including the Coast Guard, you are already familiar with the large amounts of intoxicating liquor that are smuggled into the United States from Canada. It is with a view to obtaining assistance from the Canadian authorities in suppressing this illicit traffic that the conference at Ottawa has been arranged.

International cooperation in measures to prevent smuggling and the suppression of crime has been recognized as entitled to the support of all enlightened governments. It is natural, therefore, that the United States should deem it proper to approach Canada with very definite proposals concerning practical means for accomplishing the purposes for which the conference is called. The proposals which it is desired you shall submit for consideration and endeavor to have adopted are as follows:

1. Cooperation between Canadian and American customs officials.
   a. Furnishing information concerning clearances of ships with cargoes of liquor on board.
   b. Order-in-Council preventing clearance of ships destined to ports in the United States with liquor cargoes.
   c. Refusal of clearance to ships under 250 tons with cargoes of liquor.
2. Search and seizure of vessels engaged in smuggling on Great Lakes.
3. Obligation of vessels to proceed to ports for which they clear.
4. Treaty arrangement providing for extradition of persons accused of violation of liquor laws.
5. Treaty providing for conveyance of prisoners through territory when accused of violation of liquor laws.

6. Treaty authorizing Canadian authorities to transport liquor across Alaska in connection with possible rights under Treaty of May 8, 1871.
7. Measures to stop smuggling by land.
   a. Shipments by automobile or by aeroplanes to be reported to United States officials.
8. Reciprocal arrangements for the attendance of witnesses, the execution of commissions and letters rogatory, and the certification of records.

With respect to the proposal that arrangements be made whereby Canadian authorities will furnish the officials and agents of the United States information concerning suspicious clearances of ships from Canadian ports with cargoes of liquor on board, your attention is invited to the fact that an agreement has been reached with the Cuban Government whereby the Cuban customs authorities furnish information concerning clearances of this character to the American Ambassador at Habana and this information is telegraphed to officials in the United States for use in preventing violations of its laws.[77]

Concerning the proposal that an Order-in-Council be issued by the Canadian Government preventing the clearance of ships destined to ports in the United States with cargoes of liquor on board, I may state that in a note dated June 19, 1923, received from the British Ambassador at this capital, the following statement was made:

"The Dominion Government further state that the export of liquor is not prohibited from Canada and that there exists no provision in the customs laws or regulations which would warrant the refusal of clearance papers to vessels carrying liquor destined for a port because of the fact that the entry of such liquors, without special permits, is prohibited at the foreign port in question. In these circumstances the Government of Canada much regret their inability to adopt the suggestion put forward by the United States Government in regard to this matter."

In a note dated September 17, 1923, received from the British Chargé d'Affaires ad interim at this capital,[78] the following statement was made:

"No spirituous liquors are cleared direct from the United Kingdom to United States ports."

You will observe that the regulations imposed on shipments of liquor to the United States from Canada are not in accordance with those imposed in the United Kingdom which prevent the clearance of ships for the United States with cargoes of liquor on board. You will inquire whether the Canadian authorities will give favor-

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[77] See pp. 225 ff.
[78] *Ante*, p. 189.

able consideration to the subject of amending their laws so that they will be in accord with those of the United Kingdom. In case you deem it desirable you may discuss informally the advisability of concluding a treaty arrangement at a future date whereby reciprocal protection would be accorded to each country against the clearance of ships from the other carrying cargoes whose importation into the country of destination is prohibited.

With respect to the proposal that the Canadian Government refuse to issue clearances to ships under 250 tons with cargoes of liquor on board, reference is made to the Canadian Order-in-Council No. 275–C, dated September 19, 1923, which prohibits the exportation of liquor from Canada in vessels under 200 tons when the excise taxes levied upon such liquors have not been paid. You will endeavor to have this Order-in-Council extended to apply to all shipments of liquor from Canadian ports in vessels under 250 tons, regardless of whether the excise tax has been paid. You may point out that such vessels are incapable of transporting liquor to a destination other than the United States and that it is reasonable to suppose that when they clear from Canadian ports claiming ports in Cuba or Mexico as their destination, such statements are false.

With regard to the proposal that revenue cutters of each country be given additional rights to search and seize vessels of the other government engaged in smuggling operations beyond the International Boundary Line, your attention is invited to the fact that under existing arrangements revenue cutters of the United States are not permitted to pursue vessels engaged in violating its laws across the International Boundary Line into Canadian waters on the Great Lakes and tributary waters. It is believed that the Canadian Government may be disposed to permit revenue cutters of the United States to suppress the smuggling operations carried on by small motor boats on the Great Lakes and the waters tributary thereto. You will accordingly endeavor to effect a reciprocal arrangement with respect to this matter, whereby vessels engaged in policing the shores of each country and in preventing smuggling operations will be permitted to pursue vessels into and through the territorial waters of the other and to search them, and if evidence is found that the ship is engaged in smuggling operations, to seize them and subject them to proceedings before a competent court. Such arrangement should provide that search and seizure may also be made with respect to vessels found hovering along the International Boundary Line. It is believed that the Canadian Government may be disposed to permit vessels hovering along the International Boundary Line in the Great Lakes and tributary waters to be treated in the same way that British ships hovering outside the three mile limit of the United

States will be treated under proposals which it is understood the British Government is in process of submitting to the United States.

The suggestion that arrangements be discussed whereby vessels will be obligated to proceed to the ports for which they clear is concerned with the filing of landing certificates showing that a cargo has in fact been landed at the destination stated in the clearance papers or at some other lawful place. The practice of selling cargoes of liquor on the high seas is a recent development, and it is believed that it will be found unwise to acquiesce in such practices with respect to cargoes generally.

In a note dated June 19, 1923, received from the British Ambassador at this capital, the following statements were made:

"The Government of Canada have carefully investigated the matter and have ascertained that the provisions of the law as it stands are being properly observed. Owing to the fact that liquors in bond cannot be exported except upon the giving of a bond of a Guarantee Company in double duties to produce a foreign customs landing certificate, the liquors in question are all duty paid."

It is believed that the landing certificates which are furnished to the Canadian authorities in connection with ships of this character are forged or are fraudulently obtained. It would seem that a strict enforcement of the Canadian laws might serve to prevent many shipments of this character.

Concerning the suggestion that a treaty arrangement be made for the extradition of persons accused of violation of the liquor laws, I may state that under existing treaties persons charged with violating the National Prohibition Laws of the United States and the prohibition laws of the States thereof, are not subject to extradition if apprehended in Canada. Similarly, persons charged with violation of the laws of the Canadian Government or of the Provinces thereof with respect to traffic in intoxicating liquor, are not subject to extradition to Canada if they are found in the United States. In order that persons who have violated these laws may be brought to trial, you will inquire whether the Canadian authorities would be disposed to consider the conclusion of a Convention supplemental to the existing Conventions with respect to extradition and covering these offenses. A draft for such a treaty is enclosed with this communication.[79]

To render it practicable under the law for officers of the one government having prisoners in their custody to transport such prisoners through territory of the other en route to the place of trial, a treaty was concluded between the United States and Great Britain

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[79] Not printed.

on May 18, 1908, in reference to reciprocal rights for the United States and Canada in the matters of conveyance of prisoners. A copy of this treaty is enclosed for your convenience.[80] You will observe that this treaty does not authorize the conveyance of persons accused of violation of the laws of the governments which are parties to it respecting traffic in liquors and transportation thereof. Nevertheless, on May 22, 1923, the Department of Justice brought to the attention of this Department a case arising at Hyder, Alaska, involving the transportation of a man named Tibbets, a Canadian who was arrested by the Canadian authorities at the Premier Mine on the Canadian side of the International Boundary Line for violating the Canadian laws, and who was brought through Hyder en route to Stewart, British Columbia for trial. Inasmuch as similar cases will doubtless arise in the future, you will suggest the desirability of concluding a supplemental convention providing for reciprocal rights with respect to the conveyance of prisoners through the territory of the United States and Canada, covering persons arrested on the charge of having violated the laws with respect to intoxicating liquors.

With reference to the suggestion that a treaty be concluded authorizing the Canadian authorities to transport liquor across Alaska in connection with the claims it has advanced of a right to such transportation up the Yukon River under the provisions of Article 26 of the treaty concluded between the United States and Great Britain on May 8, 1871,[81] I may state that on August 9, 1923, the British Chargé d'Affaires ad interim at this capital addressed a note to this Government in which he pointed out the difficulties encountered by the Government of the Yukon Territory in importing liquor for distribution by the Government in accordance with its laws. The British Chargé d'Affaires expressed a desire to have this Government authorize the shipment of liquor across Alaska via Skagway. The British Chargé d'Affaires stated that "under the provisions of Article 26 of the Treaty of Washington, the Government of Canada possesses the right to transport liquor into the Yukon Territory via the Yukon River". He further pointed out that such liquor was imported and dispensed exclusively by the Government of the Yukon Territory. The United States is not prepared to admit that the Canadian Government has the right under Article 26 of the Treaty of 1871 to transport liquor up the Yukon River. However, with a view to acceding to the wishes of the Canadian Government in this matter, and in consideration of the assistance which it is hoped you

[80] *Foreign Relations*, 1908, p. 397.
[81] *Ibid.*, 1871, p. 516.

will be able to obtain from them in respect to other matters above mentioned, you are authorized to discuss with the Canadian authorities the possible negotiation of a treaty whereby this Government would attach no penalty to the transportation of liquor from Skagway to the Yukon Territory under seal and under guard.

The smuggling of liquor by land relates largely to shipments by automobile. You will endeavor to effect arrangements whereby agents of the United States will be permitted to obtain advance information concerning suspicious vehicles loaded with liquor moving in the direction of the International Boundary Line. You will also endeavor to conclude arrangements whereby information will be furnished American customs officers regarding any transportation of liquor carried on by aeroplane between points in Canada and in the United States.

In order that the proceedings in courts of the United States against persons who have violated its National Prohibition Laws may be simplified, it is suggested that you discuss arrangements for furnishing evidence respecting acts committed, including copies of records made in Canada which may be important in completing proof in these cases. It is believed that the Canadian authorities charged with the prosecution of criminals may desire to obtain evidence of a similar character from sources in the United States. You will accordingly suggest to the Canadian authorities that arrangements might be concluded for an interchange of evidence of this character and whereby the authorities of one government would, when requested by the authorities of the other, attend at the trial of such cases. It should be understood that the cost of transcripts of records, depositions, certificates and letters rogatory in civil or criminal cases, and the cost of first class transportation both ways, maintenance and other proper expenses involved in connection with the attendance of such witnesses, would be paid by the nation requesting their attendance at the time of their discharge by the court from further attendance on such trial. It is believed that arrangements might be concluded whereby depositions and letters rogatory would be executed in civil cases with all possible despatch, and copies of official records or documents promptly certified by the appropriate officials.

Upon your return to the United States you are requested to submit a detailed report concerning the discussions carried on by you at Ottawa and your recommendations respecting further action to be taken to prevent the smuggling of liquor from Canada into the United States.

I have [etc.] CHARLES E. HUGHES

811.114 Ottawa Conference/48

The Assistant Secretary of the Treasury (Moss) to the Secretary of State

WASHINGTON, *December 29, 1923.*

SIR: Pursuant to your instructions under date of November 24, 1923, a copy of which is attached hereto and marked "Exhibit A",[82] I proceeded to Ottawa, Canada, on November 26 to discuss with representatives of the Government of the Dominion of Canada ways and means for the prevention of smuggling of liquors into the United States from that country, the mission having been suggested in a note from the British Charge D'Affaires ad interim, dated July 16, 1923, a copy of which is attached hereto and marked "Exhibit B".[83]

I was accompanied by the following expert assistants appointed by you:

William R. Vallance, Assistant to the Solicitor, Department of State;
James J. Britt, General Counsel, Prohibition Unit, Treasury Department;
J. P. Crawford, of the Customs Legal Force, Treasury Department;
Nathaniel G. Van Doren, Director Special Agency, Customs Service, Treasury Department;
George E. Boren, Special Assistant to the Attorney General, Department of Justice;
William J. Donovan, United States Attorney, Buffalo, New York;

also by L. G. Nutt, Chief, Narcotic Division, Prohibition Unit, Treasury Department, and Commander F. C. Billard, of the Coast Guard, Treasury Department, who went as informal observers for their respective branches of the service and were admitted to the conference.

The first session of the conference was held on the afternoon of November 27. In the absence of the Honorable Jacques Bureau, Minister of Customs and Excise, who was unavoidably detained, the conference was opened and our delegates welcomed by the Honorable Charles Stewart, Minister of the Interior, who then turned it over to the following officers of the various departments of the Canadian Government:

Hon. R. R. Farrow, Commissioner of Customs and Excise;
Hon. G. W. Taylor, Assistant Commissioner of Customs and Excise;
Hon. C. P. Blair, General Executive Assistant, Department of Customs and Excise;

[82] Instructions printed *supra.*
[83] Note printed on p. 230.

Hon. W. F. Wilson, Chief of Preventive Service, Department of Customs and Excise;
Hon. W. Stuart Edwards, Assistant Deputy-Minister of Justice;
Hon. W. W. Cory, Deputy Minister of the Interior;
Hon. Alex. Johnston, Deputy-Minister of Marine and Fisheries.

In response to the address of welcome by the Minister of the Interior, the greetings of the American Government and the purposes of the mission were set forth in a brief address, a copy of which is attached hereto and marked "Exhibit C".[84] The following proposals outlined in your letter of instructions were then read and briefly explained:

1. Co-operation between Canadian and American customs officials.
   a. Furnishing information concerning clearances of ships with cargoes of liquor on board.
   b. Order-in-Council preventing clearance of ships destined to ports in the United States with liquor cargoes.
   c. Refusal of clearance to ships under 250 tons with cargoes of liquor.
2. Search and seizure of vessels engaged in smuggling on Great Lakes.
3. Obligation of vessels to proceed to ports for which they clear.
4. Treaty arrangement providing for extradition of persons accused of violation of liquor laws.
5. Treaty providing for conveyance of prisoners through territory when accused of violation of liquor laws.
6. Treaty authorizing Canadian authorities to transport liquor across Alaska in connection with possible rights under Treaty of May 8, 1871.
7. Measures to stop smuggling by land.
   a. Shipments by automobile or by aeroplanes to be reported to United States officials.
8. Reciprocal arrangements for the attendance of witnesses, the execution of commissions and letters rogatory, and the certification of records.

At this stage of the conference, the question was raised as to whether publicity should be given to the discussions as they proceeded from day to day. In deference to the wishes of the Canadian conferees, it was finally agreed that only the subjects under discussion should be given to the press during the progress of the conference, the statements being without detail or quotation as to the views expressed.

The conference then adjourned until Wednesday forenoon.

At the opening of the forenoon session on Wednesday, the Honorable Jacques Bureau, Minister of Customs and Excise, was pres-

[84] Not printed.

ent, but, after opening the conference and further welcoming the delegation, he retired, leaving the officers previously named in charge. The foregoing proposals were then taken up and discussed in the order named.

Under the head of exchange of information between the two countries regarding violations of law, it was stated by our representatives that the officers stationed near the dividing line are in position to furnish reciprocal information of violations of the laws of the respective countries without great difficulty or much expense, which might be communicated to the authorities thereof with great advantage in the enforcement of the laws. In elaborating on this subject, the present administrative arrangement between Cuba and the United States [84a] was explained, whereby the Cuban officials undertake voluntarily to furnish the American minister at Havana with information concerning vessels clearing from Cuban ports for the United States, with liquor on board, and officials of the United States, in turn, will communicate with the proper Cuban authorities information concerning illicit shipments of narcotics from the United States to Cuba. It was suggested that the various customs officials on the Canadian border might communicate to the United States District Attorney, American customs officials, or prohibition officers at or near the port of destination, information regarding vessels clearing for ports in the United States, with liquor on board.

The Canadian officials expressed doubt as to any irregularities in connection with the clearance of vessels from Canada laden with liquor; whereupon original copies of clearance papers were submitted by us, showing that in several instances vessels had been given no-cargo clearances from different ports in Canada, although the official records of the Canadian Government, as indicated in reports received from the Department of Customs and Excise, showed cargoes of liquor to have been carried to the United States in those particular cases. Photostatic copies of these clearance papers were taken by the Canadian authorities and assurance given by them that an investigation would be made of the Canadian customs officials issuing such clearances.

In urging the point that ships loaded with liquors should not be cleared for American ports, attention was invited to the fact that Great Britain already has inaugurated a practice of refusing to grant clearances to vessels of any character when loaded with liquors for American ports, such practice being based on the theory of international co-operation and the principle that no nation should be a party to the exportation to another country of an article, the importation of which is prohibited by its laws.

[84a] See pp. 255 ff.

On the question of allowing clearances to vessels loaded with liquors, which from their size and structure are not reasonably capable of proceeding to the destination for which cleared, it was urged that, according to reliable information, many vessels have been cleared from Canadian ports for foreign ports other than the United States, which, from their size and structure, were incapable of making the voyage, and the cargoes of which were, in fact, discharged at nearby places within the United States.

In response to this contention, the representatives of the Canadian government claimed that under an order in council of September 23, 1923, clearances were by law refused to vessels of less than 200 tons carrying bonded liquors, with the result that liquors are not now shipped from Canada in bond; but are first tax paid and withdrawn, and that there now is no limitation of the size of vessels used for carrying liquors which are regularly tax paid before exportation.

It was further stated by the Canadian representatives that it is now the practice under their customs regulations to deny clearance to vessels for voyages which they are incapable of making. The Canadian representatives were advised, however, of reliable information in our possession to the effect that vessels, including boats too small to make such voyages, have cleared from Canadian ports with liquor cargoes for points in Cuba and Mexico, and returned without cargoes in many instances to the ports from which cleared, in far less time than would be required to reach the foreign destinations shown in their clearance papers; and in some instances have presented foreign landing certificates which were accepted by the Canadian authorities as bases for remitting or refunding the excise taxes.

On the subject of requiring vessels to proceed to the ports for which they are cleared, it was urged by us that, although this is not an established principle of maritime practice or international law, it might be enforced, in the instances in question, particularly in cases where vessels carry liquors in bond, conditioned for delivery at the points of destination to be evidenced by certificates of foreign landing; and also in cases where fraudulent intent is apparent. In this connection attention was invited to the provisions of Sections 337, 4197, and 4200,[85] of the Revised Statutes of the United States, requiring masters of vessels, owners, shippers, and consignors of cargoes to state in writing under oath to Collectors of Customs the foreign ports or countries in which cargoes are intended to be landed; and prescribing penalties for obtaining clearances under fraudulent statements. The good faith enjoined by comity and international obligations were urged as strong reasons for insistence that masters of vessels in all circumstances should deliver their cargoes accord-

[85] U. S. C. (1934 edition), title 15, sec. 174; title 46, secs. 91 and 92.

ing to the terms of their clearances, except when legitimate commercial practices might warrant other procedure, and particularly when not to do so would result in a violation of the law of a foreign country.

On the presentation of our request for the privilege of search and seizure of vessels engaged in smuggling on the Great Lakes, the Canadian representatives inquired whether this Government would be disposed to permit Canadian vessels to make seizures within the harbors of the United States, although expressing no definite opinion on the subject. This implied, as we thought, that they would not be disposed to permit such searches and seizures by American vessels within Canadian harbors on the ground that such a policy would permit the vessels of one country to cruise and perform police duties within the territorial waters of the other. On our part it was urged that the privilege was sought only for the purpose of aiding in the enforcement of our customs, prohibition, and narcotic laws, and that no right of search and seizure generally was desired.

It was also suggested by us that an arrangement might be consummated for reciprocal rights of search and seizure outside of a prescribed distance from harbor entrances; and that if mutually deemed advisable, such rights might be made contingent upon continuous pursuit. In order to give a concrete illustration of our purpose, we submitted a tentative proposal in the following words:

> "The vessels and boats of either nation duly charged with the enforcement of its customs laws may, for the purpose of enforcing such laws, exercise the rights of boarding, search, and seizure on the waters of Lakes Ontario, Erie, St. Clair, Huron and Superior, outside of the harbor limits of the other nation and not within one mile of the entrance to any of said harbors; and also on the St. Mary's, St. Clair, Detroit and Niagara Rivers and on the St. Lawrence River where it separates the territory of the United States from that of Canada but not within 100 yards of pier-head lines or of the shore."

We readily agreed with the Canadian conferees that it would be undesirable to permit the cutters of one nation to make searches and seizures within the harbors of the other country or inside of reasonable distances from the entrances to said harbors; and invited attention to the fact that the United States Coast Guard cutters, in the performance of their duties on the Great Lakes, now cruise actively and render assistance to vessels in distress belonging to either nation, regardless of whether they may be in Canadian waters or in the waters of the United States. We also stressed the advantages which would accrue to both countries in the enforcement of their revenue laws from reciprocal rights of the character proposed, and that such rights would not be inconsistent with the dignity of either nation.

Reference was also made by us to an arrangement which existed for a short time during the war, whereby reciprocal rights of search and seizure on the Great Lakes were made permissible, although this arrangement was not put into practice and was ultimately abandoned on the ground that it would require the sanction of a treaty, the negotiation of which was not undertaken because of the early termination of the war. Further discussion of our proposal, in which it was explained that the distance from harbor entrances on the Lakes and from the shore, and from pier-head lines on the narrow rivers, were purely tentative and subject to mutual agreement, seemingly brought about a better understanding of the purposes to be accomplished, and is believed to have dissipated to some extent the misgivings first expressed by the Canadian representatives, who finally offered no objection to our proposal, but contented themselves with the statement that the matter would necessarily have to be made the subject of treaty agreement and would be submitted to their government.

In regard to treaty arrangements providing for the extradition of persons accused of violations of the liquor laws of the two countries, it was pointed out by us that the extradition treaties of July 12, 1899 [*1889*], December 13, 1900, and April 12, 1905,[86] do not include the extradition of persons charged with violations of the liquor laws. The desirability of such treaty arrangements was urged. The Canadian conferees suggested as apparent obstacles to such a treaty the fact that our liquor laws are more stringent than theirs, and denounce as crimes thereunder certain acts which do not constitute crimes under the Canadian laws; and the further fact that, while the liquor laws of the United States are national and uniform in character, the liquor laws of the Dominion of Canada are mainly provincial and not the subject of dominion control. This lack of uniformity of the crimes denounced renders a description of the offenses to be dealt with in such treaties exceedingly difficult; but it is believed that a description sufficiently general in its application to cover all the principal violations of the laws regulating the liquor traffic in both the United States and the provinces of Canada may possibly be devised.

These difficulties do not seem to be present in connection with violations of the narcotic laws, which, while not included in the agenda, were very briefly discussed at this point, such laws having been enacted in both the United States and Canada along lines proposed for carrying out the purposes of the Hague Opium Convention.[86a]

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[86] Malloy, *Treaties*, 1776–1909, vol. I, pp. 740, 780, and 798; see also 26 Stat. 1508, 32 Stat. (pt. 2) 1864 and 34 Stat. (pt. 3) 2903.

[86a] *Foreign Relations*, 1912, p. 196.

The illicit traffic in narcotics is of vital concern to Canada as well as to the United States; and it is thought proper to advise you in this connection of a conference held in the office of William J. Donovan, United States Attorney at Buffalo, N.Y., October 25, 1923, between representatives of the United States and the Dominion of Canada, at which administrative arrangements were effected for bringing about a closer co-operation between the officials of the two governments, looking to a better enforcement of the narcotic laws. A copy of that arrangement is attached hereto and marked "Exhibit D".[87]

In reference to the proposal for concluding a supplemental convention, providing for reciprocal rights for the conveyance of prisoners through territories of the United States and Canada, arrested for violation of laws relating to intoxicating liquors, it was disclosed during the discussion that an extension of such a practice to include violations of other laws would be regarded favorably by the Canadian representatives, who frankly expressed the opinion that such an arrangement probably would be more advantageous to the Dominion of Canada than to the United States. The Canadian representatives mentioned Alaska and the State of Maine as territory of the United States through which such privilege of transportation would be of particular advantage to Canada; and we expressed the opinion that such a treaty would sometimes facilitate the transportation of United States prisoners between the cities of Buffalo, N.Y. and Detroit, Mich.

The proposed treaty arrangement permitting the Canadian Government to transport liquors across Alaskan territory had its inception in a request by the Governor of Yukon Territory in the latter part of the year 1922. Action was delayed on that request for the reason that the case of the *Cunard Steamship Company* vs. *Mellon* was then pending before the United States Supreme Court. After the decision was rendered April 30, 1923, to the effect that neither foreign nor American vessels could transport liquors within territorial waters of the United States, nor across the landed territories thereof, the request for such permission was formally denied. Since that time, however, it is understood that negotiations have been in progress between the United States and Great Britain, looking to the conclusion of a treaty whereby suspicious vessels may be boarded and searched, within certain limitations, beyond the three-mile limit, and British vessels will be allowed to carry sealed liquors within the waters of the United States when destined to ports in foreign countries.

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[87] Not printed.

It is believed that by a parity of reasoning the United States would be justified in extending such privilege to the Canadian Government, in view of the conditions existing in the far Northwest, and if surrounded with restrictions preventing violations of the purpose and intent of our prohibition laws.

It was stated by the Canadian representatives that it is necessary for their Government to raise in the Yukon Territory about $75,000 in revenue previously obtained from the sale of liquor, and that liquor valued at $90,000 is now lying at Vancouver, B.C., awaiting permission for transportation across United States territory for a distance of about twenty-six miles, in the vicinity of Skagway. The territory to be reached in The Yukon is practically inaccessible by any other route, except by the Yukon River which, I am advised, is not regarded by this Government as being open under the treaties now in force for the transportation of liquors by the Canadian Government. Even if the right of such transportation on the river were conceded, the great advantage to Canada of the privilege sought lies in the fact that the season for navigation on the Yukon River is very short and transportation by that route would involve a journey of about 1500 miles. It is believed that the stipulations necessary for such a treaty would be simple in character and would not present any difficulties under our present law.

The question of smuggling liquor by land, covered by Item 7 of the agenda, is one which relates for the most part to transportation by automobiles, and in some instances to transportation by aeroplanes. It was disclosed that there has been co-operation to some extent between the representatives of the two governments along the border in furnishing information concerning proposed violations of the revenue laws of the respective countries. This co-operation, however, has been based merely upon the friendly relation existing between certain officials of the two governments serving in subordinate capacities, and not upon any official arrangement. Since the enactment of our prohibition laws, this friendly exchange of information concerning smuggling has been attended to some extent by risk of personal violence from persons engaged in violations of this character, who commit reprisals by personal attacks upon informing officers and also by destroying private property.

It was pointed out by us that such information, to be of value, should be conveyed promptly by telephone or telegraph, and should have official sanction for the protection it might afford informing officers from reprisals. We also stated that by far the larger number of automobiles engaged in smuggling are owned in the United States; and that in starting upon a smuggling expedition they leave

the United States without reporting to our customs officers, as required by law, and usually enter and leave Canada without reporting to the Canadian customs officers, as required by Canadian laws, and are frequently found to be smuggling narcotics, silks, and other merchandise into Canada. It was generally agreed, therefore, that an exchange of information concerning such automobiles and their owners would be mutually helpful. Attention was invited to the fact that under the laws of United States Canadian officials, as well as private citizens of Canada, can be compensated out of any fines or forfeitures which may be recovered as the result of original information furnished to United States customs officers. A suggestion by the Canadian representatives that gates across the main highways would be helpful in retarding the speed of rum-running automobiles, is believed to have considerable merit, and should be given consideration.

In this connection, the closely-related subject of the disposition to be made of automobiles, stolen in one country and seized in the other for violations of the laws of the latter, naturally was given some consideration. Our practice in this regard was explained as being in accordance with an early opinion of the Attorney General (2 Op. A.G. 482) in the case of the Jewels of the Princess of Orange, which were smuggled into the United States after being stolen from the owner and were returned to the owner without penalty of any character upon the establishment of title thereto, and in the absence of any knowledge of or participation in the illegal introduction of the jewels into the United States. Comparatively recent cases were cited also wherein furs and other articles of great value have been returned to dealers in Canada under similar circumstances. It was stated that this practice is believed to be well warranted by both law and equity, and the hope was expressed that the Canadian Government may find its way clear to adopt a similar practice with respect to articles stolen in the United States and seized by Canadian customs officers for violation of the laws of that country.

In regard to the proposal for a reciprocal arrangement for the attendance of witnesses, the taking of depositions, letters rogatory, and the certification of records between the two countries, it was urged on our behalf that the administration of justice often is seriously handicapped by the fact that evidence required for proof of alleged crimes in violation of our customs, prohibition, and narcotic laws can be had in many instances only from persons in Canada, and that we are unable to proceed to trial because of the lack of power to compel the attendance of such witnesses. It was made to appear also that the administration of justice in Canada is often

likewise impeded. It was further pointed out that, while each nation has statutes authorizing letters rogatory for the taking of depositions, administrative orders, affirmations, affidavits, etc., they are usually binding only on the nationals of the respective governments and not in the territories of the other nation; and it was therefore of great importance that an understanding should be reached by which customs, prohibition, and narcotic officials of either country may be at the service of the other country to testify in matters arising in the trial of civil and criminal cases, and also for the taking of depositions, certification of records, etc. Since the Canadian Government is vexed with the smuggling of silks, narcotics, etc., from the United States into Canada and, from the causes previously stated, experiences delay in the prosecution of persons charged with such violations of the law, there was a seeming mutual willingness to perfect arrangements for accomplishing the purposes desired, including the attendance of witnesses on the official request of either country and the payment of expenses incurred by the country making the request. Copies of the laws of the two countries, relating to letters rogatory, etc., are attached hereto and marked "Exhibit E".[88]

At the conclusion of the conference we submitted in writing definite proposals for administrative understandings and treaty stipulations covering the foregoing agenda, with the request that they be given consideration at the earliest practicable date. Copies of these proposals and of the brief remarks made in submitting the same are attached hereto and are marked "Exhibit F".[88a]

In order that you may have before you a definite statement of the views of myself and my assistants, I submit herewith for your consideration and such action as you may deem advisable a draft of proposed treaty stipulations, embodying all the various proposals herein discussed, and marked "Exhibit G".[88b]

It is proper to advise you that, as was to be expected, the Canadian press was divided in its attitude toward the purposes of the mission, and is believed to be represented fairly by the three editorials which appeared in the *Montreal Gazette*, the *Ottawa Citizen*, and the *Toronto Globe*, during the week of the conference, and attached hereto as "Exhibit H".[88]

There is also attached, as "Exhibit I",[88] an article from the *Buffalo Evening News*, bearing a Toronto date line, and purporting to represent a former Ontario Attorney General as finding a similarity between the attitude of Canada on the liquor question and the

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[88] Not printed.
[88a] Enclosure 1, *infra*.
[88b] Enclosure 2, *infra*.

attitude of Great Britain in the famous *Alabama* case which arose during the Civil War.[88d]

In conclusion permit me to say that the Canadian representatives were at all times courteous and considerate, generous of their time, and prompt in attendance at the sessions. Their manner and bearing indicated a proper recognition of the importance of the questions raised and a disposition to give them that serious consideration which we believe their importance demands. As they were officers of subordinate rank, however, it will be necessary for them to report first to their respective immediate ministries; to wit—Interior, Customs and Excise, Fisheries and Marine, and Justice, in order that action may be taken by the full cabinet. While the Canadian representatives were not in position to give assurance of their probable recommendations, they did, nevertheless, indicate a purpose to consider thoroughly all of our proposals, and we were encouraged to expect as prompt action as is consistent with the circumstances.

I cannot close this report without expressing my very high appreciation of the valuable services rendered by the expert assistants which you were good enough to have accompany me. They were at all times prompt, attentive, deeply interested, and fully prepared to discuss the various subjects committed to them. They are entitled to great credit for their faithful services, and I cannot speak too highly of the exceptional way in which they discharged their duties.

Awaiting your further wishes in this behalf, I have [etc.]

McKenzie Moss

[Enclosure 1—Exhibit F]

Statement by the Assistant Secretary of the United States Treasury (Moss) at Close of Ottawa Conference, November 30, 1923

In concluding this Conference, I desire to urge the importance of certain considerations. There is a fundamental principle at the basis of our entire discussion. It is the moving force behind the conclusion of any administrative arrangements, or the making of any treaties.

We are dealing with the question of international comity from an entirely new standpoint. It is not a case of occasional smuggling. It is rather a question of dealing with the unusual problem of whoesale smuggling between Canada and the United States. The United States, exercising its right of self-determination, has entered upon a program of national prohibition. That is our right as a Nation. Canadian and American Armies fought together in

[88d] See *Papers Relating to the Treaty of Washington* (Washington, Government Printing Office, 1872), vol. IV, pp. 49 ff.

the World War to preserve that right. Friendly nations may not agree as to the policy or the expediency of such a course on the part of our country, but they should, and I believe they will, respect our efforts to enforce our own laws. They are under no obligation to lend affirmative assistance in the enforcement of our laws, but certainly you will concede that they are under obligation, morally and legally, to exercise restraint over all governmental activities which directly result, and must result, in the violation of our laws. For illustration: There is no legal inhibition in the Canadian laws against the granting of clearance to vessels carrying liquor destined for a foreign port, because of the fact that the entry of such liquors is prohibited at the foreign port in question. But this cannot be regarded as a compulsory provision. It is a customs administrative matter, pure and simple, concerning which customs officers may exercise a sound discretion; and such clearance may, in the best interests of the general welfare of both nations, be refused.

This instance is cited as fairly illustrative of the general principle governing the entire list of proposals. Certain of our proposals call for purely administrative action; others must become the subject of a treaty arrangement, but all should be approached and considered in consonance with the spirit of neighborly good will and helpfulness. Any other course would be greatly disappointing to the Government at Washington, and would also, I fear, be wholly misunderstood in all friendly quarters.

We therefore submit for earnest consideration by your Government a statement of proposals which we hope may be agreed upon as a result of this Conference.

[Subenclosure]

Statement of Proposals Which the United States Delegation Hopes May Be Agreed Upon as a Result of the Conference

The United States delegation respectfully requests that an administrative agreement may be reached, evidenced by an exchange of letters:

1. That the Canadian Customs Officers along the border be instructed to furnish to designated United States attorneys, United States customs officials, Prohibition Officers, or other officers, information concerning clearance of ships from Canadian ports with cargoes of liquor or other articles on board, and also information concerning consignments or loads of liquor or other articles transported by land or aeroplane across the border. United States Customs Officers would be instructed to furnish information to Canadian Customs Officers concerning shipments or loads of silk and other dutiable

articles, which there was reason to believe were being smuggled across the border into Canada.

2. That clearances be denied to ships carrying cargoes of liquor when the port of destination is in the United States, and also that clearances be denied to ships with cargoes of liquor, which from their tonnage, size and general character would be unable to reach the destinations set forth in the applications for clearances.

3. That an executive reciprocal arrangement be effected for the return of stolen property of all kinds belonging to nationals of the one country and seized by the Customs authorities of the other, upon satisfactory proof of ownership and upon proof that there was no collusion.

4. That reciprocal arrangements be made for the exchange of information concerning the names and activities of those persons known or suspected to be engaged in violation of the customs, liquor and narcotic laws of the respective countries.

5. That upon request customs and other administrative officials of the respective Governments be instructed to attend as witnesses and produce such available records and files, or certified copies thereof, as may be considered essential to the trial of civil or criminal cases.

It is understood that the cost of transcripts of records, depositions, certificates and letters rogatory in civil or criminal cases, and the cost of first class transportation both ways, maintenance and other proper expenses involved in connection with the attendance of such witnesses, would be paid by the nation requesting their attendance at the time of their discharge by the court from further attendance at such trial.

Letters rogatory and commissions shall be executed with all possible despatch and copies of official records or documents promptly certified by the appropriate officials, in accordance with the provisions of the laws of the respective countries.

6. That a treaty be concluded containing reciprocal arrangements for the extradition of persons accused of violation of the customs, liquor and narcotic laws of the respective Governments or the States or Provinces thereof.

7. In the event that the proposed extradition convention shall not be concluded, then a convention between the United States and Great Britain of May 18, 1908,[89] with reference to reciprocal rights for the United States and Canada in the matters of conveyance of prisoners, shall be amended by the conclusion of a supplemental convention which shall provide reciprocal rights with respect to the conveyance of persons accused of violating the customs.

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[89] *Foreign Relations*, 1908, p. 397.

8. A treaty authorizing the Canadian authorities to transport liquor across Alaska under seal and under guard shall be concluded.

9. A treaty authorizing the revenue cutters of each country to pursue across the internation[al] boundary line ships engaged in violating the customs, liquor and narcotic laws on the Great Lakes, and to search and seize vessels hovering along the international boundary line for the purpose of smuggling goods from one country into the other, or of violating its laws.

[Enclosure 2—Exhibit G]

Draft of Proposed Treaty between the United States and Great Britain regarding Smuggling Operations Along the Boundary between the United States and Canada

The United States of America and His Majesty the King of Great Britain and Ireland and of the British Dominions Beyond the Seas, Emperor of India, being desirous of suppressing smuggling operations along the boundary between the Dominion of Canada and the United States, and of assisting in the arrest and prosecution of persons violating the customs, liquor, and narcotic laws of either government, have agreed to conclude a convention to give effect to these purposes and have named as their plenipotentiaries:

The President of the United States, ...
. . . . ;

His Britannic Majesty, ...
. . . . ;

Who having communicated to each other their full powers, which were found to be in due and proper form, have agreed upon the following Articles:

1. The High Contracting Parties hereby agree that the appropriate officers of each government shall, when requested, be required to furnish to duly authorized officials of the other government information concerning clearances of ships, or the transportation of cargoes, shipments, or loads of articles across the international boundary, when the importation of the cargo carried or articles transported by land is subject to the payment of duties. Such information shall also be furnished respecting clearances of ships to foreign ports when there is ground to suspect that the owners or persons in possession of the cargo intend to smuggle it into the territory of the other government.

2. It is hereby mutually agreed by the High Contracting Parties that clearances shall be denied to ships carrying cargoes to a port of destination in the other country when the importation of the articles constituting the cargoes into the country of destination is

prohibited. Clearances shall also be denied to ships with such cargoes when from their tonnage, size, and general character it is evident they would be unable to reach the destination set forth in the applications for clearances.

3. The High Contracting Parties hereby agree that they will return to the owners, property of all kinds belonging to nationals of the one country, stolen from them and brought into the other, and seized by the customs authorities thereof. The owners shall be required to submit satisfactory proof of ownership and shall establish that there was no collusion.

4. The High Contracting Parties hereby reciprocally agree to exchange information concerning the names and activities of all persons known or suspected to be engaged in violations of the customs, liquor, or narcotic laws of the respective countries.

5. It is hereby agreed that the customs and other administrative officials of the respective governments shall, upon request, be instructed to attend as witnesses and to produce such available records and files, or certified copies thereof, as may be considered essential to the trial of civil or criminal cases.

The cost of transcripts of records, depositions, certificates, and letters rogatory in civil or criminal cases, and the cost of first-class transportation both ways, maintenance, and other proper expenses involved in connection with the attendance of such witnesses shall be paid by the nation requesting their attendance at the time of their discharge by the Court from further attendance at such trial. Letters rogatory and commissions shall be executed with all possible dispatch, and copies of official records or documents shall be certified promptly by the appropriate officials in accordance with the provisions of the laws of the respective countries.

6. The following offences are added to the list of offences numbered 1 to 3 in the 1st Article of the Treaty concluded between the United States and Great Britain on May 18, 1908, with Reference to Reciprocal Rights for the United States and Canada in the Matters of Conveyance of Prisoners and Wrecking and Salvage, that is to say:

> 4. Offences against the customs, liquor, or narcotic laws of the respective governments.

7. No penalty or forfeiture under the laws of the United States shall be applicable or attached to alcoholic liquors or to vehicles or persons by reason of the carriage of such liquors when they are transported under seal and under guard by Canadian authorities through the territorial waters of the United States to Skagway, Alaska, and thence by the shortest route, approximately twenty-six miles, to Yukon Territory, Canada, and such transit shall be as

now provided by law with respect to the transit of alcoholic liquors through the Panama Canal or on the Panama Railroad.

8. The vessels and boats of either nation duly charged with the enforcement of its customs laws may, for the purpose of enforcing such laws, pursue any craft into the territorial waters of the other nation where said waters separate the territory of the United States from that of Canada and, upon apprehending said craft, may exercise the rights of boarding, search, and seizure, provided that the pursuit shall have been continuous and that such rights of boarding, search, and seizure shall not be exercised within the harbor limits of the other nation nor within one mile of the entrance to any of said harbors, but such rights may be exercised anywhere on the St. Mary's, St. Clair, Detroit and Niagara Rivers, and on the St. Lawrênce River where it separates the territory of the United States from that of Canada, but not within one hundred yards of pier-head lines or of the shore.

Arrangement between the United States and Cuba for the Exchange of Information Useful in Suppressing Trade in Prohibited Goods

811.114/1396

The Secretary of State to the Ambassador in Cuba (Crowder)

No. 53 WASHINGTON, *May 14, 1923.*

SIR: The Department has taken up with the British Government the matter of obtaining, through American consular officers, information from British collectors of customs concerning ships clearing from ports of Great Britain carrying cargoes of liquor consigned to places from which it might be smuggled into the United States.[91] The Treasury Department has stated that it would "welcome reciprocal arrangements with other nations for the exchange of information regarding clearances of vessels, cargoes carried, and consignors and consignees of such cargoes when such information is desired by the government seeking the same as an aid to the enforcement of its own laws".

The American Ambassador at London has been instructed to advise the British Foreign Office of the readiness of the Government of the United States to exchange information of this character and to express the hope that the British Government would find it possible to enter into a reciprocal arrangement of this character.

The Department encloses a copy of a despatch [92] received from the Ambassador at London from which it appears that a statement

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[91] See pp. 228 ff.
[92] Not printed.

was made in the British House of Commons on behalf of the Government that it was believed that "action by His Majesty's Government alone would merely drive the trade into other channels". It is believed that this statement may have been based upon the view that if the British Government furnished American officials information concerning the exportation of liquor which it appeared might be smuggled into the United States, it would result in driving the trade to Cuba and other places adjacent to the coast of the United States from which smuggling operations might be conducted.

You are instructed to address a communication to the Foreign Office setting forth the readiness of the United States to exchange information with the Cuban Government regarding clearances of vessels leaving ports of the United States, the cargoes carried, and the names of the consignors and consignees of such cargoes when such information is desired by the Cuban Government as an aid to the enforcement of its own laws, if the Cuban Government will furnish similar information to officers of the United States.

You are requested to forward to the Department promptly a report concerning the matter, enclosing a copy of your communication to the Cuban Foreign Office dealing with this matter, and you will use your best endeavors to bring about a favorable response.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

811.114/1782

The Chargé in Cuba (Howell) to the Secretary of State

No. 235 HABANA, *August 3, 1923.*
[Received August 7.]

SIR: I have the honor to refer to the Department's instruction No. 53 of May fourteenth and previous correspondence relative to making reciprocal arrangements with Cuba for the exchange of information regarding clearance of vessels, cargoes carried and consignors and consignees of such cargoes, particularly with reference to whiskey, when such information is desired by the Government asking for same as an aid to the enforcement of its own laws.

The Foreign Office has just informed me that the Cuban Government will be glad to agree to such an arrangement. The details for obtaining such information upon whiskey shipments from any Cuban port are now being arranged.

I have [etc.] WM. S. HOWELL

811.114/1933

The Chargé in Cuba (Howell) to the Secretary of State

No. 317 HABANA, *September 11, 1923.*
[Received September 18.]

SIR: I have the honor to refer to the Department's Instructions numbers 44, May 4; 52, May 11; unnumbered, June 19 and 77 of June 27; and the Embassy's despatches numbers 20, March 19 and 118, May 15,[93] relative to the smuggling of liquor from Cuba to the United States, the making in Cuba of false whiskey, whiskey labels, and United States Government Internal Revenue Stamps.

The press reports that as the result of negotiations between the United States and Canada, Canada in the future will prohibit the exportation of liquor on ships of less than two hundred fifty tons. Such an arrangement would undoubtedly do much to stop the large illegal traffic into the United States from Cuba. The Cuban Government has always showed an entire willingness to cooperate in such matters, and I have had occasion to discuss quite informally the Canadian arrangement with Doctor Céspedes, the Secretary of State. He would be entirely willing to study the matter with a view to making a similar law or regulation if it were found practicable. If the Department is interested, I suggest full information regarding the Canadian arrangement be forwarded at once so that it may be informally shown to Doctor Céspedes.

. . . .

I have [etc.] WM. S. HOWELL

811.114/1933

The Secretary of State to the Chargé in Cuba (Howell)

No. 128 WASHINGTON, *October 2, 1923.*

SIR: The Department has received your despatch No. 317 dated September 11, 1923, dealing with the proposed arrangement whereby the United States will obtain information regarding shipments of liquor leaving Cuba which are intended to be smuggled into the United States. You state that according to press reports an arrangement has been made with Canada so that "Canada, in the future, will prohibit the exportation of liquor on ships of less than 250 tons". You state that such an arrangement would undoubtedly do much to stop the large illegal traffic into the United States from Cuba, and that the Cuban Government has already showed an entire willingness to cooperate in such matters. You suggest that complete information

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[93] None printed.

regarding the Canadian arrangement be forwarded at once so that it may be informally shown to Dr. Céspedes, the Secretary of State of Cuba, with whom you have discussed the matter.

The Department's records do not appear to contain information that the Canadian Government will in the future prohibit the exportation of liquor on ships of less than 250 tons. The Department is making inquiries with a view to ascertaining whether any such restriction has been made by Canada. It is believed that you may have reference to the correspondence made public on September 8, 1923, exchanged between the British Embassy and this Department dealing with measures to stop the illegal traffic in liquor across the Canadian border. Copies of this correspondence are enclosed. You will observe that the note of the British Embassy dated July 16, 1923,[94] contains the following statements:

"With regard to the general question whether the Canadian Government would be disposed to cooperate with the United States Government by prohibiting shipments of liquor from Canada to the United States unless a permit authorizing such shipments be first obtained from the competent United States authorities, I have to inform you that the Dominion Government have every desire to furnish such information to the American authorities as will assist them in securing observance of the United States law just as the Government of Canada would themselves welcome the cooperation of the United States Government in similar circumstances.

"In this connection, I would add that Canadian Customs officers at frontier ports already make a practice of notifying American Customs officials in adjacent territory of the exportation of duty paid liquors by vessels and that in some instances American officials have been present at the time such shipments were made from Canada."

A conference of representatives of the United States and Canada to discuss additional ways and means to stop this traffic has been arranged and will probably be held at Ottawa in November.

In this connection you are informed that it is stated in a note No. 797 dated September 17, 1923,[95] received from the British Embassy that "no spirituous liquors are cleared direct from the United Kingdom to United States ports." You are instructed to ascertain and report whether clearances are granted to vessels with cargoes of spirituous liquors from Cuban ports to ports in the United States.

Reference is made in this connection to the Embassy's despatches numbered 272 and 323, dated August 23 and September 13, 1923, respectively, and to the Department's instruction No. 115 dated September 14, 1923,[96] concerning the proposed arrangement for the exchange of information desired by the governments as an aid to the

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[94] *Ante*, p. 230.
[95] *Ante*, p. 188.
[96] None printed.

enforcement of their laws. It is believed that a formal exchange of notes should be had dealing with this matter which could be used as a basis for similar arrangements with other governments. You will report whether the Cuban Government would be disposed to include in such an arrangement a provision that clearances shall not be granted to vessels carrying cargoes destined for countries in which the importation of the cargo carried is prohibited.

The subject of false labels and forgery of United States Internal Revenue stamps will be dealt with in a separate instruction.[97]

I am [etc.] CHARLES E. HUGHES

811.114/2080

The Chargé in Cuba (Howell) to the Secretary of State

No. 398 HABANA, *October 19, 1923.*
[Received October 26.]

SIR: I have the honor to refer to the Department's instruction No. 128 of October 2, 1923, (file no. 811.114/1933) regarding the arrangement with the Cuban Government whereby the United States is informed regarding shipments of liquor leaving Cuban ports presumably for the purpose of being smuggled into the United States.

In accordance with this instruction, the Cuban Government has been approached informally, in order to determine whether it would be disposed to include in this arrangement a provision denying clearances to vessels carrying cargoes of liquor directly destined for the United States, since the importation of such cargoes is against the laws of that country. The Secretary for Foreign Affairs seemed favorably to consider this provision, but suggested that if there were a precedent it would help him considerably in presenting the case to his government. I was able to refer him to the action of Great Britain, and quoted the extract from the note from the British Embassy as contained in the fourth paragraph of the instruction under acknowledgment, which states that "no spirituous liquors are cleared direct from the United Kingdom to United States ports."

The arrangement providing for the reciprocal exchange of information between the governments of the United States and Cuba was arrived at by a formal exchange of notes, copies of which are attached hereto.

As to the possibility of Cuba prohibiting in the future the exportation of liquor on ships of less than 250 tons, nothing further has been done in this matter, but I believe that should the Department

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[97] Not printed.

care to press the matter, the Cuban Government would be inclined to act favorably.

I have [etc.] WM. S. HOWELL

[Enclosure 1]

The Cuban Secretary of State (Céspedes) to the American Ambassador (Crowder)

No. 721 HABANA, *July 7, 1923.*

MR. AMBASSADOR: In reply to Your Excellency's attentive note No. 48 of May twenty-fourth last,[98] in which you state that your Government will be glad to enter into a reciprocal agreement with Cuba for the interchange of information concerning the clearance of vessels, cargoes carried, consignors and consignees of freight, when such information is desired by the Government asking for same as an aid to the enforcement of its own laws, including information from Cuban collectors of customs concerning ships clearing from ports of Cuba carrying cargoes of liquor consigned to places from which it might be smuggled into the United States, I have the honor to inform Your Excellency that the Government of the Republic perceives no objection to informing the American Legation [*sic*], in compliance with its request, concerning the clearance of vessels and merchandise for importation, exportation and coastwise trade, and that the Government hopes that in exchange for this information which it is disposed to give, information may be furnished relative to the clearance of cargoes of narcotic drugs, and other articles whose entrance into our ports is forbidden.

I have the honor to request that Your Excellency be kind enough to inform me of the definite resolution made by your government in the matter treated of in this note, and to inform you that the exchange of this note and the reply which I hope to receive from Your Excellency will be sufficient to conclude the reciprocal agreement between the two governments.

Accept [etc.]

For the Secretary:
G. PATTERSON

[Enclosure 2]

The American Chargé (Howell) to the Cuban Secretary of State (Céspedes)

No. 68 HABANA, *August 4, 1923.*

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note No. 721 of July seventh, in which it is

[98] Not printed.

stated that Your Excellency's Government will be glad to enter into a reciprocal arrangement with the United States Government for the exchange of information regarding clearance of vessels, cargoes carried and consignors and consignees when such information is desired by the Government asking for same as an aid to the enforcement of its own laws.

My Government hereby gives its definite sanction to such an arrangement and understands the agreement now to be in effect.

It has been noted that the Cuban Government will be glad to furnish information from Collectors of Customs concerning ships clearing from all ports of Cuba carrying cargoes of liquor consigned to places from which it might be smuggled into the United States. In conformity with my recent conversation with the Under Secretary of State, it is understood a plan for furnishing this information to the American authorities will be decided upon at a conference to be held within the next few days between representatives of the Foreign Office, the Treasury Department and the undersigned.

Accept [etc.] WILLIAMSON S. HOWELL, JR.

811.114/2080

The Secretary of State to the Chargé in Cuba (Howell)

No. 149 WASHINGTON, *November 14, 1923.*

SIR: The Department has received your despatch No. 398 of October 19, 1923, regarding the arrangement with the Cuban Government whereby the United States is informed regarding shipments of liquor leaving Cuban ports presumably for the purpose of being smuggled into the United States. You state that the Cuban Secretary for Foreign Affairs seemed favorably disposed to include in the arrangement a provision denying clearances to vessels carrying cargoes of liquor directly destined for the United States since the importation of such cargoes is against the laws of this country.

With respect to the possibility of Cuba prohibiting in the future the exportation of liquor on ships of less than 250 tons, you state that nothing further has been done in this matter, but that you believe that should the Department press the matter the Cuban Government would be inclined to act favorably.

You are instructed to report whether the Cuban Government will agree to include a provision in the arrangement whereby clearances will be denied to vessels carrying cargoes of liquor directly destined for the United States.

With respect to the possibility of Cuba prohibiting in the future the exportation of liquor on ships of less than 250 tons, the Department encloses a copy of circular No. 275-C issued on September 19,

1923, by the Canadian Commissioner of Customs and Excise to Collectors of Customs and Excise in Canada.[99] You will observe that this circular contains the following regulation:

"No intoxicating liquors imported into Canada and no intoxicating liquors subject to duties of excise and on which such duties of excise have not been paid, may be exported from Canada in bond in any vessel under the burthen of two hundred tons gross registered tonnage."

You will bring the enclosed copy of Circular 275-C to the attention of the Cuban authorities and inquire whether they would be disposed to issue a similar regulation to Cuban Collectors of Customs and Excise.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

811.114/3099

The Chargé in Cuba (Howell) to the Secretary of State

No. 535

HABANA, *December 6, 1923.*
[Received December 14.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 149 of November 14, enclosing a copy of a circular issued by the Canadian Commissioner of Customs and Excise which prohibits the exportation under certain conditions of intoxicating liquors in any vessel of less than two hundred gross registered tonnage.

A copy of this regulation was promptly forwarded to the Foreign Office, and I have had several conferences with the Secretary of State in regard to the matter. The Treasury Department is giving the question its closest attention to see whether or not a Presidential decree of this sort might be issued or whether a law must be passed. In the latter case, there is little hope of success.

The Cuban Government is desirous of doing everything possible to assist the United States Government in preventing the illegal importation of intoxicating liquor into the United States, and the Secretary of State assures me that if there is any possible way to put this particular regulation into effect, it will be done.

Although in accordance with the instruction under acknowledgment, the Cuban Government has been asked whether it will agree to deny clearances to vessels carrying cargoes of liquor directly destined for the United States, no answer has as yet been received,

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[99] Not printed.

and I have not pressed this point for fear of prejudicing the chances of having shipments of liquor on boats of less than two hundred tons prohibited. It does not appear that any vessels clear from the Island with cargoes of liquor bound directly for the United States and from the very nature of the present regulations which require landing certificates which must be signed and stamped by officials at the port of destination, this would be impossible, so that, although there is no law in Cuba prohibiting the direct shipment of liquor to the United States, the requirements for shipping liquor out in bond are such that clearance cannot be obtained for United States ports. Among the many notifications received by the Embassy in accordance with the agreement with the Cuban Government there is not a single instance of a vessel carrying a cargo of liquor receiving clearance for a United States port.

I have [etc.] WM. S. HOWELL

STATUS IN FOREIGN COUNTRIES OF VESSELS AND REPRESENTATIVES OF THE UNITED STATES SHIPPING BOARD

195/283

The Secretary of State to Consular Officers

No. 722 WASHINGTON, *May 21, 1920.*

ACCIDENT REPORTS AND LEGAL PROCEEDINGS CONDUCTED FOR THE UNITED STATES SHIPPING BOARD

GENTLEMEN: Except in cases arising in European ports or ports where there are local representatives of the United States Shipping Board, masters of Shipping Board vessels have been instructed by the Shipping Board to report by telegraph to the nearest consular officers all cases of salvage, all total losses, all collisions and other accidents when the repairs will amount to $500.00 or more. After such notification consular officers will report the matter promptly to the Department by telegraph for the consideration of the Shipping Board. While masters have been instructed to submit written reports to the Shipping Board direct, the reports are necessarily incomplete and therefore consular officers will make full investigations and written reports in all cases reported by them in order that the interests of the Government may be fully protected.

All matters requiring legal attention in connection with Shipping Board vessels in foreign ports except ports of Europe and other ports where there are local representatives of the Shipping Board are to be reported promptly to the Department and instructions awaited before any action is taken.

All cases, however, of seizure, arrest, or attachment of Shipping Board vessels, when an agreement, undertaking, stipulation, or bond is requested to effect the release of the vessel, should be reported to the Department for instructions whether arising in European ports or other ports where there are Shipping Board representatives, or elsewhere outside American territory. In this connection Section 7 of the Act approved March 9, 1920, provides as follows:

"That if any vessel or cargo within the purview of sections 1 and 4 of this Act is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage, or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the United States Shipping Board, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the United States Shipping Board, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is hereby vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the United States Shipping Board, or of such corporation, for the allowance and payment of such judgments: *Provided, however*, That nothing in this section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case."[1]

In accordance with the provisions of the Act consular officers are not to claim any vessel or cargo referred to therein, immune from arrest, attachment or other seizure nor to execute any stipulation or

[1] 41 Stat. 525.

undertaking except upon instructions from the Department. It is possible that in many cases consular officers will be instructed to grant a stipulation without surety and it is very important that the courts recognize such stipulation. A specimen of a stipulation which will probably satisfy all necessary conditions is enclosed for your guidance in case you are instructed to grant such a document.

The following cases are insured by the Shipping Board in the American Steamship Owners' Mutual Protection and Indemnity Association:

1. Injury to any person, including members of the crew, passengers, persons on another vessel, laborers handling cargo, or any other person.

Cases under any Workman's Compensation Act are not covered by P & I insurance, except by special arrangement. Such cover is usually provided by the contracting stevedore and included in the stevedoring rate.

Reasonable burial expenses are allowed, not exceeding $100.

2. Damages to other vessels and their cargoes otherwise than by collision, including damage by wash of steamer, crowding other vessels ashore, causing two or more other vessels to collide, etc.

3. Damage to docks, piers, jetties, breakwaters, buoys, cables and other fixed or movable objects; also damage to property on docks or piers. Each claim is subject to a deduction of $50.

4. Damage to cargo, or responsibility for cargo carried or to be carried, including shortages and overcarriages, (exclusive of shortage consequent on B/L guarantee). Subject to a deduction of $500 on each voyage, irrespective of the number of ports of call.

Packages declared by the shipper to have a value exceeding $1,000 each shall be specially reported and, in general, specially insured against loss or damage from any cause for which the vessel might be liable, including pilferage.

5. Expenses of removing wreck of the vessel, where the same are a legal charge. Each claim subject to a deduction of $50.

6. Expenses of repatriating members of the crew, where the same are a legal charge. Each claim subject to a deduction of $50.

Wages, as such, are not reimbursible by way of insurance.

7. Extraordinary quarantine expenses by reason of outbreak of plague, or other contagious disease, on board the vessel. Each claim subject to a deduction of $200.

8. Illness of passengers or crew. Subject to deduction of $50 in each port.

Reasonable burial expenses are allowed, not exceeding $100.

9. Net loss due to deviation to land an injured or sick seaman, in respect of port charges incurred or bunkers, stores and provisions consumed as the result of the deviation.

10. Expenses caused by smuggling or mutiny. Also expenses of defending unfounded claims brought by the crew, relating to terms and conditions of employment. (Note: Such claims of this character as are deemed in some degree to be wellfounded should be defended, if at all, by the United States Attorney.)

11. Customs and immigration fines, and other fines arising from neglect or default of Captain or crew. Each claim subject to deduction of $50.
12. Cargo's proportion of general average, if not otherwise recoverable, as in cases where the G/A is brought about by the vessel's negligence.
13. Legal and other expenses incurred in relation to any of the above risks, or when authorized in the interest of the Association.

Legal questions arising in Protection and Indemnity Club Insurance matters described above must be handled by attorneys employed by the American Steamship Owners' Mutual Protection and Indemnity Association in foreign ports.

Notices of accidents of the above nature should be given to the Department and masters should be referred to the nearest representatives of the American P & I Association. A list of the representatives is appended.[2]

In acting as agents for the Shipping Board, consular officers must exercise due care that they do not impair their usefulness to this Government as consular officers and will be careful to keep the Department fully informed as to any action they may take in Shipping Board matters.

I am [etc.]

For the Secretary of State:
WILBUR J. CARR

[Enclosure]

(Here insert the name of the court ordering the arrest).

(Name of Claimant) vs. (Name of Vessel)	STIPULATION FOR RELEASE OF VESSEL

WHEREAS, a libel was filed on the ---------- day of --------------, 19--, by ---------------------------- against the American Steamship ------------------------ her engines, etc., for the reasons and causes in said libel mentioned; and

WHEREAS, the said Steamship -------------- is now in the custody of --------------------------------, under process issued in accordance with the prayer of said libel, as ordered by the above entitled court; and

WHEREAS, without submitting the rights of the United States to the jurisdiction of the said court, a claim for the said Steamship

[2] Not printed.

____________ has been filed by the United States of America by and through ____________________, Consul of the United States of America for the district of ______________________, and the value thereof has been fixed for the purpose of bonding at __________; and

WHEREAS, the United States Shipping Board Emergency Fleet Corporation, as stipulator, hereby consents and agrees that in case of default or contumacy on the part of said claimant, execution may issue against its goods, lands, and chattels, in the sum of________________;

NOW, THEREFORE, THE CONDITION OF THIS STIPULATION IS SUCH that if it shall hereafter be finally determined that this court has jurisdiction to proceed in said cause and if claimant herein and the United States Shipping Board Emergency Fleet Corporation, the stipulator undersigned, shall abide by all the orders of the court, interlocutory and final, and pay the amount awarded by the final decree rendered by such court or by any Appellate Court, if any appeal intervenes, then this stipulation shall be void; otherwise to remain in full force and virtue.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By ______________________________
(SEAL) Consul of the United States of America
as
Agent for the United States Shipping Board Emergency Fleet Corporation.

195/458

The Secretary of State to Diplomatic and Consular Officers

Diplomatic No. 171
Consular No. 871

WASHINGTON, *January 11, 1923.*

STATUS IN FOREIGN COUNTRIES OF VESSELS AND REPRESENTATIVES OF THE UNITED STATES SHIPPING BOARD

GENTLEMEN: Frequent inquiries have been made concerning the exemption of Shipping Board vessels and representatives of the Shipping Board in foreign countries from taxation, and the following statement of the views of the Department regarding the status and immunities in foreign countries of vessels of the United States Shipping Board, and of Shipping Board representatives, is submitted for the information and guidance of American Diplomatic and Consular Officers in maritime countries.

1. SUITS AGAINST SHIPPING BOARD VESSELS IN FOREIGN COURTS

The Department does not regard Government owned or operated vessels when engaged in commercial work to be entitled to immunity as public vessels and when the Department has been requested by diplomatic representatives of foreign governments to inform our courts that such vessels were immune, it has declined to comply with the request. It accordingly has also declined to request foreign governments to grant immunity to Shipping Board vessels when arrested in foreign ports on judicial process.

Lower Federal courts of the United States have held that merchant vessels owned and operated by foreign governments are not immune from arrest upon process issued from the Admiralty Courts of the United States and unless these decisions are reversed by the Supreme Court of the United States, the Department will continue its past practice of declining to request foreign governments to grant Shipping Board vessels immunity from judicial process in foreign courts.

In this relation it may be of interest to note that the chairman of the Shipping Board in a recent letter to the Department[2a] states that he "is heartily in favor of Government-owned ships in commercial work being subject to all the laws" which apply to privately owned ships. Attention is also invited to Section 7 of the Suits in Admiralty Act approved March 9, 1920, (41 Stat. L. 525), which was referred to in Special Consular Instruction No. 722, of May 21, 1920, and which provides among other things that American Consular officers may execute bonds under which the United States undertakes to satisfy judgments that may be rendered against the United States Shipping Board vessels in foreign ports. Reference is also made to the decision of the Supreme Court of the United States rendered May 1, 1922, in the case of the *Sloan Shipyards Corporation* vs. *the United States Shipping Board Emergency Fleet Corporation*[2b] that the defendant was not a governmental agency to such an extent that it was immune from suit in the courts of the United States.

2. CUSTOMS DUTIES ON MERCHANDISE IMPORTED FOR SHIPPING BOARD VESSELS

This Government does not exempt foreign governments from the payment of customs duties on materials brought into the United States for use in repairing merchant vessels owned or operated by them.[2c] It accordingly declines to request foreign countries to exempt the Shipping Board from the payment of such customs duties on ma-

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[2a] Not printed.
[2b] 258 U. S. 549.
[2c] Letter from Eliot Wadsworth, Assistant Secretary of the Treasury, to the Secretary of State, Dec. 1, 1922; not printed.

terials imported into such countries for repairing Shipping Board vessels.

3. INCOME TAXES ON EARNINGS OF SHIPPING BOARD VESSELS

Foreign governments are not taxed on incomes consisting of earnings derived in the United States from the operation of merchant vessels belonging to or operated by them and the Department has in the past endeavored to obtain an exemption, as a matter of comity, for the Shipping Board in certain foreign countries in which steps were taken to collect income taxes on the earnings of Shipping Board vessels. The matter was, however, not pressed as a matter of right.

Section 213(*b*) (5) and (8) of the Revenue Act of 1921 approved November 23, 1921, (42 Stat. L. 227 [*237*], 239), contain the following provisions:

"Sec. 213. That for the purposes of this title (except as otherwise provided in section 233) the term 'gross income'—

. . . .

"(b) Does not include the following items, which shall be exempt from taxation under this title:

. . . .

> "(5) The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States.
>
> . . . .
>
> "(8) The income of a nonresident alien or foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States."

You will observe that provision is made for the exemption from taxation of any income received by a foreign government from sources within the United States and also for the exemption from taxation of the income of a nonresident alien individual or a foreign corporation which consists of the earnings derived from the operation of vessels documented under the laws of a foreign country which grants the equivalent exemption to citizens of the United States and to corporations organized in the United States.

4. INCOME TAXES ON EARNINGS OF REPRESENTATIVES OF THE UNITED STATES SHIPPING BOARD IN FOREIGN COUNTRIES

As the Treasury Department has ruled that an alien who is a resident of the United States is subject to income tax upon payments made to him by a foreign government for services rendered in this

country to that government in the conduct by it of a commercial enterprise, and as representatives of the United States Shipping Board in foreign countries enjoy neither a diplomatic nor a consular status, the Department has not been in a position to request foreign governments to grant them special exemptions from taxation.

The information contained in this instruction is for use by the representatives of this Government, but should not be communicated to private interests or foreign governments except pursuant to specific instructions from the Department.

I am [etc.] CHARLES E. HUGHES

195/474

The Secretary of State to Diplomatic Officers

No. 178 WASHINGTON, *March 5, 1923.*

GENTLEMEN: Referring to the Department's Confidential Circular Instruction dated January 11, 1923, entitled "Status in Foreign Countries of Vessels and Representatives of the United States Shipping Board", the Department informs you that a communication [2d] has been received from the Chairman of the United States Shipping Board stating that it has come to his attention that some foreign governments apparently have doubt concerning the status of merchant vessels belonging to the United States of America represented by the United States Shipping Board, particularly with respect to questions of immunity from arrest and other special advantages generally accorded to public vessels of a foreign nation. In order that the status of such vessels may be clearly understood, it is desired that you shall address a communication to the Foreign Office concerning these vessels in the following sense:

The United States will not claim that ships operated by or on behalf of the United States Shipping Board, when engaged in commercial pursuits, are entitled to immunity from arrest or to other special advantages which are generally accorded to public vessels of a foreign nation. Such ships when so operated will be permitted to be subject to the laws of foreign countries which apply under otherwise like conditions to privately owned merchant ships foreign to such countries.

The United States will, however, when occasion arises, continue to ask that foreign courts and tribunals and other government departments and agencies recognize the application of Section 7 of the Suits in Admiralty Act, approved March 9, 1920 (41 Stat. at L. 525), which provides as follows:

[Here follows the text of section 7 printed in consular instructions no. 722, May 21, 1920, *ante*, page 263.]

I am [etc.] CHARLES E. HUGHES

[2d] Dated Feb. 20, 1923; not printed.

195/503

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *July 7, 1923.*

SIR: I have the honor to refer to the Ambassador's note No. 304 of April 18, 1923,[2e] in which he inquired whether His Majesty's Government are correct in interpreting the effect of Section 7 of the Suits in Admiralty Act to be as follows:

"If a suit is brought in the courts of a foreign country against a merchant vessel owned or operated by the United States Government, bail or its equivalent will be given on behalf of the United States Government and, if judgment is rendered against the vessel, payment will be made."

A communication dealing with the matter has been received from the appropriate authority of this Government,[2e] in which it is stated that broadly speaking, the interpretation of Section 7 of the Suits in Admiralty Act as stated by the Ambassador is correct. It is pointed out that it would be more exact to state that the Ambassador correctly stated the practice which has ordinarily been followed and will continue ordinarily to be followed in cases of this character. However, Section 7 does not require that such practice shall be followed, but merely authorizes the proper officers of the United States to adopt such practice.

It is also observed that possibly cases will arise in which it will be considered undesirable to furnish bail or its equivalent on behalf of the United States, and in such cases the vessel seized will be disposed of by the country directing the seizure in accordance with its ordinary practice in similar cases.

While the term "merchant vessel" employed in the Ambassador's note No. 304 of April 18, 1923, was doubtless used to refer to a vessel owned by the United States only when engaged in commercial pursuits, it is suggested, for sake of precision, that the term should be definitely construed to have such a significance.

It may be observed that foreign admiralty judgments are paid by the United States Treasury "out of any money in the Treasury of the United States not otherwise appropriated" pursuant to the provisions of Section 8 of the Suits in Admiralty Act, upon receipt of copies of the judgments certified as provided in Section 7 of that Act.

All vessels in the charge of the United States Shipping Board are owned by the United States. When such vessels are seized or threatened with seizure in Admiralty proceedings abroad it has been the

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[2e] Not printed.

practice, particularly in Great Britain, to effect their release by the giving of a stipulation by the foreign representative of the Shipping Board. I am informed that judgments rendered in these cases are paid in the same manner as judgments in cases where the procedure provided in Section 7 of the Suits in Admiralty Act has been followed.

Accept [etc.] CHARLES E. HUGHES

NEGOTIATIONS ON BEHALF OF THE WORLD WAR FOREIGN DEBT COMMISSION FOR THE SETTLEMENT OR REFUNDING OF DEBTS OWED THE UNITED STATES BY FOREIGN GOVERNMENTS[3]

800.51 W 89 Estonia/4

The Minister in Estonia, Latvia, and Lithuania (Coleman) to the Secretary of State

No. 457 RIGA, *February 27, 1923.*
[Received March 27.]

SIR: Adverting to the Department's instruction No. 271 of August 8, 1922,[3a] and subsequent correspondence with reference to the indebtedness of the Governments of Latvia, Lithuania and Esthonia to the Government of the United States, I have the honor to forward herewith copy of a letter, dated February 23rd,[3b] from the Esthonian Minister of Foreign Affairs advising that the Esthonian Government will in a short time appoint its official representative to enter into negotiations in this matter.

I have [etc.] F. W. B. COLEMAN

800.51 W 89 Latvia/7 : Telegram

The Secretary of State to the Minister in Estonia, Latvia, and Lithuania (Coleman)

WASHINGTON, *August 7, 1923—7 p.m.*

31. Please present a note to the Latvian Foreign Office substantially as follows:

"The Government of the United States is informed that on June 26, 1923, a statement was made in the British House of Commons on behalf of the Chancellor of the Exchequer to the effect that interest is being received by Great Britain in cash on relief loans to certain European Governments including the Government of Latvia.

As my Government has considered that it has been definitely understood that the United States should stand with respect to payments on account of relief obligations given by the Government of Latvia in as favorable a position as any other government hold-

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[3] Continued from *Foreign Relations*, 1922, vol. I, pp. 396–417.
[3a] *Ibid.*, p. 411.
[3b] Not printed.

ing obligations evidencing advances for similar purposes, I have the honor to inquire whether payments have been and are being made to the Government of Great Britain on obligations similar to the above, and, if so, when the Government of the United States may expect to receive, on account of obligations of the Government of Latvia held by the United States in the aggregate principal amount $5,132,287.14, payments corresponding to those made to Great Britain."

Also address similar notes to the foreign offices of Esthonia and Lithuania substituting the following figures for the Government of Esthonia $13,999,145.60; for the Government of Lithuania $4,981,628.03.

HUGHES

800.51 W 89 Latvia/9

The Minister in Estonia, Latvia, and Lithuania (Coleman) to the Secretary of State

No. 1186 RIGA, *August 29, 1923.*
[Received September 20.]

SIR: Referring to your telegram No. 31 of August 7, 7:00 P.M., instructing me to present notes to the Esthonian, Latvian and Lithuanian Governments concerning the payment of debts owing to the United States Government; I have the honor to transmit herewith a copy of a note [4] which I have just received from the Latvian Foreign Office suggesting that negotiations be carried on in Riga with a view to arranging for the settlement of these debts.

I shall await the Department's further instructions before replying to this note.

I have [etc.] F. W. B. COLEMAN

800.51 W 89 Lithuania/12

The Minister in Estonia, Latvia, and Lithuania (Coleman) to the Secretary of State

No. 1275 RIGA, *September 15, 1923.*
[Received October 6.]

SIR: With reference to the Department's telegram No. 31 of August 7:7 P.M. instructing me to ascertain from the Lithuanian Government whether payments have been made and are being made to the Government of Great Britain on obligations similar to those held by the United States Government, I have the honor to inform you that the Government of Lithuania has not yet sent an official

[4] Not printed.

reply to my note but I am in a position to inform the Department that the situation is as follows:

The Lithuanian Government has no outstanding obligations to foreign Governments except to the United States. It is, however, indebted to certain private firms in Great Britain to the amount of 18,000 pounds sterling on which interest is being paid.

Further, I am confidentially informed that Dr. Narushkevich, formerly Lithuanian representative in London, and at present in Geneva, as one of the Lithuanian delegates to the current session of the League of Nations, will proceed to Washington after the adjournment of this session to take up the question of the Lithuanian debt.

In an informal conversation in Kovno last week, Mr. Narushkevich informed Mr. Morgan [5] that the American loan was secured by Lithuania's claim for reparations from Germany; and no payments were to be asked until reparations had been secured; and since no reparations have been paid by Germany up to this time, the loan is, strictly speaking, not due. Dr. Narushkevich intimated he would ask that Lithuania be permitted to postpone payment of the loan until the money necessary for its liquidation had been obtained from Germany; or would try to cancel the loan by transferring Lithuania's claim against Germany to the United States.

Mr. Narushkevich has been chosen to discuss this question in Washington because he himself negotiated the loan with the Liquidation Committee in Paris in 1919, and is therefore well informed on the entire question.

As the Legation has no copy of the note signed by Mr. Narushkevich on behalf of the Lithuanian Government, showing its indebtedness, I should be glad if the Department would be so good as to send me a copy, in order that I may be better informed as to the terms under which the loan was negotiated and may satisfy myself as to the soundness of Mr. Narushkevich's contentions.

In this connection it is worthy of note that the Lithuanian Government is desirous of borrowing money abroad for various public works including the construction of two railways connecting Memel with Kovno from the north and from the south. The first line runs from Koslawa Ruda, on the main line from Kovno to Eydtkuhnen, passing through Schaki, Jurburg, Tauroggen, Lawkow, Retowo, and Gorshdy to Memel. The second line runs from Keidany through Rossieny and Koltynjany to meet the above line at Lawkow.

British capitalists have, I believe, been sounded as to the possibility of raising the necessary funds in London, but no definite offer has been made on either side. I have been promised a copy of the Lithuanian offer when it is drawn up.

I have [etc.] F. W. B. COLEMAN

[5] Stokeley W. Morgan, first secretary of legation at Riga.

800.51 W 89 Lithuania/15

The Minister in Estonia, Latvia, and Lithuania (Coleman) to the Secretary of State

No. 1343 RIGA, *October 10, 1923.*
[Received November 5.]

SIR: With reference to the Department's telegram No. 31, of August 7th 7:00 p.m. instructing me to ascertain from the Lithuanian Government whether payments have been made or are being made to the Government of Great Britain on obligations similar to those held by the United States Government; and my confidential despatch No. 1275 of September 15, 1923, reporting that the Lithuanian Government plans to send Dr. Narushkevich to Washington to discuss the settlement of the debt question; I have the honor to transmit herewith a copy of a note [6] which I have received from the Lithuanian Foreign Office, stating that the Lithuanian Government is paying interest on certain obligations held by the British Government; but that these obligations are not considered as being of the same nature as those held by the American Government, and that the payment of interest to Great Britain does not tend to show any discrimination against the United States.

The reasoning which leads the Lithuanian Government to this conclusion is by no means clear; however, Mr. Galvanauskas [7] states that the Lithuanian Government is anxious to meet its obligations in the most effective way, and to this end will send to the United States in the near future a representative to negotiate a definite settlement of this question.

I have [etc.] F. W. B. COLEMAN

800.51 W 89 Latvia/11 : Telegram

The Secretary of State to the Minister in Estonia, Latvia, and Lithuania (Coleman)

WASHINGTON, *October 20, 1923—3 p.m.*

48. Your despatch No. 1186, August 29. Please acknowledge Foreign Office note of August 28 and state:

"The Government of the United States is gratified to note that the Government of Latvia is prepared to enter into negotiations with a view to the settlement of the indebtedness of Latvia to the United States. Under existing legislation it is impossible for the World War Foreign Debt Commission as at present composed to conduct the negotiations in Europe, and the Government of the United

[6] Not printed.
[7] Lithuanian Prime Minister and Minister for Foreign Affairs.

States is therefore unable to accede to the suggestion of the Government of Latvia that the negotiations be conducted at Riga. I am instructed to state that the World War Foreign Debt Commission will be happy to negotiate at Washington with a representative duly authorized by the Latvian Government in regard to the indebtedness in question at as early a date as is convenient to the Latvian Government.

With respect to payments heretofore made by Latvia to Great Britain on account of relief obligations without the making of corresponding payments to the United States, I am instructed to point out that the Government of the United States has always considered that it had been definitely understood that the United States should stand with respect to payments on account of relief obligations in as favorable a position as any other nation holding similar obligations."

HUGHES

800.51 W 89 Lithuania/14

The Secretary of State to the Minister in Estonia, Latvia, and Lithuania (Coleman)

No. 78 WASHINGTON, *November 7, 1923.*

SIR: With reference to your despatch No. 1275 of September 15, 1923, regarding the indebtedness of Lithuania to the United States and the opinions of Dr. Narushkevich reported therein, you are instructed to take the first suitable opportunity to inform Dr. Narushkevich, or the appropriate official of the Lithuanian Government, that the Government of the United States is not aware of any understanding with the Lithuanian Government that repayment of Lithuania's indebtedness to the United States would not be asked until Lithuania had received its reparation payments.

In accordance with your request a photostat copy of each of the four obligations of the Government of Lithuania held by the United States Treasury is enclosed.[8] These obligations are as follows:

Date of obligation	Principal sum
June 28, 1919,	$4,159,491.96
June 30, "	306,433.00
June 30, "	84,536.07
June 30, "	431,167.00
Total:	$4,981,628.03

I am [etc.]

For the Secretary of State:
LELAND HARRISON

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[8] Not reproduced.

701.60 i 11/12 : Telegram

The Minister in Estonia, Latvia, and Lithunia (Coleman) to the Secretary of State

RIGA, *December 6, 1923—11 a. m.*
[Received December 6, 11:05 a. m.]

88. A. Piip, appointed Esthonian Minister to the United States, sails on *Aquitania* December 18, will arrive Washington 27th. He has full powers to arrange for settlement of the Esthonian debt.[8a]

COLEMAN

800.51 W 89 Lithuania/18

The Minister in Estonia, Latvia, and Lithuania (Coleman) to the Secretary of State

No. 1540 RIGA, *December 7, 1923.*
[Received December 28.]

SIR: I have the honor to acknowledge the receipt of the Department's despatch No. 78 of November 7th, replying to my despatch No. 1275 of September 15, 1923, regarding the indebtedness of Lithuania to the United States; and am very glad to have the photostat copies of the obligations of the Government of Lithuania held by the United States Treasury.

I presume that Dr. Narushkevich's contention that the American loan is secured by Lithuania's claim for reparations from Germany is based on the clause in these obligations which reads:

"This note shall be entitled to the security of, and shall constitute a charge upon, any payments or property which the State of Lithuania may receive from Germany or any of its Allies, by way of reparation or cession."

and that an attempt is now being made to expand the meaning of this clause into a tacit understanding that no payments will be asked for until reparations have been secured.

There is, of course, no ground for putting any such construction upon the words used, and I shall take the first suitable opportunity to inform Dr. Narushkevich that the Government of the United States does not so construe the agreement.

Dr. Narushkevich is at present in London but I have asked him to visit me for a few days prior to his departure for the United States, and I shall take that opportunity to discuss the matter with him.

I have [etc.] F. W. B. COLEMAN

[8a] For negotiations with the World War Foreign Debt Commission and text of agreement signed Oct. 28, 1925, see *Combined Annual Reports of the World War Foreign Debt Commission*, 1922–1926 (Washington, Government Printing Office, 1927), pp. 205 ff.

RESERVATION BY THE UNITED STATES OF ITS RIGHTS TO WRANGELL ISLAND

861.014/3

The Ambassador in Russia (Francis) to the Secretary of State

No. 479 PETROGRAD, *December 2, 1916.*
[Received December 30.]

SIR: I have the honor to enclose herewith, as of possible interest, a copy of a translation from the *Kronstadtskii Vyestnik* of October 16, 1916, relative to lands in the Arctic Ocean recently discovered by the Commander of a Russian surveying expedition.

I have [etc.] DAVID R. FRANCIS

[Enclosure—Translation]

Declaration of Russian Government Concerning Newly Discovered Lands in the Arctic Ocean

After approval by His Majesty, the Minister of Foreign Affairs on October 3, 1916, informed the representatives of allied and friendly powers to Russia in a circular notice as follows:

The large number of discoveries and explorations carried out in the Polar regions along the Northern Coast of the Russian Empire by Russian navigators and merchants during past centuries were recently added to by the new successes achieved by the activity of His Majesty's Aide-de-Camp Commander Vilkitzky, Imperial Russian Navy, the Commander of the Surveying Expedition of the Northern Frozen Ocean.

This officer of the Imperial Navy in 1913 noted several vast territories along the Northern Coast of Siberia, and in latitude 75—45 North discovered an island, later named the Island of General Vilkitzky. Then to the northward of this was discovered a large body of land extending to the north from Taimir Peninsula, to which was given the name of Emperor Nicholas II Land, Tsessarevitch Alexis Island and Starokadomsky Island.

During 1914, Commander Vilkitzky made other new and important explorations and discovered another new island near Bennet Island, to which the name of Novopashennyi was given.

The Imperial Russian Government has the honor of notifying the Governments of the allied and friendly powers to Russia of the inclusion of these lands in the Russian Empire.

The Imperial Government takes the occasion to state that it considers also as composing an integral part of the Empire the following islands: Henriette, Jeanette, Bennet, Herald and Uiedinenia (Solitude), which together with the New Siberia Islands, Wrangel and

others along the Asiatic shores of the Empire, form an extension to the north of the Continental expanse of Siberia.

The Imperial Government does not consider it necessary to include in the present notification the islands of Novaya Zemlia, Kolguev, Vaigatch and others of smaller dimensions, disposed along the European Coast of the Empire in view of the fact that they have been recognized for centuries as a part of the Empire.

861.0144/49

Memorandum by the Chief of the Division of Russian Affairs, Department of State (Poole)

[WASHINGTON,] *March 30, 1922.*

The attached memorandum was handed to me today by the Russian Ambassador.[9] He said that he thought that Wrangell Island had no political or economic importance and that it should not become in any way the subject of controversy. He only wished to put on record his point of view with respect to the matter inasmuch as it has received so much publicity.

D. C. POOLE

[Enclosure]

Memorandum by the Russian Embassy

Reports have recently appeared in the press to the effect that on September 15, 1921, the British flag was raised on Wrangell Island by members of the Vilhjalmur Stefansson polar expedition force, and that the island was proclaimed to be a part of the British Empire. Considerations followed justifying the establishment of British sovereignty by the fact that in 1914 the survivors of the wrecked *Karluk*, a Canadian Arctic Expedition vessel, remained on the island for about eight months.

Wrangell Island is a typical arctic land, lying in regions most dangerous and inaccessible. It is not fit for permanent habitation. Obviously, terms of international law, referring to acquisition of unoccupied territory through "use or settlement" (Moore's *Digest of International Law.* Vol. I, Par. 80–81) cannot be applied in this case.

Nor can any claim be advanced by Great Britain on the ground of discovery. Wrangell Island has been known to Russians since the beginning of the 19th century and bears the name of a Russian explorer. Moreover, the first men to land on the island in the 80's

[9] Boris Bakhmeteff, Russian Ambassador since July 5, 1917.

were members of an American rescue party, searching for survivors of the ill-fated *Jeanette*. Such landings, as did occur, were not purposed for exploring the island or the adjacent regions of the Polar seas, but were caused by shipwrecks or intended for rescue.

It is doubtful, in general, whether principles and precedents, accepted in international law with regard to the establishment of sovereignty over new discovered lands, be appropriately applied to arctic regions. Travel and exploration in these latitudes were not actuated by economic or political aims. There has not been that spirit of competition which leads the pioneer and navigator in milder zones to proclaim priority over new discovered lands in favor of his country. Arctic explorations were organised for purposes scientific. There prevailed towards these explorations a certain international solidarity, revealing itself in mutual helpfulness and assistance. Russia always participated in such assistance and on several occasions the parties landing on Wrangell Island returned through the confines of Russia. International cooperation of this character would scarcely be practiced if the purpose of travel in arctic regions were known to be competitive searching for territories for aggrandizement.

In the past there has been no formal delimitation of sovereignty in arctic regions. There seems to have been a tacit understanding, however, that arctic lands are naturally held as being within the sovereignty of the country to which belongs the continental confines of the Polar Ocean.

Such understanding has been upheld in cartography, arctic lands usually bearing the color of the adjacent mainland. This practice is followed in particular by J. G. Bartholomew, the leading British geographer and "Cartographer to the King."

This understanding seems to have governed also in the Convention of 1867, between the United States and Russia, ceding Alaska.[10] Article I. of the Convention reads in part: "The western limit, within which the territories and dominion conveyed, are contained, passes through a point in Behring's Straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen Ocean." It appears that, in the conception of the treaty, this meridian was to divide the regions north of the Behring Straits into zones belonging respectively to Alaska and Russia.

Within recent years endeavor was evidenced to formally establish sovereignty over arctic lands. The *Encyclopædia Britannica*

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[10] Malloy, *Treaties*, 1776–1909, vol. II, p. 1521.

(first supplementary volume, 1922, pp. 119)[10a] holds that "soon after the outbreak of the world war Russia notified a formal claim to the Arctic islands lying north of Asia. In August, 1914, Captain Isliamov hoisted the Russian flag on Franz Josef Land in anticipation of any claim that Austria might sustain by right of discovery. The Supreme Council in 1919 conferred the sovereignty of Spitsbergen and Bear Island on Norway. All of the islands of the American Arctic Archipelago are claimed by Canada."

The case of Wrangell Island, on account of its geographical location and character, is of little actual importance. The very fact, however, of the raising of the British flag and proclamation of British sovereignty is bound to have an unfortunate moral effect in connection with the present disabled state of Russia and the extreme sensitiveness of Russian national feeling.

[WASHINGTON,] *March 30, 1922.*

861.0144/13

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

No. 643 WASHINGTON, *September 12, 1922.*

SIR: With reference to the Department's instruction No. 466 of April 19 and your despatch No. 1343 of May 24, 1922,[11] it is desired that you should now make formal inquiry of the Foreign Office respecting the views of the British Government on the subject of Wrangell Island, leaving with the Foreign Office a memorandum of your inquiry. The memorandum should bring out the facts and considerations set forth below.

Wrangell Island (or Wrangell Land), which lies in the Arctic regions about one hundred miles north of the coast of Siberia, seems first to have been heard of, but not sighted, in 1823 by Baron von Wrangell, a Russian naval officer. Captain Kellett, of the British ship *Herald*, caught a glimpse of the island in 1849, but did not land thereon. In 1867 Captain Long, of the American whaler *Nile*, approached within fifteen miles of the island and gave it the name of Wrangell Land in honor of the Russian explorer above mentioned.

The first landing of which there is record was made in 1881 by officers of the United States revenue cutter *Corwin*. The officers of the *Corwin* raised the United States flag, took possession of the territory in the name of the United States, and deposited a record on the island. A few weeks later the U. S. S. *Rogers* anchored in a

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[10a] 12th ed. (1922), vol. xxx, p. 190.
[11] Neither printed.

harbor of Wrangell Island. The officers of this naval vessel found the United States flag and the record left by the officers of the *Corwin*. They made an extensive survey of the island.

From that time there appears to have been no landing until March, 1914, when the crew of the Canadian ship *Karluk* was forced to land on the island because of the wreck of its vessel. The crew of the *Karluk* was rescued the next September by an American vessel from Nome, Alaska.

One more landing has taken place since then. According to a report published in the *New York Times* of March 20, 1922, and in other newspapers at about the same time, a party of men, operating under the direction of Mr. Vilhjalmur Stefansson, arrived at Wrangell Island September 21, 1921, on the American sloop *Silver Wave*. So far as is known this party is still on the island. The party is reported to consist of a Canadian leader and three American citizens. It is reported that the Canadian leader immediately upon landing took possession of the island in the name of Great Britain or of Canada.

The facts set forth above indicate that the question of the status of Wrangell Island may require consideration at this time, especially in view of a statement reported to have been made by the Canadian Minister of Militia and Defense in the Canadian House of Commons on May 12, 1922, indicating a possible intention on the part of the Canadian Government to assert ownership thereof.

In addition to possible claims by the United States or by Great Britain (for itself or on behalf of the Canadian Government), a claim to the island has been put forward by Russia. The Government of the United States received from the Imperial Russian Ambassador at Washington under date of November 13, 1916,[12] a communication asserting that the Imperial Russian Government considered as forming part and parcel of the Empire Wrangell and other islands lying near the Siberian coast. It is presumed that a similar communication was made to the Government of Great Britain at the same time.

It is desired that you should set forth the above facts in the memorandum to be left with the Foreign Office, and, making special reference to the statement of the Canadian Minister of Militia and Defense in the Canadian House of Commons of May 12 last, inquire what purposes the British or Canadian Government may have in mind with respect to Wrangell Island and what are their views with respect to its present status.

It may be added, for your own information and guidance, that the Department feels that the public statement of the Canadian Minister of Militia and Defense justifies an official inquiry as to the purposes of

[12] Not printed.

Great Britain or Canada. The policy of this Government does not go at present beyond a reservation of all American rights in respect of the island and a readiness to discuss its status with the British Government.

I am [etc.]

WILLIAM PHILLIPS

861.0144/13

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

No. 781

WASHINGTON, *January 18, 1923.*

SIR: The Department directs attention to its instruction to the Embassy No. 643, of September 12, 1922, on the subject of Wrangell Island. The Embassy was instructed to make formal inquiry of the Foreign Office as to the views and purposes of the British Government in this connection. No report has been received from the Embassy. If no word has come from the Foreign Office, the Embassy is directed to renew its inquiry.

In this connection attention is drawn to the following sentence in a statement respecting Wrangell Island which appears on page 725 of Whitaker's *Almanack* for 1923:

"On September 21, 1921, the British flag was hoisted on the Island by an expedition despatched to the island by Stefansson, the annexation being notified to the Government of the Dominion of Canada on March 17, 1922."

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

861.0144/13

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

No. 840

WASHINGTON, *March 28, 1923.*

SIR: The Department invites attention to the fact that it has received up to the present no reply whatever to its instructions No. 643, September 12, 1922, and No. 781, January 18, 1923, on the subject of Wrangell Island. Please report immediately concerning the steps which have been taken in this matter and the results obtained.

In this connection you are informed that the Department is advised by the Secretary of War that a map of the world recently published by the Department of the Interior of Canada shows Wrangell Island as a British possession.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

861.0144/18

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

No. 2251

LONDON, *April 11, 1923.*
[Received April 24.]

SIR: I have the honor to refer to the Department's Instruction No. 840, of March 28, 1923, in which it is requested that a report be made concerning the steps taken by this Embassy in regard to the Department's Instructions No. 643, of September 12th, 1922, and No. 781, of January 18th, 1923, on the subject of Wrangell Island.

In compliance with the first named instruction, which was received in London on September 25th last, a member of this Embassy called upon Mr. Sperling, in charge of the American Division of the Foreign Office, on September 27, 1922, and left with him a memorandum based on this instruction. No reply having been received from the Foreign Office, on January 30th, the day following the receipt of the Department's second instruction in the matter, the Foreign Office was again approached and the memorandum which had previously been left with Mr. Sperling was recalled to his attention. He accordingly replied by letter, under date of February 3, 1923, and stated that he had ascertained that on November 25th, 1916, Count Benckendorff, at that time Russian Ambassador, communicated to His Majesty's Government a note, dated October 23rd, 1916, notifying the incorporation in the Russian Empire of certain islands, including Wrangell Island, alleged to have been discovered by an expedition under Captain Wilkitzki in 1913–1914. Inasmuch as Mr. Sperling had made no reference to the views of the British Government on the subject, he was requested to do so in a letter dated February 6, 1923. On February 15th he replied that the inquiry which had been raised necessitated reference to the Colonial Office and to Canada and that some little time would, he feared, necessarily elapse before the Foreign Office would be in a position to make a reply.

With further reference to the subject, I beg to enclose herewith a clipping, in triplicate, from *The Times* of April 9th last,[18] in which it is stated that Mr. Stefansson, the Arctic Explorer, is being sent to London by the Canadian Government to consult with the British authorities concerning Canada's claim to Wrangell Island and the value of the Island from a strategic and aerial point of view. The despatch is dated April 8th, and apparently cabled by *The Times* own correspondent at Ottawa.

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[18] Not printed.

In view of the above, renewed inquiries are now being made of the Foreign Office, the result of which the Embassy will not fail promptly to communicate to the Department.

I have [etc.]

For the Ambassador:
Post Wheeler
Counselor of Embassy

861.0144/18

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

No. 895 Washington, *May 17, 1923.*

Sir: The Department has received your despatch No. 2251 of April 11, 1923, reporting the communications which you have had with the Foreign Office on the subject of Wrangell Island, pursuant to the Department's instructions of September 12, 1922, and subsequent dates.

The Department regrets that this matter was not more actively pressed before the receipt of the Department's supplemental instruction of January 18, 1923, and desires that you should now endeavor to obtain a statement of the views of the British Government with the least possible delay.

It would be unfortunate if the British Government, or the Government of Canada, should be allowed to take up, without consultation with this Government, a position with regard to the ownership of Wrangell Island which might subsequently be found, for political reasons, difficult to alter.

I am [etc.]

For the Secretary of State:
William Phillips

861.0144/24

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

No. 2802 London, *August 28, 1923.*
[Received September 6.]

Sir: I have the honor to refer to the Department's Instruction No. 895, dated May 17, 1923, on the subject of Wrangel Island, and, in this connection, to enclose a clipping, in triplicate, from the *Daily Telegraph* of August 25, 1923,[14] stating that the Soviet Government has renewed its claim to this territory.

In order to obtain the view of the Foreign Office upon the question—particularly its view of the Canadian claim of annexation by virtue of the Stefánsson expedition—a member of the Embassy had

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[14] Not printed.

an informal conversation yesterday with both Mr. Ovey, of the Russian Department, and Mr. Sperling.

. . . .

Concerning the political aspect of the question, Mr. Sperling stated that the status of the island had recently been discussed by the Cabinet but that no decision had been reached. From this and the guarded nature of Mr. Sperling's replies to the Embassy's questions, I believe that the matter has assumed a rather important character in the eyes of the British Government and is accompanied by a divergence of views. Mr. Sperling remarked that Mr. Stefansson was insistent that the island would be a great economic asset to the British Empire on account of its equable, mild climate and good soil, and for communication purposes to Siberia. Mr. Sperling, on the other hand, rather relegated the advantages to the dim and distant future. Asked as to whether the claims of Russia and the fact that the crew of an American vessel had landed on the island in 1881 and taken possession in the name of the United States had been noted, Mr. Sperling replied in the affirmative, adding that he personally felt that the Russian claim was the weakest of all.

It will be seen from the above that no definite reply can yet be given to the Department's inquiry concerning the attitude of the British Government in the premises.[15] The Embassy, however, will not fail to follow the subject closely and report fully to the Department.

I have [etc.] POST WHEELER

PRELIMINARIES TO THE ASSEMBLING OF THE FIFTH INTERNATIONAL CONFERENCE OF AMERICAN STATES AT SANTIAGO, CHILE[16]

710.E/131

The Chilean Ambassador (Mathieu) to the Secretary of State

[Translation]

No. 253 WASHINGTON, *December 15, 1922.*

MR. SECRETARY: By direction of my Government, received by cable, I have the honor to inform Your Excellency that the date for the

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[15] Apparently no further statement was received directly from the British Foreign Office; but in a letter dated May 27, 1925, Mr. Vilhjalmur Stefansson wrote that "Ponsonby, acting as the official spokesman of the British Foreign Office, assured the Russians during the tenure of the Labor Government that Great Britain would never make a claim to Wrangel Island." (File no. 861.0144/135.)

[16] For the proceedings of the conference, see *Report of the Delegates of the United States of America to the Fifth International Conference of American States.*

opening of the Fifth Pan American Conference that is to meet at Santiago, has been set for the 25th day of March of the coming year 1923.

My Government further recommends me in the same communication to extend in advance to Your Excellency's Government, in order to gain the time that the circumstances require on account of receiving here by mail the note on the subject, the invitation which it has the honor to extend to you as one of the members of the Pan American Union, in order that Your Excellency's Government may deign to be represented at the aforesaid Conference, the program and regulations of which will be forwarded to Your Excellency by the Governing Board of the Pan American Union.

I take [etc.] B. MATHIEU

710.E/132 : Telegram

The Chargé in Peru (Sterling) to the Secretary of State

LIMA, *December 19, 1922—6 p.m.*
[Received December 20—12:27 a.m.]

87. In reply to telegram from Chilean Minister for Foreign Affairs notifying Peruvian Government of the transmission on December 13th of formal invitation to Peru to be represented at Pan American Conference and that program of the conference would be forwarded by Director of Pan American Union, the Minister for Foreign Affairs has telegraphed courteous acknowledgement and stated that "my Government will give serious attention to the note and announced program and in accordance with its accustomed readiness to collaborate in work for continental peace, as evidenced by the diplomatic acts recently celebrated, entertains hope that the participation of Peru in the conference will not be prevented because of the maintenance of the measures of force now being used by authorities of Tacna, Arica and Tarata against the Peruvian population in these Provinces". Latter refers to alleged recrudescence of Chilean activities reported to Minister for Foreign Affairs by his agents, see Embassy's despatch number 915, December 11th.[17]

Today *Prensa*, in editorial inspired by the Minister for Foreign Affairs, said [when] invitation and program arrive and if aforementioned persecutions suspended, Peru will be able to decide whether representation in or abstention from conference preferable.

STERLING

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[17] Not printed.

710.E/131

The Secretary of State to the Chilean Ambassador (Mathieu)

WASHINGTON, *December 20, 1922.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note of December 15, 1922, by which you inform me that the date for the opening of the Fifth Pan American Conference to meet at Santiago has been set for the 25th day of March of next year, and extend by the instruction of your Government an invitation to the Government of the United States to be represented in the said Conference.

Thanking Your Excellency for your communication, I am happy to accept, on behalf of the Government of the United States, the invitation thus courteously extended. The names of the United States representatives will in due course be communicated to your Government, through the American Ambassador at Santiago, and to you.[18]

Accept [etc.] CHARLES E. HUGHES

710.E/134: Telegram

The Chargé in Peru (Sterling) to the Secretary of State

LIMA, *December 21, 1922—1 p.m.*
[Received 8:50 p.m.]

88. Embassy's 87, December 19, 6 p.m. In reply to second telegram from Chilean Minister for Foreign Affairs deploring Peruvian attitude of complaint against Chile, the Minister for Foreign Affairs has telegraphed that Peru not desirous of occupying attention of America with quarrels only concerning Peru but that the dignity of Peru would not permit presence of Peruvian representatives in Santiago except upon disappearance of abuses to which Peruvians resident in occupied Provinces subjected.

STERLING

710.E/134: Telegram

The Secretary of State to the Chargé in Peru (Sterling)

[Paraphrase]

WASHINGTON, *January 12, 1923—6 p.m.*

1. Your 88, December 21, 1 p.m. On December 22, 1922, the Peruvian Ambassador left with the Secretary a memorandum on the sub-

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[18] The delegation of the United States was composed of Henry P. Fletcher, chairman; Frank B. Kellogg; Atlee Pomerene; Willard Saulsbury; Frank C. Partridge; George E. Vincent; William Eric Fowler; and Leo S. Rowe.

ject of the four telegrams which had been exchanged between the Chilean and Peruvian Foreign Ministers in regard to the invitation extended by Chile to Peru to attend the Fifth Pan American Conference at Santiago. The memorandum also stated . . . that Peru, for reasons affecting its national honor, could take no part in this conference while conditions in the Provinces of Tacna, Arica and Tarata remain unchanged. The Ambassador explained to the Secretary that he left the memorandum for the latter's information, and not for either advice or suggestion.

The Secretary stated in reply that he would, of course, take note of what was said in the memorandum, but that he did not desire to express any opinion in regard to the matter; that Peru's attendance at the conference was a question for her to decide for herself. The Secretary informed the Ambassador that the United States had accepted the invitation to the conference; he hoped that it would be a success, and that Peru would find it possible to attend. The Secretary added that he did not wish to express or indicate any opinion in regard to any of the statements the memorandum contained, and that he had no knowledge of the conduct of Chile referred to in it.

The Secretary said he felt that he ought, in a personal and unofficial way, to make this statement: Peru had succeeded in obtaining, as a result of the Chilean-Peruvian Conference at Washington, a protocol for the settlement of the Tacna-Arica controversy; the President of Chile had, with great difficulty, obtained the assent of the Chilean Congress to the protocol, and that the ratifications were to be exchanged soon. . . . The Secretary then pointed out that the matters in connection with Tacna-Arica to which the Ambassador had referred, namely, the conduct of Chile, et cetera, were matters which could be brought up and considered before the arbitration; it was not a case where some new or independent controversy was arising, but was a phase of the old matter which was to come under the arbitration. . . . The Secretary said that of course he could not discuss officially the question as to whether the Government of Peru should or should not be represented at the conference, for his opinion upon that point had not been asked, but that privately he might express his astonishment that Peru would take any action which should threaten the outcome of a matter which concerned her important interests.

The Ambassador stated in reply that he appreciated what the Secretary had said and that he was acting in accordance with instructions from his Government; that feeling was very intense in

Peru especially after the statements that had been made during the debates in the Chilean Congress. The Secretary then pointed out that the result had been the ratification of the protocol by a decisive vote; he added that in his opinion it would be unfortunate if foreign governments were to change their policies because of expressions that might be used by particular Senators in the course of debate in our Senate.

It is desirable that the Department's attitude should be fully appreciated, and in your conversation with the Minister of Foreign Affairs, you may make discreet use of my views as may seem appropriate to you. It is deemed important, if it can be brought about, that Peru should be represented at the Santiago Conference.

HUGHES

710.E/161 : Telegram

The Chargé in Peru (Sterling) to the Secretary of State

[Paraphrase]

LIMA, *January 18, 1923—3 p.m.*
[Received 10:30 p.m.]

2. Department's number 1, January 12, 6 p.m. Yesterday I had a long conversation with the President and Minister of Foreign Affairs together. I set forth the Department's attitude fully and asked for their views with regard to Peru's attendance at the Santiago Conference. . . .

. . . .

My argument has evidently impressed both the President and the Minister. The President stated emphatically that if some honorable way could be found, he heartily wished Peru to attend; for example, if the Chilean Ambassador would give you assurances (for the Peruvian Government could take no assurances from Chile directly) that acts of violence had ceased and that they would not be repeated; or if the Government of Chile should order a judicial investigation and the criminals were punished, he would consider an acceptance very seriously. In that case he hinted that even the deportation of Peruvians from the occupied Provinces which have taken place since the protocol[19] was signed, would be overlooked. All that is necessary is a plausible reason which will satisfy the public.

STERLING

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[19] See *Foreign Relations*, 1922, vol. I, p. 505.

710.E/166 : Telegram

The Ambassador in Chile (Collier) to the Secretary of State

[Paraphrase]

SANTIAGO, *January 22, 1923—8 p.m.*
[Received January 23—10:05 a.m.]

5. Saturday afternoon, after the President of Chile had telephoned that he wished to come to the Embassy to see me, an interview was arranged in which he stated that he regretted keenly the absence of Bolivia, Peru, and Mexico from the Pan American Conference, as he desired all American nations to be represented, and that after Mexico first declined he instructed the Chilean Minister at Mexico City to repeat and press the invitation.

Obregon told the Chilean Minister personally that the obstacle was the attitude of the United States towards Mexico, but that he desired to reach an accord with the Government at Washington, and he felt that the President of Chile, as the host of the conference, would be able to suggest a formula which would give full assurance to the United States that Mexico would comply with the principles of international law protecting the personal and property rights of foreigners.

The President of Chile expressed his desire not to make any suggestion that would not be acceptable to you; stated that he was willing to aid in this matter, that he was confident of success, and that the Chilean Ambassador in Washington had been instructed. I answered him by quoting material parts of the speech you had delivered in Boston as well as from the circular instruction of November 21, 6 p.m.,[20] and I am sending copies to him. The United States, I asserted, cherished no hostility toward Mexico; we wished to see a stable government able and willing to fulfill international obligations. The Secretary of State, I added, felt that Mexico had not yet corrected the confiscatory provisions of her Constitution by action of either the judiciary or the legislature; when this should be done, our recognition would probably be accorded. I told the President that I believed your policy would remain unchanged in reply to his request that I cable you. I would naturally inform you by cable of the fact of our interview and its substance, I said, but the Chilean Ambassador ought also to make his representation to you.

The fact of the interview and hints of Señor Alessandri's purpose leaked out despite absolute reserve on my part, and two reporters came to see me. This morning *La Nacion* printed a long interview with the Mexican Minister, in which the latter justifies

[20] *Ibid.*, vol. II, p. 705.

Mexico's declination of the invitation and takes the ground that the sovereign rights of all nations other than the United States are infringed by the rule under which the conference program must be constructed by a board composed of diplomats accredited to Washington; this rule virtually permits the United States to exclude those whom that Government is unwilling to recognize and thus to dictate the program. The Mexican Minister calls for action by the Latin American republics to abrogate this rule. *La Nacion* also prints some 50 words of an interview with me, in which I express my unwillingness to make any statement; I denied having any knowledge of a movement by third nations to bring about Mexico's attendance at the conference, and I asserted that nothing had been done by the United States to prevent Mexico's attendance, adding that the rule for the construction of the program was not dictated by the United States, but was adopted as a resolution by all the American nations.

COLLIER

710.E/169a : Telegram

The Secretary of State to the Chargé in Peru (Sterling)

WASHINGTON, *January 27, 1923—5 p.m.*

6. On January 25, the Chilean Ambassador spoke to the Secretary of the arrangements for the Santiago Conference, and stated that he believed all countries had accepted with the exception of Peru and Mexico. The Ambassador stated that his Government greatly regretted the attitude of Peru as they had reached an agreement for the submission of the Tacna-Arica question to arbitration and that there was now no difficulty between Chile and Peru and that he felt that Peru ought to have viewed the matter in this light and have accepted the invitation. The Ambassador said nothing as to the assertions of Peru that outrages were being committed against Peruvians in Tacna-Arica and the Secretary did not think it best to bring up this question.

HUGHES

710.E/180 : Telegram

The Minister in Bolivia (Cottrell) to the Secretary of State

LA PAZ, *February 17, 1923—10 a.m.*
[Received 2:40 p.m.]

6. Bolivian Government announces it will not concur [*sic*] in Pan American Conference because of Chile's unwillingness to accept a revision of the treaty of 1904.

COTTRELL

710/35a: Telegram

The Secretary of State to the Minister in Uruguay (Philip)

WASHINGTON, *February 19, 1923—5 p.m.*

3. Press despatches from Montevideo, dated 10th instant, state that President Brum has made public the plan for an association of American nations which the Uruguayan delegation is to lay before the Fifth Pan American Conference. While this plan as telegraphed by the Associated Press follows the line of President Brum's speech, enclosed in Legation's despatch No. 534, of May 15, 1920,[21] and also is similar to the announcement of Doctor Buero transmitted in Legation's despatch No. 810, of August 1, 1922,[21] it differs in some respects and has certain new features. Please telegraph synopsis of the proposal, sending full report by mail to the Department and to the Embassy at Santiago for the American delegates.

HUGHES

710/36: Telegram

The Minister in Uruguay (Philip) to the Secretary of State

MONTEVIDEO, *February 23, 1923—7 p.m.*
[Received February 24—12:32 a.m.]

8. Your 3 of February 19, 5 p.m. My 6 of February 16, 12 noon.[21] Minister for Foreign Affairs has promised me official translation of President Brum's plan for association of American nations but it is not yet available.

This proposed plan which is modeled on existing League of Nations consists of 81 articles under 10 headings, the first 5 of which comprise the fundamental principles and the rights and duties of the associated nations. Division 6 deals with the establishment of a high council, an assembly and a secretariat as authorities of the association; division 7 with the relations of the American League with the League of Nations; division 8 with general conditions; division 9 with the proposal that the assembly may authorize the formation under the high council of regional American leagues for the solution of special questions; division 10 with changing conditions.

Generally speaking the plan calls for an association of all sovereign American states, and of all those politically dependent upon

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[21] Not printed.

countries of other [continents,] provided the latter[23] maintain a diplomatic representative to at least one American sovereign state and undertake to comply with all the provisions of the association as well as to remain neutral in the event of conflict between the association and the mother countries.

Among the fundamental points upon which the plan is based are the following: the intensification of inter-American friendship, the increasing of the friendly relations of the associates with other countries of the world, the settlement of every American international conflict by arbitration, investigation committees or by the friendly mediation of other countries, the prevention of the extension to any region of the American hemisphere of the nationals of other countries either by colonization or protectorates, the settlement of injuries to the rights of an associate by countries of other continents, the adoption of measures to effectively maintain peace. Regarding the prevention of the extension of foreign dominions the plan states that this is in reference to what is known as the Monroe Doctrine which owing to a certain aspect of protection is made "somewhat vexatious to the dignity of other American countries. Therefore if that formula is useful and just, the natural thing is for it to be adopted by all, so that all may place themselves under its protection or invoke it in defense of some sister country," etc.

The following basic principles are also put forward in the draft: that all questions coming under the national laws of the associates must be decided in the courts and may not be diverted from such jurisdiction by diplomatic claims except in the case of denial of justice; that the son of a foreigner shall bear the nationality of the American country of his birth, except on reaching his majority and, being in the country of origin, he should express the desire to choose the nationality of the latter; that maintenance of peace requires the elimination of all competition in armaments and "its reduction to what is indispensable to national security and for the execution of the international obligations imposed by collective action."

. . . .

[Paraphrase.] A marked pessimism seems to exist here in diplomatic circles as to the possibility at the pending Santiago Conference that any agreement will be reached on questions of great international moment by the Governments [participating]. In my opinion this feeling arises chiefly from the very divergent views [on the question of naval and other armaments] maintained by Argentina and Brazil. [End paraphrase.]

PHILIP

[23] i. e., "all those politically dependent".

710.E/187 : Telegram

The Chargé in Mexico (Summerlin) to the Secretary of State

[Paraphrase]

MEXICO, *March 1, 1923—1 p. m.*
[Received 10:15 p. m.]

16. I am informed by the Brazilian Ambassador that as a result of pressure brought by the President of Chile, he has received instructions to endeavor to persuade the Government of Mexico to reconsider its action in declining the invitation to take part in the Fifth Pan American Conference at Santiago. He said that he had not yet received a reply from the Mexican Government, and intimated that one had not been made because the authorities feared that the delegates from the United States might place the Mexican delegates in an embarrassing position by making reservations to agreements or conventions. I await instructions.

SUMMERLIN

710.E/190d : Telegram

The Secretary of State to the Ambassador in Brazil (Morgan)

WASHINGTON, *March 5, 1923—5 p. m.*

23. For your information only and not requiring action on your part.

Brazilian Ambassador called on me yesterday under instructions and expressed the desire of his Government that if possible Mexico should participate in the Fifth Pan American Conference. In reply I have today sent him following *Aide-Memoire:*

"The Secretary of State has taken note of the desire expressed by the Brazilian Ambassador on behalf of his Government that if possible Mexico should participate in the Pan American Conference at Santiago and of the fear expressed by the Mexican authorities that in signing any conventions or treaties which might be the result of the Conference, the Government of the United States would make the reservation that its action should not be taken as a recognition of the Mexican regime.

The Secretary of State must take occasion to state that the Government of the United States entertains the most friendly feeling for the people of Mexico and the most earnest desire that diplomatic relations between the two countries should be resumed. The Secretary of State must point out, however, that the delay in achieving this result is not due to the attitude of the Government of the United States but to the failure of the Mexican authorities to give reasonable assurances that contract rights and valid titles acquired by American citizens under the laws of the Republic of Mexico will be properly respected. The Government of the United States has desired that these assurances should be made in a manner agreeable to the institutions of the Republic of Mexico but feels that a fundamental principle is involved the maintenance of which is

important not only to the people of the United States but to all other peoples.

The Secretary of State had occasion to express the views of this Government in an address delivered at Boston, Massachusetts, on October 30, 1922, in which the following paragraph occurs:

'Our feeling towards the Mexican people is one of entire friendliness and we deeply regret the necessity for the absence of diplomatic relations. We have had no desire to interfere in the internal concerns of Mexico. It is not for us to suggest what laws she shall have relating to the future, for Mexico, like ourselves, must be the judge of her domestic policy. We do, however, maintain one clear principle that lies at the foundation of international intercourse. When a nation has invited intercourse with other nations, has established laws under which investments have been lawfully made, contracts entered into and property rights acquired by citizens of other jurisdictions, it is an essential condition of international intercourse that international obligations shall be met and that there shall be no resort to confiscation and repudiation. We are not insistent on the form of any particular assurance to American citizens against confiscation, but we desire in the light of the experience of recent years the substance of such protection, and this is manifestly in the interest of permanent friendly relations. I have no desire to review the history of the past. The problem is a very simple one and its solution is wholly within Mexico's keeping.'

With these views the Government of the United States shares in the desire of the Brazilian Government that Mexico should participate in the Conference at Santiago. It is also hardly necessary to state that if the Mexican authorities should send representatives to Santiago there would be no question but that they would receive from the delegates of this Government every possible personal courtesy. Moreover, it is not believed to be probable that the ordinary discussions and transactions of the Conference would give rise to any question as to the recognition by this Government of the Mexican regime.

It must be said, however, that in the nature of things it would be quite impossible for this Government to enter into treaties with a government which had not been recognized. And it is believed that the Government of Brazil will not fail to understand that the Government of the United States, while entertaining the most friendly sentiments toward the people of Mexico, could not undertake to give any pledge or promise in advance by which it would be precluded from making such reservations as might seem to be essential in any contingency that might arise."

HUGHES

710.E/187 : Telegram

The Secretary of State to the Chargé in Mexico (Summerlin)

WASHINGTON, *March 5, 1923—5 p.m.*

20. Your confidential telegram Number 16, March 1, 1 P.M. The following *aide memoire* was given the Brazilian Ambassador to-day:

[Here follows the text of the *aide-mémoire* quoted in telegram no. 23, March 5, to Ambassador in Brazil, printed *supra.*]

The foregoing is for your confidential information only and you need take no action thereon.

HUGHES

710.E/190: Telegram

The Chargé in Peru (Sterling) to the Secretary of State

[Paraphrase]

LIMA, *March 6, 1923—10 a.m.*
[Received 12:42 p.m.]

10. With reference to previous correspondence on this subject, President Leguía told me yesterday that to his great regret Peru would be unable, in the present circumstances, to attend the conference at Santiago.

STERLING

710.E/191b: Telegram

The Secretary of State to the Ambassador in Chile (Collier)

WASHINGTON, *March 8, 1923—7 p.m.*

30. The Chilean Ambassador called on me this morning to discuss the question of Mexican participation in the approaching Pan American Conference. I have sent him today the following *Aide-Memoire* on the subject:

[Here follows the text of the *aide-mémoire*, which is the same, *mutatis mutandis*, as the *aide-mémoire* to the Brazilian Ambassador, quoted in the Department's telegram no. 23, March 5, to the Ambassador in Brazil, printed on page 295.]

The above is for your confidential information only and requires no action on your part. Repeat to Lima, as Department's [No.] 12, Buenos Aires as No. 8 and Montevideo as No. 7.

HUGHES

CONVENTIONS BETWEEN THE UNITED STATES AND OTHER AMERICAN REPUBLICS SIGNED AT THE FIFTH INTERNATIONAL CONFERENCE OF AMERICAN STATES

Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names

Treaty Series No. 751

Convention between the United States of America and Other American Republics, Signed at Santiago, April 28, 1923 [24]

Their Excellencies the Presidents of Venezuela, Panama, United States of America, Uruguay, Ecuador, Chile, Guatemala, Nicaragua,

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[24] Ratification advised by the Senate, with understandings or conditions (printed *infra*), Feb. 24, 1925; ratified by the President, Apr. 7, 1925; ratification of the United States deposited with the Government of Chile, June 16, 1925; proclaimed, Jan. 12, 1927.

Costa Rica, Brazil, Salvador, Colombia, Cuba, Paraguay, Dominican Republic, Honduras, Argentine Republic and Haití.

Being desirous that their respective countries may be represented at the Fifth International Conference of American States, have sent thereto, the following Delegates, duly authorized to approve the recommendations, resolutions, conventions and treaties which they might deem advantageous to the interest of America:

Venezuela: César Zumeta, José Austria;

Panamá: Narciso Garay, José Lefevre;

United States of America: Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, Frank C. Partridge, George E. Vincent, William Eric Fowler, Leo S. Rowe;

Uruguay: J. Antonio Buero, Eugenio Martínez Thedy;

Ecuador: Rafael M. Arízaga, José Rafael Bustamante, Dr. Alberto Muñoz Vernaza;

Chile: Agustín Edwards, Manuel Rivas Vicuña, Carlos Aldunate Solar, Luis Barros Borgoño, Emilio Bello Codesido, Antonio Huneeus, Alcibíades Roldán, Guillermo Subercaseaux, Alejandro del Río;

Guatemala: Eduardo Poirier, Máximo Soto Hall;

Nicaragua: Carlos Cuadra Pasos, Arturo Elizondo;

Costa Rica: Alejandro Alvarado Quirós;

United States of Brazil: Afranio de Mello Franco, Sylvino Gurgel do Amaral, J. de P. Rodríguez Alves, A. de Ipanema Moreira, Helio Lobo;

El Salvador: Cecilio Bustamante;

Colombia: Guillermo Valencia, Laureano Gómez, Carlos Uribe Echeverri;

Cuba: José C. Vidal y Caro, Carlos García Vélez, Arístides Agüero, Manuel Márquez Sterling;

Paraguay: Manuel Gondra;

Dominican Republic: Tulio M. Cestero;

Honduras: Benjamín Villaseca Mujica;

Argentine Republic: Manuel Augusto Montes de Oca, Fernando Saguier, Manuel Malbrán;

Haití: Arturo Rameau.

Who, after having presented their credentials and the same having been found in due and proper form, have agreed upon the following Convention for the Protection of Commercial, Industrial and Agricultural Trade-Marks, and Commercial Names, which shall be regarded as revision of the Convention of Buenos Aires of 1910.

Article I

Section 1. The High Contracting Parties agree that any commercial, industrial or agricultural trade-mark registered or deposited

in any of the States signatory of the Convention, by a person domiciled in any of such States, either directly, or through his duly authorized representative, may obtain in the other signatory States the same protection granted by them to the marks registered or deposited in their own territory, without prejudice to the rights of third parties and provided that the formalities and conditions required by the domestic law of each State, as well as the following requirements, are complied with:

a) Any person interested in the registration or deposit of the mark shall present to the proper Inter American Bureau through the proper office of the State of first registration or deposit, an application for recognition of the rights claimed, in accordance with the requirements prescribed in the Appendix of this Convention, which is declared to be a part hereof.

b) He shall pay, besides the fees of charges established by the domestic legislation of each State in which recognition of rights is desired, and other expenses incident to such recognition, a fee equivalent in value to fifty dollars ($50.00) United States gold, this sum to be paid only once for each period and for a single mark. Such fee shall be used to cover the expenses of the said Inter American Bureau.

Section 2. The period during which protection is granted shall be the same as that accorded by the laws of the particular State.

Section 3. Protection under this Convention may be renewed at the expiration of each period upon fulfillment of the requirements set forth in paragraph (*b*) hereof. Application for renewal may also be made by the interested party directly to the proper Inter American Bureau.

Section 4. Commercial names shall be protected in all the signatory States, without deposit or registration, whether the same form part of a trade mark or not, in accordance with the domestic law of each State.

ARTICLE II

The date of filing in the State where first application is made for registration or deposit through the proper Inter American Bureau, in the absence of other proof of ownership of a mark, shall determine priority for the registration or deposit of such mark in any of the signatory States.

ARTICLE III

Section 1. Each signatory State, upon receipt of an application for recognition communicated by the proper Inter American Bureau, shall determine whether protection can be granted in accordance with its laws, and notify the Inter American Bureau as soon as possible of its decision.

Section 2. In case objection is made to the registration or deposit of a mark under this Convention, the term to answer such objection in the country where it is made shall begin ninety days after the date of sending notice of such objection to the proper Inter American Bureau. This Bureau shall have no other part in the controversy originated by the opposition.

Article IV

The transfer of a mark registered or deposited in one of the contracting States shall be equally recognized in each one of the other States with the same force and effect as if made in accordance with the respective laws of each one of those States, provided that the mark transferred is a mark registered or deposited in the country where the recognition of transference under this Convention is applied for, and provided that the principles of Article V of this Convention are not impaired. Notification of transfer shall be made through the proper office of the State of first registration or deposit and the proper Inter American Bureau upon payment of the fees corresponding to each State for such transference.

Article V

Section 1. In any civil, criminal or administrative proceeding arising in a country with respect to a mark, such as opposition, falsification, imitation or unauthorized appropriation, as also the false representation as to the origin of a product, the domestic authorities of the same State alone shall have jurisdiction thereof, and the precepts of law and procedure of that State shall be observed.

Section 2. When refused protection under this Convention in a signatory State because of prior registration or a pending application for registration, the proprietor of a mark claiming recognition of rights under this Convention shall have the right to seek and obtain the cancellation of the previously registered mark, upon proving, according to the procedure by law of the country where cancellation is sought, such refusal, and either:

(*a*) That he had legal protection for his mark in any of the contracting States before the date of application for the registration which he seeks to cancel; or

(*b*) That the registrant had no right to the ownership, use or employment of the registered mark at the date of its deposit; or

(*c*) That the mark covered by the registration which he seeks to cancel has been abandoned.

Section 3. (Transitory). Those who have heretofore sought the benefits of this Convention for their marks and who have been denied

protection in certain States, may avail themselves of the right established in this article within two years after the present revision enters into effect. Those who subsequently seek to secure the benefits of the Convention shall have a period of one year, calculated in each instance from the day following that of the receipt by the proper Inter American Bureau of notice of refusal of protection, within which they may avail themselves of this right.

Section 4. This recourse shall not be applicable to trade marks the registration or deposit of which is already beyond question under national legislation; but it shall apply to renewals.

Section 5. The proof that a trade mark conceals or misrepresents the true quality, nature or origin of the merchandise covered by it, shall be cause for cancellation of the registration or deposit effected through the respective Inter American Bureau.

Article VI

For the purposes indicated in the present Convention, a union of American Nations is hereby constituted which shall act through two international bureaus, established, one in the city of Havana and the other in the city of Rio de Janeiro.

Article VII

The High Contracting Parties agree to confer the postal frank on the official correspondence of the Bureaus.

Article VIII

The Inter American Bureaus for the registration of trade-marks shall have the following duties:

Section 1. To keep a detailed record of the applications for the recognition of marks received through the national offices of registration of this Convention, as well as of all assignments or transfers thereof and of all notices pertaining thereto.[25]

Section 2. To communicate to each of the contracting States, for such action as may be necessary, the application for recognition received.

Section 3. To distribute the fees received, in accordance with the provisions of paragraph (*b*) Article I.

The Inter American Bureaus shall remit to the proper governments or, if the governments should so desire, to their local representatives in Havana and Rio de Janeiro, duly authorized therefor, the charges stipulated, at the time when recognition of the alleged rights is re-

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[25] For Senate understandings or conditions, see bracketed note, pp. 307–308.

quested by the applicant in accordance with this Convention. The cost of remitting the said charges shall be for account of the States to which remittance is made. The Inter American Bureaus shall return to the interested parties any sums returned to such Bureaus.

Section 4. To communicate to the State of first registration or deposit, for the information of the owner of the mark, the notices received from other countries with respect to the granting, opposition to, or denial of protection, or any other circumstance related to the mark.

Section 5. To publish periodical bulletins in which shall appear notices of applications for protection in accordance with this Convention, received from and sent to the various States under the provisions of the Convention, as well as documents, information, studies and articles concerning protection of industrial property.

The High Contracting Parties agree to furnish to the Inter American Bureaus all the official gazettes, reviews and other publications containing notices of the registration of trade marks and commercial names, as well as of judicial proceedings and decisions relative thereto.

Section 6. To carry on any investigation on the subject of trademarks which the government of any of the signatory States may request, and to encourage the investigation of problems, difficulties or obstacles which may hinder the operation of this Convention.

Section 7. To co operate with the governments of the contracting States in the preparation of material for international conferences on this subject; to present to the said States such suggestions as they may consider useful, and such opinions as may be requested as to what modifications should be introduced in the present Convention, or in the laws concerning industrial property; and in general to facilitate the execution of the purposes of this Convention.

Section 8. To inform the signatory governments at least once a year as to the work which the Bureaus are doing.

Section 9. To maintain relations with similar offices, and scientific and industrial institutions and organizations for the exchange of publications, information and data relative to the progress of the law of industrial property.

Section 10. To establish, in accordance with the provisions of this Convention, the regulations which the Directors may consider necessary for the internal administration of the Bureaus.

Article IX

The Bureau established in the city of Havana shall arrange with the contracting States for the registration or deposit of commercial, industrial and agricultural trade marks coming from the United States of America, Cuba, Haití, Dominican Republic, Guatemala,

El Salvador, Honduras, Nicaragua, Costa Rica, Panamá, Colombia, and Ecuador.

The Bureau established in Rio de Janeiro shall arrange for the registration of the marks coming from Brazil, Uruguay, the Argentine Republic, Paraguay, Chile and Venezuela.

Transitory Paragraph. The Inter American Bureau of Rio de Janeiro shall be installed as soon as the present Convention shall have been ratified by one third of the signatory States.

Article X

The two Inter American Bureaus shall be considered as one, and, for the purposes of uniformity in their procedure, it is provided:

(*a*). That both Bureaus adopt the same system of books and of accounts;

(*b*). That each of them send to the other copies of all applications, registrations, communications and other documents relative to the recognition of the rights of owners of marks.

Article XI

The Inter American Bureaus shall both be governed by the same regulations, prepared for the purpose by the governments of the Republics of Cuba and of Brazil.

Article XII

The part of the fees received by each Inter American Bureau which is stipulated for this purpose by the provisions of this Convention, shall be assigned to the maintenance and operation thereof.

The proceeds of the sale of publications by the Inter American Bureaus to individuals shall be assigned to the same purpose; and if both these sums should be insufficient, the deficit shall be paid by the contracting States in the following manner:

80% of the total deficit of the operating budget of both Bureaus shall be paid by the contracting States in proportion to the number of marks which they may have had registered each year through the Inter American Bureaus, and the balance of 20% by the same States in proportion to the number of marks they may have registered at the request of the Inter American Bureaus.

Any annual surplus in one of the Bureaus shall be assigned to the reduction of the deficit, if any, of the other.

The Inter American Bureaus shall not incur any expense or obligation which does not appear in their definitive budgets and for which no funds may have been made available at the time of incurring such expense or obligation.

The provisional budget of annual expenditures of each Bureau shall be submitted to the approval of the Government of the State in which such Bureau is established, and shall be communicated to the contracting States for such observations as they may see fit to formulate.

The auditing of the accounts of the Inter American Bureaus shall be done by the officer authorized by the respective government, and the Directors of the Bureaus shall transmit the auditor's report to the contracting States through diplomatic channels.

ARTICLE XIII

Trade-marks which enjoy the protection of the Convention of 1910 shall continue to enjoy this protection without payment of any fees to the contracting States.

The High Contracting Parties agree that the protection accorded by their national legislation to all marks received up to the day on which the revised Convention becomes effective shall continue to be granted in accordance with the Convention of 1910, if they have ratified it.

ARTICLE XIV

The ratifications or adhesions to this Convention shall be communicated to the Government of the Republic of Chile, which shall communicate them to the other signatory or adhering States. These communications shall take the place of an exchange of ratifications.

The revised Convention shall become effective thirty days after the receipt by the Government of Chile of notice of ratification by a number of countries equivalent to one third of the signatory States; and from that moment the Convention signed on August 20, 1910 shall cease to exist, without prejudice to the provisions of Article XIII of this Convention.

The Government of Chile obligates itself to communicate by telegraph and in writing to all the signatory and adhering States the date on which the Convention in its present form becomes effective in accordance with the provisions of this Article.

ARTICLE XV

The American States not represented in this Conference may adhere to this Convention by communicating their decision in due form to the Government of the Republic of Chile, and shall be assigned to the group which each may select.

ARTICLE XVI

Any signatory State that may see fit to withdraw from this Convention, shall so notify the government of the Republic of Chile,

which shall communicate the fact to the other signatory States; and one year after the receipt of such notification, this Convention shall cease in respect of the State that shall have withdrawn, but such withdrawal shall not affect the rights previously acquired in accordance with this Convention.

Article XVII

The Inter American Bureaus shall continue so long as not less than one half of the ratifying States adhere to the Convention. If the number of States adhering to the Convention shall become less than half, the Bureaus shall be liquidated under the direction of the Governments of Cuba and Brazil, and their funds shall be distributed among the adhering countries in the same proportion as they would have contributed to their support. The buildings and other tangible property of the Bureaus shall become the property of the Governments of Cuba and Brazil, respectively, in recognition of the services of those Republics in giving effect to the Convention, it being understood that the said Governments shall dedicate such property to purposes preeminently inter American in character.

The High Contracting Parties agree to accept as final any steps which may be taken for the liquidation of the Bureaus.

The termination of the Convention shall not affect rights acquired during the period of its effectiveness.

Article XVIII

Any differences between the contracting States relative to the interpretation or execution of this Convention shall be decided by arbitration.

APPENDIX

Regulations

Article I. Any application to obtain protection under the Convention of which the present appendix is a part shall be made by the owner of the mark or his legal representative to the administration of the State of first registration or deposit, in the manner prescribed by the respective regulations, accompanied by a money order payable to the Director of the proper Inter American Bureau in the sum required by this Convention. His application and money order shall be accompanied by an electrotype of the mark reproducing it as registered in the State of first registration or deposit, and having the dimensions required in the State of first registration or deposit.

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Article II. The administration of the State of first registration or deposit, having ascertained that the registration of the mark is regular and in force, shall send to the Inter American Bureau:

A. The money order;

B. The electrotype of the mark;

C. A certificate in duplicate containing the following details:

1. The name and address of the owner of the mark;
2. The date of the application in the State of first registration or deposit; [26]
3. The date of registration of the mark in the State of first registration or deposit;
4. The order number of the registration in the State of first registration or deposit;
5. The date of expiration of the protection of the mark in the State of first registration or deposit;
6 A facsimile of the mark;
7. A statement of the goods on which the mark is used;
8. The date of the application for recognition of the rights claimed under the Convention.

Should the applicant wish to claim color as a distinctive element of his mark, he shall send thirty copies of the mark printed on paper, showing the color, and a brief description of the same.

Article III. The proper Inter American Bureau, upon receipt of the communication of the office of the State of first registration or deposit, mentioned in the foregoing article, shall enter all the information in its books and inform the office of the State of first registration or deposit of the receipt of the application and of the number and date of the entry.

Article IV. Copies of the entry in the books of the respective Inter-American Bureau containing all the details required shall be sent to the administration of the States in which the Convention has been ratified and in which protection is applied for. This data shall also be sent to the other contracting States, for the purposes of information.

Article V. The Inter American Bureaus shall publish in their bulletins reproductions of the marks received and such particulars as are necessary.

Article VI. The notice of acceptance, opposition or refusal of a mark by the contracting States shall be transmitted by the proper Inter American Bureau to the administration of the State of first registration or deposit with a view to its communication to whom it may concern.

Article VII. Changes in ownership of a mark communicated to the respective Inter American Bureau shall be entered in its register and corresponding notice sent to the other contracting States.

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[26] For Senate understandings or conditions, see bracketed note, pp. 307–308.

Article VIII. The Directors of the Inter American Bureaus, may, in their discretion, appoint or remove the officials or employees of their Bureaus giving notice thereof to the governments of the countries where such offices are established.

IN WITNESS WHEREOF, the Delegates sign this Convention, and affix the seal of the Fifth International Conference of American States, in the city of Santiago, Chile, on the twenty eighth day of the month of April in the year one thousand nine hundred and twenty three, in English, Spanish, Portuguese and French.

This Convention shall be filed in the Ministry of Foreign Affairs of the Republic of Chile in order that certified copies may be made and forwarded through appropriate diplomatic channels to each of the Signatory States.

(Signed) *for Venezuela:* C. Zumeta, José Austria; *for Panama:* Narciso Garay, J. E. Lefevre; *for the United States of America:* Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, Frank C. Partridge, George E. Vincent, William Eric Fowler, L. S. Rowe; *for Uruguay:* J. A. Buero, Eugenio Martínez Thedy; *for Ecuador:* Rafael M. Arízaga, José Rafael Bustamante, A. Muñoz Vernaza; *for Chile:* Agustín Edwards, Manuel Rivas Vicuña, Carlos Aldunate S., L. Barros B., Emilio Bello C., Antonio Huneeus, Alcibíades Roldán, Guillermo Subercaseaux, Alejandro del Río; *for Guatemala:* Eduardo Poirier, Máximo Soto Hall; *for Nicaragua:* Carlos Cuadra Pasos, Arturo Elizondo; *for Costa Rica:* Alejandro Alvarado Quirós; *for the United States of Brazil:* Afranio de Mello Franco, S. Gurgel do Amaral, J. de P. Rodríguez Alves, A. de Ipanema Moreira, Helio Lobo; *for El Salvador:* Cecilio Bustamante; *for Colombia:* Guillermo Valencia, Laureano Gómez, Carlos Uribe Echeverri; *for Cuba:* J. C. Vidal Caro, Carlos García Vélez, A. de Agüero, M. Márquez Sterling; *for Paraguay:* M. Gondra; *for the Dominican Republic:* Tulio M. Cestero; *for Honduras:* Benjamín Villaseca M.; *for the Argentine Republic:* M. A. Montes de Oca, Fernando Saguier, Manuel E. Malbrán; *for Hayti:* Arthur Rameau.

[The Senate Resolution of February 24, 1925, giving advice and consent to ratification of the treaty, contained the following understandings or conditions:

First, that in section 1 of Article VIII the words "and to which they give course for the purposes," the equivalents of which appear in the Spanish, Portuguese, and French texts of the convention, shall be inserted in the English text after the word "registration," so that the English text of the section shall read as follows:

"Section 1. To keep a detailed record of the applications for the recognition of marks received through the national offices of registra-

tion and to which they give course for the purposes of this convention, as well as of all assignments or transfers thereof and of all notices pertaining thereto."

Second, that in Article II of the Appendix, subheading C, line 2, the words "for registration," the equivalents of which appear in the Spanish, Portuguese, and French texts, shall be inserted in the English text after the word "application" so that the English text of the line shall read as follows:

"2. The date of the application for registration in the State of first registration or deposit."

Third, that the expressions in Article I "Without prejudice to the rights of third parties" and in Article II "in the absence of other proof of ownership of a mark" are, and shall be, interpreted to protect every user of a trade-mark in the United States having ownership thereof by reason of adoption and use, and with or without subsequent registration, from any claim of priority under this convention based upon an application or a deposit in a signatory State subsequent to the actual date of such adoption and use in the United States.

Fourth, that the expression "legal protection for his mark" in Section 2 (*a*) of Article V shall be interpreted to include ownership of the mark in the United States acquired by adoption and use and with or without subsequent registration.

Fifth, that nothing contained in this convention shall take away or lessen any trade-mark right or any right to use a trade-mark of any person residing or doing business in the United States heretofore or hereafter lawfully acquired under the common law or by virtue of the statutes of the several States or of the United States.]

Treaty to Avoid or Prevent Conflicts between the American States

Treaty Series No. 752

Treaty between the United States of America and Other American Republics, Signed at Santiago, May 3, 1923 [27]

The Governments represented at the Fifth International Conference of American States, desiring to strengthen progressively the principles of justice and of mutual respect which inspire the policy observed by them in their reciprocal relations, and to quicken in their peoples sentiments of concord and of loyal friendship which may contribute toward the consolidation of such relations,

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[27] Ratification advised by the Senate, Mar. 18, 1924; ratified by the President, Apr. 21, 1924; ratification of the United States deposited with the Government of Chile, May 30, 1924; proclaimed by the President, Jan. 12, 1927.

Confirm their most sincere desire to maintain an immutable peace, not only between themselves but also with all the other nations of the earth;

Condemn armed peace which increases military and naval forces beyond the necessities of domestic security and the sovereignty and independence of States, and,

With the firm purpose of taking all measures which will avoid or prevent the conflicts which may eventually occur between them, AGREE to the present TREATY, negotiated and concluded by the Plenipotentiary Delegates whose full powers were found to be in good and due form by the Conference:

Venezuela: César Zumeta, José Austria.

Panamá: José Lefevre.

United States of America: Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, George E. Vincent, Frank C. Partridge, William Eric Fowler, Leo S. Rowe.

Uruguay: Eugenio Martínez Thedy.

Ecuador: José Rafael Bustamante.

Chile: Manuel Rivas Vicuña, Cárlos Aldunate Solar, Luis Barros Borgoño, Emilio Bello Codesido, Antonio Huneeus, Alcibiades Roldán, Guillermo Subercaseaux, Alejandro del Rio.

Guatemala: Eduardo Poirier, Máximo Soto Hall.

Nicaragua: Carlos Cuadra Pasos, Arturo Elizondo.

United States of Brazil: Afranio de Mello Franco, Sylvino Gurgel do Amaral, Helio Lobo.

Colombia: Guillermo Valencia.

Cuba: José C. Vidal Caro, Cárlos García Vélez, Arístides Agüero, Manuel Márquez Sterling.

Paraguay: Manuel Gondra.

Dominican Republic: Tulio M. Cestero.

Honduras: Benjamin Villaseca Mujica.

Argentina: Manuel E. Malbrán.

Haiti: Arturo Rameau.

ARTICLE I

All controversies which for any cause whatsoever may arise between two or more of the High Contracting Parties and which it has been impossible to settle through diplomatic channels, or to submit to arbitration in accordance with existing treaties, shall be submitted for investigation and report to a Commission to be established in the manner provided for in Article IV. The High Contracting Parties undertake, in case of disputes, not to begin mobilization or concentration of troops on the frontier of the other Party, nor to engage in any hostile acts or preparations for hostilities, from the time steps are

taken to convene the Commission until the said Commission has rendered its report or until the expiration of the time provided for in Article VII.

This provision shall not abrogate nor limit the obligations contained in treaties of arbitration in force between two or more of the High Contracting Parties, nor the obligations arising out of them.

It is understood that in disputes arising between Nations which have no general treaties of arbitration, the investigation shall not take place in questions affecting constitutional provisions, nor in questions already settled by other treaties.

Article II

The controversies referred to in Article I shall be submitted to the Commission of Inquiry whenever it has been impossible to settle them through diplomatic negotiations or procedure or by submission to arbitration, or in cases in which the circumstances of fact render all negotiation impossible and there is imminent danger of an armed conflict between the Parties. Any one of the Governments directly interested in the investigation of the facts giving rise to the controversy may apply for the convocation of the Commission of Inquiry and to this end it shall be necessary only to communicate officially this decision to the other Party and to one of the Permanent Commissions established by Article III.

Article III

Two Commissions to be designated as permanent shall be established with their seats at Washington (United States of America) and at Montevideo (Uruguay). They shall be composed of the three American diplomatic agents longest accredited in said capitals, and at the call of the Foreign Offices of those States they shall organize, appointing their respective chairmen. Their functions shall be limited to receiving from the interested Parties the request for a convocation of the Commission of Inquiry, and to notifying the other Party thereof immediately. The Government requesting the convocation shall appoint at the same time the persons who shall compose the Commission of Inquiry in representation of that Government, and the other Party shall, likewise, as soon as it receives notification, designate its members.

The Party initiating the procedure established by this Treaty may address itself, in doing so, to the Permanent Commission which it considers most efficacious for a rapid organization of the Commission of Inquiry. Once the request for convocation has been received

and the Permanent Commission has made the respective notifications the question or controversy existing between the Parties and as to which no agreement has been reached, will *ipso facto* be suspended.

ARTICLE IV

The Commission of Inquiry shall be composed of five members, all nationals of American States, appointed in the following manner: each Government shall appoint two at the time of convocation, only one of whom may be a national of its country. The fifth shall be chosen by common accord by those already appointed and shall perform the duties of President. However, a citizen of a nation already represented on the Commission may not be elected. Any of the Governments may refuse to accept the elected member, for reasons which it may reserve to itself, and in such event a substitute shall be appointed, with the mutual consent of the Parties, within thirty days following the notification of this refusal. In the failure of such agreement, the designation shall be made by the President of an American Republic not interested in the dispute, who shall be selected by lot by the Commissioners already appointed, from a list of not more than six American Presidents to be formed as follows: each Government party to the controversy, or if there are more than two Governments directly interested in the dispute, the Government or Governments on each side of the controversy, shall designate three Presidents of American States which maintain the same friendly relations with all the Parties to the dispute.

Whenever there are more than two Governments directly interested in a controversy, and the interest of two or more of them are identical, the Government or Governments on each side of the controversy shall have the right to increase the number of their Commissioners, as far as it may be necessary, so that both sides in the dispute may always have equal representation on the Commission.

Once the Commission has been thus organized in the capital city, seat of the Permanent Commission which issued the order of convocation, it shall notify the respective Governments of the date of its inauguration, and it may then determine upon the place or places in which it will function, taking into account the greater facilities for investigation.

The Commission of Inquiry shall itself establish its rules of procedure. In this regard there are recommended for incorporation into said rules of procedure the provisions contained in Articles 9, 10, 11, 12 and 13 of the Convention signed in Washington, February, 1923, between the Government of the United States of America and the Governments of the Republics of Guatemala, El Salvador, Hon-

duras, Nicaragua and Costa Rica, which appear in the appendix to this Treaty.

Its decisions and final report shall be agreed to by the majority of its members.

Each Party shall bear its own expenses and a proportionate share of the general expenses of the Commission.

ARTICLE V

The Parties to the controversy shall furnish the antecedents and data necessary for the investigation. The Commission shall render its report within one year from the date of its inauguration. If it has been impossible to finish the investigation or draft the report within the period agreed upon, it may be extended six months beyond the period established, provided the Parties to the controversy are in agreement upon this point.

ARTICLE VI

The findings of the Commission will be considered as reports upon the disputes, which were the subjects of the investigation, but will not have the value or force of judicial decisions or arbitral awards.

ARTICLE VII

Once the report is in possession of the Governments parties to the dispute, six months' time will be available for renewed negotiations in order to bring about a settlement of the difficulty in view of the findings of said report; and if during this new term they should be unable to reach a friendly arrangement, the Parties in dispute shall recover entire liberty of action to proceed as their interests may dictate in the question dealt with in the investigation.

ARTICLE VIII

The present Treaty does not abrogate analogous conventions which may exist or may in the future exist between two or more of the High Contracting Parties; neither does it partially abrogate any of their provisions, although they may provide special circumstances or conditions differing from those herein stipulated.

ARTICLE IX

The present Treaty shall be ratified by the High Contracting Parties, in conformity with their respective constitutional procedures, and the ratifications shall be deposited in the Ministry for Foreign Affairs of the Republic of Chile, which will communicate them

through diplomatic channels to the other Signatory Governments, and it shall enter into effect for the Contracting Parties in the order of ratification.

The Treaty shall remain in force indefinitely; any of the High Contracting Parties may denounce it and the denunciation shall take effect as regards the Party denouncing one year after notification thereof has been given.

Notice of the denunciation shall be sent to the Government of Chile, which will transmit it for appropriate action to the other Signatory Governments.

Article X

The American States which have not been represented in the Fifth Conference may adhere to the present Treaty, transmitting the official documents setting forth such adherence to the Ministry for Foreign Affairs of Chile, which will communicate it to the other Contracting Parties.

In Witness Whereof, the Plenipotentiaries and Delegates sign this Convention in Spanish, English, Portuguese and French and affix the seal of the Fifth International Conference of American States, in the city of Santiago, Chile, on the 3rd day of May in the year one thousand nine hundred and twenty three.

This Convention shall be filed in the Ministry for Foreign Affairs of the Republic of Chile in order that certified copies thereof may be forwarded through diplomatic channels to each of the Signatory States.

(Signed) *For Venezuela:* C. Zumeta, José Austria; *for Panamá:* J. E. Lefevre; *for the United States of America:* Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, George E. Vincent, Frank C. Partridge, William Eric Fowler, L. S. Rowe; *for Uruguay:* Eugenio Martínez Thedy, with reservations relative to the provisions of Article I, (first) in so far as they exclude from the investigation questions that affect constitutional provisions; *for Ecuador:* José Rafael Bustamante; *for Chile:* Manuel Rivas Vicuna, Carlos Aldunate S., L. Barros B., Emilio Bello C., Antonio Huneeus, Alcibíades Roldán, Guillermo Subercaseaux, Alejandro del Rio; *for Guatemala:* Eduardo Poirier, Máximo Soto Hall; *for Nicaragua:* Carlos Cuadra Pasos, Arturo Elizondo; *for the United States of Brazil:* Afranio de Mello Franco, S. Gurgel do Amaral, Helio Lobo; *for Colombia:* Guillermo Valencia; *for Cuba:* J. C. Vidal Caro, Carlos García Vélez, A de Agüero, M. Márquez Sterling; *for Paraguay:* M. Gondra; *for the Dominican Republic:* Tulio M. Cestero; *for Honduras:* Benjamin Villaseca M.; *for the Argentine Republic:* Manuel E. Malbrán; *for Haytí:* Arthur Rameau.

APPENDIX

Article I

The Signatory Governments grant to all the Commissions which may be constituted the power to summon witnesses, to administer oaths and to receive evidence and testimony.

Article II

During the investigation the Parties shall be heard and may have the right to be represented by one or more agents and counsel.

Article III

All members of the Commission shall take oath duly and faithfully to discharge their duties before the highest judicial authority of the place where it may meet.

Article IV

The Inquiry shall be conducted so that both Parties shall be heard. Consequently, the Commission shall notify each Party of the statements of facts submitted by the other, and shall fix periods of time in which to receive evidence.

Once the Parties are notified, the Commission shall proceed to the investigation, even though they fail to appear.

Article V

As soon as the Commission of Inquiry is organized, it shall at the request of any of the Parties to the dispute, have the right to fix the status in which the Parties must remain, in order that the situation may not be aggravated and matters may remain *in statu quo* pending the rendering of the report by the Commission.

Convention Providing for the Publicity of Customs Documents

Treaty Series No. 753

Convention between the United States of America and Other American Republics, Signed at Santiago, May 3, 1923 [28]

Their Excellencies the Presidents of Venezuela, Panama, United States of America, Uruguay, Ecuador, Chile, Guatemala, Nicaragua,

[28] Ratification advised by the Senate, Feb. 18, 1924; ratified by the President, Apr. 21, 1924; ratification of the United States deposited with the Government of Chile, May 30, 1924; proclaimed by the President, Jan. 12, 1927.

Costa Rica, Brazil, Salvador, Colombia, Cuba, Paraguay, Dominican Republic, Honduras, Argentine Republic, and Hayti:

Being desirous that their respective countries may be represented at the Fifth International Conference of American States, have sent thereto the following Delegates, duly authorized to approve the recommendations, resolutions, conventions and treaties which they might deem advantageous to the interests of America.

Venezuela: Pedro César Dominici, César Zumeta, José Austria;

Panamá: Narciso Garay, José E. Lefevre;

United States of America: Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, Frank C. Partridge, George E. Vincent, William Eric Fowler, Leo S. Rowe;

Uruguay: J. Antonio Buero, Justino Jiménez de Aréchaga, Eugenio Martínez Thedy;

Ecuador: Rafael M. Arízaga, José Rafael Bustamante, Alberto Muñoz Vernaza;

Chile: Agustín Edwards, Manuel Rivas Vicuña, Carlos Aldunate Solar, Luis Barros Borgoño, Emilio Bello Codesido, Antonio Huneeus, Alcibíades Roldán, Guillermo Subercaseaux, Alejandro del Río;

Guatemala: Eduardo Poirier, Máximo Soto Hall;

Nicaragua: Carlos Cuadra Pasos, Arturo Elizondo;

Costa Rica: Alejandro Alvarado Quirós;

United States of Brazil: Afranio de Mello Franco, Sylvino Gurgel do Amaral, J. de P. Rodríguez Alves, A. de Ipanema Moreira, Helio Lobo;

El Salvador: Cecilio Bustamante;

Colombia: Guillermo Valencia, Laureano Gómez, Carlos Uribe Echeverri;

Cuba: José C. Vidal Caro, Carlos García Vélez, Arístides Agüero, Manuel Márquez Sterling;

Paraguay: Manuel Gondra, Higinio Arbo;

Dominican Republic: Tulio M. Cestero;

Honduras: Benjamín Villaseca Mujica;

Argentine Republic: Manuel Augusto Montes de Oca, Fernando Saguier, Manuel E. Malbrán;

Hayti: Arthur Rameau.

Who, after having presented their credentials and the same having been found in due and proper form, have agreed upon the following Convention on Publicity of Customs Documents:

The High Contracting Parties, considering that it is of the utmost importance to give the greatest publicity to all customs laws, decrees, and regulations, agree as follows:

ARTICLE I

The High Contracting Parties agree to communicate to each other all the laws, decrees and regulations that govern the importation or the exportation of merchandise, as well as all laws, decrees and regulations referring to vessels entering into or sailing from their ports.

ARTICLE II

The High Contracting Parties agree to publish in full or in an abridged form the laws, decrees and regulations mentioned in Art. I, which have been communicated to them by the several American Countries that have ratified this Convention.

ARTICLE III

The High Contracting Parties will communicate to the Central Executive Council of the Inter American High Commission the laws, decrees or regulations to which Art. I refers.

ARTICLE IV

The High Contracting Parties resolve to entrust to the Central Executive Council of the Inter American High Commission the preparation of a handbook as detailed as possible, of the customs laws, decrees, and regulations enforced in the American countries. This handbook will be published in English, Spanish, Portuguese and French.

ARTICLE V

This Convention will become effective as soon as it is ratified by six Signatory States.

ARTICLE VI

The American countries not represented at the Fifth International Conference of American States may adhere to this Convention at any time. The respective protocol will be signed in Santiago, Chile, the original texts of this Convention being filed in the archives of the Government of the Republic of Chile.

ARTICLE VII

The ratifications of this Convention will be deposited with the Ministry of Foreign Affairs of the Republic of Chile.

The Government of the Republic of Chile will notify the Signatory States, through diplomatic channels, of the deposit of these ratifications; this notification will be equivalent to an exchange of ratifications.

Article VIII

This Convention may be denounced at any time. The denunciation must be made to the Government of the Republic of Chile and will affect the Government making such denouncement, one year after the date of the notification.

Article IX

Any controversy which may arise between the High Contracting Parties with respect to the execution or interpretation of this Convention, shall be decided by arbitration.

This Convention is issued in Spanish, English, Portuguese and French, each of which texts is authentic.

In Witness Whereof, the Delegates sign this Convention in English, Spanish, Portuguese and French and affix the seal of the Fifth International Conference of American States, in the city of Santiago, Chile, on the 3rd day of May in the year one thousand nine hundred and twenty three.

This Convention shall be filed in the Ministry of Foreign Affairs of the Republic of Chile, in order that certified copies may be made and forwarded through appropriate diplomatic channels to each of the Signatory States.

(Signed) *for Venezuela:* Pedro César Dominici, César Zumeta, José Austria; *for Panama:* Narciso Garay, J. E. Lefevre; *for the United States of America:* Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, George E. Vincent, Frank C. Partridge, William Eric Fowler, Leo S. Rowe; *for Uruguay:* J. Antonio Buero, Justino Jiménez de Aréchaga, Eugenio Martínez Thedy; *for Ecuador:* Rafael M. Arízaga, José Rafael Bustamante, Alberto Muñoz Vernaza; *for Chile:* Agustín Edwards, Manuel Rivas Vicuña, Carlos Aldunate Solar, Luis Barros Borgoño, Emilio Bello Codesido, Antonio Huneeus, Alcibíades Roldán, Guillermo Subercaseaux, Alejandro del Río; *for Guatemala:* Eduardo Poirier, Máximo Soto Hall; *for Nicaragua:* Carlos Cuadra Pasos, Arturo Elizondo; *for Costa Rica:* Alejandro Alvarado Quirós; *for the United States of Brazil:* Afranio de Mello Franco, Sylvino Gurgel do Amaral, J. de P. Rodríguez Alves, A. de Ipanema Moreira, Helio Lobo; *for El Salvador:* Cecilio Bustamante; *for Colombia:* Guillermo Valencia, Laureano Gómez, Carlos Uribe Echeverri; *for Cuba:* José C. Vidal Caro, Carlos García Vélez, Arístides Agüero, Manuel Márquez Sterling; *for Paraguay:* Manuel Gondra, Higinio Arbo; *for the Dominican Republic:* Tulio M. Cestero; *for Honduras:* Benjamín Villaseca Mujica; *for the Argentine Republic:* Manuel A. Montes de Oca, Fernando Saguier, Manuel E. Malbrán; *and for Hayti:* Arthur Rameau.

Convention Providing for Uniformity of Nomenclature for the Classification of Merchandise

Treaty Series No. 754

Convention between the United States of America and Other American Republics, Signed at Santiago, May 3, 1923 [29]

Their Excellencies the Presidents of Venezuela, Panama, United States of America, Uruguay, Ecuador, Chile, Guatemala, Nicaragua, Costa Rica, Brazil, Salvador, Colombia, Cuba, Paraguay, Dominican Republic, Honduras, Argentine Republic, and Hayti:

Being desirous that their respective countries may be represented at the Fifth International Conference of American States, have sent thereto the following Delegates, duly authorized to approve the recommendations, resolutions, conventions and treaties which they might deem advantageous to the interests of America.

Venezuela: Pedro César Dominici, César Zumeta, José Austria;

Panamá: Narciso Garay, José E. Lefevre;

United States of America: Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, George E. Vincent, Frank C. Partridge, William Eric Fowler, Leo S. Rowe;

Uruguay: J. Antonio Buero, Justino Jiménez de Aréchaga, Eugenio Martínez Thedy;

Ecuador: Rafael M. Arízaga, José Rafael Bustamante, Alberto Muñoz Vernaza;

Chile: Agustín Edwards, Manuel Rivas Vicuña, Carlos Aldunate Solar, Luis Barros Borgoño, Emilio Bello Codesido, Antonio Huneeus, Alcibíades Roldán, Guillermo Subercaseaux, Alejandro del Río;

Guatemala: Eduardo Poirier, Máximo Soto Hall;

Nicaragua: Carlos Cuadra Pasos, Arturo Elizondo;

Costa Rica: Alejandro Alvarado Quirós;

United States of Brazil: Afranio de Mello Franco, Sylvino Gurgel do Amaral, J. de P. Rodríguez Alves, A. de Ipanema Moreira, Helio Lobo;

El Salvador: Cecilio Bustamante;

Colombia: Guillermo Valencia, Laureano Gómez, Carlos Uribe Echeverri;

Cuba: José C. Vidal Caro, Carlos García Vélez, Arístides Agüero, Manuel Márquez Sterling;

Paraguay: Manuel Gondra, Higinio Arbo;

Dominican Republic: Tulio M. Cestero;

Honduras: Benjamín Villaseca Mujica;

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[29] Ratification advised by the Senate, Feb. 18, 1924; ratified by the President, Apr. 21, 1924; ratification of the United States deposited with the Government of Chile, May 30, 1924; proclaimed by the President, Jan. 12, 1927.

Argentine Republic: Manuel Augusto Montes de Oca, Fernando Saguier, Manuel E. Malbrán;

Hayti: Arthur Rameau.

Who, after having presented their credentials and the same having been found in due and proper form, have agreed upon the following Convention:

ARTICLE I

The High Contracting Parties agree to employ the Brussels nomenclature of 1913 in their statistics of international commerce, either exclusively or as a supplement to other systems.

ARTICLE II

Any controversy which may arise between the High Contracting Parties regarding the interpretation or operation of this Convention shall be settled by arbitration.

ARTICLE III

The American States not represented at the Fifth International Conference may adhere to this Convention by communicating their decision in due form to the Government of the Republic of Chile.

ARTICLE IV

The deposit of ratifications shall be made in the city of Santiago, Chile. The Chilean Government shall communicate such ratifications to the other Signatory States. This communication shall have the effect of an exchange of ratifications.

ARTICLE V

This Convention shall become effective for each Signatory State on the date of the ratification thereof by such State. It shall remain in force without limitation of time, but each Signatory State, upon notification of its intention to the Government of the Republic of Chile, may withdraw from said Convention upon the expiration of the period of one year counting from the date of the notification of such intention.

In WITNESS WHEREOF, the Delegates sign this Convention in English, Spanish, Portuguese, and French and affix the seal of the Fifth International Conference of American States, in the city of Santiago, Chile, on the 3rd day of May in the year one thousand nine hundred and twenty three.

This Convention shall be filed in the Ministry of Foreign Affairs of the Republic of Chile, in order that certified copies may be made

and forwarded through appropriate diplomatic channels to each of the Signatory States.

(Signed) *for Venezuela:* Pedro César Dominici, César Zumeta, José Austria; *for Panama:* Narciso Garay, J. E. Lefevre; *for the United States of America:* Henry P. Fletcher, Frank B. Kellogg, Atlee Pomerene, Willard Saulsbury, George E. Vincent, Frank C. Partridge, William Eric Fowler, Leo S. Rowe; *for Uruguay:* J. Antonio Buero, Justino Jiménez de Aréchaga, Eugenio Martínez Thedy; *for Ecuador:* Rafael M. Arízaga, José Rafael Bustamante, Alberto Muñoz Vernaza; *for Chile:* Agustín Edwards, Manuel Rivas Vicuña, Carlos Aldunate Solar, Luis Barros Borgoño, Emilio Bello Codesido, Antonio Huneeus, Alcibíades Roldán, Guillermo Subercaseaux, Alejandro del Río; *for Guatemala:* Eduardo Poirier, Máximo Soto Hall; *for Nicaragua:* Carlos Cuadra Pasos, Arturo Elizondo; *for Costa Rica:* Alejandro Alvarado Quirós; *for the United States of Brazil:* Afranio de Mello Franco, Sylvino Gurgel do Amaral, J. de P. Rodríguez Alves, A. de Ipanema Moreira, Helio Lobo; *for El Salvador:* Cecilio Bustamante; *for Colombia:* Guillermo Valencia, Laureano Gómez, Carlos Uribe Echeverri; *for Cuba:* José C. Vidal Caro, Carlos García Vélez, Arístides Agüero, Manuel Márquez Sterling; *for Paraguay:* Manuel Gondra, Higinio Arbo; *for the Dominican Republic:* Tulio M. Cestero; *for Honduras:* Benjamín Villaseca Mujica; *for the Argentine Republic:* Manuel A. Montes de Oca, Fernando Saguier, Manuel E. Malbrán; *and for Hayti:* Arthur Rameau.

AGREEMENTS BETWEEN THE UNITED STATES AND CENTRAL AMERICAN REPUBLICS, SIGNED AT WASHINGTON, FEBRUARY 7, 1923

813.00 Washington/208

The Secretary General of the Conference on Central American Affairs (Stabler) to the Secretary of State

WASHINGTON, *February 12, 1923.*

SIR: I have the honor to transmit herewith for deposit with the Government of the United States in accordance with the provisions of Article XVI, the signed original of the Convention for the Establishment of International Commissions of Inquiry, which was signed at the Final Plenary Session of the Conference on February 7th, 1923.[80]

[80] For minutes of the proceedings and for texts of instruments to which the United States was not a signatory, see *Conference on Central American Affairs, Washington, December 4, 1922–February 7, 1923* (Washington, Government Printing Office, 1923).

I further have the honor to transmit the signed original of the Protocol of an Agreement between the Governments of the United States of America and of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, whereby the former will designate fifteen of its citizens to serve in the Tribunal which may be created in conformity with the terms of the Convention establishing an International Central American Tribunal.

I beg to request that I may be furnished with an official receipt for the aforementioned documents for the archives of the Secretariat-General.

I have [etc.] JORDAN HERBERT STABLER

[Enclosure 1]

Convention between the United States and the Central American States for the Establishment of International Commissions of Inquiry, Signed at Washington, February 7, 1923 [31]

The Government of the United States of America and the Governments of the Republics of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, desiring to unify and recast in one single convention, the conventions which the Government of the United States concluded with the Government of Guatemala on September 20, 1913, with the Government of El Salvador on August 7, 1913, with the Government of Honduras on November 3, 1913, with the Government of Nicaragua on December 17, 1913, and with the Government of Costa Rica on February 13, 1914, all relating to the Establishment of International Commissions of Inquiry, have for that purpose, named as their Plenipotentiaries:

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

The Honorable Charles E. Hughes, Secretary of State of the United States of America.

The Honorable Sumner Welles, Envoy Extraordinary and Minister Plenipotentiary.

THE PRESIDENT OF THE REPUBLIC OF GUATEMALA:

Señor Don Francisco Sánchez Latour, Envoy Extraordinary and Minister Plenipotentiary to the United States of America.

THE PRESIDENT OF THE REPUBLIC OF EL SALVADOR:

Señor Doctor Don Francisco Martinez Suárez, President of the Supreme Court.

Señor Doctor Don J. Gustavo Guerrero, Envoy Extraordinary and Minister Plenipotentiary to Italy and Spain.

[31] In English and Spanish; Spanish text not printed. Ratification advised by the Senate, Jan. 28, 1925; ratified by the President, Apr. 7, 1925; ratifications deposited with the Government of the United States, June 13, 1925; proclaimed by the President, June 15, 1925. (Treaty Series No. 717.)

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THE PRESIDENT OF THE REPUBLIC OF HONDURAS:

Señor Doctor Don Alberto Uclés, Ex-Minister for Foreign Affairs.

Señor Doctor Don Salvador Córdova, Ex-Minister Resident in El Salvador.

Señor Don Raúl Toledo López, Chargé d'Affaires in France.

THE PRESIDENT OF THE REPUBLIC OF NICARAGUA:

Señor General Don Emiliano Chamorro, Ex-President of the Republic and Envoy Extraordinary and Minister Plenipotentiary to the United States of America.

Señor Don Adolfo Cárdenas, Minister of Finance.

Señor Doctor Don Maximo H. Zépeda, Ex-Minister for Foreign Affairs.

THE PRESIDENT OF THE REPUBLIC OF COSTA RICA:

Señor Licenciado Don Alfredo Gonzáles Flores, Ex-President of the Republic.

Señor Licenciado Don J. Rafael Oreamuno, Envoy Extraordinary and Minister Plenipotentiary to the United States of America.

Who, after having exhibited to one another their respective full powers which were found to be in good and proper form, have agreed upon the following articles:

ARTICLE I

When two or more of the Contracting Parties shall have failed to adjust satisfactorily through diplomatic channels a controversy originating in some divergence or difference of opinion regarding questions of fact, relative to failure to comply with the provisions of any of the treaties or conventions existing between them and which affect neither the sovereign and independent existence of any of the signatory Republics, nor their honor or vital interests, the Parties bind themselves to institute a Commission of Inquiry with the object of facilitating the settlement of the dispute by means of an impartial inquiry into the facts.

This obligation ceases if the Parties in dispute should agree by common accord to submit the question to arbitration or to the decision of another Tribunal.

A Commission of Inquiry shall not be formed except at the request of one of the Parties directly interested in the investigation of the facts which it is sought to elucidate.

ARTICLE II

Once the case contemplated in the preceding article has arisen, the Parties shall by common accord draw up a protocol in which shall be stated the question or questions of fact which it is desired to elucidate.

When, in the judgment of one of the interested Governments, it has been impossible to reach an agreement upon the terms of the Protocol, the Commission will proceed with the investigation, taking as a basis the diplomatic correspondence upon the matter, which has passed between the parties.

ARTICLE III

Within the period of thirty days subsequent to the date on which the exchange of ratifications of the present Treaty has been completed, each of the Parties which have ratified it shall proceed to nominate five of its nationals, to form a permanent list of Commissioners. The Governments shall have the right to change their respective nominations whenever they should deem it advisable, notifying the other Contracting Parties.

ARTICLE IV

When the formation of a Commission of Inquiry may be in order, each of the Parties directly interested in the dispute shall be represented on the Commission by one of its nationals, selected from the permanent list. The Commissioners selected by the Parties shall by common accord, choose a President who shall be one of the persons included in the permanent list by any of the Governments which has no interest in the dispute.

In default of said common agreement, the President shall be designated by lot, but in this case each of the Parties shall have the right to challenge no more than two of the persons selected in the drawing.

Whenever there shall be more than two Governments, directly interested in a dispute and the interests of two or more of them be identical, the Government or Governments, which may be parties to the dispute, shall have the right to increase the number of their Commissioners from among the members of the permanent list nominated by said Government or Governments, as far as it may be necessary, so that both sides in the dispute may always have equal representation on the Commission.

In case of a tie, the President of the Commission shall have two votes.

If for any reason any one of the members appointed to form the Commission should fail to appear, the procedure for his replacement shall be the same as that followed for his appointment. While they may be members of a Commission of Inquiry, the Commissioners shall enjoy the immunities which the laws of the country, where the Commission meets, may confer on members of the National Congress.

The diplomatic representatives of any of the Contracting Parties accredited to any of the Governments which may have an interest

in the questions which it is desired to elucidate, shall not be members of a Commission.

ARTICLE V

The Commission shall be empowered to examine all the facts, antecedents, and circumstances relating to the question or questions which may be the object of the investigation, and when it renders its report it shall elucidate said facts, antecedents, and circumstances and shall have the right to recommend any solutions or adjustments which, in its opinion, may be pertinent, just and advisable.

ARTICLE VI

The findings of the Commission will be considered as reports upon the disputes, which were the objects of the investigation, but will not have the value or force of judicial decisions or arbitral awards.

ARTICLE VII

In the case of arbitration or complaint before the Tribunal created by a Convention signed by the five Republics of Central America, on the same date as this Convention, the reports of the Commission of Inquiry may be presented as evidence by any of the litigant Parties.

ARTICLE VIII

The Commission of Inquiry shall meet on the day and in the place designated in the respective protocol and failing this, in the place to be determined by the same Commission, and once installed it shall have the right to go to any localities which it shall deem proper for the discharge of its duties. The Contracting Parties pledge themselves to place at the disposal of the Commission, or of its agents, all the means and facilities necessary for the fulfilment of its mission.

ARTICLE IX

The signatory Governments grant to all the Commissions which may be constituted the power to summon and swear in witnesses and to receive evidence and testimony.

ARTICLE X

During the investigation the Parties shall be heard and may have the right to be represented by one or more agents and counsel.

ARTICLE XI

All members of the Commission shall take oath before the highest judicial authority of the place where it may meet, duly and faithfully to discharge their duties.

Article XII

The Inquiry shall be conducted so that both Parties must be heard. Consequently, the Commission shall notify each Party of the statements of fact submitted by the other, and shall fix periods of time in which to receive evidence.

Once the Parties are notified, the Commission shall proceed to the investigation, even though they fail to appear.

Article XIII

As soon as the Commission of Inquiry is organized, it shall, at the request of any of the Parties to the dispute, have the right to fix the status in which the Parties must remain, in order that the conditions may not be aggravated and matters may remain in the same state pending the rendering of the report by the Commission.

Article XIV

The report of the Commission shall be published within three months, to be reckoned from the date of its inauguration unless the Parties directly interested decrease or increase the time by mutual consent.

The report shall be signed by all the members of the Commission. Should one or more of them refuse to sign it, note shall be taken of the fact, and the report shall always be valid provided it obtains a majority vote.

In every case the vote of the minority, if any, shall be published with the report of the Commission.

One copy of the report of the Commission and of the vote of the minority, if any, shall be sent to each of the Ministries of Foreign Affairs of the Contracting Parties.

Article XV

Each Party shall bear its own expenses and a proportionate share of the general expenses of the Commission.

The President of the Commission shall receive a monthly compensation of not less than 500 dollars, American gold, in addition to his travelling expenses.

Article XVI

The present Convention, signed in one original, shall be deposited with the Government of the United States of America, which Government shall furnish to each of the other Signatory Governments

an authenticated copy thereof. It shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the Executive and Legislative Powers of the Republics of Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica, in conformity with their constitutions and laws.

The ratifications shall be deposited with the Government of the United States of America, which will furnish to each of the other Governments an authenticated copy of the procés verbal of the deposit of ratification. It shall take effect for the parties which ratify it immediately after the day on which at least three of the Contracting Governments deposit their ratifications with the Government of the United States of America. It will continue in force for a period of ten years, and shall remain in force thereafter for a period of twelve months from the date on which any one of the Contracting Governments shall have given notification to the others, in proper form, of its desire to denounce it.

The denunciation of this Convention by one or more of the said Contracting Parties shall leave it in force for the Parties which have ratified it but have not denounced it, provided that these be no less than three in number. Should any Central American States bound by this Convention form a single political entity, this Convention shall be considered in force as between the new entity and the Contracting Republics, which may have remained separate, provided that these be no less than two in number. Any of the Signatory Republics, which should fail to ratify this Convention, shall have the right to adhere to it while it is in force.

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

Done at the City of Washington, the seventh day of February, one thousand nine hundred and twenty-three.

Charles E. Hughes [seal]
Sumner Welles [seal]
Francisco Sánchez Latour [seal]
F. Martínez Suárez [seal]
[seal] J. Gustavo Guerrero
[seal] Alberto Uclés
[seal] Salvador Córdova
[seal] Raúl Toledo López
[seal] Emiliano Chamorro
[seal] Adolfo Cárdenas
[seal] Máximo H. Zepeda
[seal] Alfredo González
[seal] J. Rafael Oreamuno

[Enclosure 2]

Protocol between the United States and the Central American States, Signed at Washington, February 7, 1923 [82]

I

The Governments of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica have communicated to the Government of the United States of America the Convention signed by them on this date for the establishment of an International Central American Tribunal, and at the same time have requested the Government of the United States to cooperate with them for the realization of the purposes of said Convention in the manner indicated therein.

II

The Government of the United States of America herewith expresses its full sympathy and accord with the purposes of the aforementioned Convention, and desires to state that it will gladly cooperate with the Governments of the Central American Republics in the realization of said purposes. With this end in view, the Government of the United States of America will designate fifteen of its citizens who meet the necessary requirements and may serve in the Tribunals that will be created in conformity with the terms of said Convention.

Washington, February seventh, nineteen hundred and twenty-three.

Charles E. Hughes [seal]
[seal] Sumner Welles
[seal] Francisco Sánchez Latour
[seal] Marcial Prem
[seal] F. Martínez Suárez
[seal] J. Gustavo Guerrero
[seal] Alberto Uclés
[seal] Salvador Córdova
[seal] Raúl Toledo López
[seal] Emiliano Chamorro
[seal] Adolfo Cárdenas
[seal] Máximo H. Zepeda
[seal] Alfredo González
[seal] J. Rafael Oreamuno

[82] In English and Spanish; Spanish text not printed.

BOUNDARY DISPUTES

Colombia and Panama[33]

721.2315/98 1/2

Memorandum by the Secretary of State of a Conversation with the Colombian Chargé (Uribe), March 23, 1922

[Extract]

II. RELATIONS BETWEEN COLOMBIA AND PANAMA

The Chargé referred to the third article of the treaty between the United States and Colombia[34] that the Government of the United States would take steps to obtain for [*from*] the Government of Panama the despatch of a duly accredited agent to negotiate and conclude with the Government of Colombia a treaty of peace and friendship with a view to bringing about regular diplomatic relations between Colombia and Panama, and the adjustment of the question of pecuniary liability between the two countries. The Chargé hoped that the American Government would soon take action under this clause. The Secretary said that he was fully apprised of that clause in the treaty and had the matter of appropriate steps in the light of this provision under his consideration.

719.21/61a

The Chief of the Division of Latin American Affairs, Department of State (White) to the Panaman Minister (Alfaro)[35]

WASHINGTON, *April 12, 1923.*

MY DEAR MR. MINISTER: I take pleasure in sending you herewith a copy of the Procès Verbal which you approved in my office on the 10th instant, together with a suggested Spanish translation of the same. I venture to hope that I may hear from you within a few days that your Government approves the draft as submitted.

I am [etc.] FRANCIS WHITE

[Enclosure]

Draft Procès-Verbal of a Meeting To Take Place between the Secretary of State and the Ministers of Colombia and Panama

Doctor Enrique Olaya and Doctor Ricardo J. Alfaro, Envoys Extraordinary and Ministers Plenipotentiary of the Republics of Co-

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[33] For previous correspondence, see *Foreign Relations*, 1919, vol. I, pp. 73 ff.
[34] *Foreign Relations*, 1922, vol. I, p. 976.
[35] Similar letter apparently sent also on the same date to the Colombian Minister; see his letter of Apr. 30, *post*, p. 334.

lombia and Panama, respectively, having on the invitation of the Secretary of State of the United States, met with him in his office at the Department of State, Washington, at .... o'clock on April 1923:

Mr. Hughes stated that he had invited Messrs. Olaya and Alfaro to his office to confer with them regarding the institution of diplomatic relations between the two Republics which is so cordially desired by the Government of the United States.

The Secretary of State added that it would be most gratifying indeed for the two neighboring Republics of Colombia and Panama to enter into regular diplomatic relations, and he, therefore, asked the Minister of Colombia whether, by reason of the recognition of Panama by Colombia as an independent nation, he did not think the moment opportune for establishing such relations and inquired whether it would please the Government of Colombia to receive the representative that the Government of Panama would accredit for that purpose and to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship and to adjust all questions of pecuniary liability as between the two countries, in accordance with recognized principles of law and precedents. He further inquired whether Colombia would also be prepared to accredit a Minister to Panama.

Doctor Olaya replied that he was authorized by his Government to state officially to the Panaman Minister that the Republic of Colombia recognizes Panama as an independent nation on the following understanding: That the boundary between the two states shall be the following: From Cape Tiburón to the headwaters of the Rio de la Miel and following the mountain chain by the ridge of Gandi to the Sierra de Chugargun and that of Mali going down by the ridges of Nigue to the heights of Aspave and from thence to a point on the Pacific half way between Cocalito and La Ardita. He added that his Government would be pleased to receive the duly accredited agent whom the Republic of Panama would despatch to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship and to adjust all questions of pecuniary liability as between the two countries, in accordance with recognized principles of law and precedents. He stated that the Government of Colombia would also be pleased to accredit a Minister to the Republic of Panama.

Thereupon, the Secretary of State, addressing the Panaman Minister, expressed the hope that the Panaman Government was ready to enter into diplomatic relations with the Government of Colombia and inquired whether his Government would be inclined, with a view to instituting official relations between the two Republics, to

accredit a diplomatic agent to the Republic of Colombia, for the purposes and on the basis mentioned, and to receive the Minister whom the Republic of Colombia might accredit.

Doctor Alfaro replied that he was authorized by his Government to express its gratification at the recognition of Panama by Colombia as an independent nation and to agree that the boundary between the two states shall be the following: From Cape Tiburón to the headwaters of the Rio de la Miel and following the mountain chain by the ridge of Gandi to the Sierra de Chugargun and that of Mali going down by the ridges of Nigue to the heights of Aspave and from thence to a point on the Pacific half way between Cocalito and La Ardita. He added that his Government would despatch a duly accredited agent to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship and to adjust all questions of pecuniary liability as between the two countries, in accordance with recognized principles of law and precedents. He stated that his Government would be pleased to receive the Minister accredited by the Government of Colombia.

The Secretary of State then stated that he desired to avail himself of that opportunity to offer to serve as a medium for the request of the *agrément* of the Ministers who should be accredited by the Republics of Colombia and Panama, respectively, if Messrs. Olaya and Alfaro had instructions on the subject.

The Panaman Minister stated that he was authorized by his Government to inquire, in case the Minister of Colombia should have been instructed to answer, whether Mr. (name of person who had been previously and privately agreed upon to be inserted here) would be *persona grata* to the Colombian Government.

The Colombian Minister replied that he was authorized by his Government to accept as *persona grata* anyone whose name should have been suggested by the Government of Panama, and he added that he was authorized by his Government, in reciprocation, to inquire whether Mr. (name of person who had been previously and privately agreed upon to be inserted here) would be *persona grata* to the Government of Panama.

The Panaman Minister replied that he was authorized by his Government to accept as *persona grata* anyone whose name should have been suggested by the Government of Colombia.

The Secretary of State then expressed his appreciation of the good-will and friendly attitude thus shown by the Governments of Colombia and Panama towards each other, and his gratification that the sister Republics were to establish regular diplomatic relations and undertake formally to adjust their relations in accordance with recognized principles of law and precedents. It was, he said, his understanding that both Governments earnestly desired the establishment

of regular diplomatic relations as soon as possible and to that end it might be agreeable to both Governments to set a date for the appointment of Mr. . . . . as Panaman Minister to Colombia and Mr. . . . . . . as Colombian Minister to Panama. If so, he would suggest April . . . . , 1923, as a suitable date, it being mutually agreed that both representatives shall thereupon proceed forthwith to their respective posts.

The Colombian and Panaman Ministers both replied that they were authorized by their respective Governments to state that Messrs. . . . . and . . . . . . would be appointed respectively as Panaman Minister to Colombia and Colombian Minister to Panama on April . . . , 1923, and that they would thereupon proceed forthwith to their posts.

This procès verbal of the meeting, drawn up in triplicate in English and Spanish, was signed by the Secretary of State and the Ministers of Colombia and Panama, one copy being retained by the Secretary of State and one copy being handed to the Ministers of Colombia and Panama respectively.

719.21/58

Memorandum by the Chief of the Division of Latin American Affairs, Department of State (White)

[Washington,] *April 18, 1923.*

The Panaman Minister called on Wednesday, April 18, to say, with regard to the draft proposed Procès Verbal of a meeting to take place between the Secretary of State and the Colombian and Panaman Ministers, copy of which was given him on April 12, that his Government has instructed him that it does not feel that the boundary question should be settled in an informal document of this sort, and pointed out that the Panaman Constitution provides that the boundaries of Panama and the Republic of Colombia shall be determined by public treaties. He stated that even should the Procès Verbal be signed as drafted it would have no binding effect upon Panama until included in a treaty ratified by the Panaman Assembly.

I told Señor Alfaro that I quite appreciated that the boundary agreement would finally have to be ratified by the Assembly. I pointed out to him that it was of great value to include a statement of the boundary in the Procès Verbal as showing the intention of the Panaman Executive to conclude a treaty on that basis and thus remove from further negotiation a subject which might give rise to further difficulties. Señor Alfaro stated that he thought the matter could be satisfactorily handled in the negotiations to be carried on

upon the institution of diplomatic relations and he said that he felt sure satisfactory arrangements could then be arrived at. I asked him whether he meant by that that his Government would accept the boundary as stated in the Procès Verbal. He replied that he could not give me any assurance on that point as he did not know whether his Government would want to give up the Juradó territory which had been claimed by previous administrations.

I called his attention again to President Porras' letter to Mr. Phillips, of January 10, 1920,[36] and he said that this could have no binding effect as under the Panaman Constitution an Act of the President had to be countersigned by one of the Secretaries of State, and that this could only be considered as an informal negotiation. Señor Alfaro stated that he had been in the Cabinet at the time the letter had been written and had heard nothing whatsoever about it and was sure the matter had not been considered by that body. I told Señor Alfaro that this Government would certainly learn with great surprise that a written statement of the President of Panama was without any value whatsoever, and that President Porras personally would go back on a statement solemnly given. He stated that President Porras would, of course, not do so, but that he saw no reason why the boundary should be definitely stated in the treaty when the settlement of pecuniary liabilities is left to the negotiation of the two Governments upon the establishment of diplomatic relations.

I pointed out to him that, as Minister Price was instructed to inform the President (see Department's instruction No. 692, of November 13, 1919[37]), boundary disputes are often the foundation of strained international relations which all too frequently hinder progress and contribute to the unrest of the nations involved. I pointed out that a question of pecuniary liability, while perhaps causing protracted negotiations, does not lend itself to the serious situations that a disputed boundary does. I pointed out that if two powers both claim the same territory its occupation by one of them might very well give rise to an outburst by chauvinistic elements in the other and thus cause serious complications. Señor Alfaro said that it was inconceivable that such should happen in this case. I pointed out to him that such, nevertheless, had unhappily been the situation as regards the Panama-Costa Rica boundary only two years ago, and while I ardently hoped that it was beyond the realm of possibility in the present case the only sound way of approaching the matter was by removing any such possibilities however remote.

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[36] *Foreign Relations*, 1919, vol. I, p. 79.

[37] *Ibid.*, p. 74.

Señor Alfaro stated that he agreed with me that it was well to settle as many questions as possible, but again pointed out that even should the Procès Verbal be signed it would not mean the settling of the frontier, because it would still have to pass the Panaman Assembly. I pointed out to him that all negotiations are, in the nature of things, between the executive branches of the Government[s]; that the executive cannot, of course, bind the legislative branch, but that, in any case, the negotiations must be carried on by the executive. I pointed out to him that President Porras has it within his power to settle now for all times this boundary dispute, because by making such a statement it will be a confirmation by the Panaman Executive to the Colombian Executive of the undertaking given by the Panaman Executive to the United States that Panama would settle the boundary along the frontier mentioned in the Procès Verbal. Then, of course, the Panaman Executive would instruct its plenipotentiary in Bogotá to conclude a treaty on that basis, and half the steps looking to its final settlement would then have been accomplished. Señor Alfaro said that the Assembly might then undo the work and pointed out that the next Assembly does not meet until next September. I pointed out to Señor Alfaro that the Panaman Executive now fortunately enjoys a majority support in the Assembly and that I presumed that in a matter of such importance the President would wish to call a special session of the Assembly, and that, with his majority support therein, it seemed likely that the boundary treaty would be ratified; that it is, therefore, within President Porras' power to settle now once for all definitely the boundary question.

Señor Alfaro stated that he would send a private telegram to President Porras in this sense. I asked him whether he would indorse the suggestion and recommend to the President that he should take the action outlined. Señor Alfaro stated that he could not; that he did not feel in a position to give any advice on such large matters of policy when so far from his country; that he would be quite willing to do so were he in Panama where he could answer any attacks and criticisms against it, but that he was so far away he could not do so. I pointed out to Señor Alfaro that I had not contemplated a press campaign or public discussion of the matter but merely confidential advice to his Government. He stated that he regretted the nature was such that the matter could not help becoming public and that he, therefore, did not feel that he could do so.

. . . .

WHITE

719.21/57

The Colombian Minister (Olaya) to the Chief of the Division of Latin American Affairs, Department of State (White)

No. 1063 WASHINGTON, *April 30, 1923.*

MY DEAR MR. WHITE: Referring to your esteemed letter of the 12th inst., and to our last conversation in your office, I take pleasure in advising you that my Government approves the text of the Procès Verbal for initiating regular diplomatic relations between Colombia and Panama as submitted by the Department of State, and authorizes me to sign it.

It gives me great pleasure to have reached this happy result and trusting to hear from you in the matter, I await your commands and remain,

Yours very sincerely,

ENRIQUE OLAYA

719.2115A/99

The Department of State to the Panaman Legation

MEMORANDUM

It appears to the Department, from the conversations which have taken place during the last few weeks with the Ministers of Panama and Colombia by officials of the Department of State, that the only obstacle to the establishment of diplomatic relations between Panama and Colombia consists in the determination of the boundary line from the heights of Aspavé to the Pacific.

The Department of State suggested that the boundary line should be the following: From Cape Tiburón to the headwaters of the Rio de la Miel and following the mountain chain by the ridge of Gandi to the Sierra de Chugargun and that of Mali going down by the ridges of Nigue to the heights of Aspavé and from thence to a point on the Pacific half way between Cocalito and La Ardita. The line has been accepted by the Colombian Government, but the Panaman Government has not yet accepted it. In these circumstances a brief review of the matter may be useful. The question of the boundary between Panama and Colombia was discussed at length in Washington between the Department of State and the Ministers of Panama and Colombia in 1906 and 1907. After a careful consideration of the whole question the Department reached the conclusion that the true frontier between Panama and Colombia was that mentioned in the Law of New Granada of June 9, 1855, and in a letter addressed to Señor Cortes, Minister of Colombia, on August

26, 1907,[38] a copy of which was communicated to the Panaman Legation in Secretary Root's personal note of February 17, 1908,[39] Secretary Root stated that "the view of the United States is that the boundary between Colombia and Panama is that described in the above mentioned Law of New Granada of June 9th, 1855. This is the view originally reached by Mr. Buchanan [40] and concurred in by me and a careful examination of the various papers which have been adduced during the recent negotiations has not seemed to me to furnish any just ground for a change of this view, which you may regard as the matured and definite position of the Government of the United States".

In view of the controversy between Panama and Colombia regarding jurisdiction over the Jurado territory, the American Government, in accordance with the expressed wish of the Government of Panama, approached the Colombian Government with a view to arbitration and on January 9, 1909, a treaty was signed between the Colombian Minister and the Panaman Chargé d'Affaires in Washington,[41] by which the boundary was established from the Atlantic to the heights of Aspavé and the line from this point to the Pacific was left to be determined by a tribunal of arbitration for which the same treaty made provision. This treaty never came into effect, and the United States Government again opened negotiations with Colombia with a view to securing recognition of Panama's independence, by reason of the fact that the United States had guaranteed to maintain the independence of the Republic of Panama. Negotiations dragged on without result until 1913, when there appeared to be a better chance for success and they were pursued diligently to a successful conclusion on April 6, 1914.

By the treaty of that date the United States was fortunately able to obtain a recognition by Colombia of the independence of Panama and a copy of that treaty is attached hereto for the information of the Panaman Government.[42] In that treaty the boundary was established on the basis of the Law of New Granada of June 9, 1855, and in accordance with the matured and definite opinion of the United States as to the true boundary between Colombia and Panama. It may be stated that during the course of the negotiations the Colombian authorities proposed the seventy-ninth longitude west of Greenwich as the boundary, and other lines somewhat less unfavorable to Panama were from time to time suggested by the Colombian

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[38] *Foreign Relations*, 1919, vol. I, p. 77.
[39] Not printed.
[40] William I. Buchanan, Minister in Panama, Dec. 1903 to Feb. 1904.
[41] *Foreign Relations*, 1909, p. 229.
[42] *Ibid.*, 1914, p. 163.

negotiators. This Government however stated that the line fixed by the Law of New Granada above mentioned was the only boundary accepted and recognized by the Government of the United States as the frontier between the Republics of Colombia and Panama, and this Government happily obtained the consent of the Colombian Government to that line.

This Government was not unmindful of the fact that the Panaman Government had for some time maintained that the boundary of the State of Panama should follow the course of the Atrato and Napipí rivers, in accordance with the Executive Decree issued by President Mosquera on the 7th of August 1847. However, this contention was carefully studied by the Department of State and it is evident, on account of the provisions of Article III of the Constitution of the Republic of Panama providing that "the territory of the Republic is composed of all the territory from which the State of Panama was formed by the amendment to the Granada Constitution of 1853, on February 27, 1855, and which was transformed in 1886 into the Department of Panama", that an Executive Decree of 1847 could obviously have no standing in the matter. The amendment of February 27, 1855, to the Granada Constitution of 1853 states that "a subsequent law will fix those (limits) which should divide it from the rest of the territory of the Republic". The only subsequent law known to this Government fixing those limits is that of June 9, 1855, Article VII of which the Minister of Foreign Affairs of New Granada officially informed this Government, through the American Minister Resident at Bogotá on June 18, 1855, designated the limits of the new federal state of Panama. Article VII of that Law states that the boundaries of the new state of Panama are on the east "from Cape Tiburón to the headwaters of the Rio de la Miel and following the mountain chain by the ridge of Gandi to the Sierra de Chugargun and that of Mali going down by the ridges of Nigue to the heights of Aspavé and from there to the Pacific between Cocalito and La Ardita".

It thus becomes evident that the boundary line which this Government succeeded in having recognized by the Colombian Government, in the treaty referred to, is that determined by the Panaman Constitution itself. This Government, therefore has felt justified in supposing that this line would be acceptable to the Panaman Government, and it had the more reason to feel that there could be no opposition to the acceptance by the Panaman Government of this line in view of the letter addressed to the Assistant Secretary of State by the present President of Panama on January 10, 1920,[43] in which he withdrew his objections to that line and "from any con-

[43] *Foreign Relations*, 1919, vol. I, p. 79.

troversy" regarding the matter. It was with great regret, therefore, that this Government learned that the Panaman Government withheld acceptance. The advantages of definitely settling this question concerning territory for the most part wild, little known and apparently valueless, are of such paramount importance that the United States Government most earnestly hopes that the Panaman Government will now inform it of its concurrence in the boundary line agreed to by the Colombian Government, a line in accordance with the boundary described in the Panaman Constitution, and thus pave the way for the establishing of diplomatic relations between the two countries.

WASHINGTON, *June 2, 1923.*

719.2115/14¼

Memorandum by the Secretary of State of a Conversation with the Panaman Minister (Alfaro), June 2, 1923

The Minister called at the Secretary's request. The Secretary delivered to the Minister the Department's memorandum of this date and stated orally the substance of it. The Secretary said that it appeared that the only obstacle to the resumption of diplomatic relations between Panama and Colombia was the question of boundary, and it further appeared that there was no difference as to this except [as] to a small portion. The suggestion of the United States as to this boundary had been accepted by Colombia and it was hoped that Panama would close the question and permit the resumption of relations with Colombia by a similar acceptance. The Secretary referred to the fact that the question had been discussed in 1906 and 1907 and that Mr. Root, in his letter to Mr. Cortes, the Minister of Colombia, under date of August 26, 1907, had stated that it was "the matured and definite position of the Government of the United States that the boundary between Colombia and Panama was that described in the law of New Granada of June 9th, 1855." Mr. Root had sent a copy of this letter to the Panaman Legation in February, 1908. The Secretary referred to the subsequent controversy over the Juradó territory and to the Treaty of 1909 by which the boundary from the Heights of Aspave to the Pacific was to be settled by arbitration; that this treaty failed and that some time later the United States had opened negotiations to secure the recognition by Colombia of the independence of Panama. These negotiations had resulted in the treaty between the United States and Colombia of 1914. In these negotiations Colombia had made certain extreme claims and had proposed the 79th Longitude West of Greenwich as the boundary. The United States had stated that the line fixed by the law

of New Granada, above-mentioned, was the only boundary recognized by the United States Government. The Secretary said that he had in mind the decree issued by President Mosquera on August 7, 1847. But this decree could not influence the conclusion because the matter had been settled pursuant to the amendment to the Constitution of New Granada of February, 1855. This amendment had provided that "a subsequent law will fix at once limits which should divide it (the State of Panama) from the rest of the territory of the Republic." The Secretary said that it was quite apparent then that the controlling law was the subsequent law. The Secretary then referred to the provisions of article 7 of the law of June 9, 1855. He said that he was aware that it was suggested by Panama that this provision was only incidental to the granting of a concession to the Panaman Railroad, but the Secretary said that it was entirely competent for Colombia to fix the boundary in connection with that concession, if it wished to do so, and the only question was whether it had done so. The Secretary said that it was conclusively brought out that the boundary had thus been established because the Minister of Foreign Affairs of New Granada at once informed the Foreign Office that the boundary had been thus established. The Secretary had the original volume of communications from New Granada of this period and showed to the Panaman Minister the original communication from the Minister of Foreign Affairs of New Granada to the Government of the United States, under date of June 18th, 1855. The Secretary said that in the face of this the subsequent statement by the Superior Chief of State of Panama had no effect, its only significance having been to direct attention to what had actually been accomplished. In this light the Secretary said there could be no question that the boundary had been fixed according to the amendment of the New Granada Constitution and hence when Panama in her own Constitution had referred to the boundary of the State of Panama it had referred to the boundary as thus established by the law of 1855, which followed the New Granada Constitution. The Secretary then referred to the fact that when the treaty between the United States and Colombia was pending in the Senate President Porras had written to the Department withdrawing his objection which he had previously raised with respect to the boundary and hence the United States had proceeded in accordance with the actual facts in the case and with the determinative law and with the acquiescence of President Porras. In these circumstances the Government of the United States must renew its statement that the boundary as stated in the treaty with Colombia between the United States and Colombia was the true Panaman boundary and it was earnestly hoped that the Panaman Government would facilitate the resumption

of relations with Panama by proceeding on the basis of the acceptance of this boundary. The Secretary then called attention to the fact that the territory in question was almost worthless and certainly not important enough to justify a dispute between Panama and Colombia and the prevention of the resumption of friendly relations which were so important to both. The Secretary emphasized strongly the desirability of a settlement.

The Panaman Minister referred to Mr. Root's letter and said that subsequently he had written to the representative of Panama stating that in view of the special considerations relating to the Juradó territory the Government of the United States would use its good offices to have the question of the boundary from the Heights of the Aspave to the Pacific settled by arbitration, and it was with this view that the treaty had been made. The Minister emphasized the fact that this showed that Mr. Root had not adhered to his original position, but had regarded the question of the Juradó territory as open to further consideration. The Minister referred to the law of New Granada of 1855 and said that this only fixed the boundary of certain territories as stated and not the boundary of the State of Panama.

The Secretary replied that so far as Mr. Root was concerned what he had done had been in the interest of a settlement but did not change his opinion which he had expressed as the matured and definite opinion of this Government as to what the boundary was; and that after the arbitration treaty had failed and this Government took up the matter again it had no basis for any other conclusion than that the boundary was that fixed by the law of New Granada of 1855. Having obtained the acceptance by Colombia of this boundary and believing it to be the true boundary, this Government thought that it should be accepted by Panama. The Secretary then said that with respect to the language used in the law of 1855 it was sufficient to point out the construction at once placed upon it by the Minister of Foreign Affairs of New Granada. The Secretary again called attention to the Minister's communication to the United States Government on this point stating that this law defined the boundary of the State of Panama.

The Panaman Minister said that all his Government desired was an opportunity further to discuss the matter with Colombia; that if relations were resumed he believed there would be no difficulty in reaching a settlement; that the territory was not worth much, indeed it was not worth the time that the Secretary and he were giving to it in the course of discussions, but the fact remained that it was a question with the Panaman people and had a good deal of political importance. The Panaman people had believed that they

were entitled to go to the line of Atrato and that when this was given up by taking the line of the mountains from the Atlantic to the Heights of the Aspave they wished to show that they had something for it and they wished to have some further negotiations with respect to the rest of the line. The Secretary pointed out that the line from the Atlantic to the Heights of the Aspave, fixed in accordance with the law of New Granada of 1855, had been accepted by Panama; that there was no basis for any contention with regard to it. The Minister said that the point was that Panama should have an opportunity to continue to negotiate; that if they reported to their people that they had settled this matter and had relinquished their point there would be great criticism. The press at this time was vigorously attacking the Panaman Government and it would be impossible for them to surrender their position. On the other hand, if Colombia would resume relations there would not be the slightest difficulty for the Panaman Minister at Bogota in effecting a settlement, even though he got only one-twentieth part of the territory that was involved. The Minister suggested that the Government of the United States might endeavor to persuade Colombia not to insist upon this point but to resume relations.

The Secretary said that the Department had been doing its best to bring the two Governments together but Colombia absolutely insisted upon the recognition of the boundary described in the treaty; that it was impossible for the United States to ask Colombia to withdraw their contention when the boundary thus described was the boundary which the United States had no question was the true boundary. The Minister said that he feared the suggestion could not be accepted, but he would report the communication to his Government.

719.2115/14 1/2

Memorandum by the Chief of the Division of Latin American Affairs, Department of State (White)

[WASHINGTON,] *June 25, 1923.*

The Secretary received the Colombian Minister at twelve o'clock on Saturday, June 23. The Colombian Minister stated that he desired to express on behalf of his Government its appreciation of the efforts which had been made by the Department to bring about an agreement between the Colombian and Panaman Governments for the settlement of the boundary dispute and for the establishment of diplomatic relations between those Governments. He stated that he had informed his Government of all the negotiations that had led up to the draft procès verbal, and that he was instructed by his Gov-

ernment to state formally and officially that it accepted absolutely the terms of the procès verbal as presented. Señor Olaya added that he desired also to express his own personal appreciation of the efforts of the Department in the matter. Señor Olaya stated that he hoped that Panama would also promptly accept the proposed settlement, and that as the Colombian Congress is now in session he would be very pleased if he might have some statement from the Secretary regarding the matter which he could send confidentially to the Colombian Minister for Foreign Affairs for possible use in a private session of the Congress.

The Secretary replied that he was very gratified to receive this friendly expression from the Minister and the Colombian Government, and that it was a pleasure for him to know that the draft procès verbal met with the approval of the Colombian Government. As regards the situation with Panama, the matter was under negotiation and this Government was waiting for the reply of the Panaman Government, and that he regretted that it would not be possible for him to make any statement regarding the matter at this time.

The Colombian Minister then stated that he hoped that the proposed settlement would soon be accepted by Panama; that there is always the danger in Latin American countries, when the settlement of such matters is prolonged and long drawn out, that the press will get hold of the matter and will cause discussion and polemics which embitter feeling and make a settlement more difficult. The Secretary replied that it was precisely for this reason that he did not wish to make any statement, for should he make one it would doubtless be telegraphed to Panama and might make the situation more difficult. Señor Olaya replied that he understood perfectly, and that he would write a confidential letter to the Minister for Foreign Affairs giving him an account of his interview with the Secretary.

WHITE

719.2115/16

The Panaman Minister (Alfaro) to the Secretary of State

[Translation]

WASHINGTON, *August 6, 1923.*

MR. SECRETARY: The Government of Panama has given its most earnest consideration to the memorandum which Your Excellency did me the honor to deliver in person at the conference we had on Saturday the second of June last, and has instructed me to answer it in the terms I will now set forth:

In the first place I wish most duly to thank Your Excellency in the name of my Government for the notice given in your memoran-

dum to the Republic of Panama of the treaty concluded between the United States and Colombia on April 6, 1914 and approved by the American Senate on April 20, 1921.

As very properly remarked by Your Excellency, the one obstacle in the way of concluding the protocol by means of which it is intended to establish diplomatic relations between the Republic of Panama and that of Colombia lies in the difficulty of finding a formula that would be acceptable to the parties concerned with regard to the boundary between the two nations.

As Your Excellency knows, the first drafts that were presented to the Panaman Government for its consideration made no reference whatsoever to the boundary question, which it seemed most natural for us to do, since both the boundary question and the others that are to be settled by Panama and Colombia are properly matters for public treaties which are to be concluded by the respective plenipotentiaries in Panama or Bogota after the desired diplomatic relations are established. It was presented in the latest draft, where for the first time there appeared a clause stipulating that the boundary between Colombia and Panama would be formed by the line laid down by the Granadina law of June 9, 1855.

The Government of Panama promptly answered that the boundary question was not to be put in the protocol under consideration because it would seem that it was thus intended to fix the limits through that instrument, while the constitution of Panama directs that the boundaries with Colombia are to be fixed by means of a public treaty. The Department of State nevertheless has been evincing some anxiety to have the purpose of the Government of Panama with regard to boundaries be established even now, so as to eliminate from the discussions that are to take place later, questions which are troublesome and delicate in nature, as boundary questions always are, and the Panaman Government in deference to the wishes of Your Excellency's Government and actuated solely by international courtesy and conciliation decided to make a proposition in the boundary question that would eliminate the most arduous part of the question and at the same time conform with the requirements of our constitutional laws and leave an open door for a final settlement through a public treaty.

I had, therefore, the honor on May 8 last, to propose to the Department of State that together with the protocol of establishment of diplomatic relations, there would be signed a preliminary protocol concerning the boundary conforming to the following basis:

I

"Panama and Colombia declare their intention to reach a friendly and final settlement of the boundary between the two countries by

means of a public treaty that will be negotiated immediately upon the exchange of plenipotentiary diplomatic missions between the two States.

II

The Republic of Panama declares that it recognizes and is ready finally to accept through a public treaty that will be concluded, the following boundary line with the Republic of Colombia; From Cape Tiburon to the headwaters of the Miel River and following the range of mountains along the cerro de Gandí, to the Chugargún and Malí mountains and coming down along the cerros de Nigue to the heights of Aspavé.

III

Practically the whole of the boundary line between the two countries having been thus agreed upon on the strength of the foregoing declaration, Panama and Colombia declare that there only remains open for future diplomatic negotiations to fix the frontier between the heights of Aspavé and the Pacific Ocean, the said frontier being fixed by means of a direct convention or through arbitration which will be confined to mark down the line within the two extremes hereinbelow stated: At the North and as the extreme claim on the part of Colombia a straight line which running from the heights of Aspavé will go towards the Pacific Ocean to a point of equal distance from the Capes of Cocalito and Ardita; at the South and as the extreme claim of Panama a line beginning at Ensenada de Aguacate or Octavia Bay in front of Punta de Marzo or Morro-Quemado and then over a cerro on the coast following in the North-easterly direction taken from the North by the summits which separate the rivers that pour into the Atlantic from those that go into the Pacific as far as the headwaters of Juradó River and then eastward as far as the heights of Aspavé."

To my Government this proposition appeared to offer a happy solution of the difficulty that had arisen and one that would be accepted both by the Government of Colombia and Your Excellency's Government, because this compromise keeps under the power and in the possession of Colombia the country open to negotiations which implies that to Panama the postponement of those negotiations is of no benefit whatsoever.

The Juradó district had always been an integral part of the Panaman territory until 1908 when Colombia militarily occupied the town of that name following a declaration made by Secretary Root that in the opinion of the United States the boundary between Panama and Colombia is that laid down by the Law of June 9, 1855.

As a matter of fact, the inhabitants of the township of Juradó have always lived under the administrative jurisdiction of the Panaman authorities and always maintained social and commercial relations with the inhabitants of the Isthmus, while they have shown no sign of relations of any kind either with the authorities or the

inhabitants of the Department of Cauca, within which Juradó fell on account of the territorial division which is alleged to have been decreed by the Law of June 9, 1855.

In evidence of this condition of affairs the resolution issued by the President of the Sovereign State of Panama on May 7, 1881, upon complaints made by the inhabitants of Juradó and which decreed that the said township would continue to be governed as it had been in all times by the constitutional laws and authorities of the State of Panama may be cited. There may be cited also all together so as to avoid being too prolix the many acts relative to that district by the Assemblies of the State and Department of Panama and the note addressed on November 4, 1890 by General Juan V. Aycardi, Governor of the Department and the Minister of Gobierno, in which he asked that the Department of Panama be finally marked in accordance with Article IV of the Unitarian Constitution issued in 1886.

It may be observed also that the line which runs from Octavia Bay to the heights of Aspavé and which, according to the proposition I have the honor to submit in those negotiations, will constitute the extreme claim of Panama, is not the arbitrary idea of any Panaman, but that which is marked as expressing the true facts by the eminent Colombian geographer, Doctor Felipe Pérez, by virtue of a contract entered into in 1861 with the government of his country for the writing of a general geography of Colombia and a geography of every one of the States, and it is furthermore that which completes the natural boundary of the mountain range which takes the place of the boundary which is also natural of the Atrato River to which Panama has adduced historical title.

The Sovereign State of Cauca did not consider that its boundary dispute with the Sovereign State of Panama was finally settled by the Law of June 9, 1855, as seems to be the claim today; and it is proved by the fact that in 1882 it appointed for its plenipotentiary General Buenaventura Reinales, Senator for Cauca, to come over and arrive at an understanding with the political authorities of Panama in order to settle the old standing dispute between the two States. He failed in his mission not being able to arrive at an agreement with the Secretary of Gobierno of Panama, Doctor José M. Vives Leon. But in 1883 the President of the State of Panama, Don Dámaso Cervera, accredited Señor Joaquin María Pérez, as plenipotentiary of Panama to the President of the State of Cauca, General Eliseo Payán, and on August 27 they signed a convention, Article XXVII of which reads as follows:

"The question pending between the two States as to the marking of the dividing line of their respective countries will be referred subject to the acquiescence of the two legislatures to the award of

the citizen President of the Sovereign State of Bolivar, and the decision arrived at will be held to be final on the subject."

The Executive Power of the State of Panama thereafter approved that convention but the legislatures of the two States did not reach the point of considering it as it was not referred to them, and there the negotiations stopped. The impossibility of doing away with those antecedents no doubt actuated the Government of Colombia in having its plenipotentiary, Don Enrique Cortés, affix his signature to the tripartite treaties of Washington in 1909, in which there was included an arbitrament clause like that contained in the Convention of 1883 between the Sovereign States of Panama and Cauca and which as above stated was never executed.

The capital consideration which compels the Panaman Government to insist on the solution proposed by it is that it reproduced while making it more precise and perfect, the solution which was arrived at in the question of boundaries through the above mentioned tripartite treaties concluded between Panama, Colombia and the United States in 1909, the plenipotentiaries of the three countries being the then Secretary of State, Mr. Elihu Root, and the Ministers Arosemena and Cortés. If in the above mentioned year Mr. Root himself, who was the party who favored the line of 1855, agreed to refer to arbitration the Juradó district why should it be suggested now that Panama upon entering into relations with Colombia should concede more in this matter of boundaries. In this respect, I have been told that those treaties lapsed because they were not approved by the Government of Colombia, but in answer to that remark I would in turn point out that the failure to approve was not on account of the boundary clause but of the clause relative to the pecuniary compensation which Colombia was to receive, and that in the Treaty of 1914 it was found fair to fix a sum ten times as large as that agreed upon in the 1909 treaty. And if Colombia in 1909 accepted arbitration on the Juradó question when the other clauses of the treaty were not so favorable to it why should it not accept that same solution which is now proposed by Panama? It has also been remarked that the treaty between the United States and Colombia establishes the boundary of the Law of 1855 as that of Panama, but in this respect I must remark that inasmuch as Panama was not party to that Treaty, what third parties agreed to in that respect cannot in any way concern it.

But this is not all. The 1909 Treaty was approved by the National Assembly of Panama, less than one month after it had been signed, by Law No. 21 of February 1 of the year above mentioned. In so approving it the Panaman legislature virtually expressed its wishes in regard to the boundaries with Colombia and how can the

Government of Panama agree to an award and a protocol expressly running counter to that desired? By what argument could the Panaman Government justify now to the country a greater concession than that which was made in 1909? The Panaman Government, try as it may, is unable to see any at present as it believes that any covenant concerning the boundary which would go beyond the proposition of May 8th is out of time and out of place in the present negotiations.

The note of Your Excellency makes the astonishing disclosure of the fact that in the course of negotiations of the Treaty of 1914, the Colombian authorities proposed to designate the 79th meridian of longitude west of Greenwich for the boundary between Colombia and Panama, but that the Government of the United States declared that in its mind the boundary was that laid down by the Law of June 9, 1855, and obtained Colombia's acceptance thereof.

But to Panama this consent does not imply any concession whatsoever on the part of Colombia since to that nation it meant the recognition by the United States of the extreme limit which it might claim on the strength of an instrument which had at least an apparent legal value. There is no meaning in the wish expressed by Colombia to run the boundary line along the 79th meridian thus cutting in two the territory of the Republic, because being unable to justify such a claim with any legal instrument, any antecedent or foundation in history, law or geography, it would be tantamount to asking the Government of the United States to convert itself into a conqueror of Panaman territory in order to present it to the Republic of Colombia. On the same foundation it might also ask that the boundary line be drawn along the 82nd meridian thus virtually wiping the Republic of Panama off the map.

Your Excellency laid great stress on the letter sent by the present President of the Republic of Panama to the Under Secretary of State, Mr. Phillips, on the tenth of January, 1920.[43a] As for that letter and others exchanged between the same Under Secretary of State and His Excellency, Doctor Belisario Porras, my attention has been called to them in the course of a conference with the Chief of the Latin American Division, Mr. White, and upon my apprizing the President thereof he in turn referred them to the cabinet plenary council for their examination and consideration, and according to a despatch sent to the Legation by the Department of Foreign Relations "the Cabinet Council arrived at the conclusion that those letters contained no promises that may give the Department of State occasion to declare that Panama agreed to the boundaries described in the Thompson-Urrutia Treaty; quite to the contrary there is no-

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[43a] *Foreign Relations*, 1919, vol. I, p. 79.

ticed in them the writer's insistence to claim for Panama the boundaries which historically belong to it."

In essence the letter of January 10, 1920, of President Porras is to the effect that he wished in an informal and unofficial manner to suggest to the Department of State the advisability of having the United States bring out in its Treaty with Colombia the claim of Panama based on history and law to the Atrato frontier; but that owing to the insistence of the United States on the ideas manifested by Secretary Root he realized it would be inconvenient to insist on his viewpoints as he had no purpose to embarrass the negotiations between the United States and Colombia.

The true attitude of the government presided over by Doctor Porras in this matter is that which is justified in the memorandum that in my capacity as Special Envoy of the Republic of Panama, I had the honor to present to Your Excellency on March 17, 1921, which reads as follows:

"The Government of Panama wishes to maintain relations of cordial friendship with all the peoples on earth and will, therefore, see with the greatest pleasure any action or step taken towards the establishment of diplomatic relations with the Republic of Colombia, a nation from which Panama seceded without bad blood or ill will and actuated solely by the vital necessity of resuming the management of its own destiny.

"However, the Treaty between the United States and the Republic of Colombia being about to be considered and voted on in the American Senate, the Government of Panama deems it its duty to renew the protests it has made to the Department of State to the effect that if any clause fixing the boundary of Panama with Colombia is inserted in that Treaty it would constitute a proceeding that cannot depend on the consent or approval of Panama.

"The Constitution of the Republic of Panama, by its Article 3, provides that the boundaries between Panama and Colombia will be fixed by means of public treaties which necessarily means public treaties to which Panama is a party. This matter concerns vital interests of Panama and its Government thinks it has a right to be left at liberty to discuss it with Colombia adequately and at the proper time.

"The Panaman Government declares that if the Treaty between the United States and Colombia is eventually approved by the Senate, its provisions cannot affect the rights of Panama which has not been consulted nor taken into account in the negotiations in spite of its previous protests. It also declares that as it has not empowered the United States to negotiate in behalf of Panama in the matter of boundaries and pecuniary settlements with Colombia, whatever convention in that respect is made between the United States and Colombia will, with respect to Panama, be *res inter alios acta* and cannot of right be binding upon it."

I believe, therefore, Mr. Secretary that from the foregoing statement Your Excellency will have formed an idea of the conciliatory

spirit and the motives of equity that have inspired Panama, when it made its proposal of May 8th last, and if as the Panaman Government hopes it may be the Colombian Government is now animated by sentiments as friendly and fraternal as those which Panama cherished it will find no difficulty in accepting a solution which will insure immediate success of the negotiations for the establishment of diplomatic relations, happily initiated through Your Excellency's powerful mediation.

I do not wish to allow the present opportunity to pass by without reiterating to Your Excellency the sincere expression of the wishes of the Republic of Panama that the relations of official friendliness will be entered into by Colombia and that those negotiations which we have entered actuated by no purpose of expectation of material profit, but impelled by the love which we have for the people with whom we have shared misfortunes and achievements in eighty-two years of political union will be crowned with a happy outcome.

I lastly desire to express the profound gratitude of my Government for the interest and tact displayed by Your Excellency in your praiseworthy endeavor to bring about diplomatic *rapprochement* between my country and Colombia which endeavor Panama will try as far as possible to carry out in order that in the brilliant work Your Excellency is carrying on in the cause of peace and international harmony, entire success will be achieved.

I am [etc.] R. J. Alfaro

719.2115/16

The Secretary of State to the Panaman Minister (Alfaro)

Washington, *August 25, 1923.*

Sir: I have the honor to acknowledge the receipt of your note of August 6, 1923, in which you discuss the attitude of your Government in regard to the boundary between Panama and the Republic of Colombia, and in which you again propose that that portion of the boundary line lying between the heights of Aspavé and the Pacific Ocean should be left to be settled by future diplomatic negotiations either by means of a direct convention or through arbitration.

In reply I have the honor to inform you that, while the Government of the United States has always regarded arbitration as an appropriate means of dealing with disputes which it has been impossible to settle through direct negotiations between the governments interested, it nevertheless in this specific case is unable to find satisfactory ground for the conclusion that the question of the boundary between Panama and Colombia is a matter which requires further

examination either by the Governments concerned or by an impartial arbiter in order to ascertain what is the true boundary established by existing law between the two countries.

It is unnecessary here to repeat the reasons, outlined in this Department's memorandum of June 2, last, which have convinced this Government that the boundary specified in the Constitution of Panama is that which was established by the law of New Granada of June 9, 1855, and which is accepted in Article III of the Treaty of April 6, 1914, between Colombia and the United States. I have duly noted the statements in your note of August 6 which seek to show that the State of Panama had not acted in conformity with the New Granadan Law of 1855, and had attempted from time to time to exercise jurisdiction over the District of Juradó, which was not included within the territory of the State of Panama by that law. I cannot perceive, however, that the attempt of the state government to exercise jurisdiction within territory which, under existing law, lay within another state, can alter the fact that the boundary of the State of Panama was definitely established by the Constitution of New Granada and by a law enacted in pursuance of the provisions of that Constitution, since it is assumed that the Federal Constitution took precedence over any law enacted by one of the States.

Being persuaded, therefore, that the boundary specified in the Constitution of Panama is that which was established by the law of New Granada of June 9, 1855, and this boundary having been accepted in Article III of the Treaty of April 6, 1914, between Colombia and the United States, this Government is not in a position to transmit to the Government of Colombia your proposal that the settlement of the boundary line between Panama and Colombia should be left to subsequent negotiations.

In reply to your statement that the Government of the United States agreed to the arbitration of the status of the Juradó district in 1909, and that it is, therefore, difficult to understand why Panama should concede more at the present time, I may say that the situation has changed materially since 1909 by reason of the fact that the United States, while it had already at that time definitely expressed its view that the Juradó district did not fall within the boundaries of Panama, as prescribed by the Constitution of that country, had not then entered into a treaty with Colombia under which, as the guarantor of Panama's independence, it secured from Colombia the recognition of the independence of Panama within the boundaries outlined in the treaty. You will appreciate that the provisions of this treaty make it impossible for this Government to suggest to Colombia that Colombia should consent to an arbitration of the

status of territory which this Government has recognized as belonging to Colombia under the laws of both that country and of Panama.

I have noted your statement that the Panaman Cabinet considers that the letter addressed on January 10, 1920, by the President of Panama to Mr. Phillips, and other letters exchanged between His Excellency, Dr. Belisario Porras, and Mr. Phillips "contain no promises to declare that Panama agreed to the boundaries described in the Thompson Urrutia Treaty." I submit, however, that the explicit statement of the President of Panama to a high official of the United States Government in which His Excellency, the President, withdrew his objections to the boundary line set forth in the Treaty between the United States and Colombia, and expressed his intention to withdraw from any controversy regarding the matter, justified the United States Government in proceeding as it did proceed in subsequent discussions with both Panama and Colombia on the assumption that Panama would not raise further objections to the boundary as outlined in the Treaty of 1914. It was with grave disappointment that this Government learned that the Government of Panama desired to reopen the question of the location of the boundary.

In the light of the foregoing, the Government of the United States earnestly hopes that the Government of Panama will again consider the facts set forth in this Department's memorandum of June 2, last. This Government would be highly gratified if the Government of Panama should reach the conclusion that the boundary set forth in the New Granadan Law of 1855 is the boundary established by the Panaman Constitution and should, therefore, determine to accept this boundary in order that there may be no further obstacles to the establishment of friendly relations between the Government of Panama and the Government of Colombia.

Accept [etc.] CHARLES E. HUGHES

719.2115/106

The Chief of the Division of Latin American Affairs, Department of State (White) to the Secretary of State

[WASHINGTON,] *October 29, 1923.*

DEAR MR. SECRETARY: Señor Alfaro came in this morning to state that he has received a reply from his Government regarding the Panama-Colombian frontier matter. His Government declines categorically to accept the boundary. Señor Alfaro said that he preferred to give me the information orally rather than by note. He stated that if the Department desired a written reply he will of course have to state his Government's refusal to accept the boundary

proposed in the draft procès verbal of an interview between you and the Panaman and Colombian Ministers. Señor Alfaro stated that he preferred not to do this as it would make it more difficult either for the present Panaman administration or any succeeding one to accept the boundary with this formal protest on record and that he personally hoped that if the matter is allowed to rest it will be possible at some later date to come to an agreement in the matter. From what Señor Alfaro stated I was led to believe that perhaps after the next Panaman elections on August 10, 1924, it may be possible to induce the Panaman Government to accept the boundary proposed. In any case Señor Alfaro stated that he hoped that within a year it might be possible to find a solution of this difficulty. He reiterated his personal feeling that the boundary should be accepted as proposed and that the territory in dispute is not worth the time being given to it. He stated however that it was only his personal opinion but of course he had to transmit his Government's views in the matter.

I told Señor Alfaro that I concurred with him that it would be better not to make any reply in writing at this time but to leave the matter in abeyance for the present. I of course made no mention to him of the approaching treaty negotiations.[44]

WHITE

Colombia and Peru [45]

721.2315/109 : Telegram

The Secretary of State to the Ambassador in Peru (Poindexter)

[Paraphrase]

WASHINGTON, *October 8, 1923—6 p.m.*

36. On July 5 the President of Colombia wrote a personal letter to President Harding which the Department has just received [46] and in which President Nel Ospina states that the treaty signed March 24, 1922, between Colombia and Peru [46a] was to be submitted simultaneously to the Congress of each country for approval and that the session of the Colombian Congress had on one occasion been prorogued so as to permit an opportunity for its submission should Peruvian Government do likewise. Up to this time Peru has been unwilling to submit treaty to Peruvian Congress. President Nel Ospina has asked the President's good offices in the matter.

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[44] For papers concerning abrogation of the Taft Agreement, see vol. II, pp. 638 ff.
[45] For previous correspondence, see *Foreign Relations*, 1919, vol. I, pp. 80 ff.
[46] Not printed.
[46a] League of Nations Treaty Series, vol. 74, p. 9.

Are there at present acute issues before Peruvian Congress which would make it more advisable to delay action for the time being? If there are not, the Department leaves it to your discretion, should a favorable opportunity present itself, to call the attention of President Leguía orally, unofficially and in a friendly manner to the mutual advantages of terminating this long-standing controversy, and to inform him that the Government of the United States would be highly gratified if he could arrange for submission of the treaty to the Peruvian Congress. You may also state that this Government understands that submission of the treaty in question will be entirely satisfactory to and highly appreciated by the Government of Colombia, which is ready to reciprocate at any time. Please report promptly any developments which take place in matter.

HUGHES

721.2315/111 : Telegram

The Ambassador in Peru (Poindexter) to the Secretary of State

[Paraphrase]

LIMA, *November 5, 1923—noon.*
[Received 5:00 p.m.]

43. Your 36, October 8, 6 p.m. I am informed by the Minister of Foreign Affairs that within a few days the budget will come up for debate and that there is a fair chance that the Government will also submit the Colombian-Peruvian boundary treaty to this session of Congress, which comes to an end the latter part of November. From the Minister of Foreign Affairs I receive the impression that the Government intends to ratify the treaty now if possible.

POINDEXTER

721.2315/111 : Telegram

The Secretary of State to the Ambassador in Peru (Poindexter)

[Paraphrase]

WASHINGTON, *November 7, 1923—3 p.m.*

39. In view of the favorable attitude shown by the Minister of Foreign Affairs, you will endeavor discreetly to ascertain whether the Peruvian Government has taken any steps to fix a date for the joint submission of the boundary treaty to the Congresses of Colombia and Peru. If there have been none, you should approach President

Leguía at your discretion in the sense of the Department's telegram of October 8, 6 p.m., and report the results by cable.

HUGHES

721.2315/113 : Telegram

The Ambassador in Peru (Poindexter) to the Secretary of State

[Paraphrase]

LIMA, *November 16, 1923—noon.*
[Received November 17—3:04 p.m.]

46. Yesterday afternoon I spoke to the President and expressed to him our anxiety lest the Peruvian Congress adjourn without taking any action on the treaty. I told him that the settlement of this question would be most acceptable to our Government, and I pointed out the treaty's favorable terms to Peru, the vast territories now in dispute to which she will acquire an undisputed title, and the advantage which will accrue to her from strengthening her position in every direction by settling her controversies permanently. President Leguía replied that he strongly favored ratification of the treaty and he regarded our interest in it as very important as it was his intention to submit the treaty to Congress and insist upon its approval. . . .

. . . .

POINDEXTER

721.2315/114 : Telegram

The Secretary of State to the Ambassador in Peru (Poindexter)

[Extract—Paraphrase]

WASHINGTON, *December 4, 1923—6 p.m.*

47.

. . . .

The Department has obtained the impression from your telegrams that it is President Leguía's intention to avoid submitting the treaty to Congress because of the approaching presidential election. The Department doubts whether more energetic representations to him at this time would be productive of results. The Department wishes its action kept within the limits of that of a friendly power earnestly interested in the welfare of both Peru and Colombia, an interest to be expressed whenever favorable opportunities may arise. If, however, you have an opinion to suggest for further action which might produce desired results, you will please cable it briefly. . . .

HUGHES

Guatemala and Honduras[47]

714.1515/370c: Telegram

The Secretary of State to the Minister in Guatemala (Geissler)

WASHINGTON, *January 29, 1923—6 p.m.*

6. The Department of State, as mediator in the boundary dispute between Guatemala and Honduras, has suggested to both Governments that the present would be a propitious time to reach a final solution of the long-standing controversy between the two Governments. As the result of an intimation from the Delegations[48] of the two Governments that the Governments of Guatemala and Honduras would be disposed to submit the matter to arbitration and that in such event the President of the United States would be the only arbiter upon whom both Governments could agree, it was suggested that the two Delegations obtain positive instructions from their Governments as to whether both Governments would agree to submit the boundary dispute to arbitration by the President of the United States. The Government of Honduras has already replied that it was willing to submit the controversy to the arbitration of the President. The Minister of Guatemala has not yet received final instructions.

You are instructed to obtain an interview with the President at the earliest opportunity and advise him of the decision reached by the Government of Honduras and to express the hope of this Government that a like decision will be reached by the Government of Guatemala. You may state that a most excellent impression would be created if announcement could be made in the closing plenary session of the Central American Conference that the Governments of Guatemala and Honduras had determined to submit this dispute of many years' standing to arbitration in the manner referred to.

HUGHES

714.1715/371: Telegram

The Minister in Guatemala (Geissler) to the Secretary of State

GUATEMALA, *January 31, 1923—7 p.m.*
[Received February 1—8 p.m.]

9. Referring to the Department's telegram of January 29, 6 p. m.

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[47] For previous correspondence, see *Foreign Relations*, 1921, vol. I, pp. 231 ff.
[48] To the Conference on Central American Affairs, Washington, Dec. 4, 1922–Feb. 7, 1923.

Yesterday I conferred with President Orellana. He called a cabinet meeting for today to consider the Guatemala-Honduras boundary dispute. This evening the President informed me that the Government of Guatemala will gladly join in an agreement to submit the controversy to arbitration by the President of the United States and that instructions to that effect will immediately be sent to the Guatemalan Minister at Washington.

GEISSLER

714.1515/388 : Telegram

The Acting Secretary of State to the Minister in Guatemala (Geissler)

WASHINGTON, *September 14, 1923—4 p.m.*

58. For your information. On August 25 the Minister at Tegucigalpa telegraphed:

"The President of Honduras is desirous of ascertaining if President Coolidge will act as Arbitrator of the Guatemalan Honduranean boundary question in place of the late President Harding."

Department has to-day informed the Legation that the President has signified his willingness to act as arbitrator if a formal request should be made by both Governments.

PHILLIPS

714.1515/395

The Chargé in Guatemala (Hewes) to the Secretary of State

No. 388 GUATEMALA, *September 17, 1923.*
[Received October 1.]

SIR: I have the honor to refer to the Department's telegram no. 58 of September 14, 4 p.m. relative to the request of the President of Honduras that President Coolidge arbitrate the Guatemalan-Honduranean boundary question in place of the late President Harding.

In this connection, I beg to report, as a result of a circumspect inquiry in the course of a conversation with the Minister of Foreign Affairs today, that this Government does not desire any action taken in the matter until after the presidential election in Honduras. . . .

I have [etc.] CLARENCE B. HEWES

Dominican Republic and Haiti[49]

839.5565/2

The American Commissioner in the Dominican Republic (Welles) to the Secretary of State

No. 50 SANTO DOMINGO, *April 26, 1923.*
[Received May 16.]

SIR: I have the honor to inform you that in several recent conferences which I have held with the members of the Dominican Commission, I have suggested the advisability of authorizing the Provisional Government, during its existence, to take certain measures which will prove of positive benefit in the development of the prosperity of the country, although such measures were not contemplated when the Plan of Evacuation was agreed upon;[50] such authorization necessarily to be contingent upon the approval of the Government of the United States and the Dominican Commission. The Provisional Government is in a peculiarly favorable position to take the action proposed, since it has obtained the confidence of the great majority of the Dominican people, and owing to its non-political character the measures which it may take cannot form the basis of party dispute.

I have suggested that the present would be an opportune time for the Dominican Government to consider the possibility of negotiating agreements with the Italian and Spanish Governments whereby desirable Italian and Spanish immigration can be brought to this Republic with Government support and under Government supervision. The members of the Dominican Commission are heartily in favor of carrying out this proposal and are now considering the basis for such an arrangement with the Italian Government. It is their belief, in which I coincide, that any such arrangement should contemplate a yearly immigration of a very limited number of Italian families in order that the revenues of the Government may be amply sufficient to meet the initial expenditures which such immigration will entail. If a limited number of immigrants of a desirable character are brought here during a term of years and receive favorable treatment, the success of the experiment will in itself attract a larger number of immigrants. The territory of the Republic is very greatly under-populated and immigration of the character proposed will do much to develop the agricultural resources of the country.

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[49] Continued from *Foreign Relations*, 1922, vol. I, pp. 434–442.
[50] For correspondence concerning the Plan of Evacuation, see *ibid.*, vol. II, pp. 5 ff; also *ante*, pp. 892 ff.

I have also proposed to the Commission that the present was an opportune time for commencing negotiations with the Haitian Government with a view to obtaining a final settlement of the boundary question between the two countries, which has been pending since the Haitian occupation of the Dominican Republic.

Repeated efforts have been made to bring about a settlement of this controversy, but the question has invariably been made a political issue. Because of its exceptional situation, the Provisional Government, with the unanimous approval of the three Presidential candidates, should have an excellent opportunity for reaching an agreement with the Government of Haiti, particularly in view of the present status of the Haitian Government. Any treaty or protocol which may be negotiated with the Haitian Government must of necessity be *ad referendum* to the Dominican Congress which will be elected next autumn. Given the previous approval, however, of the leaders of the three parties which will be represented in the Congress, it will be a foregone conclusion that the approval of the Congress will be obtained to any treaty or protocol so arrived at. I assume, of course, that the Department shares my belief that power should be given to the Provisional Government to enter into such negotiations. The boundary dispute between Haiti and the Dominican Republic has been the cause of constant friction between the two countries and so recently as ten days ago the kidnapping of certain Dominican citizens by a band of Haitians (among whom were members of the Haitian *Gendarmerie*) on Dominican territory adjacent to the provisional boundary, very nearly caused an international dispute of serious proportions. Because of the over-population of Haiti, Haitians near the Dominican border are constantly encroaching upon Dominican lands, with the result that territory which is clearly Dominican is, in many cases, solely occupied by Haitians. The indefinite situation in which the boundary controversy now stands likewise creates constant disputes in relation to the collection by Dominican authorities of internal revenue as well as of customs charges. I am hopeful that when the Provisional Government and the Dominican Commission determine, as they will in the near future, that the present is an opportune time to begin negotiations with the Government of Haiti, the Department will exert its good offices with the Haitian Government in order that an agreement satisfactory to both parties to the controversy may be reached.

I have [etc.] SUMNER WELLES

738.3915/237

The Secretary of State to the Minister in the Dominican Republic (W. W. Russell)

No. 509 WASHINGTON, *May 18, 1923.*

SIR: There is transmitted herewith, for your information, a copy of a despatch [52] from the American High Commissioner at Port au Prince regarding difficulties occurring in connection with the boundary between Haiti and the Dominican Republic.

You will note the High Commissioner's suggestion that a portion of the line surveyed in 1901 in the district of the Laguna Salidilla should be re-surveyed by a joint commission, in order that the monuments may be properly repaired and missing monuments replaced. The Department would be glad to have you discuss the suggestion with Mr. Welles and report whether it appears advisable to propose a re-survey of this particular section of the line to the provisional government.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

738.3915/241

The Minister in the Dominican Republic (W. W. Russell) to the Secretary of State

No. 858 SANTO DOMINGO, *May 29, 1923.*
[Received June 12.]

SIR: I have the honor to acknowledge the receipt of your No. 509 of May 18th, transmitting a copy of a despatch from the American High Commissioner in Haiti regarding difficulties in connection with the Santo Domingo-Haiti boundary line.

I am of the opinion that just at present it would be inadvisable to propose a resurvey of a portion of the line surveyed in 1901 in the district of the Laguna Salidilla. The Commission of Dominican Representatives has taken up the boundary question for the purpose of making a report to the Provisional President recommending immediate negotiations with Haiti for a definite settlement of the question. The chiefs of the three political parties have named representatives to go into the matter thoroughly and make a report to the Commission.

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[52] Not printed.

The following appeared in the press of the 26th instant; and I have ascertained that the information was given out for publication by the Ministry of Foreign Relations:

"From an official source we have been informed that Lic. Angel Morales, Secretary of State for Foreign Relations, had an interview at Dajabón last Thursday with Lic. Félix Magloire, Minister of Foreign Relations of the Republic of Haiti, on the invitation of this latter high functionary. There were likewise present at the meeting: General Charles Zamor, General McDougal, Chief of the Haitian *Gendarmerie*, and General Harrington. Lic. Morales was accompanied by Major Lora, Chief of the Department of the North of the P. N. D.

"The matter under discussion was the last frontier incident and the measures that ought to be adopted to avoid the repetition of such occurrences. Likewise there was discussion of the Law of Immigration and the *modus vivendi* which existed before said law was put into force in order not to hinder those living in the neighborhood of the frontier in their daily travelling to and fro in those districts and in order not to confound such travellers with those day-laborers who cross the frontier with the intention of establishing themselves in this Republic. Moreover, there was a mutual accord on the proposition to approach the Department of Public Works of each country on the subject of the construction of an international bridge over the Massacre River.

"The greatest cordiality prevailed at the interview, the participants binding themselves to work frankly and decidedly to the end that practical measures may be established to avoid the repetition of vexatious incidents, until such time as the problem may be definitely settled." (*ex Listin Diario*, Santo Domingo.)

I have [etc.] WILLIAM W. RUSSELL

738.3915/241: Telegram

The Secretary of State to the Minister in the Dominican Republic (W. W. Russell)

WASHINGTON, *June 25, 1923—11 a.m.*

20. Your despatch No. 858 regarding Santo Domingo-Haiti boundary and Welles' despatch No. 56 [53] reporting authorization to provisional government to negotiate arbitration of question with Haiti.

Department is in accord with Mr. Welles that a serious attempt should be made to solve this vexatious problem under the present non-partisan régime. Government of Haiti apparently desires a settlement.

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[53] Not printed.

As the present régime in the Dominican Republic will not continue much longer, Department considers that everything possible should be done immediately to expedite action of subcommittee of Commission and open negotiations. Please report by cable what steps you have taken and all developments. High Commissioner Russell [54] is being similarly instructed.

HUGHES

738.3915/241 : Telegram

The Secretary of State to the Chargé in Haiti (Dunn)

WASHINGTON, *June 25, 1923—11 a.m.*

68. For General Russell.

Your despatch No. 141 [55] regarding Haiti-Santo Domingo boundary.

Department is informed a sub-committee of the Dominican Commission in collaboration with the Provisional President and Minister of Foreign Affairs is now drafting instructions to a representative of the Dominican Government for use in negotiating with Haiti the submission of the whole boundary question to arbitration.

In view of the foregoing it is felt that this is not an opportune time for the resurvey of the northern portion of the boundary suggested by you; but Department believes that the present non-partisan régime in the Dominican Republic offers an opportunity to solve a problem whose existence is a source of constant danger. It understands that the Haitian Government is in sympathy with this object.

You are authorized to inform President Borno of the foregoing in the manner seeming to you most effective and to make any appropriate suggestions to him in that regard to further the boundary settlement. Please report fully your action and any developments. Minister Russell is being similarly instructed.

HUGHES

738.3915/243 : Telegram

The High Commissioner in Haiti (J. H. Russell) to the Secretary of State

PORT AU PRINCE, *June 29, 1923—2 p.m.*
[Received 6:40 p.m.]

90. Department's 68, June 25, 11 a.m. President Borno in an informal discussion states that he is strongly opposed to any action

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[54] Gen. John H. Russell, High Commissioner in Haiti.
[55] Not printed.

by the Dominican Provisional Government toward the permanent settlement of the boundary question.

In support of his contention he stated that the Provisional Government was formed by various Dominican political groups for a specific purpose and that no authority was given it to negotiate for the settlement of the boundary. I replied that the groups he mentioned covered all political parties and it might appear that the action of the Provisional Government would receive the backing of all parties whereas the Constitutional Government would have only one party backing it. The President answered that since the Provisional Government was not authorized by the political group forming it to consider this question it had no authority to take such action.

RUSSELL

738.3915/243 : Telegram

The Secretary of State to the Chargé in Haiti (Dunn)

WASHINGTON, *July 7, 1923—5 p.m.*

75. For General Russell.

Your 90, June 29, 2 p.m.

Please reply to President Borno that the Department was confidentially informed that the Commission of representative Dominicans which elected the provisional government voted unanimously, on May 11, authorizing that government to negotiate with Haiti the submission of this question to arbitration.

The Department believes that this unanimity of the representatives of the various Dominican political parties in support of the proposal for arbitration augurs well for a fair settlement of this matter, subject to ratification by the constitutional congress and President on their respective inaugurations. It is desired that you make every effort to bring about cooperation by M. Borno.

The legation at Santo Domingo reported that instructions for Dominican representative to be appointed to confer with representative of Haiti, were to be ready June 28.

HUGHES

738.3915/244 : Telegram

The High Commissioner in Haiti (J. H. Russell) to the Secretary of State

PORT AU PRINCE, *July 14, 1923—2 p.m.*
[Received 6:40 p.m.]

100. Department's 75, July 7, 5 p. m. President Borno has informed me that he intends replying to my note accepting in prin-

ciple the question of negotiating at this time with the Dominican Government with a view to the settlement of the boundary dispute by arbitration but that he will request that negotiations be carried on at Port au Prince.

RUSSELL

738.3915/257: Telegram

The Minister in the Dominican Republic (W. W. Russell) to the Secretary of State

SANTO DOMINGO, *September 14, 1923—12 a.m.*
[Received September 16—8:15 p.m.]

50. I had long conference yesterday with the President and Minister of Foreign Affairs in regard to the boundary question. The President is taking active steps in the matter and I hope that within a short time something will have been accomplished as to the naming of arbiters to begin negotiations at Port au Prince.

RUSSELL

Honduras and Nicaragua[56]

715.1715/238a: Telegram

The Secretary of State to the Minister in Honduras (Morales)

WASHINGTON, *January 29, 1923—6 p.m.*

6. Your 7, January 16, 10 a.m.[57]

Informal conversations have been held by the American Delegation to the Central American Conference with the Delegates of Honduras and Nicaragua, relative to the boundary dispute between the two Republics, in the belief that the present is a propitious moment for the settlement of this long-standing controversy. As a result of these conversations, agreement was reached by both Delegations, subject to approval by their Governments, upon a draft protocol providing for the submission of the controversy by the Governments concerned to the arbitral decision of the Secretary of State. This protocol, which the Honduranean Delegation is today cabling to the President of Honduras, is as follows:

"The Governments of Honduras and Nicaragua having accepted the friendly mediation which the Department of State of the United States offered in 1918 in the controversy which had arisen between them regarding the arbitral award of the King of Spain rendered on December 23, 1906, and having been unable to reach an agreement

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[56] Continued from *Foreign Relations*, 1922, vol. I, pp. 443–447.
[57] Not printed.

as to the manner of settling the controversy, have determined to ask that the mediation of the Department of State be transformed into arbitral proceedings and have decided to request the Secretary of State of the United States that he take into consideration all of the antecedents of the matter in dispute and that he determine the just solution of the controversy.

The Governments above named agree that they will accept the solution proposed by the Secretary of State of the United States as final and without appeal."

You may confidentially advise the President that the Government of Nicaragua has instructed its Delegation to accept the protocol as proposed. You will also state to the President that it is hoped by this Government that the Government of Honduras will be disposed to accept the solution offered in order that this controversy of many years' standing may now be finally settled. You may call his attention to the excellent impression which would be created if announcement could be made at the closing plenary session of the Central American Conference that the Governments of Honduras and Nicaragua had determined to submit their controversy to arbitration.

HUGHES

715.1715/241 : Telegram

The Minister in Honduras (Morales) to the Secretary of State

TEGUCIGALPA, *February 6, 1923—10 a.m.*
[Received 7 p.m.]

10. Referring to the Department's telegram of January 29, 6 p.m. The Department's telegram received on 3d instant. The President states that Congress must authorize the acceptance of mediation proposed and suggests that a note be sent to the Foreign Office so it can be submitted to Congress.

Alberto Ucles [58] has been instructed to accept the mediation as proposed for settlement of the Guatemalan boundary dispute.[59]

MORALES

715.1715/241 : Telegram

The Secretary of State to the Minister in Honduras (Morales)

WASHINGTON, *February 10, 1923—6 p.m.*

7. Your February 6, 10 a.m. Department understands that protocol as quoted in Department's January 29, 6 p.m., was cabled

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[58] Delegate to the Conference on Central American Affairs.
[59] See pp. 354 ff.

to President of Honduras by Honduranean Delegation. It would therefore seem that Government could submit protocol to Congress as coming from its own representatives, without necessity of note from you. In view of nature of proposal it is better that note should not be sent. Of course, you may in an appropriate manner indicate general interest in settlement but without expressing any desire that Secretary of State should be arbitrator. This was not my suggestion, although I have not objected.

HUGHES

THE TACNA-ARICA QUESTION:[60] OPENING OF THE ARBITRATION AND THE EXCHANGE OF CASES BY CHILE AND PERU

723.2515/1099

The Chilean Ambassador (Mathieu) to the Secretary of State

[Translation]

No. 16 WASHINGTON, *January 16, 1923.*

MR. SECRETARY OF STATE: In compliance with instructions received from my Government, I have the honor to apply to Your Excellency and through your worthy medium to His Excellency the President of the United States of America, for the purpose of asking that he accept the office of Arbitrator provided for in the Arbitration Treaty signed at Washington on July 20th last[61] by the plenipotentiaries of Chile and Peru, the exchange of ratifications of which took place yesterday in this city through the respective diplomatic representatives.

I wish at the same time to avail myself of this opportunity to express to Your Excellency, by special direction of my Government, the great satisfaction, as well as the high confidence, with which the Republic of Chile applies to His Excellency the President of the United States in order to find in his lofty spirit of justice the solution of the problem implied in the clauses of the Treaty of Ancón which have not been executed.

Your Excellency may be assured that nothing will be more welcome or worthy of thankful acknowledgment to the Government of Chile than His Excellency President Harding's acceptance of the arbitral office flowing from the above mentioned treaty to which he so efficiently contributed through his commanding initiative and Your Excellency, through your invaluable personal intervention.

Be pleased [etc.] B. MATHIEU

[60] Continued from *Foreign Relations*, 1922, vol. I, pp. 447–518.
[61] *Ibid.*, p. 505.

723.2515/1114

The Peruvian Ambassador (Pezet) to the Secretary of State

[Translation]

WASHINGTON, *January 20, 1923.*

MR. SECRETARY OF STATE: In the conference which, through the friendly initiative of President Harding, was opened in this capital on the 12th of May, 1922, the Ministers Plenipotentiary of Peru and Chile, on July 20 of that same year, signed the protocol of arbitration and the additional act, the text of which I was pleased to make known in due time to Your Excellency, and according to which it was agreed that the difficulties springing from the nonexecuted stipulations of Article III of the Peruvian-Chilean Peace Treaty of October 20, 1883, would be referred to the arbitral decision of the President of the United States of America in the form specified by the said protocol and the additional act. The execution of both agreements has been awaiting for their perfecting, which has just taken place through the exchange of ratifications that took place at this capital on the 15th instant, after being given the proper legislative approval in Peru and Chile. The time, therefore, has come to ask the President of the United States of America, as I have hereby the honor to do in the name of and under special instructions from my Government, through Your Excellency's high medium, that he deign to accept the high office of arbitrator, with which he has been entrusted for the final and unappealable solution of the difficulties above mentioned.

The generous interest shown on many occasions by the American Government in the peaceful settlement of the questions which for forty years have been a constant and dangerous cause of disturbance in the relations between Peru and Chile, and the well-deserved confidence we have in the wise and justice-loving mind of the Chief Magistrate of this Great Republic, warrant the hope that he will be pleased to accept the important office with which he has been vested, thus doing another invaluable service to the cause of peace and tranquility of America, for which service my Government wishes to express its thanks in advance.

I avail myself [etc.] F. A. PEZET

723.2515/1099

The Secretary of State to the Chilean Ambassador (Mathieu) [62]

WASHINGTON, *January 29, 1923.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note of January 16, 1923, in which, on behalf of your Government,

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[62] The same, *mutatis mutandis*, to the Peruvian Ambassador.

you apply, through me, to the President of the United States to accept the office of arbitrator for the purpose of the Arbitration Agreement signed at Washington on July 20 last by the Plenipotentiaries of Chile and Peru, the exchange of ratifications of which took place in this city on January 15. A similar application on behalf of the Government of Peru has also been received from His Excellency the Peruvian Ambassador.

It affords me much pleasure to inform you that the President, deeply appreciating the trust and confidence thus reposed in him by the Governments of Chile and Peru, and highly gratified that this long-standing difference between the two Governments is to be composed by the honorable means of arbitration, is most happy to accept the office of arbitrator.

Accept [etc.] CHARLES E. HUGHES

723.2515/1129

The Chilean Ambassador (Mathieu) to the Secretary of State

[Translation]

No. 52 WASHINGTON, *March 1, 1923.*

MR. SECRETARY OF STATE: I have the honor to inform Your Excellency that my Government has appointed the former Minister of Foreign Relations, Señor Ernesto Barros Jarpa, to take charge of Chile's interests in the arbitration agreed with Peru in the Protocol of July 20, 1922.

Señor Barros Jarpa is already in Washington and will have his office at the Embassy.

In bringing this appointment to Your Excellency's knowledge for all pertinent purposes, I take [etc.]

B. MATHIEU

723.2515/1137

The Peruvian Ambassador (Pezet) to the Secretary of State

WASHINGTON, *March 14, 1923.*

SIR: I have the honour to furnish herein, for the records of the Department of State, the names of the personnel composing the Commission appointed by my Government for the presentation of the Peruvian case to the President of the United States, in the arbitration proceedings between Peru and Chile.

Doctor Meliton F. Porras, President,
Doctor Solon Polo, Peruvian Counsel,
Edwin M. Borchard, American Counsel,
Doctor Juan Mendoza, attached to the Commission,
Gonzalo N. de Arámburu, attached to the Commission.

Mr. Mendoza, Second Secretary of the Legation in London, and Mr. de Aramburu, Second Secretary of the Legation in Berlin, have been specially attached to the Commission. All the above-mentioned Peruvian gentlemen have been accorded diplomatic status by my Government, and while not appearing in the *Diplomatic List*, I would beg that the Department recognize them as being here on an official diplomatic mission of my Government.

Accept [etc.] F. A. PEZET

723.2515/1138b

The Secretary of State to the Chargé in Peru (Sterling) [63]

No. 178 WASHINGTON, *March 21, 1923.*

SIR: You are informed that the Chilean and Peruvian Ambassadors have agreed, as regards the conducting of the arbitration of the Tacna-Arica question, arranged between both parties on July 20, 1922, that each of the parties will have six months from the date set by the arbitrator for the presentation of his case; that this period can be extended two months more if either party should indicate that it needs this extension, and that there will be a period of three months from the time when the arbitrator shall have handed over to both parties all the papers and documents which have been presented in which to reply to them, and that this time can be extended for two months more should either party so request.

The President has approved this arrangement and the respective Ambassadors have been informed that the time for the presentation of the cases will date from March 13th, and that six months from that date will be the last date on which the cases may be presented unless either party shall ask for an extension, in which case two additional months will be allowed.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

723.2515/1159

The Chilean Ambassador (Mathieu) to the Secretary of State

[Translation]

No. 255 WASHINGTON, *September 1, 1923.*

MR. SECRETARY: I have the honor to inform Your Excellency that my Government has designated Señor Don Carlos Aldunate-Solar, formerly Minister of Foreign Affairs, to take charge, together with

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[63] The same instruction was sent to Chile as no. 373.

Señor Ernesto Barros Jarpa, referred to in my note of March 1 of this year, of the defense of the rights of Chile in the arbitration agreed to with Peru by the protocol of July 20, 1922.

Señor Aldunate-Solar is now in Washington and has his office in the office of the Embassy.

In bringing the foregoing to Your Excellency's knowledge for all pertinent purposes, I take [etc.]

W. MATHIEU

723.2515/1163

The Acting Secretary of State to the Ambassador in Peru (Poindexter)

No. 20 WASHINGTON, *September 18, 1923.*

SIR:

[The first paragraph summarizes the Department's instruction no. 178, of March 21, printed on page 367.]

A note dated September 1, 1923, from the Embassy of Chile at Washington, has been received, stating that due to circumstances over which the Government of Chile has no control, the Government of Chile has decided to make use of this provision granting an additional two months for the presentation of the cases.

A note, dated September 13, 1923, from the Embassy of Peru at Washington,[64] has been received, stating that on September 1, 1923, the Ambassador of Chile at Washington had informed the Peruvian Embassy of the desire of his Government to make use of this provision granting an additional two months for the presentation of the cases, and that the Government of Peru, while prepared to present its case on the date originally agreed upon, recognizes the right of the Government of Chile to make the request, and that consequently it will not present its case until November 13, 1923.

I am [etc.] WILLIAM PHILLIPS

723.2515/1174

The Chilean Ambassador (Mathieu) to the Secretary of State

[Translation]

No. 324 WASHINGTON, *November 13, 1923.*

MR. SECRETARY: I have the honor to forward to Your Excellency the case of Chile in the dispute over the unfulfilled stipulations of the Treaty of Ancón that was referred to the decision of His Excellency the President of the United States of America by the Protocol

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[64] Not printed.

signed at Washington by the Plenipotentiaries of Chile and Peru on July 20, 1922.

The accompaniments to the present communication include the case itself, which consists of 187 pages,[65] and a book of 764 pages containing English translations of documents.[66]

The case appears to be signed by Messrs. Carlos Aldunate S. and Ernesto Barros, Agents of the Government of Chile, and Messrs. Robert Lansing and L. H. Woolsey, in their capacity as counsel.

I venture to beg Your Excellency kindly to see that the above mentioned documents reach His Excellency the President of the United States of America.

I gladly avail myself [etc.] B. Mathieu

723.2515/1175

The Peruvian Chargé (Prada) to the Secretary of State

[Translation[67]]

Washington, *November 13, 1923.*

Most Excellent Sir: In compliance with instructions from my Government, I have the honor to lay before Your Excellency the case of Peru in the arbitration agreed upon by the Protocol of July 20, 1922, between the Republics of Peru and Chile. I request Your Excellency kindly to place it in the hands of the arbitrator, the President of the United States of America.

In accordance with the terms agreed upon, the Peruvian and Chilean cases were to have been laid before the arbitrator on September 13, last. The Government of Chile, having availed itself of its right to a two-months' extension for the completion of its case, as was in due time made known to Your Excellency, the new term granted expires today, and I therefore discharge the duty of presenting the Peruvian case to Your Excellency.

Pursuant to the suggestion in Your Excellency's note of March 8, 1923,[68] I have the honor also to deliver a copy of the case[69] and annexed documents[70] for submission to the opposing party in the arbitration.

I avail myself [etc.] A. González Prada

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[65] *Tacna-Arica Arbitration: The Case of the Republic of Chile,* etc. [Washington (?), 1923].

[66] *Tacna-Arica Arbitration: The Appendix to the Case of the Republic of Chile,* etc. [Washington (?), 1923].

[67] File translation revised.

[68] Not printed.

[69] *Arbitration between Peru and Chile: The Case of Peru,* etc. (Washington [, National Capital Press, Inc.], 1923).

[70] *Arbitration between Peru and Chile: Appendix to the Case of Peru,* etc. (Washington [, National Capital Press, Inc.], 1923).

723.2515/1174

The Secretary of State to the Chilean Ambassador (Mathieu)[71]

WASHINGTON, *November 13, 1923.*

EXCELLENCY: With reference to my notes of March 13, 1923, and September 17, 1923,[72] and in compliance with the agreement made between you and the Peruvian Ambassador regarding the conducting of the arbitration arranged between both parties on July 20, 1922, as set forth in your note No. 53, of March 2, 1923,[73] I now have the honor, on behalf of the President, to hand you herewith the case of Peru, in two volumes, and to inform you that there will be a period of three months from today in which to reply thereto, and that this period may be extended for two months more should either party so request.

Accept [etc.] CHARLES E. HUGHES

723.2515/1195

The Peruvian Chargé (Prada) to the Secretary of State

[Translation]

WASHINGTON, *December 16, 1923.*

EXCELLENT SIR: I have the honor to inform Your Excellency that my Government has appointed as President of the Counsel of Peru in the arbitration of Tacna-Arica, Doctor Solón Polo in place of Doctor Melitón F. Porras, who has resigned.

I avail myself [etc.] A. GONZÁLEZ PRADA

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[71] The same, *mutatis mutandis,* to the Peruvian Chargé.
[72] Neither printed.
[73] Not printed; see Department's instruction of Mar. 21 to the Chargé in Peru.

ALBANIA

AMERICAN PROTESTS AGAINST A CONCESSION TO THE ANGLO-PERSIAN OIL COMPANY FOR AN ALLEGED MONOPOLY IN ALBANIA[1]

875.6363/48: Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *February 16, 1923—3 p.m.*
[Received 4:10 p.m.]

16. The Minister for Foreign Affairs has informed me that the Albanian Government feels that it is obligated by agreement signed by former Cabinet to submit to the National Assembly the Anglo-Persian Oil Company's proposals for an oil monopoly.

Effort is being made to obtain Italian and French cooperation in the maintenance of the Open Door.

GRANT-SMITH

875.6363/48: Telegram

The Secretary of State to the Minister in Albania (Grant-Smith)

[Paraphrase]

WASHINGTON, *February 19, 1923—6 p.m.*

6. Referring to your telegram no. 16, the Department desires you to telegraph any details available on the proposed Anglo-Persian's concession in regard to (1) the nature of the monopoly, (2) the extent of territory which is involved, (3) whether both the prospecting and the marketing of oil are included therein, (4) whether or not a loan is being offered the Albanian Government in return for the concession and (5) who are the representatives of American oil companies, if any, at present in Albania.

The Department understands from Maxwell Blake, former Commissioner in Albania, who is now in Washington, that the Anglo-Persian Company's concession was approved tentatively by the Albanian Ministry in July, 1921, but that he was assured by Albanian officials that while the Government was obligated to submit the

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[1] For previous correspondence regarding oil concessions in Albania, see *Foreign Relations*, 1922, vol. I, pp. 604 ff.

concession to the National Assembly it would not receive the Assembly's approval. The Department desires to be informed if rejection is probable under present circumstances and wishes to know date of consideration of the concession by the National Assembly.

Please explain the reference in the last paragraph of your telegram no. 16 to Italian and French cooperation for maintenance of the Open Door.

HUGHES

875.6363/49 : Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *February 21, 1923—10 a.m.*
[Received February 22—5:45 p.m.]

17. Department's no. 6, February 19, 6 p.m. The Albanian Government decline to communicate to competitors the proposals of the Anglo-Persian Oil Company, but the following data have been elicited in conversations with the Minister for Foreign Affairs, with Mr. Xhafer Ypi the Prime Minister, with foreign colleagues and with the representative of the Standard Oil Company; (1) The original proposals, which provided for the prospecting for all minerals, have been altered to confine prospecting to oil. (2) The concession would cover the entire country for two years, then 100,000 hectares for the succeeding three years for test drilling and after that 65 [omission?] for 75 years for exploitation, which would include all probable productive areas. The Standard Oil Company is asking for 35,000 hectares, the French for 5,000, and the Italians for 4,000. (3) The Legation has obtained no information relative to marketing. (4) The Government state that the concession involves no loan. (5) The only representative now here is Sheffield, of the Standard Oil Company of New York.

The agent of the Sinclair Company left in December, 1922, and up to the present has shown no intention to return. Only the guarantee of a considerable loan would enable this company to compete successfully with foreign companies and with the Standard, which has won the support of the Minister of Public Works and has, so I am informed, declined to pool issues with Sinclair.

The British proposals, after having been accepted by the Cabinet in 1921, were transmitted to the competent committee of the National Assembly, but were not reported to the House by mutual consent for fear, I believe, of their rejection owing to the opposition that their exclusive character had aroused. It is admitted by members of the Government that each new proposal has been submitted to the

British company which has the right of preference where terms are equal. Now the Government declare that they feel obligated to bring the Anglo-Persian's original proposals, together with the subsequent modifications, to a vote. The result will probably depend in large measure upon the amount of persuasion and pressure employed by the competitors. . . . The Prime Minister called today to say that he would endeavor to exclude any company which employed improper methods of persuasion; that the ratification of the British concession was not certain, that he found the Standard's proposals the best that had been submitted and that he hoped Sheffield would remain until the final decision.

The French and Italians object strongly to the attempted establishment of any oil monopoly by Great Britain. The possible oil areas are large enough to satisfy the French, Italian, and Standard Oil Company proposals and still leave a larger area for the British than that sought by the American company but the former continue to insist on exclusive rights. The Italian Minister has been instructed vigorously to oppose this pretension, and the French Chargé has recently made a protest against the granting of exclusive rights.

GRANT-SMITH

875.6363/56 : Telegram

The Secretary of State to the Minister in Albania (Grant-Smith)

[Paraphrase]

WASHINGTON, *February 27, 1923—5 p.m.*

9. In accordance with request of National City Bank you are informed that the bank has established a credit in favor of the Government of Albania for $40,000 United States gold as guarantee for contract being negotiated with that Government by Mr. E. S. Sheffield. You may inform the Government of Albania of the foregoing and advise the Department of the action taken.

HUGHES

875.6363/49 : Telegram

The Secretary of State to the Minister in Albania (Grant-Smith)

[Paraphrase]

WASHINGTON, *February 27, 1923—7 p.m.*

10. Your no. 17, February 21, 10 a.m. Point number 2 of your telegram. In view of the apparent monopolistic character of the Anglo-Persian Oil Company's proposal as described particularly

therein, you are authorized, in your discretion and when you may deem it most timely, to point out to the Albanian Government that the Department would regret any action tending to deny the principle of the Open Door as it applies to the development of the natural resources of Albania.

You may also point out that the Government of the United States expects that the Government of Albania will treat the granting of an oil concession on its merits, and will afford an equal opportunity to American companies with the companies of any other nationality and that there will be no concession granted of a monopolistic character or of a nature which would exclude possibility of participation by American nationals.

You may make the representations authorized either orally or in writing. If you employ written communication you should reinforce your note by vigorous oral representations setting forth this Government's policy of the Open Door and describing the unfortunate effect upon possible commercial relations in the future with the United States of a step which would give the impression that a particularly privileged treatment was reserved for nationals of any other country in Albania.

The Italian Ambassador, acting under instructions from his Government, has suggested that the Government of the United States should cooperate with Italy and France in taking steps to block approval of the Anglo-Persian Oil Company's contract by the Albanian authorities. The Department believes that you should cooperate with your Italian and French colleagues to maintain the principle of the Open Door, but it is felt that any representations which you might make would be more forceful if they were made independently.

Please advise Department of action you take.

HUGHES

875.6363/54: Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

TIRANA, *March 1, 1923—5 p.m.*
[Received 6:50 p.m.]

19. Referring to the Department's telegram of February 27, number 10 [*9?*]. The Minister for Foreign Affairs was notified this morning in writing of the deposit made in the National City Bank to the credit of the Government of Albania on behalf of the Standard Oil Company of New York. A copy was also handed by Sheffield to the Minister of Public Works.

GRANT-SMITH

875.6363/55 : Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *March 2, 1923—noon.*
[Received March 3—2:45 a.m.]

20. This morning I communicated the purport of Department's no. 10 to the Minister for Foreign Affairs. He expressed pleasure at being furnished in this way with material with which he could support his contentions in the Council of Ministers to which the views expressed in the Department's telegram would be communicated this afternoon. I left a memorandum in English with him and a translation into Albanian will be in his hands tomorrow morning before the Cabinet meets. The moment was most opportune for the Department's instruction to arrive as it enabled me authoritatively and formally to confirm many of the arguments which have been frequently and urgently brought to Albanian attention.

I took occasion yesterday to point out quite positively to the Prime Minister the critical position of the affairs of his Government and country, apparently with some effect. The Minister of Public Works expressed his approval to me of the proposals of the Standard Oil Company which that company had submitted signed; he pointed out to me that he could not sign the proposals until after the Anglo-Persian Company's contract had been acted on by the National Assembly to which it had been submitted bearing the Minister's signature but without his recommendation; he stated that he would oppose the approval of the contract. He intimated that should the Anglo-Persian's contract be rejected the Standard Oil Company's contract would be submitted next.

The Italian Chargé expects to make representations tomorrow. The arrival of my French colleague is awaited.

GRANT-SMITH

875.6363/52 : Telegram

The Secretary of State to the Ambassador in Italy (Child)

[Paraphrase]

WASHINGTON, *March 2, 1923—5 p.m.*

16. You are informed in strictest confidence that the Italian Ambassador has suggested to the Department that simultaneous action be taken with Italy and France to prevent a monopoly by the Anglo-Persian Oil Company of the oil resources in Albania. Replying to this suggestion the Department informed the Ambassador that the American Minister in Albania had been instructed to inform the

Albanian Government at his discretion that to grant any monopolistic concession which would deny the principle of the Open Door would cause most unfavorable impression and might affect detrimentally the future commercial relations between Albania and the United States. The Ambassador was also informed that while the American Minister would undoubtedly cooperate with his Italian and French colleagues in this matter he would make independent representations to the Albanian Government.

HUGHES

875.6363/57 : Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Extract—Paraphrase]

TIRANA, *March 3, 1923—3 p.m.*
[Received March 4—1:37 a.m.]

21. From official and other sources on which I can rely, I learn that persons having official connections with both the British Legation and the Anglo-Persian Oil Company have spread the report that should the Albanian National Assembly reject that company's proposals Great Britain would act to bring about the annexation to Greece of a portion of southern Albania; also I learn that a threat to reimpose the capitulations has recently been made, greatly impressing the members both of the Cabinet and of the legislative body. I suggested to the Minister for Foreign Affairs that these statements be brought to the attention of Lord Curzon, Cecil and others through some safe channel on the assumption that they were unauthorized, but it appears that the Albanians have little confidence that anything can be accomplished through their Legation in Great Britain. . . .

. . . .

GRANT-SMITH

875.6363/67

The Minister in Albania (Grant-Smith) to the Secretary of State

No. 50 TIRANA, *March 5, 1923.*
[Received March 26.]

SIR: As reported in my telegram of the 2nd instant, No. 20, the purport of the Department's instructions as contained in telegram of the 27th ultimo were communicated to the Albanian Minister for Foreign Affairs on that date.

The Italian Chargé d'Affaires expressed a preference for an identic note or joint verbal representations but, in harmony with my instruc-

tions, I pointed out the greater effect which would attend separate representations and hastened to comply with the Department's wishes without delay. Occasion was taken to leave a memorandum with the Minister for Foreign Affairs, a copy of which is enclosed herewith, in order that he might be furnished with some tangible evidence of the attitude of the Government of the United States towards the granting of monopolies in Albania to foreigners.

It will be noticed that attention was called to the fact that after the contract with the Anglo-Persian Company had been signed American companies had been invited to submit proposals, and furthermore, that that company had had the advantage of submitting modifications in the light of the proposals made by competitors. This was done in order to offset the plea that the Cabinet was morally obligated to honor the signatures of their predecessors but which had already been submitted and subsequently withdrawn from the competent committee of the National Assembly.

Occasion was likewise taken to forestall a plea, employed by a British corporation which was vainly striving to preserve a monopoly in Hungary and with which they had inoculated the Hungarian officials, that since they had been the first in the field, they should, in the event of the rejection by the National Assembly of the British proposals, receive preferential treatment.

The Italian Chargé d'Affaires made representations on behalf of his Government on the 3rd instant and the French on the 4th. They had received instructions to consult their American colleague and be guided by his advice. I pointed out to them the advantages of leaving memoranda with the Minister for Foreign Affairs, who is somewhat absent minded, and furthermore the fact that their Governments having so much more at stake here in Albania than the United States, they could well make representations of a much stronger and more definite character. I hope to be able later to forward copies of their respective memoranda.

Both the Prime Minister and the Minister for Foreign Affairs have, on several occasions, indicated to me that they were anxious to find a way out of the dilemma in which they now find themselves and have apparently welcomed our intervention but too much weight has not been given to such intimations nor have the efforts of the Legation to bring about the desired result been diminished. In this connection it might be well to mention the fact that I have confined myself strictly to explaining to various officials of the Albanian Government and of the National Assembly the advantages which would accrue to their country by the adoption of the policy of the open door and the unfortunate results which would supervene in case various monopolies are given to foreigners. I have been most

careful not to express disapproval of any nation nor have I asked pledge of any deputy or government official. Naturally, whenever the question of threats of loss of territory has been raised, I have taken pains to explain their emptiness and have maintained that they could not have received the approval of the British Foreign Office. Knowledge of such threats having been freely made by the official dragoman of the British Legation and by the lawyer in the employ of the Anglo-Persian Oil Company is spread throughout the country, according to a deputy who has just arrived from Koritza. And, as I have already reported, even the delegate of the League of Nations and his subordinate have lent themselves to this propaganda and the British Vice Consul, as I have been informed by a subordinate official at the Foreign Office, threatened the reimposition of the capitulations if the Albanians failed to comply with British demands. These facts are likewise a matter of general knowledge.

The Standard Oil Company's representatives, there are now two here, Mr. E. S. Sheffield and Mr. Wm. S. Taylor recently arrived from Athens . . . are carrying on a vigorous propaganda among the deputies by means of leaflets and the publication of articles in the newspapers, small sheets which appear twice or thrice weekly in various towns. It is hardly necessary to assure the Department that no member of this Legation is any way connected with this work. Certain deputies have volunteered the information that the information thus conveyed is much appreciated and is exercising a considerable influence as opposed to the granting of monopolies.

I have [etc.] U. GRANT-SMITH

[Enclosure—Memorandum]

The American Minister (Grant-Smith) to the Albanian Minister for Foreign Affairs (Evanghelli)

The American Minister called on the Minister for Foreign Affairs on the 2nd March and referred again to the decision of the Albanian Government to transmit to the National Assembly for action not only the original oil concession signed with the Anglo-Persian Oil Company by the competent Ministers of the Cabinet of M. Ilias Vrioni, but also certain modifications subsequently made after the submission and in the light of proposals made by American companies which, since the signature in 1921 of the contract with the Anglo-Persian Company, had been encouraged by the Albanian Government to prepare and submit bids for concessions for the

development of the petroleum resources of Albania, which they had been led to believe would be granted on a purely competitive basis.

He referred especially to the terms of the said contract and subsequent modifications by which an exclusive right would be granted, in the event of ratification, for exploration throughout Albania during a certain period of time, and subsequent rights which would ensure to that company a practical monopoly of the petroleum resources of this country.

The American Minister stated that, in view of these facts he had been instructed to inform the Albanian Government that the Government of the United States of America expected that the question of granting oil concessions in Albania would be treated entirely on its merits; that an equal opportunity would be afforded to American companies for competition with the companies of any other country and that no concessions would be granted by the Albanian Government which were of a monopolistic character or of such a nature as to exclude American citizens from the possibility of participation.

Mr. Grant-Smith reiterated certain of the arguments, put forward at previous interviews bearing on this subject, with regard to the policy of the "open door" so persistently followed by the American Government, a policy, the maintenance of which, was of such high importance to the welfare and independence of weak nations, and the unfortunate effect that a step of the nature referred to, and now threatened, would undoubtedly have upon the future commercial and financial relations between Albania and the United States of America.

He also took occasion to mention to H. E. Monsieur Pandeli Evangelli that, in case the National Assembly happily declined to sanction the monopolistic concession now submitted to it, he felt authorized to say that his Government would not be prepared to accept the view, sometimes advanced in somewhat similar circumstances, that the fact that a given competitor had been the first in the field was a reason for according him certain preferential treatment.

[TIRANA,] *2 March, 1923.*

875.6363/56a : Telegram

The Secretary of State to the Minister in Albania (Grant-Smith)

[Paraphrase]

WASHINGTON, *March 8, 1923—3 p.m.*

11. Should you have reason to believe that the Albanian Cabinet is favorable to the apparent effort of the Anglo-Persian Oil Com-

pany to obtain a monopoly in Albania, you may be able to find an appropriate occasion to call the attention of the Government to the Prime Minister's communication of June 25, 1922, to Commissioner Blake,[2] in which the Prime Minister states that following official recognition by the Government of the United States of the Government of Albania and pending the conclusion of a commercial treaty American interests in Albania would receive most-favored-nation treatment; and that, furthermore, the Government of Albania was ready to render every facility to the installation of American capital in Albania and to accord as well concessions to American concerns.

This statement of the desire of the Albanian Government to encourage American investments in Albania was apparently unsolicited.

HUGHES

875.6363/56

The Secretary of State to the Ambassador in Great Britain (Harvey)[3]

No. 827 WASHINGTON, *March 14, 1923.*

SIR: There is enclosed herewith, for your strictly confidential information, a copy of a letter addressed to the Secretary of Commerce summarizing negotiations of various oil interests for concessionary rights in Albania.[2]

You will note that, in view of report which the Department has received that the Anglo-Persian Oil Company was endeavoring to secure a monopoly of the Albanian field, the Department instructed Minister Grant-Smith to indicate to the Albanian Government that this Government expected that no action would be taken which would deny the principle of the Open Door as applied to the natural resources of Albania and that equal opportunity should be afforded to American companies with the companies of any other nationality.

Mr. Grant-Smith's attention was subsequently called to a communication addressed to the American representative in Albania on June 25, 1922 by the Prime Minister indicating that American interests in Albania would receive most-favored-nation treatment and that the Albanian Government was ready to accord facilities to American capital and to give favorable consideration to American concerns.

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[2] Not printed.

[3] The same instruction sent to the Ambassador in France (no. 592) and to the Ambassador in Italy (no. 329).

It is desired that you report briefly, by telegraph or despatch, any information regarding this subject which may come to your attention.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

875.6363/64 : Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *March 19, 1923—2 p.m.*
[Received 8:03 p.m.]

27. This morning the French Chargé handed to the Minister for Foreign Affairs an *aide-mémoire* demanding the Open Door for all concessions granted foreigners which is translation of pertinent portions of my memorandum of March 2 reported in my despatch no. 50, March 5. The French proposals for an archeological concession [4] have been altered, he says, to be in harmony therewith. He volunteered the information that the application for a British tobacco monopoly would be opposed. I should be glad to receive instructions as to how far the Legation should support, if requested to do so, the French representations in this regard.

GRANT-SMITH

875.6363/80

The Minister in Albania (Grant-Smith) to the Secretary of State

No. 60

TIRANA, *March 30, 1923.*
[Received May 1.]

SIR: As I had the honor to report in my telegram of today's date,[5] the Italian Minister has finally sent in a *Pro Memoria* to the Minister for Foreign Affairs in support of the representations made by Signor Dr. Gobbi, acting as Chargé d'Affaires, on the 3rd instant. It will be noticed that the document, of which a copy and translation is enclosed herewith,[5] is dated March 3rd although it was handed in at the Ministry only today. Its contents cannot but give satisfaction to this Government since it definitely places the Government of Italy on record as favoring the policy of the open-door for Albania, a complete reversal of the attitude which Italy has assumed towards this country heretofore. This result is doubtless largely due to the clear-sightedness of their present Minister here who has been quick to

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[4] See vol. II, p. 17 ff.
[5] Not printed.

realize that his country was not at present in a position to realize her desires with regard to Albania, either territorily or economically, and the attempt of Great Britain to gain a privileged position was sufficient to convince him, and through him his Government, of the urgent necessity of securing the cooperation of other Powers to prevent the realization of British designs. Even should the Italian oil concession for some four thousand hectares have been secured, the preponderance of the British at Valona would obviously have seriously endangered Italy's position both on the main land and especially on the Island of Sasseno, the occupancy of which they are especially tenacious. These considerations appear to have been sufficient not only to impel them to invoke the aid of the United States and France but also to induce them formally to commit themselves . . . to the protest against the establishment of foreign monopolies in Albania.

I have [etc.] U. GRANT-SMITH

875.6363/73 : Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *April 11, 1923—9 a.m.*
[Received 2:21 p.m.]

33. An official of the Ministry for Foreign Affairs has admitted that the Anglo-Persian Oil Company has again submitted modified proposals which now provide for a two years' monopoly for the prospecting of 200,000 hectares. I understand that the contract has been withdrawn from the committee by the Government in order to make modifications. . . .

The French Chargé, now at Scutari, urges a joint note to protest against admission of British modifications and to demand that all proposals be considered together by the National Assembly. If the latter suggestion were adopted it might be detrimental to the Standard Oil Company but advantageous to the Sinclair Company and it would also doubtless greatly protract the negotiations. I respectfully request early instructions. All of Legation's information tends to indicate postponement of definite action until after the settlement of the frontiers.

GRANT-SMITH

875.6363/75 : Telegram

The Secretary of State to the Minister in Albania (Grant-Smith)

[Paraphrase]

WASHINGTON, *April 12, 1923—7 p.m.*

17. A request has been made by the National City Bank of New York that the Department cable to you for communication to the

appropriate member of the Cabinet in collaboration with Mr. E. S. Sheffield the following: [6]

"The National City Bank of New York guarantees that E. S. Sheffield, in his legal capacity as representative of The Standard Oil Company of New York, is financially competent to undertake the development of from twenty to thirty mining claims of an area of fifteen hundred hectares each for which he may submit petitions and which may be granted in his name."

This message may be communicated to Sheffield. It would not be appropriate for you to take action which might be deemed to constitute governmental guarantee of any private organization or undertaking but there would be no objection to your bringing the above message to the attention of the appropriate Albanian authorities as one which had been received from the National City Bank of New York, a reputable and responsible American banking institution.

HUGHES

875.6363/74 : Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *April 18, 1923—[1] p.m.*
[Received 3:15 p.m.]

35. My no. 33, April 11, 9 a.m. The Anglo-Persian's amendments, which were transmitted to the National Assembly April 16, have been referred to committee. The French Chargé telegraphs that his Government has decided that the French request for oil, archeology, tobacco, and bridge concessions be examined immediately, and he urges a collective note. Our Italian colleague is not disposed to join, preferring renewed verbal representations. I incline toward the French plan, provided there is no prejudice to any joint agreement already obtained by Americans. The Albanian Minister to Great Britain is at present in Tirana urging Anglo-Persian Company's claims.

GRANT-SMITH

875.6363/73 : Telegram

The Secretary of State to the Minister in Albania (Grant-Smith)

[Paraphrase]

WASHINGTON, *April 18, 1923—3 p.m.*

18. Your no. 33, April 11, 9 a.m. The Department is not of the opinion that it would be appropriate to attempt to influence the

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[6] Quotation not paraphrased.

Government of Albania regarding the time and manner of considering the various proposals for oil concessions. The position of this Government would be substantially met were appropriate opportunity granted to interested American companies to compete on equal terms with other companies, and if proper consideration be given their offers on their merits and no concession which contains privileges of an essentially monopolistic or exclusive character for either prospecting or exploitation is granted.

Equality of opportunity appears to be denied by the permission which from your telegram no. 17 of February 21, 10 a.m., seems to have been accorded the Anglo-Persian Oil Company to submit better modified terms if better offers are received. The Department does not, however, favor a joint protest as suggested in paragraph two of your telegram.

HUGHES

875.6363/77 : Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *April 20, 1923—5 p.m.*
[Received 10 p.m.]

37. My no. 35, April 18, 1 p.m. I have learned that the Anglo-Persian Company's modifications provide for the exclusive right for one year to the exploration of over 200,000 hectares, and after that for 50,000 hectares for exploitation. The company has demanded definite Parliamentary action by May 28, for the purpose, obviously, of forcing conclusion before the Boundaries Commission makes its final report.

Lieutenant Colonel Sterling (British) has arrived at Durazzo with his family. He states that he is adviser to the Prime Minister, who, when asked, was somewhat vague in his reply and mentioned the reorganization of the *gendarmerie*. The first that the Minister for Foreign Affairs had heard of this project was today from the Prime Minister in my presence.

GRANT-SMITH

875.6363/82 : Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *May 4, 1923—4 p.m.*
[Received 9:12 p.m.]

38. The Prime Minister, speaking on May 1 before the Parliamentary committee which is considering the British oil concession,

stated that the United States was negligible as it could bring no political assistance to Albania, but that to placate the European great powers it was hoped to provide British, French, and Italian participation.

We are making every effort to counteract this influence, but should the principal opposing power carry the day, an outcome involving the disregard by the Albanian Government of its pledges to us, I respectfully suggest that consideration be given to instruction for my future conduct here.

GRANT-SMITH

875.6363/80

The Secretary of State to the Minister in Albania (Grant-Smith)

No. 33 WASHINGTON, *May 19, 1923.*

SIR: The receipt is acknowledged of your despatches No. 57 of March 21st[7] and No. 60 of March 30th, 1923, enclosing, respectively, a copy of an *Aide Memoire* handed to the Albanian Minister for Foreign Affairs on March 4th by the French Chargé d'Affaires, and a copy of a *Pro-Memoria*, dated March 3rd, which was sent to the Albanian Foreign Office by the Italian Minister on March 30th.

It is noted with gratification that in the *Aide-Memoire* and the *Pro-Memoria* the French and Italian representatives referred to their desire to see the principle of the Open Door applied in Albania. It would be helpful to the Department to be informed whether any publicity has been given to these two communications, and if not, whether they were obtained by you from the French and Italian representatives under circumstances which would permit the Department to make reference to these communications in correspondence with the Italian and French governments, respectively, as indicating the attitude of France and Italy with respect to the principle of the Open Door and the subject of monopolistic concessions in the event that a case should arise which might make such reference desirable.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

875.6363/82 : Telegram

The Secretary of State to the Minister in Albania (Grant-Smith)

[Paraphrase]

WASHINGTON, *May 23, 1923—3 p.m.*

20. Your no. 38, May 4, 4 p.m. In view of the information contained in your telegram you may desire to bring to the attention of

[7] Not printed; see telegram no. 27, Mar. 19, from the Minister, p. 381.

the proper Albanian officials the Albanian Prime Minister's letter of June 25, 1922, to Commissioner Blake, already referred to in the Department's no. 11, March 8, 3 p.m., wherein the Prime Minister gave assurance that the Government of Albania was ready to accord every facility to American capital in Albania and to grant concessions to American firms.

Is it your opinion that there is a pronounced tendency to deny reasonable opportunity to Americans to participate on an equal footing with other powers in development of the economic resources of Albania? Telegraph reply.

. . . .

HUGHES

875.6363/84: Telegram

The Minister in Albania (Grant-Smith) to the Secretary of State

[Paraphrase]

TIRANA, *May 26, 1923—noon.*
[Received 7:18 p.m.]

40. Your no. 20, May 23, 3 p.m. Use has been made of all points included in Albanian Prime Minister's note of June 25, 1922. The Parliamentary joint committee has notified the Government that the Anglo-Persian Company's proposals are inacceptable. The British are still holding out and stormily protesting. I have again made representations in which I have denied their pretended rights to preference and have urged immediate consideration of the American proposals on the merits of the latter which are admittedly superior to the Anglo-Persian's proposals. It is difficult to form an opinion of the real sentiments of the Prime Minister and his colleagues, but great pressure and the desire for support are the apparent reasons for the present political advantage of the British. The President of the National Assembly is reliably reported to have declared before the committee that if the concession were not granted the Anglo-Persian Company, Albania would lose territory in the south. The Minister of Italy has been categorically assured by the Prime Minister of satisfaction of the Italian demands for a concession, in any event.

. . . .

GRANT-SMITH

875.6363/93

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

No. 2487 LONDON, *June 8, 1923.*
[Received June 21.]

SIR: With reference to your Instruction No. 827 of March 14, 1923, concerning the oil situation in Albania and the concessions procured by the Anglo-Persian Oil Company, Ltd., I have the honor to state that secretaries of this Embassy interviewed L. I. Thomas, Esquire, Vice President of the Standard Oil Company of New York, and Montague Piesse, Esquire, the Standard Oil Solicitor in London, respectively.

The Solicitor expressed the desire that information given in his interview should not be sent to Washington without the permission of Mr. Thomas, and Mr. Thomas, who gave practically the same information as that given by the Solicitor, stated that he intended to see Mr. Harrison directly on his return to the United States, and would give him full particulars of the Albanian situation. He therefore requested that the Embassy should not forward the substance of his conversation *re* Albania to the Department.

While the information given by the Standard Oil officials above mentioned does not seem to be of a confidential nature, I take it that there will be no objection on the part of the Department to our respecting their wishes, particularly in view of the fact that Mr. Thomas is to see Mr. Harrison on his arrival.

Mr. Thomas spoke in the highest terms of the work of Mr. Grant-Smith, American Minister in Albania.

I have [etc.] POST WHEELER

875.6363/99

The Minister in Albania (Grant-Smith) to the Secretary of State

No. 110 TIRANA, *June 13, 1923.*
[Received July 5.]

SIR: I have the honor to report that in spite of all the arguments and facts brought to their attention, the Albanian Government continues to contend that the Anglo-Persian Company has right of preference which will persist until after the National Assembly has taken definite action on their proposals for a concession for the development of a certain proportion of the oil resources of the country. Mr. Hunger, the Financial Adviser, during our conversation, reported in my despatch No. 102, of June 2nd,[9] last, appeared to hold the opinion that the British Company had forfeited any pref-

[9] Not printed.

erential rights it may have enjoyed but Mr. Sheffield, of the Standard Oil Company, informs me that during a conference yesterday the Financial Adviser stated that he had become convinced that the Anglo-Persian Company had done nothing to forfeit these rights. Our case seems so clear that I cannot but presume that some agreement, of which we have no knowledge, must exist between the British and the Albanian Government[s] which could account for Mr. Hunger's change of front.

Up to the present we have succeeded in bringing about modifications in the Anglo-Persian proposals which will materially increase the cost of production and operation on their part and which go far towards nullifying their efforts to establish a complete monopoly of the oil industry of Albania. Even should they succeed in obtaining the first choice of lands to the extent of fifty thousand hectares, and should the National Assembly, as is considered probable, decline to accord an exclusive privilege of a year or more of exploration over a much larger area, the American companies would have an opportunity to take up concessions in the supposed oil bearing lands remaining, the total of which is variously estimated at from 150,000 to 450,000 hectares. The latter estimate, however, has been put forward chiefly by the representatives of the Sinclair Oil Company, whose proposals are for 150,000 hectares. In conversation some days ago the British Minister mentioned 150,000 as the probable figure and, I am confidentially advised by the representative of the Standard Oil Company that, according to his opinion, all the territory worth developing could be included in 35,000 hectares or even less. It appears that British geologists have been for some weeks past busily engaged in making a careful study of the lands involved and will doubtless be prepared to indicate those desired immediately upon the reassembly of the National Assembly in the Autumn.

The declarations made to the Albanian Minister for Foreign Affairs at the instance of the Italian Government, by the French, Italian and American representatives in support of the application of the principle of the "open door" might also be reckoned among the advantages thus far gained in spite of strong British opposition.

I have [etc.]

U. Grant-Smith

875.6363/100

The Minister in Albania (Grant-Smith) to the Secretary of State

No. 112

Tirana, *June 13, 1923.*
[Received July 5.]

Sir: I have the honor to report that since signing my despatch No. 110 of even date I have had a conversation with Djafer Villa, the

Secretary General of the Ministry of Foreign Affairs, during which I said that in view of the clear evidence, which I recapitulated, I was at a loss to understand why the Prime Minister and the Minister for Foreign Affairs, and also the Financial Adviser, should persist in maintaining that the Anglo-Persian Company still enjoyed preferential rights; I could attribute such an attitude only to the existence of some understanding or agreement between the two Governments of which we had no knowledge. Djafer Bey, whose confidence I have been fortunate enough to gain, made reply by fixing his eyes on the floor. After a few moments silence I remarked that any agreement which might exist was no concern of ours so long as it observed the principle of the "open door." He replied that time would work in favor of the Albanian Government and that he had every reason to anticipate that the question of the oil concessions would eventually be settled in accordance with that principle, and indicated that postponement beyond September was probable.

I have [etc.] U. Grant-Smith

875.6363/103

The Chargé in Albania (Swift) to the Secretary of State

No. 126 Tirana, *July 2, 1923.*
[Received July 24.]

Sir: I have the honor to inform the Department that according to information received today from a reliable source, Mr. Hunger, the Financial Adviser to the Albanian Government, has presented to the Minister of Finance a memorandum setting forth his views on the oil question in Albania.[10] I am told that he expresses himself as being opposed to a monopoly and that he is in favor of giving to each company which has submitted a contract to the Government an equal opportunity to participate in the exploitation of the oil lands in the country. He is said to have invited the attention of the Government to what he considers the more favorable terms submitted by the Standard Oil Company and to have recommended that the other interested companies be supplied with copies of its contract in order that they may be given an opportunity to revise their proposals along lines more closely approximating those of the Standard Oil Company. Should the Government approve this suggestion, he is further said to have recommended that the oil lands be divided into as many tracts as there are companies submitting proposals and that the companies draw lots for the choice of the land.

[10] Not printed; a copy of the memorandum, which was addressed to the Prime Minister, was transmitted to the Department July 13.

I hope to be able to secure a copy of Mr. Hunger's memorandum to transmit to the Department in the course of the next week or so.

I have [etc.]

W. MERRITT SWIFT

875.6363/93

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

No. 927

WASHINGTON, *July 9, 1923.*

SIR: In reply to your despatch No. 2487, June 8, 1923, with regard to a conversation between secretaries of the Embassy and Mr. L. I. Thomas and Mr. Montague Piesse of the Standard Oil Company of New York with regard to the latter's interests in Albania, the Department desires to inform you that Mr. Thomas has not yet called at the Department or communicated the information, to which the Embassy alludes, with regard to the Company's negotiations in Albania.

It is therefore desired that you furnish the Department by despatch, for its confidential information, the substance of the information communicated to you by Mr. Thomas and Mr. Piesse.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

875.6363/107

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

No. 2717

LONDON, *August 3, 1923.*
[Received August 15.]

SIR: In reply to your instruction No. 927 of July 9, 1923, relative to interviews had between Secretaries of the Embassy and certain officers of the Standard Oil Company of New York concerning the oil situation in Albania, I have the honor to state that the substance of the interviews was as follows: that the Anglo-Persian had secured a concession from the Albanian Government covering the entire country; that the Standard Oil was either working for or had succeeded in getting a concession from the Government covering a part of the country which, as far as the Standard knew, Anglo-Persian geologists did not consider to be at all promising; that the Anglo-Persian concession and the Standard's (if it had one) had not been ratified by the Legislature largely due to the opposition made by the rival company; that the Standard proposed a settlement with the Anglo-Persian along the following lines:—

Each company to disclose to the other the areas in which it was actually interested, i. e. in which it meant to drill for oil; in the

event that the two companies were actively interested in the same territory they were to take half the product derived from that territory and, in the event there was no overlapping of land in which they were actually so interested, they were to proceed independently with their examination and development work. In the event that the Anglo-Persian did not desire to disclose the part of Albania in which it was actually interested, the Standard proposed that the entire country should be developed on a fifty-fifty basis.

The Anglo-Persian declined the Standard offer.

I have [etc.]

POST WHEELER

875.6363/104 : Telegram

The Chargé in Albania (Swift) to the Secretary of State

TIRANA, *August 3, 1923—4 p.m.*
[Received August 4—2:09 a.m.]

47. Albanian Parliament convenes extraordinary session August 20th for discussion of oil concessions.

SWIFT

875.6363/104 : Telegram

The Secretary of State to the Chargé in Albania (Swift)

[Paraphrase]

WASHINGTON, *August 7, 1923—7 p.m.*

27. Your no. 47, August 3, 4 p.m. Does the Albanian Government, in considering the question of the oil concessions, contemplate using as a basis the suggestions of the Financial Adviser reported in the Legation's despatch no. 126, July 2? Keep Department fully informed regarding developments, and do not fail at appropriate time to repeat emphatically the representations previously made by the Government of the United States with regard to the Open Door, recalling the many assurances given Commissioner Blake and the American Minister in this respect.

HUGHES

875.6363/111 : Telegram

The Chargé in Albania (Swift) to the Secretary of State

[Paraphrase]

TIRANA, *August 27, 1923—6 p.m.*
[Received August 28—2:54 a.m.]

48. Department's no. 27, August 7, 7 p.m. The Legation is unable to say at this time whether or not all foreign governments will adopt

the Financial Adviser's suggestions. His advice does not seem to carry great weight with leaders of the Government.

I am reliably informed that at a meeting attended yesterday by a score of deputies of the Government party, including the Prime Minister and most of the Cabinet, an attempt was made to make the question of oil concessions a party issue with the object of forcing the adoption of the Anglo-Persian's contract later on. The Prime Minister, the Minister of Justice, the Minister of Public Works, the President of Parliament and a deputy from Durazzo spoke in favor of the motion. Their arguments were based on the great advantage to be won by gaining Great Britain's support while the final decision of the Council of Ambassadors on the boundary question is still pending. The Minister of Finance, the Minister of Public Instruction, the President of the Government party and deputies from Scutari and Durazzo spoke against adoption as a party measure. Other deputies did not participate in discussion. The suggestion was made that all contracts for oil concessions be published so that deputies would be able to study them and then vote independently and according to individual judgment. There was no vote taken on any question, however, and the meeting adjourned.

Thus it appears that the more influential leaders of the Government party favor the adoption of the Anglo-Persian Company's contract, but it is also apparent from what took place at the party meeting that there seems to be opposition inside the Government party. Observers of experience, however, are inclined to think that the division of opinion in the Government ranks is factitious rather than real and was arranged by those in control.

The members of the Opposition comprise approximately one-third of the Parliamentary votes and are believed to oppose en bloc the ratification of the Anglo-Persian's contract.

SWIFT

875.6363/118 : Telegram

The Chargé in Albania (Swift) to the Secretary of State

[Paraphrase]

TIRANA, *September 25, 1923—1 p.m.*
[Received September 26—2:08 a.m.]

54. The Anglo-Persian Company has categorically refused to modify the contract to include drilling operations. It is reported that yesterday the British Minister informed the Albanian Prime Minister that unless the Anglo-Persian Company's contract was accepted and ratified in its present form during the present session of the

Parliament, which will adjourn on September 13 [*30*], he would withdraw immediately, an act which would virtually sever diplomatic relations. It is impossible to state definitely whether the Minister threatened to leave Albania or reiterated threats previously made regarding the withdrawal of British favor in the delimitation of Albania's southern frontier, but there can be little doubt that he has brought pressure to bear heavily. Yesterday the Government decided suddenly to bring the question of the oil concession before Parliament and it was under debate this morning although no decision was reached. It will be taken up again at the afternoon session. Opinion had been unanimous until yesterday that the matter of oil concession would not be brought before the Parliament during its present session. It is rumored that the Government is willing to meet important demands of the Opposition regarding the election law which is now before Parliament if the opposition will in turn agree not to obstruct action on the Anglo-Persian's contract.

SWIFT

875.6363/121: Telegram

The Chargé in Albania (Swift) to the Secretary of State [11]

[Paraphrase]

TIRANA, *September 26 [27?], 1923—6 p.m.*
[Received September 28—1:45 a.m.]

56. Discussion of the question of oil concessions has continued behind closed doors in the Albanian Parliament. At the afternoon session Tuesday the deputy from Scutari, one of the Opposition leaders, in a long speech compared the proposals of the Anglo-Persian Company with the more favorable terms of the American companies and proposed that the Parliament thoroughly discuss the American advantages. At yesterday's secret session the leader of the Opposition, Bishop Noli, referred to the American, Italian, and French notes on the Open Door policy [and discussed?] the question of granting the oil concession from the economic, financial, and political points of view. In reply to his question as to whether the oil concession had political significance, the Minister for Foreign Affairs said "no", and stated that there was no reason why the concession should not be discussed purely as an economic and financial matter.

There is no doubt that the Albanian Government, the British Minister, and the Anglo-Persian Company were convinced of the impossibility of making a party issue of the oil question, for to have

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[11] Summary telegraphed to the Ambassador in Great Britain as Department's no. 267, Sept. 28.

done so might have caused a division in the Government party; and, alarmed by the logic and strength of the arguments used by the Opposition, decided that in the interests of the company discussion of the question by the Parliament should be postponed, and discussion will not be resumed during remainder of present session. The British Minister leaves today on a two months' leave of absence.

SWIFT

875.6363/118 : Telegram

The Secretary of State to the Chargé in Albania (Swift)

[Paraphrase]

WASHINGTON, *September 27, 1923—5 p.m.*

32. Your no. 54, September 25, 1 p.m. The Department is instructing the Embassy in Great Britain to repeat to you Department's telegram no. 33.[12]

If an appropriate opportunity presents itself you may state orally and discreetly to the Albanian Minister for Foreign Affairs that rumors (referred to in your no. 54 and previous despatches) have been brought to your attention of undue political pressure in connection with the oil concession, but that you can hardly credit them. You may then inquire if there is any basis for these rumors and, if there is, whether his Government has made any effort to verify, through its diplomatic representatives abroad, the authority on which the reports you describe are circulated.

If in your opinion it would be helpful, you may address a communication in writing to the Albanian Minister for Foreign Affairs inquiring under instructions from your Government if the Government of Albania is prepared to deal with oil-concession contract on its merits.

HUGHES

875.6363/118 : Telegram

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

[Paraphrase]

WASHINGTON, *September 27, 1923—7 p.m.*

266. Refer to Department's written despatch no. 827, March 14. The American Chargé in Albania has informed the Department that it has been reported that the British Minister has informed the Albanian Prime Minister that unless the Anglo-Persian Oil Company's

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[12] See telegram no. 266 to the Ambassador in Great Britain, *infra*.

contract is accepted and ratified in its present form during the present session of the Parliament, which will adjourn on October 13 [*September 30*], he would withdraw immediately, by this action virtually severing diplomatic relations. A previous unconfirmed report has come to the Department that a threat had been made to the Albanian Government that if the Anglo-Persian's oil concession were not granted the capitulations would be reimposed and British support in the matter of the delimitation of the boundaries of Albania would be withdrawn.

Information received from Tirana indicates that the Anglo-Persian Company's draft concession is not as favorable in many respects as are the offers of the two American oil companies which are competing for a concession and that if the matter were to be considered on its merits and without the imposition of political pressure, a contract of the nature proposed by the Anglo-Persian Company would not now be accepted by the Albanian Government.

I desire that you should discreetly and orally bring it to the attention of the British Foreign Office that reports have apparently been circulated in Albania which indicate that pressure of a political nature in favor of British oil interests is being brought to bear on the Albanian Government, and that while the Department trusts that these reports have no foundation it feels nevertheless that they should be brought candidly and confidentially to the attention of the British Government. Here you may refer guardedly to the reports mentioned above. You may then add that the interest of the American Government in this matter is maintenance of the Open Door and equality of opportunity in Albania and that the oil-concession question should be considered on its merits alone, without political pressure being brought to bear.

Repeat to the American Legation in Albania as the Department's no. 33 and report promptly giving Department and Legation information obtained.

HUGHES

875.6363/125 : Telegram

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

[Paraphrase]

LONDON, *October 5, 1923—4 p.m.*
[Received 5:06 p. m.]

423. Department's no. 266, September 27, 7 p.m., and no. 267, September 28, 7 p.m.[13]

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[13] See footnote 11, p. 393.

The Embassy approached the Foreign Office in compliance with your instructions, explaining carefully the Department's point of view. The Foreign Office in reply denied emphatically the truth of any reports which may have been circulated that either the British Government or the British Minister in Albania is using political pressure to force the Anglo-Persian Company's oil concession upon the Albanian Government. The British Minister was supporting this concession, which was not monopolistic in character, just as any proper business proposal by an American firm interested in a foreign country would be supported by the American diplomatic representative there. The British Government was entirely in accord with the American point of view in regard to the principle of the Open Door and equality of opportunity.

The Embassy received today, unsolicited, a note from the Foreign Office the substance of which is as follows:

> By the agreement which the Anglo-Persian Oil Company is at present negotiating with the Government of Albania the company would be permitted upon ratification of the agreement to select 200,000 hectares for exploration, and from this area to select, within four months, 50,000 for exploitation. It is clear, therefore, that instead of seeking a monopoly the company would, should the agreement be ratified, acquire working rights over about 1 percent of Albania.
>
> Furthermore, the Foreign Office understands that at the present time there are two American companies seeking exploitation rights in Albania, one for 150,000 hectares, the other for 35,000 hectares. The contention that the British company is endeavoring to obtain a monopoly would, therefore, appear to be unfounded.
>
> His Majesty's Government are confident that the Government of the United States, with the facts thus presented, will agree that there exists no question of any violation of the principles of the Open Door or of any threat to the territorial integrity of Albania.

This Embassy understands that recently the Foreign Office sent a note, somewhat similar, to the French Ambassador in reply to inquiries he had made.

Repeated to our Legation in Albania.

HARVEY

875.6363/133

The Minister in Albania (Grant-Smith) to the Secretary of State

No. 192 [TIRANA,] *December 22, 1923.*
[Received January 16, 1924.]

SIR: Referring to Mr. Swift's despatch of October 3rd last, No. 165,[15] in which he reported that members of the Albanian Govern-

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[15] Not printed; see his telegram no. 56, of Sept. 26 [27?], p. 393.

ment had been of the opinion that the question of the Anglo-Persian proposals for an oil concession would not be brought before the National Assembly during the short session then in progress, and that, to the surprise of many of the administration party and of the opposition, the question appeared on the agenda given out the morning of September 24th for discussion during that day's session, I have the honor to report that, in endeavoring to account for the sudden discontinuation of the discussions, there is an interesting factor of which the Chargé d'Affaires seems to have been unaware.

It appears, according to Mr. Swift's report, that during a secret session on the morning of the 26th the Minister for Foreign Affairs stated, in reply to an interpellation, that the matter under consideration had no political significance and that he knew of no reason why it should not be considered strictly on its merits as an economic question.

It will be recalled that the British Minister had a long conference with the Prime Minister on Sunday the 23rd of September, that the following morning the oil concession question was unexpectedly brought before the National Assembly, that it was dropped, equally unexpectedly on the 26th.

My French colleague informs me that during the interview which he had with Ahmet Bey on the 26th, when the latter admitted frankly that the British Minister had renewed his threats of withdrawal of support on the boundary commission, M. Billecocq declared that the Albanian Government need entertain no fears in that regard and that he formally gave him the French Government's guarantee that Albania would obtain the southern frontier. (Je vous donne la garantie de mon gouvernement que vous aurez votre frontière du sud). The Minister for Foreign Affairs' declaration during the secret session reflected the Government's momentary feeling of security, for Italian support could also evidently be counted upon. The discussion was discontinued, towards which result, doubtless, the reasons assigned by Mr. Swift had their due weight.

. . . .

I have [etc.] U. Grant-Smith

AUSTRIA

NEGOTIATIONS FOR A TREATY OF AMITY, COMMERCE, AND CONSULAR RIGHTS BETWEEN THE UNITED STATES AND AUSTRIA

711.632/7a : Telegram

The Secretary of State to the Minister in Austria (Washburn)

WASHINGTON, *July 19, 1923—5 p.m.*

13. Department is now prepared to negotiate with the Austrian Government a general treaty of amity, commerce and consular rights.

Please inquire at the Foreign Office as to whether the immediate negotiation of such a treaty would be agreeable to the Austrian Government and inform the Department promptly of the result. If the Austrian Government agrees, the text of the proposed treaty and full covering instructions will be sent you within a few days.

[Paraphrase.] The Austrian Chargé, acting evidently on instructions from his Government, has urged repeatedly that a commercial treaty be negotiated with Austria. Inasmuch as he says that his Government feels particularly the need of a consular convention, the Department trusts that the Foreign Office will be glad to open negotiations immediately. [End paraphrase.]

HUGHES

711.632/8 : Telegram

The Minister in Austria (Washburn) to the Secretary of State

VIENNA, *July 23, 1923—6 p.m.*
[Received July 24—9:11 a.m.]

30. Department's telegram 13, July 19, 5 p.m. Foreign Office is prepared immediately to negotiate general treaty of amity, commerce and consular rights and asks me expressly to say that the Austrian Government is much gratified by the Department's willingness to conclude such a treaty at this time.

WASHBURN

711.632/8a

The Secretary of State to the Minister in Austria (Washburn)

No. 579 WASHINGTON, *August 3, 1923.*

SIR: There is enclosed herewith a copy of a treaty of friendship, commerce, and consular rights for submission to the Government of Austria through your Legation. An additional copy is also enclosed for your Legation. The latter, which is solely for your own use and not to be shown to the Austrian Government, contains in parallel columns comments explanatory of the several provisions.[1]

The following statement is designed to make clear the position of this Government concerning the general features of the treaty, and respecting the various provisions thereof.

You will observe from the Preamble that this is a treaty of friendship as well as of commerce. It touches many matters unrelated to commerce. It is designed to promote the friendly intercourse between the peoples of the United States and Austria, through provisions advantageous to both. It may be said with entire candor that this treaty embodies no attempt whatever to attain by sharp bargaining undue advantages over a friendly state. The draft contains in certain articles provisions which in their practical operation ought to be deemed of special advantage to a foreign contracting party such as Austria. These advantages are incorporated in the treaty because they are deemed to promote justice as between the peoples of friendly States. In a word, through the present draft it is sought to lay the foundation for a comprehensive arrangement responsive to the modern and exacting requirements of important States. To that end the several articles are expressed in terms which definitely and clearly set forth what is desired. It is sought by this means to avoid the danger of conflicting interpretations. The terms and phrases used are not always those which have been employed in treaties of the United States. Those here utilized will, it is hoped, add to the clearness of the document.

. . . .

In presenting the treaty to the Austrian Government, it would be desirable for you to state that perhaps the Austrian Government understands that somewhat later the United States Government expects to propose some appropriate plan for a Mixed Claims Commission to deal with American claims which have arisen against Austria.

I am [etc.] CHARLES E. HUGHES

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[1] Comments not printed.

[Enclosure]

Draft Treaty of Friendship, Commerce, and Consular Rights, between the United States of America and Austria

PREAMBLE

The United States of America and the Republic of Austria, desirous of strengthening the bond of peace which happily prevails between them, by arrangements designed to promote friendly intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic and commercial aspirations of the peoples thereof, have resolved to conclude a Treaty of Friendship and Commerce and for that purpose have appointed as their plenipotentiaries:

The President of the United States of America,

. . . .

and

The Federal President of Austria,

. . . .

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

ARTICLE I

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 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.

ARTICLE II

With respect to that form of protection granted by National, State or Provincial laws establishing civil liability for injuries or for death, and giving to relatives or heirs or dependents of an injured party a right of action or a pecuniary benefit, such relatives or heirs or dependents of the injured party, himself a national of either of the High Contracting Parties and within any of the territories of the other, shall regardless of their alienage or residence outside of the territory where the injury occurred, enjoy the same rights and privileges as are or may be granted to nationals, and under like conditions.

ARTICLE III

The dwellings, warehouses, manufactories and shops of the nationals of each of the High Contracting Parties in the territories of the other, and all premises thereto appertaining used for any purposes set forth in Article I, shall be respected. It shall not be allowable to make a domiciliary visit to, or search of any such buildings and premises, or there to examine and inspect books, papers or accounts, except under the conditions and in conformity with the forms prescribed by the laws, ordinances and regulations for nationals.

ARTICLE IV

Where, on the death of any person holding real or other immovable property or interests therein within the territories of one High Contracting Party, such property or interests therein would, by the laws of the country or by a testamentary disposition, descend or pass to a national of the other High Contracting Party, were he not disqualified by the laws of the country where such property or interests therein is or are situated, such national shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and withdraw the proceeds thereof, without restraint or interference, and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the nationals of the country from which such proceeds may be drawn.

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Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

ARTICLE V

The nationals of each of the High Contracting Parties in the exercise of the right of freedom of worship, within the territories of the other, as hereinabove provided, may, without annoyance or molestation of any kind by reason of their religious belief or otherwise, conduct services either within their own houses or within any appropriate buildings which they may be at liberty to erect and maintain in convenient situations, provided their teachings or practices are not contrary to public morals; and they may also be permitted to bury their dead according to their religious customs in suitable and convenient places established and maintained for the purpose, subject to the reasonable mortuary and sanitary laws and regulations of the place of burial.

ARTICLE VI

In the event of war between either High Contracting Party and a third State, such Party may draft for compulsory military service nationals of the other having a permanent residence within its territories and who have formally, according to its laws, declared an intention to adopt its nationality by naturalization, unless such individuals depart from the territories of said belligerent Party within sixty days after a declaration of war.

ARTICLE VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation. Nothing in this Treaty shall be construed to restrict the right of either High Contracting Party 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.

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.

Each of the High Contracting Parties also binds itself unconditionally to impose no higher or other charges or other restrictions or prohibitions on goods exported to the territories of the other High Contracting Party than are imposed on goods exported to 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 the growth, produce or manufacture of the other High Contracting Party.

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.

The stipulations of this Article do not extend to the treatment which is accorded by the United States to the commerce of Cuba under the provisions of the Commercial Convention concluded by the United States and Cuba on December 11, 1902,[2] or any other commercial convention which hereafter may be concluded by the United States with Cuba, or to the commerce of the United States with any of its dependencies and the Panama Canal Zone under existing or future laws.

ARTICLE VIII

The nationals and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment

[2] Malloy, *Treaties*, 1776–1909, vol. I, p. 353.

as nationals and merchandise of the country with regard to transit duties, charges in respect to warehousing and other facilities and the amount of drawbacks and bounties.

Article IX

Limited liability and other corporations and associations, whether or not for pecuniary profit, which have been or may hereafter be organized in accordance with and under the laws, National, State or Provincial, of either High Contracting Party and maintain a central office within the territories thereof, shall have their juridical status recognized by the other High Contracting Party provided that they pursue no aims within its territories contrary to its laws. They shall enjoy free access to the courts of law and equity, on conforming to the laws regulating the matter, as well for the prosecution as for the defense of rights in all the degrees of jurisdiction established by law.

The right of such corporations and associations of either High Contracting Party so recognized by the other to establish themselves within its territories, establish branch offices and fulfill their functions therein shall depend upon, and be governed solely by, the consent of such Party as expressed in its National, State or Provincial laws.

Article X

The nationals of either High Contracting Party shall enjoy within the territories of the other, reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the organization of and participation in limited liability and other corporations and associations, for pecuniary profit or otherwise, including the rights of promotion, incorporation, purchase and ownership and sale of shares and the holding of executive or official positions therein. In the exercise of the foregoing rights and with respect to the regulation or procedure concerning the organization or conduct of such corporations or associations, such nationals shall be subjected to no conditions less favorable than those which have been or may hereafter be imposed upon the nationals of the most favored nation. The rights of any of such corporations or associations as may be organized or controlled or participated in by the nationals of either High Contracting Party within the territories of the other to exercise any of their functions therein, shall be governed by the laws and regulations, national, state or provincial, which are in force or may hereafter be established within the territories of the Party wherein they propose to engage in business.

The nationals of either High Contracting Party shall, moreover, enjoy within the territories of the other, reciprocally and upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain of the other.

Article XI

(*a*) Manufacturers, merchants, and traders domiciled within the jurisdiction of one of the High Contracting Parties may operate as commercial travelers either personally or by means of agents or employees within the jurisdiction of the other High Contracting Party on obtaining from the latter, upon payment of a single fee, a license which shall be valid throughout its entire territorial jurisdiction.

In case either of the High Contracting Parties shall be engaged in war, it reserves to itself the right to prevent from operating within its jurisdiction under the provisions of this article, or otherwise, enemy nationals or other aliens whose presence it may consider prejudicial to public order and national safety.

(*b*) In order to secure the license above mentioned the applicant must obtain from the country of domicile of the manufacturers, merchants, and traders represented a certificate attesting his character as a commercial traveler. This certificate, which shall be issued by the authority to be designated in each country for the purpose, shall be viséed by the consul of the country in which the applicant proposes to operate, and the authorities of the latter shall, upon the presentation of such certificate, issue to the applicant the national license as provided in Section (*a*).

(*c*) A commercial traveler may sell his samples without obtaining a special license as an importer.

(*d*) Samples without commercial value shall be admitted to entry free of duty.

Samples marked, stamped or defaced in such manner that they cannot be put to other uses shall be considered as objects without commercial value.

(*e*) Samples having commercial value shall be provisionally admitted upon giving bond for the payment of lawful duties if they shall not have been withdrawn from the country within a period of six (6) months.

Duties shall be paid on such portion of the samples as shall not have been so withdrawn.

(*f*) All customs formalities shall be simplified as much as possible with a view to avoid delay in the despatch of samples.

(*g*) Peddlers and other salesmen who vend directly to the consumer, even though they have not an established place of business in the country in which they operate, shall not be considered as commercial travelers, but shall be subject to the license fees levied on business of the kind which they carry on.

(*h*) No license shall be required of:

(1) Persons traveling only to study trade and its needs, even though they initiate commercial relations, provided they do not make sales of merchandise.

(2) Persons operating through local agencies which pay the license fee or other imposts to which their business is subject.

(3) Travelers who are exclusively buyers.

(*i*) Any concessions affecting any of the provisions of the present Article that may hereafter be granted by either High Contracting Party, either by law or by treaty or convention, shall immediately be extended to the other party.

Article XII

(*a*) Regulations governing the renewal and transfer of licenses issued under the provisions of Article XI, and the imposition of fines and other penalties for any misuse of licenses may be made by either of the High Contracting Parties whenever advisable within the terms of Article XI and without prejudice to the rights defined therein.

If such regulations permit the renewal of licenses, the fee for renewal will not be greater than that charged for the original license.

If such regulations permit the transfer of licenses, upon satisfactory proof that transferee or assignee is in every sense the true successor of the original licensee, and that he can furnish a certificate of identification similar to that furnished by the original licensee, he will be allowed to operate as a commercial traveler pending the arrival of the new certificate of identification, but the cancellation of the bond for the samples shall not be effected before the arrival of the said certificate.

(*b*) It is the citizenship of the firm that the commercial traveler represents, and not his own, that governs the issuance to him of a certificate of identification.

The High Contracting Parties agree to empower the local customs officials to issue the said licenses upon surrender of the certificate of identification and authenticated list of samples, acting as deputies of the central office constituted for the issuance and regulation of licenses. The said customs officials shall immediately transmit the appropriate documentation to the central office, to which the licensee shall thereafter give due notice of his intention to ask for the renewal

or transfer of his license, if these acts be allowable, or cancellation of his bond, upon his departure from the country. Due notice in this connection will be regarded as the time required for the exchange of correspondence in the normal mail schedules, plus five business days for purposes of official verification and registration.

(*c*) It is understood that the traveler will not engage in the sale of other articles than those embraced by his lines of business; he may sell his samples, thus incurring an obligation to pay the customs duties thereupon, but he may not sell other articles brought with him or sent to him, which are not reasonably and clearly representative of the kind of business he purports to represent.

(*d*) Advertising matter brought by commercial travelers in appropriate quantities shall be treated as samples without commercial value. Objects having a depreciative commercial value because of adaptation for purposes of advertisement, and intended for gratuitous distribution, shall, when introduced in reasonable quantities, also be treated as samples without commercial value. It is understood, however, that this prescription shall be subject to the customs laws of the respective countries. Samples accompanying the commercial traveler will be despatched as a portion of his personal baggage; and those arriving after him will be given precedence over ordinary freight.

(*e*) If the original license was issued for a period longer than six months, or if the license be renewed, the bond for the samples will be correspondingly extended. It is understood, however, that this prescription shall be subject to the customs laws of the respective countries.

Article XIII

There shall be complete freedom of transit through the territories including territorial waters of each High Contracting Party on the routes most convenient for international transit, by rail, navigable waterway, and canal, other than the Panama Canal and waterways and canals which constitute international boundaries of the United States, to persons and goods coming from or going through the territories of the other High Contracting Party, except such persons as may be forbidden admission into its territories or goods of which the importation may be prohibited by law. Persons and goods in transit shall not be subjected to any transit duty, or to any unnecessary delays or restrictions, and shall be given national treatment as regards charges, facilities, and all other matters.

Goods in transit must be entered at the proper custom house, but they shall be exempt from all customs or other similar duties.

All charges imposed on transport in transit shall be reasonable, having regard to the conditions of the traffic.

ARTICLE XIV

Each of the High Contracting Parties agrees to receive from the other, consular officers in those of its ports, places and cities, where it may be convenient and which are open to consular representatives of any foreign country.

Consular officers of each of the High Contracting Parties shall, after entering upon their duties, enjoy reciprocally in the territories of the other all the rights, privileges, exemptions and immunities which are enjoyed by officers of the same grade of the most-favored-nation. As official agents, such officers shall be entitled to the high consideration of all officials, national or local, with whom they have official intercourse in the state which receives them.

The Governments of each of the High Contracting Parties shall furnish free of charge the necessary exequatur of such consular officers of the other as present a regular commission signed by the chief executive of the appointing state and under its great seal; and they shall issue to a subordinate or substitute consular officer duly appointed by an accepted superior consular officer with the approbation of his Government, or by any other competent officer of that Government, such documents as according to the laws of the respective countries shall be requisite for the exercise by the appointee of the consular function. On the exhibition of an exequatur, or other document issued in lieu thereof to such subordinate, such consular officer shall be permitted to enter upon his duties and to enjoy the rights, privileges and immunities granted by this treaty.

ARTICLE XV

Consular officers, nationals of the state by which they are appointed, shall be exempt from arrest except when charged with the commission of offenses locally designated as crimes and subjecting the individual guilty thereof to punishment as a criminal. Such officers shall be exempt from military billetings, and from service of any military or naval, administrative or police character whatsoever.

In criminal cases the attendance at the trial by a consular officer as a witness may be demanded by the prosecution or defense. The demand shall be made with all possible regard for the consular dignity and the duties of the office; and there shall be compliance on the part of the consular officer.

Consular officers shall be subject to the jurisdiction of the courts in the state which receives them in civil cases, subject to the proviso, however, that when the officer is a national of the state which appoints him and is engaged in no private occupation for gain, his

testimony shall be taken orally or in writing at his residence or office and with due regard for his convenience. The officer should, however, voluntarily give his testimony at the trial whenever it is possible to do so without serious interference with his official duties.

ARTICLE XVI

Consular officers, including employees in a consulate, nationals of the State by which they are appointed other than those engaged in private occupations for gain within the State where they exercise their functions shall be exempt from all taxes, National, State, Provincial and Municipal, levied upon their persons or upon their property, except taxes levied on account of the possession or ownership of immovable property situated in, or income derived from property of any kind situated or belonging within the territories of the State within which they exercise their functions. All consular officers and employees, nationals of the State appointing them shall be exempt from the payment of taxes on the salary, fees or wages received by them in compensation for their consular services.

Lands and buildings situated in the territories of either High Contracting Party, of which the other High Contracting Party is the legal or equitable owner and which are used exclusively for governmental purposes by that owner, shall be exempt from taxation of every kind, National, State, Provincial and Municipal, other than assessments levied for services or local public improvements by which the premises are benefited.

ARTICLE XVII

Consular officers may place over the outer door of their respective offices the arms of their State with an appropriate inscription designating the official office. Such officers may also hoist the flag of their country on their offices including those situated in the capitals of the two countries. They may likewise hoist such flag over any boat or vessel employed in the exercise of the consular function.

The consular offices and archives shall at all times be inviolable. They shall under no circumstances be subjected to invasion by any authorities of any character within the country where such offices are located. Nor shall the authorities under any pretext make any examination or seizure of papers or other property deposited within a consular office. Consular offices shall not be used as places of asylum. No consular officer shall be required to produce official archives in court or testify as to their contents.

Upon the death, incapacity, or absence of a consular officer having no subordinate consular officer at his post, secretaries or chancel-

lors, whose official character may have previously been made known to the government of the State where the consular function was exercised, may temporarily exercise the consular function of the deceased or incapacitated or absent consular officer; and while so acting shall enjoy all the rights, prerogatives and immunities granted to the incumbent.

Article XVIII

Consular officers, nationals of the State by which they are appointed, may, within their respective consular districts, address the authorities, National, State, Provincial or Municipal, for the purpose of protecting their countrymen in the enjoyment of their rights accruing by treaty or otherwise. Complaint may be made for the infraction of those rights. Failure upon the part of the proper authorities to grant redress or to accord protection may justify interposition through the diplomatic channel, and in the absence of a diplomatic representative, a consul general or the consular officer stationed at the capital may apply directly to the government of the country.

Article XIX

Consular officers may, in pursuance of the laws of their own country, take, at any appropriate place within their respective districts, the depositions of any occupants of vessels of their own country, or of any national of, or of any person having permanent residence within the territories of, their own country. Such officers may draw up, attest, certify and authenticate unilateral acts, deeds and testamentary dispositions of their countrymen, and also contracts to which a countryman is a party. They may draw up, attest, certify and authenticate written instruments of any kind purporting to express or embody the conveyance or encumbrance of property of any kind within the territory of the State by which such officers are appointed, and unilateral acts, deeds, testamentary dispositions and contracts relating to property situated, or business to be transacted within, the territories of the State by which they are appointed, embracing unilateral acts, deeds, testamentary dispositions or agreements executed solely by nationals of the State within which such officers exercise their functions.

Instruments and documents thus executed and copies and translations thereof, when duly authenticated under his official seal by the consular officer shall be received as evidence in the territories of the contracting parties as original documents or authenticated copies, as the case may be, and shall have the same force and effect

as if drawn by and executed before a notary or other public officer duly authorized in the country by which the consular officer was appointed; provided, always that such documents shall have been drawn and executed in conformity to the laws and regulations of the country where they are designed to take effect.

ARTICLE XX

In case of the death of a national of either High Contracting Party in the territory of the other without having in the territory of his decease any known heirs or testamentary executors by him appointed, the competent local authorities shall at once inform the nearest consular officer of the State of which the deceased was a national of the fact of his death, in order that necessary information may be forwarded to the parties interested.

In case of the death of a national of either of the High Contracting Parties without will or testament, in the territory of the other High Contracting Party, the consular officer of the State of which the deceased was a national and within whose district the deceased made his home at the time of death, shall, so far as the laws of the country permit and pending the appointment of an administrator and until letters of administration have been granted, be deemed qualified to take charge of the property left by the decedent for the preservation and protection of the same. Such consular officer shall have the right to be appointed as administrator within the discretion of a tribunal or other agency controlling the administration of estates provided the laws of the place where the estate is administered so permit.

Whenever a consular officer accepts the office of administrator of the estate of a deceased countryman, he subjects himself as such to the jurisdiction of the tribunal or other agency making the appointment for all necessary purposes to the same extent as a national of the country where he was appointed.

ARTICLE XXI

A consular officer of either High Contracting Party may in behalf of his non-resident countrymen receipt for their distributive shares derived from estates in process of probate or accruing under the provisions of so-called Workmen's Compensation Laws or other like statutes provided he remit any funds so received through the appropriate agencies of his Government to the proper distributees, and provided further that he furnish to the authority or agency making distribution through him reasonable evidence of such remission.

Article XXII

Each of the High Contracting Parties agrees to permit the entry free of all duty and without examination of any kind, of all furniture, equipment and supplies intended for official use in the consular offices of the other, and to extend to such consular officers of the other and their families and suites as are its nationals, the privilege of entry free of duty of their baggage and all other personal property, whether accompanying the officer to his post or imported at any time during his encumbency thereof; provided, nevertheless, that no article, the importation of which is prohibited by the law of either of the High Contracting Parties, may be brought into its territories.

It is understood, however, that this privilege shall not be extended to consular officers who are engaged in any private occupation for gain in the countries to which they are accredited, save with respect to governmental supplies.

Article XXIII

Subject to any limitation or exception hereinabove set forth, or hereafter to be agreed upon, the territories of the High Contracting Parties to which the provisions of this Treaty extend shall be understood to comprise all areas of land, water, and air over which the Parties claim and exercise dominion as sovereign thereof, except the Panama Canal Zone.

The persons described in this Treaty as nationals of a High Contracting Party shall be understood to be persons deemed by such Party to owe permanent allegiance to it.

Article XXIV

Nothing in the present treaty shall be construed to limit or restrict in any way the rights, privileges and advantages accorded to the United States or its nationals by the treaty between the United States and Austria establishing friendly relations, concluded on August 24, 1921.[3]

Article XXV

The present Treaty shall remain in full force for the term of ten years from the date of the exchange of ratifications, on which date it shall begin to take effect in all of its provisions.

If within one year before the expiration of the aforesaid period of ten years neither High Contracting Party notifies to the other

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[3] *Foreign Relations*, 1921, vol. I, p. 274.

an intention of modifying, by change or omission, any of the provisions of any of the articles in this Treaty or of terminating it upon the expiration of the aforesaid period, the Treaty shall remain in full force and effect after the aforesaid period and until one year from such a time as either of the High Contracting Parties shall have notified to the other an intention of modifying or terminating the Treaty.

ARTICLE XXVI

The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Vienna as soon as possible.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the same and have affixed their seals hereto.

Done in duplicate this .... day of ...., 1923.

711.632/14

The Minister in Austria (Washburn) to the Secretary of State

No. 374 VIENNA, *December 18, 1923.*
[Received January 15, 1924.]

SIR: Referring to my despatch No. 361 of the 30th ultimo,[4] and especially to my despatch No. 293 of September 7, 1923,[4] in response to Department's instruction No. 579 of August 3, 1923, enclosing a copy of a proposed Treaty of Friendship, Commerce and Consular Rights between the United States and the Austrian Republic, I now have the honor to submit the following detailed report of the conferences and negotiations at the Foreign Office here, which have been many. I am for the most part contenting myself with comment upon those Articles where amendments have finally been actually suggested. Various other Articles have either in writing or orally been the object of challenge or scrutiny, but the Austrian experts have in the last analysis, as to these provisions, professed themselves as satisfied with the explanations which have been made. I address myself to each Article where changes are proposed, seriatim.

Article I: About this Article the Foreign Office has been especially solicitous. In the first memorandum submitted to me (see my Despatch No. 341 of November 2, 1923)[4] some concern was expressed concerning the interpretation to be attached to the following clause, being lines 3, 4 and 5 of page 2 of Department's draft, to-wit: "submitting themselves to all local laws and regulations duly established."

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[4] Not printed.

The Austrian Federal Government understood this clause as applying to all matters dealt with in the foregoing stipulations of the paragraph and it was suggested that this intent be made quite clear by substituting, in lieu of the language above quoted, the following, to-wit: "submitting themselves in all matters dealt with in this paragraph to all local laws and regulations duly established." Upon my pointing out, however, that the following language in Article I beginning with the fifth line from the bottom, page 1 of the draft: "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", seemed to dispose of this criticism of the Austrian experts, they withdrew their above proposed amendment. I cannot conceive that I am wrong about this, but I should be glad to have the Department confirm my interpretation, in order that I may be authorized to give the desired assurances.

In the above mentioned memorandum, it was further suggested that the Austrian Federal Government would "appreciate" it if the following paragraphs could be added at the end of Article I:

(A) "The nationals of each High Contracting Party, who have their residence in the territories of the other and who should come to be expelled by judgment at law, by police measures legally applied and executed, or by virtue of the police regulations concerning public morals and paupers, shall be received with their families in any case by their native country.

(B) "The High Contracting Parties engage themselves reciprocally to give to indigent nationals of the other who fall ill, become mentally deranged or meet with an accident within their territories the same care, and the same treatment accorded to their own nationals until the repatriation can be effected without prejudice for the person concerned or for others.

(C) "For the costs incurred in such cases and for the burial of dead paupers, no reciprocal compensation shall take place at the charge of State, Province, Municipality or other public funds; merely a private redress being reserved against the person concerned or others who may be under such obligation on application of the competent authority the High Contracting Parties will grant each other reciprocal assistance according to their respective laws in order to assure that these costs be refunded in an equitable measure to those who have incurred them."

The Austrian experts seem to attach considerable importance to these various paragraphs. I finally said that if the word "deportation" were substituted for "repatriation" in the next to the last line of proposed paragraph B, I could see no serious objection in principle to Paragraphs A and B as proposed, and I would so state to the Department. As to proposed paragraph C, however, it seemed to

me to present some difficulties in view of the federal and state powers under our constitutional system, and I stated that I was reluctant to submit it to the Department in the form as drafted. Dr. Richard Schüller (see my Despatch No. 349 of November 16 last),[5] who has since his return from Geneva been devoting some attention to this particular treaty, saw the force of my objection and rather than permit this paragraph C to delay an agreement is content to strike it out altogether. He so informed me at the end of last week. The following language in paragraph C could, I suppose, without serious objection be retained in some form, if it were thought desirable, it being merely declaratory of the present existing rule as I understand it, to-wit:

"For the costs incurred in such cases and for the burial of dead paupers, no reciprocal compensation should take place at the charge of State, Province, Municipality or other public funds; merely a private redress being reserved against the person concerned or others who may be under such obligation."

In a second memorandum recently handed to me by the Federal Chancellery, Department for Foreign Affairs, it is further pointed out with respect to Article I:

"The draft contains the stipulation that the nationals of each Party shall be permitted to own, erect or occupy buildings and to lease lands. The fact that no right to acquire landed property is stipulated and the fact that Article IV of the draft provides for the possibility of a national of one of the Contracting Parties being disqualified by the laws of the country to own a property descended to him by inheritance, justify the supposition that the American Government in consideration of the laws existing in several States of the United States do not intend to grant to Austrian citizens by this Treaty the full right of acquiring land in the same way as American citizens. If this should be the case, the Federal Government would be glad to be informed what interpretation the American Government give to the term 'own buildings'. According to Austrian laws it is impossible to own a building without owning the ground whereon this building is situated, the building being always considered as a pertainance [*sic*] of the ground."

I explained that the system of ground rents obtains with us in some States and a system of long term leases in most of the others, virtually assuring ownership of buildings on land so rented or leased. This was satisfactory. Quoting further from this same memorandum:

"The Federal Government would further point out that the right of foreigners to acquire landed property in Austria depends on the respective foreign country granting to Austrian citizens in this respect national treatment. The exclusion of Austrian citizens from the right to acquire land only in some of the States of the United

[5] Not printed.

States of America would have the consequence that no American citizen could acquire landed property in Austria. The Federal Government would wish to avoid this consequence and proposed therefore that a stipulation be inserted in Article I by which the Contracting Parties grant to the nationals of the other the right to acquire land as far as foreigners are not excluded from such acquisition by the laws of the country. A stipulation of this kind would have as consequence that Austrian nationals would enjoy in the United States of America with respect to the acquisition of landed property a treatment not less favorable than the nationals of any other country, while American citizens would be admitted to the acquisition of land in Austria without any exception."

What is here desired is a formula for reciprocity. As I understand from Dr. Schüller, before a local Court would confirm the right of an American citizen to acquire property in Austria, it would have to be satisfied by some such affirmative declaration like the one above proposed as to corresponding rights of Austrian citizens in the United States. I would therefore suggest the insertion in Article I of a paragraph in the following sense:

"The nationals of each High Contracting Party shall be permitted to acquire land upon the same terms as nationals of the most favored nation."

Finally, with respect to Article I, the Austrian Federal Government proposes to insert in the enumeration of occupations wherein the respective nationals may engage and the purposes for which land may be leased the word "agricultural" just before "commercial" in the sixth line from the bottom on page 1.[6] I therefore submit this suggestion. If the local law in some of the states makes such an amendment inadvisable, I feel certain that Dr. Schüller would consent to delete it. Otherwise, I would recommend that the proposed amendment be accepted. For purposes of comparison I here give Article I, as in the original draft, and also with the proposed amendments. The alterations are indicated by italics:

[Here follows text of article I as in the original draft of the treaty which is printed on page 400.]

ARTICLE I (with alterations)

"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

[6] *Ante*, p. 400 (9th line).

and to lease lands for residential scientific, religious, philanthropic, manufacturing, *agricultural*, 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 each High Contracting Party shall be permitted to acquire land upon the same terms as nationals of the most favored nation.*"

"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 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.

(*A*) "*The nationals of each High Contracting Party, who have their residence in the territories of the other and who should come to be expelled by judgment at law, by police measures legally applied and executed, or by virtue of the police regulations concerning public morals and paupers, shall be received with their families in any case by their native country.*

(*B*) "*The High Contracting Parties engage themselves reciprocally to give to indigent nationals of the other who fall ill, become mentally deranged or meet with an accident within their territories the same care and the same treatment accorded to their own nationals until the deportation can be effected without prejudice for the person concerned or for others.*

(Provisionally suggested without recommendation):

[*C*] "*For the costs incurred in such cases and for the burial of dead paupers, no reciprocal compensation shall take place at the charge of State, Province, Municipality or other public funds; merely a private redress being reserved against the person concerned or others who may be under such obligation?*"

Article V: The Austrian Federal Government, in order to make the stipulations of this Article concerning the exercise of the right of freedom of worship tally with Austrian legislation, in lieu of the phrase "provided their teachings or practices are not contrary to public morals", as found in line 13 of Article V on page 4 of draft,[7] pro-

[7] *Ante*, p. 402 (7th line).

pose to insert the words: "provided their teachings and practices are not inconsistent with public order or public morals, and provided further they conform to all laws and regulations duly established in these territories." I was disposed to challenge the phrase "public order" until it was pointed out to me that this language was taken from Article 63 of the Treaty of St. Germain. In response to my objection that it was, of course, theoretically possible for the benefits sought to be conferred by this Article to be nullified by local laws and regulations, it was answered that Article 63 of the Treaty of St. Germain was inconsistent with any such policy even if it should be contemplated. Article 63 provides:

"Austria undertakes to assure full and complete protection of life and liberty to all inhabitants of Austria without distinction of birth, nationality, language, race or religion.

"All inhabitants of Austria shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals."

This provision of the Treaty is incorporated in the present Austrian Constitution by the following language:

(A) "Art. 149. (1) In addition to this law (the federal constitution) the following laws shall, within the meaning of Article 44, paragraph 1, be regarded as constitutional laws with due consideration for the changes necessitated by this law;

. . . .

"Section V of Part III of the Treaty of St. Germain, of September 10, 1919, *State Law Gazette*, 1920, No. 303."

(See *The New Constitutions of Europe*, page 291, by Howard Lee McBain and Lindsay Rogers, Doubleday, Page & Company, 1922.)

Relevant Austrian laws and regulations which have been called to my attention are the law of May 25, 1868, concerning marriage laws for Catholics; the law of April 9, 1870, concerning marriages of persons who do not belong to any legally recognized church or religious society; law of May 25, 1868, concerning the relation of schools towards the church. The chief law cited in this connection is the State Fundamental Law of April 21, 1867, which contains, *inter alia*, the following provisions:

Article 14. "Full freedom of religion and conscience is guaranteed to everyone.

"The enjoyment of civil and political rights is independent of religious profession; political duties, however, shall not be derogated from by religious profession.

"No one can be forced to perform a religious action or to participate in a religious ceremony, insofar as he is not subject to the authority of another person duly authorized by law.

ARTICLE 15. "Each legally recognized church and religious society has the right to common and public exercise of religion, settles and manages its internal affairs independently; remains in possession and enjoyment of its institutions, foundations and funds designated for religious purposes, education and charity, but, like any other society, is subject to the general laws of the State.

ARTICLE 16. "Adherents of a religious profession, not recognized by law, are allowed to exercise their religion at home, so far as this is not against the law nor injurious to morality.

ARTICLE 17. "Science and its teaching is free. Any citizen who has lawfully shown his qualifications is entitled to establish schools and educational institutions and to give lessons there.

"Teaching at home is not subject to such restriction.

"Religious teaching in the schools is the duty of competent church or religious society.

"The State has the right of supreme management and control with regard to the entire teaching and educational system."

Finally, with respect to this Article the Austrian Federal Government proposed to substitute the word "established" for "reasonable", as found in line 21 of Article V on page 4.[8] I very early sensed that the Austrian experts attached much importance to these provisions and I am certain that the present prelate Chancellor is especially solicitous about Article V. In view of the above mentioned Article 63 of the Treaty of St. Germain and the present state of local law and practice, it has not seemed to me that the proposed alterations can be deemed as vital from our standpoint. The Austrian Government proposed to cancel the succeeding Article VI wholly, but upon this point I have been obdurate. The proposed disposition of Article V is more or less coupled with the proposed disposition of Article VI.

Article V as found in the original draft and with the proposed amendments follows:

[Here follows text of article V as in the original draft treaty printed on page 402.]

ARTICLE V. (with proposed amendments)

"The nationals of each of the High Contracting Parties in the exercise of the right of freedom of worship, within the territories of the other, as hereinabove provided, may, without annoyance or molestation of any kind by reason of their religious belief or otherwise, conduct services either within their own houses or within any appropriate buildings which they may be at liberty to erect and maintain in convenient situations *provided their teachings and practices are not inconsistent with public order or public morals and provided further they conform to all laws and regulations duly established in these territories;* and they may also be permitted to bury their dead according to their religious customs in suitable and con-

[8] *Ante*, p. 402 (10th line).

venient places established and maintained for the purpose, subject to the *established* mortuary and sanitary laws and regulations of the place of burial."

Article VI: With respect to this article the attitude of the Austrian Federal Government is shown in the following excerpt:

"The Government of the United States are certainly aware that there exists a certain diversity between the American and the Austrian point of view with respect to the legal status of persons who have declared their intention to adopt another country's nationality. According to the Austrian law Austrian citizens who have taken out their 'first papers' in the United States remain Austrian citizens, because these first papers do not yet confer upon them the American citizenship. The Federal Government find it difficult to confirm by a treaty the different principles of the United States Government and the practice deriving therefrom. They would therefore propose that Article VI be cancelled."

As above stated, I have consistently taken strong ground against the cancellation of this Article, pointing out with some detail the various reasons why the Government of the United States deemed this provision important as reserving to it a necessary belligerent right. (See my comments with respect to this Article in my despatch No. 293 of September 7, 1923 [9]) I further found when I got below the surface that the chief obstacle in the minds of the Austrian experts against the incorporation of such an Article lay in the fact that the Austrian Government would thereby expose itself to the charge of an unneutral attitude towards friendly nationals with whom we might happen to be at war if it should, by formal treaty stipulation, recognize our right to draft for compulsory military service Austrian nationals, even though the right to draft was conditional. Although it was felt that the reciprocal benefits flowing from such an arrangement as is proposed in Article VI were very unequal, the reasons for the American desire to have such a provision were fully appreciated. I was specifically asked whether any other country had agreed to incorporate any such provision, to which I replied that we were just now inaugurating negotiations with various Powers, with the outcome of which I was not acquainted. Finally, the Austrian Government agreed, either by protocol or exchange of notes at the time of signing the treaty, to waive its right to object to the drafting of Austrian nationals for compulsory military service upon the conditions and within the limitations prescribed by Article VI. This, of course, will eliminate this Article from the proposed treaty, but it will secure to us the substance of what we here desire. I trust the Department will approve of this arrangement. Dr. Schüller has agreed to collaborate with me in drawing up a draft of a

[9] Not printed.

protocol or notes to be exchanged, for the approval of our respective Governments, and I am sure he will presently do so. I can cable this draft later to the Department for its consideration if the time does not permit its transmission by post.

Article VII: The Austrian Federal Government, of course, welcomes the phraseology of the most favored nation provisions as found in this Article. It has no objection to the exceptions carved out in the last paragraph. It proposed, however, that a similar clause be inserted with regard to the special arrangement that might be made between Austria on one side and Czechoslovakia and Hungary on the other under the provisions of Article 222 of the Treaty of St. Germain. The following clause corresponding to the text of Article I, paragraph 2 of the commercial treaty concluded between Austria and France on July 22, 1923, was proposed:

"The United States renounce to claim the special advantages that Austria might grant with respect to custom duties by application of Article 222 of the Treaty of St. Germain, as comprised in Article II of the treaty between the United States and Austria, concluded on August 24th, 1921."[10]

The amendment suggested by me at the end of Article VII is, however, wholly satisfactory to the Austrian Federal Government, to-wit:

"Likewise this article shall not apply to arrangements which may be made by the Austrian Government with the Governments of Hungary, or of the Czechoslovak State within the meaning of Article 222 of the Treaty of St. Germain anything in Article 2 of the Treaty between the United States and Austria establishing Friendly Relations, concluded August 24, 1921, to the contrary notwithstanding."

This provision, or one similar to it, would seem to be unobjectionable under all the circumstances and I therefore recommend its incorporation.

Articles VIII and XIII: The Austrian experts direct attention to the fact that Article VIII stipulates that the nationals and merchandise of each Party shall receive national treatment with regard to "transit duties" whereas the provisions of Article XIII state that "persons and goods in transit shall not be subjected to any transit duty". There would appear to be a certain inconsistency in these two provisions and the "Federal Government would be grateful for an exact interpretation of the comparative meaning of these two different formulas".

Upon this point I ask instructions.

The Austrian Government has no special objection to both stipulations, but in accepting the provision that persons in transit shall

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[10] *Foreign Relations*, 1921, vol. I, p. 274.

not be subjected to any transit duty it interprets the words "transit duty" as not comprising transit visa certificates and the charges collected for the same. Bearing this interpretation in mind, there is, under the Austrian law, no transit duty upon persons and none upon merchandise, except upon monopolies such as tobacco, salt and explosives.

Article XI: The Austrian Federal Government understands that under our municipal law licenses may be required, but it desires to point out that foreign commercial travelers need no license in Austria and that it is sufficient for them to have a certificate issued by the competent authority of either country attesting their character as commercial travelers (Legitimationskarte). No visa of this certificate by an Austrian consul is required. The Austrian experts are prepared, however, to adopt the text as set forth in the draft, except as hereinafter pointed out, adding merely that under the present regulations it is not necessary for American commercial travelers to obtain a visa or license.

The Austrian Trade Law (Gewerbeordnung) is regarded as almost fundamental or organic and it is represented that in order to bring Article XI into conformity with this law two amendments are necessary. I quote:

"According to the Austrian trade-law (Gewerbeordnung #59) commercial travelers are only allowed to take orders for merchandise from merchants, industrials, tradesmen and in general, such persons in whose business articles of the offered kind are employed; they may, for this purpose carry samples, but no merchandise to be sold directly. The stipulation contained in letter *c*) of the draft would therefore be contrary to Austrian legislation; the Federal Government hope for this reason that the Government of the United States will consent to cancel this paragraph".

In lieu of Article XI, Section G, the Austrian Government desires to retain only so much of the text of the original draft as is embraced in the following words, to-wit: "Salesmen who vend directly to the consumer shall not be considered as commercial travelers".

The explanation for this lies in the fact that peddling depends, according to Austrian law, on a special personal concession. Under the Austrian Constitution provincial governments may regulate and prohibit peddling. As a matter of policy, foreigners are not given special personal concessions to peddle because "of our neighbors in the Succession States". From the Austrian standpoint, therefore, peddlers must be excluded from those who enjoy favored nation privileges and the Federal Government represents itself as unable to make any contractual obligations concerning the treatment of peddlers.

As amended, therefore, Section C, would be eliminated altogether, which would, of course, necessitate a relettering of the sections and in lieu of present section G, we would have the following: "Salesmen who vend directly to the consumer shall not be considered commercial travelers."

Article XII: The Austrian Federal Government has no objection to Article XII, section B, as it now stands, if it be understood that the cancellation of the bond is effected in Austria at the port or place of reexportation.

With respect to Article XII, Section C, it is pointed out that according to the Austrian Trade Law above mentioned (Gewerbeordnung), it is forbidden to all commercial travelers, whether Austrian or foreign, to deal with private customers; they may only deal with revenders or with business firms. Accordingly, it is proposed with respect to this section, to strike out everything after the semicolon in line 5 of section C, page 11 [11] of the draft, so as to read:

"Article XII, Section C. It is understood that the traveler will not engage in the sale of other articles than those embraced by his line of business".

I am informed that the principles laid down in the proposed amendments to Articles XI and XII as above noted are embodied in other commercial treaties concluded by Austria, *inter alia*, those with Italy and France of April 28 and June 22, 1923, respectively.

Article XV: The gravamen of the criticism with respect to this Article lies in the following—that the phrase beginning in line 5 of Article XV [12] "offences locally designated as crimes and subjecting the individual guilty thereof to punishment as a criminal" is broad enough to include all grades of public offences which in the common law are classified as treason, felony and misdemeanor. The term "crimes" was also contained in Article II of the Consular Convention between the United States of America and Austria-Hungary of July 7, 1870. In the German text of this Convention the term has been rendered "Verbrechen". According to Austrian law "Verbrechen" is a punishable action which in contrast with "Vergehen" or "Uebertretungen" is threatened with prison ("Kerkerstrafe" instead of "arrest"). I infer from this that "Vergehen or Uebertretungen" is punishable with fine and not with imprisonment. The Austrian experts are apprehensive that the English word "crimes" does not correspond to the Austrian term "Verbrechen", which imports something more closely corresponding to a felony. They are fearful that the use of the word "crimes" in Article XV might have the consequence that Austrian consular officials in the United States could be prosecuted for rela-

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[11] *Ante*, p. 407 (2d line).
[12] *Ante*, p. 408 (3d line).

tively small offences or misdemeanors involving imprisonment, (for example, overspeeding with an automobile or an offence against the sanitary laws such as expectorating in the public highways), whereas American consular officers in Austria enjoy a much greater immunity.

"As the Federal Government suppose that this is not the intention of the American Government, they propose to substitute in Article XV for the words "crimes and criminals" the terms "felonious crimes and felon" which they consider a more adequate rendering of the Austrian term 'Verbrechen' and 'Verbrecher'."

The Austrian Federal Government further points out that according to paragraph 3 of Article XV, "Consular Officers shall be subject to the jurisdiction of the courts in the state which receives them in civil cases" and interprets this stipulation as meaning that the receiving state is the United States of America and not the respective state of the Union wherein the Consular officer may reside.

The Austrian Federal Government in this connection draws attention to Article III, section 2, paragraph 2 of our Constitution providing "that in all cases affecting ambassadors, other public ministers and consuls and those in which a state shall be party, the Supreme Court shall have original jurisdiction." To this I have replied that this provision has been construed not to mean exclusive jurisdiction so as to prevent the vesting of power in any such case in inferior Federal Courts (*U.S.* v. *Ravara*, 2 Dall 297). It is my understanding, however, that a consul can be impleaded only in a Federal Court and that state courts as distinguished from Federal Courts cannot take cognizance of offences charged against him. (Kosloff's Case, and Mr. Fish, Secretary of State, to Count de Colobiano, Moore's *International Law Digest*, Vol. 5, Pgs. 65 and 74 respectively).

It occurs to me in this connection that a United States Attorney would hardly be likely to proceed criminally against a Consul in cases involving misdemeanors without explicit directions from the Attorney General and it is possible that the Austrian Federal Government might be satisfied with this assurance. Upon this point I ask for instructions. As I gather from Dr. Schüller, aside from the apprehension that Austrian consular officers may be prosecuted for petty offences the main thought here is to be quite sure that the treaty does not contemplate any change in the existing procedure. Upon this point I have felt quite at liberty to reassure him.

Article XVI: The Austrian Federal Government interprets the language at the beginning of this article "consular officers including employees in a consulate nationals of the state by which they are appointed other than those engaged in private occupations for gain within the state where they exercise their functions," et cetera, as

relating to "consuls de carrière" as opposed to honorary consuls. To this I replied that under our system there were numerous consular officers, vice consuls and employees who are American nationals and who are not "de carrière" who would undoubtedly come within the purview of this language. This explanation is satisfactory. The desire of the Austrian Government is to avoid being obliged to accord favored nation treatment to nationals of the neighboring or Succession States who seek to obtain commissions as honorary consuls or to exercise consular functions without compensation for the purpose of securing tax exemption.

Furthermore, the Federal Government proposes to strike out the clause beginning in line 13, Article XVI,[13] to-wit: "or income derived from property of any kind situated or belonging within" on the ground that these words are too general and vague. I quote in this connection from the first memorandum submitted to me:

"Should the Government of the United States attach importance to inserting a clause concerning the taxing of income other than that derived from immovable property (and, of course, the income derived from the commercial activity of honorary consular officers) the Federal Government would propose to adopt the following wording:
". . . shall be exempt from all taxes, National, State, Provincial and Municipal, levied upon their persons or upon their property, except taxes levied on account of income derived from any property situated within the territories of the State within which they exercise their functions, according to the laws of that State, upon all foreigners, who have no domicile or residence within that State."

The Federal Government also proposed to substitute for the words "for governmental purposes by that owner" as found in the 7th line from the bottom of Article XVI (2nd paragraph)[14] the words "for purposes of the diplomatic representation of that Party, shall be . . . etc." I pointed out that the paragraph so amended had no logical place in an article dealing with consular exemptions. Dr. Schüller promptly agreed that this was so and said that he would be content if the word "governmental" were eliminated and the words "diplomatic or consular" inserted in lieu thereof, so as to read "for diplomatic or consular purposes." He thought the word "governmental" much too broad. A building owned by the Soviets and used for industrial purposes would, from the Soviet standpoint be "used exclusively for governmental purposes."

As amended, therefore, in the first paragraph of Article XVI the clause beginning in line 13,[13] "or income derived from property of

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[13] *Ante*, p. 409 (7th line).
[14] *Ante*, p. 409 (3d line).

any kind situated or belonging within" would either be suppressed altogether, or in lieu thereof the paragraph would be altered so as to read:

"Consular officers, including employees in a consulate nationals of the State by which they are appointed other than those engaged in private occupations for gain within the State where they exercise their functions shall be exempt from all taxes, National, State, Provincial and Municipal, levied upon their persons or upon their property, except taxes levied on account of *income derived from any property situated within the territories of the State within which they exercise their functions, according to the laws of that State, upon all foreigners, who have no domicile or residence within that State.* All consular officers and employees, nationals of the State appointing them shall be exempt from the payment of taxes on the salary, fees or wages received by them in compensation for their consular services."

The second paragraph would read, as amended:

"Lands and buildings situated in the territories of either High Contracting Party, of which the other High Contracting Party is the legal or equitable owner and which are used exclusively for *diplomatic and consular* purposes by that owner, shall be exempt from taxation of every kind, National, State, Provincial and Municipal, other than assessments levied for services or local public improvements by which the premises are benefited."

Article XVII: The Austrian Federal Government in this connection points out that this Article of the draft:

"stipulates the right for consular officers to place over the outer door of the respective office the arms of their State with an appropriate inscription designating the official character of the office, to hoist the flag of their country on their offices and over any boat or vessel employed in the exercise of the consular function. The Federal Government would appreciate it very much if the American Government would consent to add a clause by which consular titles, arms and flags are protected against illegal use. The Government of the United States are certainly aware of the fact that foreign consular officers in the United States have often been obliged to apply for the aid of the local Authorities against such illegal use, committed, it is true, chiefly by emigrated conationals of the consuls, and that such aid was sometimes denied to them in some States for the lack of legal dispositions to this effect. The Federal Government wish to point out that the laws existing in Austria always give the possibility to proceed against an illegal use of the titles, arms or flags of an American consulate. They hope therefore that the American Government will consent to create a conventional basis for a reciprocal protection of Austrian consular titles, arms and flags in the United States."

I am not informed and I have not the means at hand of determining with certainty whether our existing Federal Statutes can be construed so as to make the illegal use of Austrian consular titles,

arms and flags in the United States an offense. If not, some affirmative legislation would, of course, be necessary to give force and effect to a treaty stipulation of this character. I do not think vital importance is attached to this criticism and, if existing legislation be inadequate, I am of the opinion, which I have been at pains to confirm, that an assurance that such legislation would be recommended would be satisfactory, for the request seems to be wholly reasonable. I have therefore asked for instructions upon this point.

Article XX: As to this Article it is pointed out that paragraph 1:

"obliges the local authorities to inform under certain circumstances the nearest consular officer of the other Contracting Party of the fact of the death of a national. According to the view of the Federal Government it would be in the interest of the nationals of both Parties, if such an obligation were established also for the case that a national were declared by the local authorities to be insane or to be otherwise incompetent. The Federal Government propose therefore to add to paragraph 1 of Article XX the following sentence: '*In the event a national of either of the High Contracting Parties should be declared incompetent or insane like notice should be given to the nearest consular officer.*' "

The above quoted alteration, to-wit, "in the event a national of either of the High Contracting Parties should be declared incompetent or insane like notice should be given to the nearest consular officer" would, therefore, be inserted after the word "interested" in line 15 of the first paragraph of Article XX.[16]

This Article especially has given the Foreign Office here some concern. See in this connection my before-mentioned despatch No. 361.[17] The Austrian Consular Representatives in the United States were instructed several weeks ago to report upon this provision particularly, and Dr. Grünberger tells me that a reply should be received before the end of the year. They were instructed to reduce any objections they may have to a minimum. If any further alterations are here proposed I will advise the Department promptly, but the Foreign Office is optimistic that this will not result in any material delay. The Consular provisions of the treaty are, I understand, the only outstanding features upon which the Foreign Office reserves the right to offer further suggestions.

Article XXII: With respect to this article:

"The Federal Government are of opinion that the immunities of consuls with respect to custom duties, as well as in other respects, could advantageously be resumed in the following text:

'On condition of reciprocity, the Consular officers of either of the High Contracting Parties shall enjoy in the territories of the other all the privileges,

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[16] *Ante*, p. 411 (7th line).

[17] Not printed.

rights and immunities, which the Consular officers of any other country enjoy or may enjoy.

'It is understood that, always on condition of reciprocity, the privileges, rights and immunities extended to the consular officers of one of the Contracting Parties within the territories of the other, shall never *depass* the privileges, rights and immunities granted by the former to the Consular officers of the latter Party.'

["]In case the Government of the United States should attach importance to maintaining Article XXII in the form inserted in the draft, the Federal Government would be prepared to adopt it, provided the following amendments be introduced:

'. . . . the privilege of entry free of duty of their baggage and their used transmigration-goods accompanying the officer to his post;'

"In explanation of this proposed text the Federal Government wish to point out that the Austrian law on custom-duties provides for an immunity of custom duties only for escutcheons, flags, arms, official stamps and official prints of the Consulates, while consular officers and their suite enjoy an immunity for baggage and transmigration-goods only according to the general provisions of the law in this respect."

The Austrian experts in lieu of the language proposed by them, to-wit: "the privilege of entry free of duty of their baggage and their used transmigration goods accompanying the officer to his post" agreed to accept a substitute drafted by me. Article XXII, line 13,[18] strike out after the word "duty" the words "of their baggage and all other personal property whether accompanying the officer to his post or imported at any time during his incumbency thereof," and insert the following: "their personal or household effects actually in use which accompany such consular officers, their families or suites or which arrive shortly thereafter;"

The words "household effects" I borrowed from Par. 1531 of the Tariff Act of 1922, where it is employed in a comprehensive sense. Coupled with the word "personal" ("personal or household effects") the privilege of free entry here guaranteed would appear to be sufficiently broad. The Federal Government first desired, as it will be perceived, that such effects should accompany the officer to his post, but is content to accept the modification contained in the words "which arrive shortly thereafter." I recommend, therefore, that the amendment above proposed be accepted. In the form as amended, therefore, the first paragraph of Article XXII will read:

"Each of the High Contracting Parties agrees to permit the entry free of all duty and without examination of any kind, of all furniture, equipment and supplies intended for official use in the consular offices of the other, and to extend to such consular officers of the other and their families and suites as are its nationals, the

[18] *Ante*, p. 412 (6th line).

privilege of entry free of duty *their personal or household effects actually in use which accompany such consular officers, their families or suites which arrive shortly thereafter*, provided, nevertheless, that no article, the importation of which is prohibited by the law of either of the High Contracting Parties, may be brought into its territories."

There remains for brief discussion at this time the question of the bearing of the system of import licenses now in force in Austria upon such a treaty as is here contemplated. I have asked both the Consul and the Trade Commissioner to supply me with all their available information upon this subject. This system may potentially affect many commodities. In practice it pinches American interests mainly as regards automobiles. See in this connection my despatch No. 363, of November 30, 1923.[19] I am assured at the Foreign Office that this system of import licenses or prohibitions is a temporary weapon mainly employed in retaliation against the hostile tariff legislation of the Succession States and that it will be laid aside with the enactment of a new tariff shortly to be introduced to supplant the present antiquated one now on the statute books. The possibility of inflicting great if not irreparable damage upon the American automobile export trade with Austria by means of such a device is of course very great and pending the receipt of the Departmental instructions in response to my above mentioned despatch No. 363, the matter is giving me some concern. I am not, however, especially disturbed about our failure to receive most favored nation treatment. Both Dr. Grünberger, who was formerly a Sektionschef in the Department of Commerce, and Dr. Schüller have assured me emphatically that they will intervene actively in our behalf and at their suggestion I am submitting a detailed list of applications for import licenses which have either been rejected or which are now pending and unacted upon. The prospects of trade expansion in this direction with Austria's economic recovery seem for the moment to be very bright, judging from what the various agents tell me and I am not sure that being accorded the largest contingent granted to any other country will be adequate. The Trade Adviser has gone so far as to intimate that no treaty which does not guarantee or permit the unrestricted importation of automobiles and commodities generally will "satisfy the Department of Commerce." Nevertheless, I cannot overlook that our present favored nation policy as embodied in Article VII seems clearly to recognize by implication the right of each of the Contracting Parties to impose conditions and prohibitions on the importation of any article providing they be not dis-

[19] Not printed.

criminatory. Compare second paragraph of Article VII in this connection, to-wit:

"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."

I am waiting to see what happens to the pending applications and also for official instructions already requested, before taking this matter up in further detail with the Department.

The above review seems rather formidable at first glance, but I think upon analysis it will be found to present few questions of difficulty and I should be glad to receive the Department's conclusions and instructions in the premises as promptly as may be conveniently possible. I am sure the official disposition here is to push the matter to a conclusion with all convenient speed. I note that the Treaty with Germany has already been concluded. Germany's unilateral favored nation obligations in the Treaty of Versailles extend over a period of five years. Austria's corresponding obligations were for three years and the time limit has expired. Austria's situation is therefore somewhat different and it was unavoidable that the draft submitted by me to the Foreign Office in September last should receive more or less deliberate scrutiny. Moreover, Dr. Schüller's absence in Geneva and the supposed necessity of communicating with the Austrian consular officers in the United States have inevitably contributed to delay.

Just as I am concluding this despatch I am advised by Dr. Schüller that he is now definitely prepared to waive *in toto* Clause C at the end of Article I referred to on pages 3 and 4 of this despatch,[20] so that the Clause provisionally suggested on page 8 [21] may, if the Department elects, be ignored.

I have [etc.] ALBERT H. WASHBURN

[20] See pp. 414–415.
[21] See p. 417.

BELGIUM

CONVENTION AND PROTOCOL BETWEEN THE UNITED STATES AND BELGIUM RELATING TO AMERICAN RIGHTS IN EAST AFRICA, SIGNED ON APRIL 18, 1923, AND JANUARY 21, 1924, RESPECTIVELY[1]

862S.01/16: Telegram

The Secretary of State to the Ambassador in Belgium (Fletcher)

WASHINGTON, *February 2, 1923—7 p.m.*

15. Belgian memorandum of October 10, 1922,[2] concerning "B" mandate, transmitted with your despatch No. 171, of November 22, 1922.[3]

Please address the Minister for Foreign Affairs in the sense of the following:

"My Government has given careful consideration to the views advanced in your Memorandum of October 10, 1922, with regard to the proposed treaty for Ruanda-Urundi and the Belgian mandate for that territory.

It is noted that since my Memorandum of July 15, last,[4] on this matter, Article 8 of the mandate for Ruanda-Urundi has been redrafted, and that the final text of this Article, as confirmed by the Council of the League of Nations on July 20, 1922, is substantially similar to paragraph 1 of Article II of the treaty between the United States and Japan, regarding the former German Islands north of the equator, signed February 11, 1922. My Government will, therefore, not object to the text of Article 8 as defined by the Council of the League of Nations.

Accordingly, my Government is willing to proceed immediately to the signature of the convention.

There is transmitted herewith a draft of the full English text of the proposed convention, the terms of which have been agreed upon in our previous correspondence."

. . . .

In handing the foregoing memorandum to M. Jaspar, please take advantage of that opportunity to say orally that this Government assumes that it is not the intention of the Belgian Government to

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[1] For previous correspondence, see *Foreign Relations*, 1922, vol. I, pp. 623 ff.

[2] Not printed; reproduces substantially the two notes of Sept. 9 and Oct. 14, 1922, from the Belgian Chargé, *Foreign Relations*, vol. I, 1922, pp. 637. 638.

[3] Not printed.

[4] Not printed; see memorandum to the Belgian Legation, July 12, 1922, *Foreign Relations*, 1922, vol. I, p. 637.

deny to American missionaries in the mandated territory of Ruanda-Urundi the enjoyment of privileges heretofore accorded them in that territory.

The Department would be glad if you could find it possible to make necessary arrangements to proceed promptly to the signature of the treaty, and is telegraphing full powers.

For your information. Department has also received reply of French Government, through Embassy, Paris, and instructions similar to those set forth above have been telegraphed to Mr. Herrick.[4a]

HUGHES

862S.01/17 : Telegram

The Ambassador in Belgium (Fletcher) to the Secretary of State

BRUSSELS, *February 3, 1923—10 p.m.*
[Received February 4—5:10 p.m.]

23. Department's telegram 15, February 2, 7 p. m. Have communicated informally to the Minister of Foreign Affairs the substance of Department's telegram received late today. He agreed with Department's suggestions and expressed willingness to sign treaty at our convenience. He also said that, "It was not the intention of the Belgian Government to deny to American missionaries in the mandated territory of Ruanda-Urundi the enjoyment of privileges heretofore accorded them in that territory." . . .

FLETCHER

862S.01/19 : Telegram

The Secretary of State to the Ambassador in Belgium (Fletcher)

WASHINGTON, *December 10, 1923—4 p.m.*

83. Reference my telegram No. 15, February 2, 7 p.m.

The Belgian Ambassador on July 7, 1923 addressed a Note to the Department[5] inquiring whether the change in the boundary of Belgian B Mandate of Ruanda-Urundi agreed upon by the Belgian and British Governments to prevent the dismemberment of the Musinga Kingdom was acceptable to this Government. The Department replied by Note[5] stating that this Government did not perceive any objection to the modification in question, and that at the proper time this Government would be prepared to proceed to the signature of the necessary protocol supplementing the Treaty of April 18, 1923.[5a]

[4a] *Foreign Relations*, 1922, vol. II, p. 153.
[5] Not printed.
[5a] Texts *infra*.

In order to assent to the modifications involved, the Department is now ready to execute a supplementary protocol amendatory of Article I of the Mandate recited in the preamble of the treaty in question. The Department desires, therefore, that you address a Note to the Belgian Government in the following sense:

"In accordance with instructions from my Government, I have the honor to advise Your Excellency that, in order to assent to the modification in the boundary of the Mandate for East Africa in the District of Ruanda Urundi administered by His Majesty the King of the Belgians, the Government of the United States is now prepared to execute a protocol amendatory of the treaty concluded April 18, 1923.

Accordingly, I have the honor to transmit herewith to Your Excellency a draft of the proposed amendatory protocol and to express the hope of my Government that His Majesty's Government will be disposed to proceed to an early conclusion of the amendment."

Please prepare the text of the protocol as follows:

[Here follows the text of the protocol which, after minor modifications suggested by the Belgian Minister for Foreign Affairs and approved by the Department in a telegram to the Ambassador in Belgium, December 31, 1923 (not printed), was appended to the convention on promulgation.]

Since the Congress is now in session, and since it is desired that there should be ratification at an early date, it is hoped that you will be able to effect a prompt conclusion of the amendment. Full powers are being prepared and will be telegraphed to you upon Department's learning of readiness of Belgian Government to sign proposed amendment.

HUGHES

Treaty Series No. 704

Convention and Protocol between the United States of America and Belgium, Signed at Brussels, April 18, 1923, and January 21, 1924 [6]

Whereas by article 119 of the Treaty of Peace signed at Versailles the 28th of June 1919, Germany renounced in favor of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions; and

Whereas by article 22 of the same instrument it was provided that certain territories, which as a result of the war had ceased to be under

[6] In English and French; French text not printed. Ratification advised by the Senate, Mar. 3, 1924; ratified by the President, Mar. 10, 1924; ratified by Belgium, Oct. 20, 1924; ratifications exchanged at Brussels, Nov. 18, 1924; proclaimed by the President, Dec. 6, 1924.

The maps attached to the original convention and protocol are not here reproduced.

the sovereignty of the States which formerly governed them, should be placed under the mandate of another Power, and that the terms of the mandate should be explicitly defined in each case by the Council of the League of Nations; and

Whereas the benefits accruing to the United States under the aforesaid Article 119 of the Treaty of Versailles were confirmed by the Treaty between the United States and Germany, signed on August 25, 1921, to restore friendly relations between the two nations; and

Whereas four of the Principal Allied and Associated Powers, to wit: the British Empire, France, Italy and Japan, agreed that the King of the Belgians should exercise the mandate for part of the former Colony of German East Africa; and

Whereas the terms of the said mandate have been defined by the Council of the League of Nations as follows:

"(Quote) Article 1

"The territory over which a mandate is conferred upon His Majesty "the King of the Belgians (hereinafter called the Mandatory) com- "prises that part of the territory of the former colony of German "East Africa situated to the west of the following line:

"From the point where the frontier between the Uganda Pro- "tectorate and German East Africa cuts the River Mavumba, a "straight line in a south-easterly direction to point 1640, about "15 kilomètres south-south-west of Mount Gabiro;

"Thence a straight line in a southerly direction to the north shore "of Lake Mohazi, where it terminates at the confluence of a river "situated about 2½ kilometres west of the confluence of the River "Msilala;

"If the trace of the railway on the west of the River Kagera be- "tween Bugufi and Uganda approaches within 16 kilometres of the "line defined above, the boundary will be carried to the west, follow- "ing a minimum distance of 16 kilometres from the trace, without, "however, passing to the west of the straight line joining the termi- "nal point on Lake Mohazi and the top of Mount Kivisa (point "2100), situated on the Uganda-German East Africa frontier about "5 kilometres south-west of the point where the River Mavumba "cuts this frontier;

"Thence a line south-eastwards to meet the southern shore of Lake "Mohazi;

"Thence the watershed between the Taruka and the Mkarange "rivers and continuing southwards to the north-eastern end of Lake "Mugesera;

"Thence the median line of this lake and continuing southwards "across Lake Ssake to meet the Kagera;

"Thence the course of the Kagera downstream to meet the western "boundary of Bugufi;

"Thence this boundary to its junction with the eastern boundary "of Urundi;

"Thence the eastern and southern boundary of Urundi to Lake "Tanganyika.

"The frontier described above is shown on the attached British "1:1.000.000 map G. S. G. S. 2932. The boundaries of Bugufi and "Urundi are drawn as shown in the Deutscher Kolonialatlas (Die-"trich-Reimer) scale 1:1.000.000 dated 1906.

"ARTICLE 2

"A Boundary Commission shall be appointed by His Majesty the King of the Belgians and His Britannic Majesty to trace on the spot "the line described in Article 1 above.

"In case any dispute should arise in connection with the work of "these Commissioners, the question shall be referred to the Council "of the League of Nations, whose decision shall be final.

"The final report by the Boundary Commission shall give the pre-"cise description of this Boundary as actually demarcated on the "ground; the necessary maps shall be annexed thereto and signed by "the Commissioners. The report, with its annexes, shall be made in "triplicate; one copy shall be deposited in the archives of the League "of Nations, one shall be kept by the Government of His Majesty the "King of the Belgians and one by the Government of His Britannic "Majesty.

"ARTICLE 3

"The Mandatory shall be responsible for the peace, order and good "government of the territory, and shall undertake to promote to the "utmost the material and moral well-being and the social progress of its inhabitants.

"ARTICLE 4

"The Mandatory shall not establish any military or naval bases, "nor erect any fortifications, nor organise any native military force "in the territory except for local police purposes and for the defence "of the territory.

"ARTICLE 5

"The Mandatory:

"1) shall provide for the eventual emancipation of all slaves, and "for as speedy an elimination of domestic and other slavery as social "conditions will allow;

"2) shall suppress all forms of slave trade;

"3) shall prohibit all forms of forced or compulsory labour, ex-"cept for public works and essential services, and then only in return "for adequate remuneration;

"4) shall protect the natives from measures of fraud and force by "the careful supervision of labour contracts and the recruiting of "labour;

"5) shall exercise a strict control over the traffic in arms and am-"munition and the sale of spirituous liquors.

"ARTICLE 6

"In the framing of laws relating to the holding or transfer of "land, the Mandatory shall take into consideration native laws and

"customs, and shall respect the rights and safeguard the interests of "the native population.

"No native land may be transferred, except between natives, with- "out the previous consent of the public authorities. No real rights "over native land in favour of non-natives may be created except "with the same consent.

"The Mandatory will promulgate strict regulations against usury.

"ARTICLE 7

"The Mandatory shall secure to all nationals of States Members "of the League of Nations the same rights as are enjoyed by his "own nationals in respect of entry into and residence in the territory, "the protection afforded to their person and property, the acquisition "of property, movable and immovable, and the exercise of their pro- "fession or trade, subject only to the requirements of public order, "and on condition of compliance with the local law.

"Further, the Mandatory shall ensure to all nationals of States "Members of the League of Nations, on the same footing as to his "own nationals, freedom of transit and navigation, and complete eco- "nomic, commercial and industrial equality; provided that the "Mandatory shall be free to organise public works and essential "services on such terms and conditions as he thinks just.

"Concessions for the development of the natural resources of the "territory shall be granted by the Mandatory without distinction on "grounds of nationality between the nationals of all States Members "of the League of Nations, but on such conditions as will maintain "intact the authority of the local Government.

"Concessions having the character of a general monopoly shall not "be granted. This provision does not affect the right of the Manda- "tory to create monopolies of a purely fiscal character in the interest "of the territory under mandate, and in order to provide the terri- "tory with fiscal resources which seem best suited to the local require- "ments; or, in certain cases, to carry out the development of natural "resources, either directly by the State, or by a controlled agency, "provided that there shall result therefrom no monopoly of the nat- "ural resources for the benefit of the Mandatory or his nationals, di- "rectly or indirectly, nor any preferential advantage which shall be "inconsistent with the economic, commercial and industrial equality "hereinbefore guaranteed.

" The rights conferred by this article extend equally to companies " and associations organized in accordance with the law of any of " the Members of the League of Nations, subject only to the require- " ments of public order, and on condition of compliance with the " local law.

"ARTICLE 8

" The Mandatory shall ensure in the territory complete freedom " of conscience and the free exercise of all forms of worship which " are consonant with public order and morality; missionaries who are " nationals of States Members of the League of Nations shall be " free to enter the territory and to travel and reside therein, to " acquire and possess property, to erect religious buildings and to " open schools throughout the territory; it being understood, how-

" ever, that the Mandatory shall have the right to exercise such
" control as may be necessary for the maintenance of public order
" and good government, and to take all measures required for such
" control.

"ARTICLE 9

" The Mandatory shall apply to the territory any general inter-
" national conventions applicable to contiguous territories.

"ARTICLE 10

" The Mandatory shall have full powers of administration and
" legislation in the area subject to the mandate: this area shall be
" administered in accordance with the laws of the Mandatory as an
" integral part of his territory and subject to the preceding
" provisions.

" The Mandatory shall therefore be at liberty to apply his laws to
" the territory under the mandate subject to the modifications re-
" quired by local conditions, and to constitute the territory into a
" customs, fiscal or administrative union or federation with the adja-
" cent possessions under his own sovereignty or control; provided
" always that the measures adopted to that end do not infringe the
" provisions of this mandate.

"ARTICLE 11

" The Mandatory shall make to the Council of the League of
" Nations an annual report to the satisfaction of the Council. This
" report shall contain full information concerning the measures taken
" to apply the provisions of the present mandate.

"ARTICLE 12

" The consent of the Council of the League of Nations is required
" for any modification of the terms of this mandate.

"ARTICLE 13

" The Mandatory agrees that, if any dispute whatever should arise
" between the Mandatory and another Member of the League of
" Nations relating to the interpretation or the application of the
" provisions of the mandate, such dispute, if it cannot be settled by
" negotiation, shall be submitted to the Permanent Court of Interna-
" tional Justice provided for by Article 14 of the Covenant of the
" League of Nations (Unquote);"

Whereas the United States of America by participating in the war against Germany contributed to her defeat and to the renunciation of her rights and titles over her oversea possessions, but has not ratified the Treaty of Versailles; and

Whereas the Government of the United States and the Government of the King of the Belgians desire to reach a definite understanding with regard to the rights of the two Governments and their

respective nationals in the aforesaid former Colony of German East Africa under mandate to the King of the Belgians;

The President of the United States of America and His Majesty the King of the Belgians have decided to conclude a Convention to this effect and have nominated as their plenipotentiaries:

His Excellency the President of the United States of America,

Mr Benjamin Thaw, Junior, chargé d'affaires ad interim of the United States of America at Brussels, and

His Majesty the King of the Belgians:

Monsieur Henri Jaspar, His Minister for Foreign Affairs,

Who, after having communicated to each other their Full Powers, found in good and due form, have agreed on the following provisions:

Article 1

Subject to the provisions of the present Convention, the United States consents to the administration by the Government of the King of the Belgians, pursuant to the aforesaid mandate, of the former German territory, described in Article 1 of the mandate.

Article 2

The United States and its nationals shall have and enjoy all the rights and benefits secured under the terms of Articles 3, 4, 5, 6, 7, 8, 9, and 10 of the mandate to members of the League of Nations and their nationals, notwithstanding the fact that the United States is not a member of the League of Nations.

Article 3

Vested American property rights in the mandated territory shall be respected and in no way impaired.

Article 4

A duplicate of the annual report to be made by the mandatory under article 11 of the mandate shall be furnished to the United States.

Article 5

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.

Article 6

The extradition Treaties and Conventions in force between the United States and Belgium shall apply to the mandated territory.

Article 7

The present Convention shall be ratified in accordance with the respective constitutional methods of the High Contracting Parties. The ratifications shall be exchanged in Brussels as soon as practicable. It shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed the present treaty and have affixed thereto the seal of their arms.

Done in duplicate at Brussels, this 18th day of April 1923.

[seal] Benjamin Thaw, Jr. [seal] Hen. Jaspar

And Whereas a Protocol amendatory of the said Treaty was signed by the Plenipotentiaries of the two Governments at Brussels on the twenty-first day of January, one thousand nine hundred and twenty-four, the original of which Protocol, in the English and French languages, is word for word as follows:

PROTOCOL

Whereas, the boundary of the mandate conferred upon His Majesty the King of the Belgians over the territory of Ruanda-Urundi and recited in the preamble of the Treaty concerning the mandate concluded between the United States of America and Belgium on April 18, 1923, has been modified by a common accord between the British and Belgian Governments with the approval given by the Council of the League of Nations at its meeting of the 31 of August, 1923, in order better to safeguard the interests of the native populations; and,

Whereas, by article V of the Treaty referred to above nothing contained in the Treaty shall be affected by any modification which may be made in the terms of the mandate as recited in the Treaty unless such modification shall have been assented to by the United States of America; and,

Whereas, the Government of the United States of America perceives no objection to the modification in question,

The Governments of the United States of America and Belgium have resolved to amend the Treaty signed on April 18, 1923, between the two countries and have named for this purpose their respective plenipotentiaries

The President of the United States of America,
 Mr. Henry P. Fletcher, Ambassador of the United States of America at Brussels,

His Majesty the King of the Belgians,
 Mr. Henri Jaspar, His Minister of Foreign Affairs;

who, after having communicated each to the other their full powers found in good and due form, have agreed to the following

amendatory articles to be taken as part of the Treaty signed April 18, 1923:

ARTICLE 1

Article 1 of the mandate recited in the preamble of the Treaty signed April 18, 1923, shall be replaced by the following:

" The territory over which a mandate is conferred upon His
" Majesty the King of the Belgians (hereinafter called the Manda-
" tory) comprises that part of the territory of the former colony
" of German East Africa situated to the west of the following line:
" The mid-stream of the Kagera River from the Uganda boundary
" to the point where the Kagera River meets the western boundary of
" Bugufi, thence this boundary to its junction with the eastern bound-
" ary of Urundi, thence the eastern and southern boundary of Urundi
" to Lake Tanganyka.
" The frontier described above is shown on the attached British map
" GSGS Number 2932–A, on the scale of 1: 1.000.000.".

ARTICLE 2

The present protocol shall be ratified in accordance with the constitutional methods of the high contracting parties. The ratifications shall be exchanged in Brussels on the same day as those of the Treaty of April 18, 1923. It shall take effect on the date of exchange of ratifications.

In witness whereof the respective plenipotentiaries have signed the present protocol and have affixed thereto the seal of their arms.

Done in duplicate at Brussels, this twenty-first day of January, one thousand nine hundred and twenty four.

[SEAL] HENRY P. FLETCHER [SEAL] HENRI JASPAR

BOLIVIA

RELUCTANCE OF BOLIVIA TO FULFILL THE CONTRACT OF 1922 FOR A LOAN FROM AMERICAN BANKERS[1]

824.51/170a : Telegram

The Secretary of State to the Minister in Bolivia (Cottrell)

WASHINGTON, *March 26, 1923—4 p.m.*

4. Representatives of Equitable Trust called at the Department today and informed it that they had received advices from La Paz to the effect that a special commission has been appointed to examine into the recent loan and that its report will be published Wednesday or Thursday containing various allegations as to the illegality of the loan, and that it is probable that the report will be published in full in the Bolivian newspapers. Bankers understand that the attack on the loan is purely a matter of Bolivian internal politics. They state that their attorneys studied the loan law and contracts carefully and are fully satisfied as to the legality of the loan. Bankers fear that if a report such as mentioned above is published it will very adversely affect the market in this country for this loan in particular, causing serious losses to the holders of recent issue, and will also very seriously affect Bolivia's general crédit; it might even make it impossible to issue the further installments authorized by the loan law and contract. The bankers feel very much alarmed at the situation and have expressed the earnest hope that no report attacking the legality of the loan will be published.

The above is for your information. You may, however, in your discretion orally and informally bring the bankers' views in the matter to the attention of the President or Government of Bolivia.

HUGHES

824.51/174 : Telegram

The Minister in Bolivia (Cottrell) to the Secretary of State

LA PAZ, *April 3, 1923—12 noon.*
[Received 11:30 p.m.]

18. Referring to the Department's telegram of March 26, 4 p. m. Saturday evening I had an extended interview with the Minister for

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[1] For previous correspondence on loan, see *Foreign Relations*, 1922, vol. I, pp. 640 ff.

Foreign Affairs at his invitation when he said that President had instructed him to ask me to lay the following facts before the Department of State with the hope that it would use its good offices and influence with the New York bankers in behalf of the Bolivian Government in the following premises: That when the law was enacted and the contract made for the loan it was the sincere purpose and belief of the President and Congress that the bankers would loan additional two millions for completion of the Potosi-Sucre Railroad immediately after January 1st; that the President had promised residents of departments of Chuchisaca and Potosi in good faith that this sum would be forthcoming but now owing to different interpretation of option clause by bankers and failure to get additional loan the President is greatly embarrassed with his own people who in Sucre and Potosi are making direct issues against him an instance of bad faith when he is not to blame. The President is more interested in this improvement than any other administrative plan and can not easily negotiate loan owing to terms of contract and sincerely hopes the Department of State can see its way clear to communicate the foregoing to the bankers. Without comment I promised to communicate his views but took occasion to say that I had learned from Cahill now representing bankers here that the new power of attorney had not been issued to anyone to sign permanent bonds as required by Equitable Trust Company repeatedly and that I understood that unless this was granted at once bonds might depreciate and great loss result to bondholders in the United States and that before bankers could consider a further loan it would apparently be necessary that this power of attorney be issued to protect bonds already issued and sold. He gave President's views of illegality of certain clauses of contract as the reason for failure to grant power of attorney.

COTTRELL

824.51/174a : Telegram

The Secretary of State to the Minister in Bolivia (Cottrell)

WASHINGTON, *April 3, 1923—1 p.m.*

6. Representatives of Equitable Trust have informed the Department that, although they were advised that the Government of Bolivia was taking steps to prepare a power of attorney authorizing the Bolivian Minister in Washington to sign the definitive bonds which are to be exchanged for the temporary bonds of the recent loan, they have now received a cablegram stating that the President of Bolivia has declined for the present to grant the power of attorney. The bankers state that the failure to appoint a delegate to sign the definitive bonds may become a matter of very serious consequence to the holders of the temporary bonds, that the second installment

of interest is due on May 1, 1923, and that if the definitive bonds are not issued prior to that time the bondholders will be greatly inconvenienced in collecting their interest, and, furthermore, that the failure to issue the definitive bonds prior to the next interest payment date, as contemplated by the Trust contract, is very likely to cause comment and discussion in banking circles and bring about depression in the market value of these bonds and also may very seriously affect Bolivia's general credit.

Consult bankers' representatives and, in your discretion, orally and informally bring the bankers' views in the matter to the attention of the President of Bolivia and express the hope of this Government that the question may be satisfactorily adjusted without loss or undue inconvenience to the holders of the bonds in this country.

HUGHES

824.51/175 : Telegram

The Minister in Bolivia (Cottrell) to the Secretary of State

LA PAZ, *April 6, 1923—5 p.m.*
[Received 6:45 p.m.]

20. Referring to the Department's telegram of April 3, 1 p.m. Accompanied by Secretary of Legation Flack had very agreeable conference with the President this afternoon setting forth points in Department's telegram. President said he had contract and all facts before him and knew the situation and was glad to have the views of the bankers.

COTTRELL

824.51/174 : Telegram

The Secretary of State to the Minister in Bolivia (Cottrell)

[Paraphrase]

WASHINGTON, *April 9, 1923—3 p.m.*

7. Your telegram No. 18, April 3, noon.

. . . .

2. The Department understands that the loan contract was signed after it had been telegraphed to La Paz and had been definitely approved by the Bolivian Government with a full knowledge of its contents. The bankers have stated that the loan was not made until after a long and careful consideration of all points regarding its legality had been made, and that absolutely no doubt exists on either their part or that of their attorneys that there is any illegality. Setting aside the question of the legality of the loan, the Department would direct attention to the fact that the Bolivian Government, after having

accepted and used the proceeds of the loan, would seem to be estopped from asserting now that the loan was illegal. The bankers appear to have conformed strictly to their obligations under the contract, and for the Government of Bolivia to fail to sign the definitive bonds after having issued temporary ones would be not only regrettable departure from its agreement, but ruinous as well to Bolivia's general credit, as this course would jeopard the investments made by seven or eight thousand people in the United States who are relying on the Bolivian Government's good faith, and would create a situation in which it would be impossible for the bankers to sell further issues for the Potosi-Sucre Railway and other purposes as provided in the trust contract, should Bolivia later fulfil the precedent conditions therein stipulated.

3. You are instructed to seek an interview immediately with the President and communicate to him the views of this Government as set forth in the foregoing statements, and impress upon him the very grave concern which this Government feels as a result of his refusal to sign the definitive bonds. You will say that this Government, speaking as a sincere well-wisher of Bolivia, recommends most earnestly and strongly that he carry out immediately the terms of the contract, and that the collapse of Bolivia's credit would appear to be the only alternative. Impress upon him the fact that should the bankers not be in a position to deliver the definitive bonds prior to May 1, the next date of interest due, those bonds would depreciate greatly and serious losses would follow to a very numerous body of American investors who purchased them confiding in the good faith and integrity of the Bolivian Government. In addition there is reason to fear that should the value of Bolivian securities fall, it might even be impossible for a considerable length of time for Bolivia to contract other foreign loans, at least on any favorable terms.

4. The Department feels that the objections raised by the Bolivian Government are for political purposes, and that the real difficulty lies in certain local elements having been led to believe that the construction of the Potosi-Sucre Railway was provided for definitely and unconditionally in the loan contract, as is not the case.

HUGHES

824.51/179 : Telegram

The Minister in Bolivia (Cottrell) to the Secretary of State

LA PAZ, *April 10, 1923—10 a.m.*
[Received 2:20 p.m.]

21. Referring to my cable of April 3, noon. The President has named Jorge Saenz, Manager of the Bank of the Nation, and José

Mendieta, Manager of the National Bank, a Commission with full powers to go to New York to arrange modifications in loan contract. They leave April 26th.

COTTRELL

824.51/184 : Telegram

The Minister in Bolivia (Cottrell) to the Secretary of State

LA PAZ, *April 18, 1923—8 a.m.*
[Received 3:10 p.m.]

23. Referring to my cable of April 16, 4 p.m.[2] President replied yesterday afternoon to the memorandum of Department's views left with him. Translation follows:

"Reply of the Bolivian Government to the memorandum presented by the Minister of the United States.

The report given by the Equitable Trust Company of New York to the Department of State is incorrect when it states that the loan agreed upon with the Government of Bolivia was signed by the latter with a full knowledge of the conditions of the contract. The Bolivian consul in New York sent cablegram on May 27th in which the fundamental features of the loan contract were expressed very briefly. The Government in a cable of the 29th of the same month made observations on many of the points ordering the consul to demand their modification. The Government authorized the signature of the contract under pressure of its not being effected if there should be delay but always on the understanding that it agreed not only with the laws dictated by the Bolivian Congress to authorize this operation but also with the observations which the Government made to the features briefly communicated by the consul in the cable referred to of May 27th.

The result however has been that the Government has only actually known the contract in all its details 80 days after it was signed in New York and thereupon immediately raised definite objections in a note sent to the consul on September 20th, 1922.

This contract in all of its details, which were not known to the Government as the bankers state, was nothing else than a repetition ad pedem litere [*ad lites pendentes*] of a draft of a loan contract which the same bankers had submitted to the Government on March 17th, 1922. That draft after having been considered by a commission of bankers of this country was rejected *in limine* by cablegram of March 29th addressed to the Equitable Trust Company which contained the following: 'It is my duty to inform you that after having studied carefully the proposal presented by the bankers on the 17th instant to Messrs. Rivero and Ballívián for the loan of [$]33,000,000 and which has been communicated to us, the Government has decided

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[2] Not printed.

not to accept this proposal for the reason that it was too onerous to the interests of the nation'.

[Notwithstanding this the bankers made the Bolivian consul sign the same contract.

In addition the tenor of the contract signed in New York is in direct contradiction with the laws of February 10th and May 24th, 1922,[3] which contained the conditions authorized for the contracting of the loan in New York. The law of May 24th was passed by the Bolivian Congress for this express purpose accepting the text forwarded by the lawyer of the bankers. Notwithstanding this the loan contract has failed to respect any of the clauses of the law in question of May 24th for it has included securities not contemplated in that law as well as conditions not authorized in it; so that the bankers have acted contrary to the text of the same law they themselves asked for. The power of attorney sent by the Bolivian Government to the Consul states textually that the contract must be in agreement with the provisions of the law enacted by the Bolivian Congress.] [4]

The Bolivian Government wishes to fulfill strictly its international obligations for the good of the credit of the nation and it has been doing so with all of its international agreements but in the case of the loan contracted in New York it is necessary to secure the modifications which the Government seeks and to make them comply with the laws referred to for the contract has not only overstepped and infringed on those laws but has raised a very great clamor in this country against its iniquitous conditions.

The Government is not only morally responsible to the country besides its legal responsibility [*being legally responsible?*] before Congress, but also a contract drawn with the provisions which the bankers of New York demand involves a great loss of prestige for the North American bankers, who treat the South American countries which have recourse to the markets of the United States, because of their requirements, with the most unyielding inflexibility.

The Bolivian Government is ready to fulfill its obligations and for this reason would be ready to sign the bonds immediately but it wishes a formal promise to be made by the bankers before the Department of State to the effect that they will accede to the requests of the Bolivian Government for the rectification of the contract to make it conform to the tenor of the laws which authorized it and it petitions the Department of State that it interpose its good offices with the Equitable Trust Company so that it may accept the modifications asked for. Contingent upon this promise the Government would authorize immediately the signature of the bonds. La Paz, April 17, 1923. B. Saavedra."

Cottrell

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[3] Not printed.

[4] The two paragraphs in brackets, inadvertently omitted from the telegram as sent, were transmitted on Apr. 19.

824.51/184 : Telegram

The Secretary of State to the Minister in Bolivia (Cottrell)

WASHINGTON, *April 25, 1923—6 p.m.*

8. Your 23, April 18, 8 a.m.

At their request you are authorized to transmit to the President the following statement submitted by Stifel-Nicolaus Investment Company, Spencer Trask and Company, and the Equitable Trust Company of New York regarding the memorandum presented by the Bolivian Government to you on April 17:

"The Memorandum of the Bolivian Government contains certain statements of fact which are at variance with the record and sets forth a legal opinion which the Bankers regard as unfounded. The statements of fact may be briefly summarized as follows:

(1) That the Trust Contract of May 31, 1922 was 'a repetition ad pedem litere [*ad lites pendentes*] of a draft of a Loan Contract which the same Bankers had submitted to the Government on March 17, 1922' and which the Bolivian Government had promptly rejected.

(2) That the Bolivian Government was not informed as to the provisions of the Trust Contract until 80 days after it had been signed.

The legal opinion referred to may be summarized as follows: That the Trust Contract is in conflict with the laws of February 10th and March [*May*] 24, 1922, and therefore void.

In answer to the above, the Bankers respectfully submit the following statement:

(1) As regards the identity of the March proposition and the May contract:

The proposition submitted to the Bolivian Government on March 17, 1922 differs radically from the contract as finally concluded. A copy of the March 17, 1922 proposition in the form of a 'Financial Plan' dated March 16, 1922, and of a transmitting letter, dated March 17, 1922, addressed to Messrs. Ramón Rivero and Adolfo Ballivian (Fiscal Agents of the Bolivian Government for the purpose of the loan) is herewith submitted. A comparison of this proposition with the Trust Contract and the Bond Purchase Contract of May 31, 1922, discloses notable differences, among which may be mentioned the following:

(*a*) The March proposition provides that the Permanent Fiscal Commission [5] shall itself collect the revenues pledged as security. The May Contract leaves the collection of those revenues in the hands of Bolivian officials.

(*b*) The March proposition provides that the bonds shall be callable at 110 and shall be purchased through the Sinking Fund at the

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[5] By a law of March 24, 1922, a commission of three members, all appointed by the President of Bolivia, was established to act as Financial Advisers to the Republic. Two members were nominated by the bankers, the third by the President.

same figure, except when available in the market at lower prices. The May Contract reduces the above figure to 105.

(*c*) The March proposition prohibits any further external loans by the Government for 15 years. The May Contract permits such loans after December 5, 1924.

(*d*) The March proposition contains an 'offer to purchase the bonds at 90, less 2½ per cent commission,[']' equivalent to 87½ net. Under the May Contract the Bankers paid 92.

In the face of the above differences, the Bankers fail to understand how the Bolivian Government can claim that the two propositions are identical.

(2) As regards the information which the Bolivian Government had of the May Contract:

The Bolivian Memorandum admits that 'the Bolivian Consul in New York sent a cablegram on May 27th in which the fundamental features of the Loan Contract were expressed', but adds that this was done 'very briefly.' A copy of the 'May 27th' cablegram is submitted herewith.[6] (The correct date is May 26th).

The Department is requested to examine this cablegram and the replying cablegram of the Bolivian Government, dated May 29th, of which a copy is also submitted herewith.[6] No one reading these two cablegrams can fail to be convinced that the Bolivian Government was fully informed regarding every substantial provision of the Trust Contract, and that the statement to the contrary contained in its Memorandum of April 17th last is not in accord with the facts. There are other statements and other documents which could be adduced in support of the Bankers' contention, but the two cablegrams above referred to seem entirely sufficient. In this connection it may not be improper to point out that the negotiations for the loan covered a period of many months, during which time the Bolivian Government had the benefit of expert advice, not only from the Consul General who finally signed the Contract, but from Mr. Rivero, the Minister of Finance, and Mr. Ballivian, the Bolivian Minister to Washington; and that before closing the loan it retained as its special financial adviser, Mr. Eli H. Bernheim, President of the Columbia Bank of New York City. The Bankers assume that Mr. Bernheim kept the Bolivian Government fully advised. The final contracts were submitted to Mr. Bernheim before execution and were approved by him. It should be added that after the terms of the loan had been practically settled, but before the Contract was signed Mr. Rivero returned to Bolivia and personally reported to his Government. It was not until after such report that the President authorized the signing of the contracts.

As regards the legality of the loan: This of course is a question of opinion and involves issues regarding which no final determination can be had at this time. It should be pointed out, however, that the Bolivian Government was represented in the negotiations and in the final contract by eminent counsel, namely, by the Honorable Samuel Abbott Maginnis, former United States Minister to Bolivia, and by Mr. S. M. Stroock of the New York Bar, and that those experts fully agreed with the Bankers' counsel that the contracts as signed were

[6] Not found in Department files.

in accord with the enabling acts of the Bolivian Congress and were legal in every respect.

The Memorandum of the Bolivian Government suggests that the Bankers agree to make certain changes in the Trust Contract and asks that they make a 'formal promise' before the Department 'to the effect that they will accede to the request of the Bolivian Government for the rectification of the contract to make it conform to the tenor of the laws which authorize it.'"

The Bankers reply:

["] First, that the Contract already conforms to those laws; second, that they have no power to change the contract in any respect; and third, that even had they such power, they would be unwilling to take upon themselves a commitment so wholly indefinite as that which the Bolivian Government requests.

The one thing that the Bolivian Government seems not to comprehend is that the Trust Contract cannot be changed except with the unanimous consent of all bondholders—of whom there are approximately 8,000—and that it is impracticable to obtain such consent. The objection by a single bondholder or failure on his part to acquiesce would suffice to prevent any change. Furthermore, if a Committee of bondholders should be formed to deal with the situation, the mere appointment of such a Committee would advertise the fact that the Bolivian Government had already defaulted under its contract, and the credit of the country would thereby be seriously affected. So far as the Bankers can see, there is nothing that they can do, and the Bolivian Government is therefore faced with a situation where it must elect either to live up to its contract or to repudiate it. It is hardly necessary to point out what the results of repudiation would be.

For the moment the most important matter is the signing of the definitive bonds. Already innumerable inquiries have been received from bondholders regarding the exchange of temporary for definitive bonds; and the Bankers feel that those inquiries should be answered. They have accordingly prepared a statement, copy of which is enclosed herewith, which they propose to use in that connection."

The Bankers have informed the Department that Bolivian Government has copies of all enclosures mentioned above except the last one which reads as follows:

"The definitive bonds have been prepared and are now awaiting the signature of a special delegate of the Republic to be appointed for such purpose. The Consul General, originally appointed as such delegate is no longer in office; and no new delegate has yet been appointed. The delay is due to certain misunderstandings which have arisen between the President of the Republic of Bolivia and the Trustee with reference to the meaning of those provisions of the Trust Agreement which deal with the issue of additional bonds; to the desire of the President to obtain modifications of the Trust Contract; and to criticism of some of the provisions of the loan. The Bankers entertain no doubt that the Government intends to pay the interest and sinking fund of the loan; and remittances to cover the May in-

stallment are in hand. Apparently, however, the President seems to believe that by delaying the exchange of definitive bonds for temporary bonds he may succeed in obtaining the modifications which he desires. The Bankers have sent representatives to La Paz to clear up the misunderstandings which have arisen and to impress upon the President that the trust contract under which the bonds were issued is an instrument that cannot legally be modified."

At the same time that you transmit the above you will again earnestly impress upon the President the seriousness of the present situation and the very great harm to Bolivia's credit, and to the value of the securities bought by American investors trusting in the good faith of the Bolivian Government, should he persist in refusing to authorize the signature of the definitive bonds. You may also renew the representations authorized in section three of the Department's April 9, 3 p.m.

HUGHES

824.51/190 : Telegram

The Minister in Bolivia (Cottrell) to the Secretary of State

LA PAZ, *May 2, 1923—3 p.m.*
[Received 11:30 p.m.]

26. Bankers' representatives today presented to the President a proposition that he grant provisional power of attorney without prejudice to Bolivia's position in the proposed discussions in New York with the President's committee. He appeared favorably disposed and it is probable that power of attorney will be adjusted. Committee expects to leave for the United States next week. The Bolivian Government has remitted June service of the loan.

COTTRELL

824.51/195

The Secretary of State to the Bolivian Minister (Ballivián)

WASHINGTON, *May 16, 1923.*

SIR: I have the honor to inform you that the Department has received a telegram from the American Legation at La Paz,[7] Bolivia, transmitting the text of the official power of attorney for Gregorio Garrett, Bolivian Consul at New Orleans, now said to be in New York, to sign the definitive Bolivian bonds. The Minister of Finance of Bolivia has requested that a copy of this text of the power of attorney be given to your Legation in Washington, as instructions from the Bolivian Government for Garrett to sign the

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[7] Not printed.

bonds while in New York. Accordingly, a copy of the text of the power of attorney, as transmitted in the telegram, is forwarded to you herewith.[8]

Accept [etc.]

For the Secretary of State:
LELAND HARRISON

824.51/225: Telegram

The Secretary of State to the Minister in Bolivia (Cottrell)

WASHINGTON, *December 19, 1923—6 p.m.*

25. At the request of the Equitable Trust Company of New York you will please immediately inform President Saavedra, unless you find that the facts are incorrectly reported, that the Company has been informed that the Bolivian Senate has passed a law declaring free from lien of Trust Contract of May 31, 1922, the Potosi Sucre Railroad and certain other revenues which were pledged under Sections 2 and 4 of Article 4 of said contract. You may state to the President that the Equitable Trust Company as trustee and representative of the bondholders believes it its duty to protest vigorously against passage of any law which amounts to an arbitrary confiscation of rights granted by the Bolivian Government to the bondholders by the express terms of the Trust Contract.

Unless you receive satisfactory assurances from the President that such a law will not be enacted you may in a formal note present the views and the protest of the Equitable Trust Company as set forth above. Report results by cable.

HUGHES

824.51/227: Telegram

The Minister in Bolivia (Cottrell) to the Secretary of State

LA PAZ, *December 21, 1923—9 a.m.*
[Received 9:10 p.m.]

48. Your number 25, December 19, 6 p.m. Yesterday afternoon conveyed to President views of the Equitable Trust Company when the President stated that since the bankers had failed to loan Bolivia funds for the construction of the Potosi-Sucre Railroad he felt they had no further claims upon pledges that had been made to them for such loan and therefore it was only just that the bankers should now release the lien to enable the Bolivian Government to make the twelve million internal or external loan enabling continuation of con-

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[8] Not printed.

struction. He stated also that in his opinion the bankers had not been fully advised of the action of Congress in seeking an avenue whereby this railroad could be built without impairing Bolivian credit or the interests of American bondholders; also that Bolivia under her new revenue law would have ample funds to meet the service of the New York loan promptly. He stated the law had been proposed with these considerations in view, together with the building of the Potosi-Sucre Railroad, an improvement which he had thought was provided for in the American loan. He expressed the hope that the bankers would examine carefully the new revenue law and place no obstacles in the way of the Government in raising money for the Potosi-Sucre Railroad. I am informed that Railway Works Company of London desires to consider contemplated loan and it desires to know if Equitable Trust Company would object. Have informed Fiscal Commission which advised bankers but no reply received. In view of this new phase of situation please instruct whether I shall make formal protest.

COTTRELL

824.51/227 : Telegram

The Secretary of State to the Minister in Bolivia (Cottrell)

WASHINGTON, *December 28, 1923—6 p.m.*

27. Your 48, December 21, 9 a.m.

Department not impressed with the views of the President given in your telegram.

You are requested to present in a formal note the views and protests of the Equitable Trust Company as set forth in the Department's telegram No. 25, December 19, 6 p.m.

HUGHES

824.51/230 : Telegram

The Minister in Bolivia (Cottrell) to the Secretary of State

LA PAZ, *January 3, 1924—10 a.m.*
[Received 2 p.m.]

1. Your number 27, December 28, 6 p.m. Congress has passed law as to Potosi-Sucre Railroad and the President has signed it. I had previously protested as requested.

COTTRELL

BRAZIL

EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND BRAZIL ACCORDING MUTUAL UNCONDITIONAL MOST-FAVORED-NATION TARIFF TREATMENT

611.3231/417 : Telegram

The Ambassador in Brazil (Morgan) to the Secretary of State

RIO DE JANEIRO, *January 6, 1922—2 p.m.*
[Received January 6—1:45 p.m.]

3. Executive decree was issued January 4th authorizing for the year 1922 the continuation of American tariff preferentials as granted in 1921; list of articles unaltered.

By Executive decree also of January 4th preferential customs treatment was granted to the same articles of Belgian origin received there [*here?*] last year.

MORGAN

611.3231/415 : Telegram

The Secretary of State to the Ambassador in Brazil (Morgan)

WASHINGTON, *December 16, 1922—6 p. m.*

172. Department's instruction No. 684, December 8, 1921,[1] and your telegram No. 3, January 6, 1922, 2 P.M. Pending further instructions do not request renewal of preferences for 1923.

HUGHES

611.3231/422 : Telegram

The Ambassador in Brazil (Morgan) to the Secretary of State

RIO DE JANEIRO, *December 26, 1922—4 p.m.*
[Received December 26—3:50 p.m.]

136. Department's telegram 172, December 16, 6 p.m. The Federal budget of expenditures for 1923 (*orcamento de recceita*) article 2, paragraph 8, authorizes the President [to] "adopt differential customs tariff more or less to a maximum of 30 percent for products of foreign origin in conformity with the interests and defense of

[1] Not printed.

commerce and national products." Under this provision the President is able to issue a customary decree granting American tariff preferentials for 1923. Would it not be expedient to request that a decree be issued covering our usual list and thus secure advantages of preferential treatment for listed articles until such time as the American and Brazilian Governments have concluded new commercial arrangements regarding which this office is awaiting further instructions? Application should be made this week in order that decree may be issued early January.

MORGAN

611.3231/422 : Telegram

The Secretary of State to the Ambassador in Brazil (Morgan)

[Paraphrase]

WASHINGTON, *January 6, 1923—3 p.m.*

2. Your telegram number 136, dated December 26, 1922, 4 p.m.

(1) Please inform the Government of Brazil that the Government of the United States will not ask that preferences granted by Brazil be renewed.

You will state that this Government is committed to general principle of most-favored-nation treatment; that it makes an exception of the special reciprocal arrangement with the Government of Cuba for the reason that because of geographical situation, peculiar economic ties and treaty relations with that Government, special relations with it are not a deviation from and are not inconsistent with that principle; that the Government of Brazil is requested to make formal announcement that it will accord most-favored-nation treatment to the commerce of the United States; and that this Government contemplates proposing to Brazil the negotiation of a commercial treaty in order to place commercial relations upon a most-favored-nation basis.

(2) In view of the existing preferences to Belgium, most-favored-nation treatment accorded the commerce of the United States would mean treatment equal to that which is now or at any time hereafter accorded to Belgium or to any other most-favored nation. If Brazil should renew voluntarily the present preferences without suggestion on your part, they would be accepted, but the Department does not consider that any suggestion of or request for them would be consistent with the policy that is embodied in section 317 of the recently enacted tariff act; and further, it considers that in the long run this policy offers larger advantages of amity and trade.

(3) You will telegraph developments.

HUGHES

611.3231/427: Telegram

The Ambassador in Brazil (Morgan) to the Secretary of State

RIO DE JANEIRO, *January 15, 1923—4 p.m.*
[Received January 17—8:40 a.m.]

4. Referring to the Department's number 2, January 6, 3 p.m., Brazilian Government will willingly discuss new tariff regulations. Negotiations to be conducted through Sebastian Sampaio, commercial expert, Foreign Office, recently commercial attaché, Washington.

Brazilian Government desires to know whether, if it announces formally that it will accord to the commerce of the United States most-favored-nation treatment, the American Government will understand thereby that whatever preferentials are granted Belgium or other countries will also automatically become American preferentials.

Regarding our customary preferentials as stated in Embassy's 136, December 26, 4 p.m., legislative authorization was granted but Executive decree has not been issued.

Brazilian Government is opposed to commercial treaty and prefers to conclude a less formal agreement on basis of mutual concessions. They desire to secure maximum reduction in American duty on manganese, mica, and Brazilian nuts. Would also be glad to obtain reduction Brazilian sugar. Sampaio wishes to see tentative memorandum of our proposals immediately.

Several European countries have requested preferentials. They will be granted Great Britain if she reduces duty on Brazilian coffee.

This telegram has been seen by Commercial Attaché Schurz, who has informed his Department of its dispatch.

MORGAN

611.3231/427: Telegram

The Secretary of State to the Ambassador in Brazil (Morgan)

WASHINGTON, *April 24, 1923—5 p.m.*

37. Department's 33, March 30, 5 p.m.[2] Keep Department advised by telegraph of progress of negotiations and issues raised, particularly whether Brazil appears likely to state formally that the United States will receive unconditional most-favored-nation treatment. Does Brazil at present accord to imports from Argentina or any other country preferential customs treatment not accorded to American trade, and if so to what articles? Report briefly by telegraph and fully by mail on the foregoing, also as to situation in

[2] Not printed.

regard to possible demand for refund of duties paid in excess of preferential rates formerly allowed on American goods.

HUGHES

611.3231/439 : Telegram

The Ambassador in Brazil (Morgan) to the Secretary of State

RIO DE JANEIRO, *April 26, 1923—1 p.m.*
[Received 2:15 p.m.]

30. Department's 37, April 24, 5 p.m. Brazil is disinclined to state formally that the United States will receive unconditional most-favored-nation clause because she will be forced to change her international tariff policy in which she has been educated by the United States through our annual insistence upon the reissue of our preferential list. This preferential policy the Brazilian Government finds convenient and desires to extend to other nations.

Brazilian Government entirely engrossed in Santiago Conference incapable of giving attention to other subjects. I await the return of Helio Lobo [3] from conference to effect a satisfactory arrangement.

Brazil has regranted preferential treatment to Argentina's fresh fruits in force for several years and based upon reciprocity; bananas and grapes are the principal fruits interchanged. Since Argentina's apple season is the reverse of that in the United States this preferential at present produces little effect upon the sale of American apples. No other preferentials have been given this year any foreign country.

Not likely that demand will be made for the refund of duty to which last sentence in the Department's telegram refers.

MORGAN

611.3231/442

The Brazilian Embassy to the Department of State

[Translation]

MEMORANDUM

The Brazilian Government since 1903 has issued annually a decree granting a reduction of 30% on the import duties on American flour and of 20% on the majority of the products which Brazil imports from the United States.

The Brazilian Government has never refused to grant such favors. The annual decree generally has been issued immediately after the

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[3] Brazilian consul general at New York and member of Brazilian delegation to Santiago Conference.

American Government, through its Ambassador at Rio de Janeiro, has asked for its renewal.

In the beginning of this year, in a conversation at the Ministry of Foreign Affairs in Rio de Janeiro on the technical studies made there every year for the purpose of establishing the commercial relations of Brazil on a foundation of a true reciprocity, the American Ambassador declared spontaneously that he was going to ask instructions of his Government to propose to Brazil an Agreement for twelve months, renewable every year, on a basis of reciprocity, which would better guarantee the customs favors that American products have been enjoying.

A few days ago, instead of this proposition, the American Ambassador presented to the Ministry of Foreign Affairs a Memorandum in which the American Government declared that it would not ask or make any effort to obtain customs favors of any kind from any foreign Nation, and hoped that the Brazilian Government would accept the only customs policy which the American Government with its new Tariff Law could follow in its commercial relations with Brazil and all the other countries of the world, excepting Cuba,—a policy of most-favored-nation treatment.

Entering into details, the American Government asks in this Memorandum the formal acceptance by Brazil of the making of a *modus-vivendi*, preparatory to a Treaty, and adds that if this policy is adopted, every customs favor granted to any other nation by Brazil would be automatically and unconditionally granted to the United States, considered by Brazil a most-favored-nation, in reciprocity for the same treatment of Brazilian products in the United States, exception only being made of the special favors given by this country to Cuba.

The Brazilian Government accepts the friendly explanation of the Government at Washington in the said Memorandum and understands that the new American point of view is determined by the recent revision of its Tariff. The Government receives with due appreciation the declaration of the Memorandum, and understands that the United States already gives unconditionally to Brazilian products most-favored-nation treatment.

Brazil is ready to accept in its commercial relations with the United States the new policy of reciprocal most-favored-nation treatment proposed by this country.

The method of adopting this policy in Brazil will be the issuance of a decree for the twelve months of our fiscal year, which decree shall be renewed annually so long as this policy is maintained, granting to the United States for that period all the customs favors

which are granted to the products imported by Brazil from other countries.

As to the manner of the adoption of this policy by the United States in regard to Brazil, the Government at Washington will of course inform the Brazilian Government, and no doubt will explain, also, why it has suggested a *modus vivendi*, preparatory to a Treaty on this subject.

In any case, however, the Brazilian Government would like to know the opinion of the American Government as to the best way of bringing about an understanding between the two countries in this matter.

With this answer, which shows the satisfaction with which Brazil has received the Memorandum of the American Embassy at Rio de Janeiro, the Brazilian Government in this Memorandum of its Embassy at Washington wishes to make two declarations on the subject.

The first is to emphasize that Brazil accepts the new customs policy for the purpose of demonstrating its good-will towards a friendly country and sister Republic, and of affirming, in a practical way, its disposition to meet all its wishes for the most intimate commercial bonds.

The second one is a consideration to which Brazil in a most friendly spirit calls the attention of the Government at Washington. The Brazilian Government has in mind the great inconvenience of interrupting at the present time the customs favors which Brazil for twenty years and without the slightest interval has granted to the United States.

Politically, this interruption may provoke comment and international misunderstanding with disagreeable effects upon the public opinion of the two interested countries.

Commercially and economically, this interruption will diminish American exports to Brazil,—an effect which would occur under such conditions even without the present increase in the value of the dollar. It is sufficient to remember the lower freight from Argentina to Rio de Janeiro, which even now almost prevents the competition of American flour in the south of Brazil, notwithstanding the present reduction of 30%.

All this seems to advise against the interruption of the said concessions of customs favors to the United States.

Brazil firmly believes that the best way to sell a greater quantity of its products to North America is to favor, more and more, the buying of American products in its territory. Holding this opinion, the Brazilian Government would like to be able to agree with the Government at Washington on some understanding that would not

interrupt the customs favors which are now granted to American products.

An understanding in this sense must have, however, the character of reciprocity, without which Brazil would not be able to conveniently regulate its customs policy towards the other countries with which it also maintains commercial relations.

As a proof, however, that Brazil is only looking for the best way of making its relations with the United States more close, the Government at Rio de Janeiro is disposed to accept for that reciprocal understanding any favors or facilities, even not connected with the Tariff, which the Government at Washington would wish to offer as a compensation for the continuation of the favors of the Brazilian Tariff.

WASHINGTON, *May 23, 1923.*

611.3231/442

The Department of State to the Brazilian Embassy

MEMORANDUM

The Government of the United States is deeply gratified to note the expressions of friendship and good-will which are contained in the Memorandum on the subject of the commercial relations between Brazil and the United States which was handed to the Secretary of State by the Brazilian Ambassador on May 23, 1923. In particular the Government of the United States is gratified to note the statement that Brazil is ready to accept in its commercial relations with the United States the policy proposed by the United States.

It is noted further that, as a method of adopting this policy, the Brazilian Government contemplates the issuance of a decree for the twelve months of its fiscal year, to be renewed annually so long as this policy is maintained, granting to the United States for that period all the customs favors which are granted to the products imported by Brazil from other countries.

The Brazilian Ambassador states that the Government of the United States will of course inform the Brazilian Government as to the manner of the adoption of the policy in question by the United States in regard to Brazil, and observes that the Brazilian Government desires to know the opinion of the American Government as to the best way of bringing about an understanding between the two countries in this matter.

It is the view of the Government of the United States that the most acceptable procedure for making clear the purpose of the two Govern-

ments would be an exchange of notes by the terms of which they would declare that they will accord to each other unconditional most-favored-nation treatment in customs matters. In order to facilitate consideration of this question, and with the hope that the course suggested may prove acceptable to the Brazilian Government, drafts of notes which might be exchanged are attached hereto.[4]

The Government of the United States has carefully noted the two declarations made by the Brazilian Government in the Memorandum of the Ambassador. It notes with gratification the declaration that the Government of Brazil accepts the customs policy of unconditional most-favored-nation treatment for the purpose of demonstrating its good-will toward the United States and with a view to affirming in a practical way the disposition of the Brazilian Government to bring about more intimate commercial bonds, in mutual accord. The second declaration of the Brazilian Government relates to the subject of the preferences which prior to the present year have been accorded to American commerce. The Government of the United States, in refraining from requesting the renewal of the preference in question for the present year, has not been indifferent to the fact that changes of this character may possibly in some measure interfere with commercial intercourse as conducted on the previously existing basis. However, as stated in the Memorandum recently presented to the Brazilian Government by the American Ambassador at Rio de Janeiro, it is the policy of the United States to offer to all countries and to seek from them unconditional most-favored-nation treatment, making exception only in the case of Cuba, the dependencies of the United States, and the Panama Canal Zone. This policy is expressed by specific provisions in recent tariff legislation of the Congress of the United States, and, in the judgment of the United States, it is the policy best calculated to be of the maximum of advantage in furthering relations of amity and commerce.

The Brazilian Government will readily perceive how inconsistent it would be for the Government of the United States to enter into any arrangement involving a request on its part for special customs treatment or which offered special concessions on the part of the United States, whether in connection with the customs tariff or otherwise, in consideration of the granting to the United States of special customs treatment. It is the opinion of the Government of the United States that the stabilization of commercial relations between Brazil and the United States on the basis proposed could not but

[4] Drafts not printed; they are identical with the signed texts printed *infra*.

promote in the long run the strengthening of the bonds of friendship and commerce which now happily exist between them.

WASHINGTON, *June 2, 1923.*

Treaty Series No. 672

The Secretary of State to the Brazilian Ambassador (Alencar)

WASHINGTON, *October 18, 1923.*

EXCELLENCY: I have the honor to communicate to Your Excellency my understanding of the views developed by the conversations which have recently taken place between the Governments of the United States and Brazil at Washington and Rio de Janeiro with reference to the treatment which shall be accorded by each country to the commerce of the other.

The conversations between the two Governments have disclosed a mutual understanding which is that in respect to customs and other duties and charges affecting importations of the products and manufactures of the United States into Brazil and of Brazil into the United States, each country will accord to the other unconditional most-favored-nation treatment, with the exception, however, of the special treatment which the United States accords or hereafter may accord to Cuba, and of the commerce between the United States and its dependencies and the Panama Canal Zone.

The true meaning and effect of this engagement is that, excepting only the special arrangements mentioned in the preceding paragraph, the natural, agricultural and manufactured products of the United States and Brazil will pay on their importation into the other country the lowest rates of duty collectible at the time of such importation on articles of the same kind when imported from any other country, and it is understood that, with the above mentioned exceptions, every decrease of duty now accorded or which hereafter may be accorded by the United States or Brazil by law, proclamation, decree, or commercial treaty or agreement to the products of any third power will become immediately applicable without request and without compensation to the products of Brazil and the United States, respectively, on their importation into the other country.

It is the purpose of the United States and Brazil and it is herein expressly declared that the provisions of this arrangement shall relate only to duties and charges affecting importations of merchandise and that nothing contained herein shall be construed to restrict the right of the United States and Brazil to impose, on such terms as they may see fit, prohibitions or restrictions of a sanitary charac-

ter designed to protect human, animal, or plant life, or regulations for the enforcement of police or revenue laws.

I shall be glad to have your confirmation of the accord thus reached.

Accept [etc.] CHARLES E. HUGHES

Treaty Series No. 672

The Brazilian Ambassador (Alencar) to the Secretary of State

[Translation]

WASHINGTON, *October 18, 1923.*

MR. SECRETARY OF STATE: I have the honor to acknowledge the receipt of your Excellency's note of today's date, communicating to me your understanding of the views developed by the conversations which have recently taken place between the Governments of Brazil and the United States at Rio de Janeiro and Washington with reference to the treatment which shall be accorded by each country to the commerce of the other.

I am happy to be able to confirm to you, under instructions from my Government, your Excellency's understanding of the said views as set forth in the following terms:

The conversations between the two Governments have disclosed a mutual understanding which is that in respect to customs and other duties and charges affecting importations of the products and manufactures of Brazil into the United States and of the United States into Brazil, each country will accord to the other unconditional most-favored-nation treatment, with the exception, however, of the special treatment which the United States accords or hereafter may accord to Cuba and of the commerce between the United States and its dependencies and the Panama Canal Zone.

The true meaning and effect of this engagement is that, excepting only the special arrangements mentioned in the preceding paragraph, the natural, agricultural and manufactured products of Brazil and the United States will pay on their importation into the other country the lowest rates of duty collectible at the time of such importation on articles of the same kind when imported from any other country, and it is understood that, with the above mentioned exceptions, every decrease of duty now accorded or which hereafter may be accorded by Brazil or the United States by law, proclamation, decree, or commercial treaty or agreement to the products of any third power will become immediately applicable without request and without compensation to the products of the United States and Brazil, respectively, on their importation into the other country.

It is the purpose of Brazil and the United States and it is herein expressly declared that the provisions of this arrangement shall relate only to duties and charges affecting importations of merchandise and that nothing contained herein shall be construed to restrict the right of Brazil and the United States to impose, on such terms as they 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.

I avail myself [etc.] A. DE ALENCAR

BULGARIA

NATURALIZATION TREATY BETWEEN THE UNITED STATES AND BULGARIA, SIGNED NOVEMBER 23, 1923

711.744/10

The Minister in Bulgaria (Wilson) to the Secretary of State

No. 389 SOFIA, *November 23, 1923.*
[Received December 15.]

SIR: Referring to the Legation's telegram No. 46 of today's date,[1] I have the honor to transmit herewith the Naturalization Treaty between the United States and Bulgaria, signed today by the Bulgarian Minister for Foreign Affairs and myself.[2]

I also enclose herewith the full powers [1] of the King of the Bulgarians authorizing Mr. Kalfoff, the Minister for Foreign Affairs to sign the treaty in question.

It may be of interest to recall that this is the first and only treaty ever signed between the United States and Bulgaria. The Minister for Foreign Affairs referred to this, saying that he considered himself fortunate to be the first Bulgarian Minister to sign a treaty with a nation for which all Bulgarians entertained such strong sentiments of admiration and friendship, and that he hoped that this treaty would be followed by others which would further strengthen the ties between the two countries.

I have [etc.] CHARLES S. WILSON

Treaty Series No. 684

Treaty between the United States of America and Bulgaria, Signed at Sofia, November 23, 1923 [3]

The President of the United States of America and His Majesty Boris III, King of the Bulgarians, being desirous of reaching an

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[1] Not printed.

[2] The naturalization treaty was proposed by the American Government. The first draft, as transmitted to the Minister in Bulgaria in instruction no. 25, Sept. 23, 1922 (not printed), was accepted without change by the Bulgarian Government. Certain modifications in the draft were transmitted by the Department of State to the Minister in Bulgaria in instruction no. 57, Aug. 2, 1923 (not printed). These changes were also accepted by the Bulgarian Government.

[3] Ratification advised by the Senate, Feb. 18, 1924; ratified by the President, Feb. 26, 1924; ratified by Bulgaria, Mar. 30, 1924; ratifications exchanged at Sofia, Apr. 5, 1924; proclaimed by the President, May 6, 1924.

agreement concerning the status of former nationals of either country who have acquired, or may acquire, the nationality of the other by reasonable processes of naturalization within any territory under its sovereignty, 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:

Charles S. Wilson, Envoy Extraordinary & Minister Plenipotentiary of the United States of America to Bulgaria;

AND HIS MAJESTY, THE KING OF THE BULGARIANS:

Christo Kalfoff, Minister for Foreign Affairs and Worship of Bulgaria,

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

Nationals of the United States who have been or shall be naturalized in Bulgarian territory, shall be held by the United States to have lost their former nationality and to be nationals of Bulgaria.

Reciprocally, nationals of Bulgaria who have been or shall be naturalized in territory of the United States shall be held by Bulgaria to have lost their original nationality and to be nationals of the United States.

The foregoing provisions of this Article are subject to any law of either country providing that its nationals do not lose their nationality by becoming naturalized in another country in time of war.

The word "national", as used in this convention, means a person owing permanent allegiance to, or having the nationality of, the United States or Bulgaria, respectively, under the laws thereof.

The word "naturalized", refers only to the naturalization of persons of full age, upon their own applications, and to the naturalization of minors through the naturalization of their parents. It does not apply to the acquisition of nationality by a woman through marriage.

ARTICLE II

Nationals of either country who have or shall become naturalized in the territory of the other, as contemplated in Article I, shall not, upon returning to the country of former nationality, be punishable for the original act of emigration, or for failure, prior to naturalization, to respond to calls for military service not accruing until after bona fide residence was acquired in the territory of the country whose nationality was obtained by naturalization.

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Article III

If a national of either country, who comes within the purview of Article I, 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.

Article IV

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 to the other of such intention.

In Witness Whereof, the respective plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate at Sofia this 23rd day of November 1923.

[seal] Charles S. Wilson
[seal] Chr. Kalfoff

CANADA

SIGNING OF A CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN FOR THE PRESERVATION OF THE HALIBUT FISHERY IN THE NORTHERN PACIFIC[1]

711.428/712

The British Ambassador (Geddes) to the Secretary of State

No. 118 WASHINGTON, *February 12, 1923.*

SIR: With the note which you were so good as to address to me on December 14th last[2] you communicated to me copies of a draft Convention[3] which it is proposed should be concluded between the United States Government and the Government of Canada to provide for the protection of the Pacific Halibut fishery.

I have the honour to inform you that the Dominion Government, while concurring in the main points of the draft, have requested me to suggest the following minor modifications which it is hoped will be agreeable to the United States Government:

(1) The word "department" to be substituted for the word "Ministry" in the second paragraph of Article I (See page 3 of the draft Convention).

(2) The words "including the Behring Sea" to be inserted after the words "North Pacific Ocean" in the penultimate line of paragraph 2, Article 3 (See page 5 of draft Convention).

I should be grateful if I might be informed whether the United States Government concur in the amendments suggested by the Dominion Government. As the Canadian Government are particularly anxious to conclude the Convention at an early date, I have the honour to request that I may be notified as soon as possible whether the United States Government are now prepared to proceed to its signature subject to the modifications proposed above.

I have [etc.]

(For the Ambassador)
H. G. CHILTON

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[1] For previous correspondence concerning the regulation of fisheries, see *Foreign Relations*, 1922, vol. I, pp. 669 ff.

[2] *Ibid.*, p. 675.

[3] Not printed.

711.428/712

The Secretary of State to the British Ambassador (Geddes)

WASHINGTON, *February 27, 1923.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 118 of February 12, 1923, by which you are so good as to inform me that the Government of Canada while concurring in the main points of the draft convention to provide for the protection of the Pacific Halibut fishery, enclosed with my note of December 14 last, have requested you to suggest the following minor modifications:

(1) The substitution of the word "department" for the word "Ministry" in the second paragraph of Article 1;
(2) The insertion of the words "including the Behring Sea" after the words "North Pacific Ocean" in the penultimate line of paragraph 2, Article 3.

These modifications are entirely acceptable. I have accordingly directed the preparation of the Convention for signature and I shall later arrange with you the day for signature.

Accept [etc.]

CHARLES E. HUGHES

Treaty Series No. 701

Convention between the United States of America and Great Britain, Signed at Washington, March 2, 1923

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India, being equally desirous of securing the preservation of the halibut fishery of the Northern Pacific Ocean have resolved to conclude a Convention for this purpose, and have named as their plenipotentiaries:

The President of the United States of America: Charles Evans Hughes, Secretary of State of the United States; and

His Britannic Majesty: The Honorable Ernest Lapointe, K.C., B.A., LL.B., Minister of Marine and Fisheries of Canada;

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

ARTICLE I

The nationals and inhabitants and the fishing vessels and boats, of the United States and of the Dominion of Canada, respectively, are hereby prohibited from fishing for halibut (Hippoglossus) both in the territorial waters and in the high seas off the western coasts

of the United States, including Bering Sea, and of the Dominion of Canada, from the 16th day of November next after the date of the exchange of ratifications of this Convention, to the 15th day of the following February, both days inclusive, and within the same period yearly thereafter, provided that upon the recommendation of the International Fisheries Commission hereinafter described, this close season may be modified or suspended at any time after the expiration of three such seasons, by a special agreement concluded and duly ratified by the High Contracting Parties.

It is understood that nothing contained in this Article shall prohibit the nationals or inhabitants and the fishing vessels or boats of the United States and of the Dominion of Canada, from fishing in the waters hereinbefore specified for other species of fish during the season when fishing for halibut in such waters is prohibited by this Article. Any halibut that may be taken incidentally when fishing for other fish during the season when fishing for halibut is prohibited under the provisions of this Article may be retained and used for food for the crew of the vessel by which they are taken. Any portion thereof not so used shall be landed and immediately turned over to the duly authorized officers of the Department of Commerce of the United States or of the Department of Marine and Fisheries of the Dominion of Canada. Any fish turned over to such officers in pursuance of the provisions of this Article shall be sold by them to the highest bidder and the proceeds of such sale, exclusive of the necessary expenses in connection therewith, shall be paid by them into the treasuries of their respective countries.

Article II

Every national or inhabitant, vessel or boat of the United States or of the Dominion of Canada engaged in halibut fishing in violation of the preceding Article may be seized except within the jurisdiction of the other party by the duly authorized officers of either High Contracting Party and detained by the officers making such seizure and delivered as soon as practicable to an authorized official of the country to which such person, vessel or boat belongs, at the nearest point to the place of seizure, or elsewhere, as may be mutually agreed upon. The authorities of the nation to which such person, vessel or boat belongs alone shall have jurisdiction to conduct prosecutions for the violation of the provisions of the preceding Article or of the laws or regulations which either High Contracting Party may make to carry those provisions into effect, and to impose penalties for such violations; and the witnesses and proofs necessary for such prosecutions, so far as such witnesses or proofs are under the control of the other High Contracting Party, shall

be furnished with all reasonable promptitude to the authorities having jurisdiction to conduct the prosecutions.

Article III

The High Contracting Parties agree to appoint within two months after the exchange of ratifications of this Convention, a Commission to be known as the International Fisheries Commission, consisting of four members, two to be appointed by each party. This Commission shall continue to exist so long as this Convention shall remain in force. Each party shall pay the salaries and expenses of its own members, and joint expenses incurred by the Commission shall be paid by the two High Contracting parties in equal moieties.

The Commission shall make a thorough investigation into the life history of the Pacific halibut and such investigation shall be undertaken as soon as practicable. The Commission shall report the results of its investigation to the two Governments and shall make recommendations as to the regulation of the halibut fishery of the North Pacific Ocean, including the Bering Sea, which may seem to be desirable for its preservation and development.

Article IV

The High Contracting Parties agree to enact and enforce such legislation as may be necessary to make effective the provisions of this Convention with appropriate penalties for violations thereof.

Article V

This Convention shall remain in force for a period of five years and thereafter until two years from the date when either of the High Contracting Parties shall give notice to the other of its desire to terminate it. It shall be ratified in accordance with the constitutional methods of the High Contracting Parties. The ratifications shall be exchanged in Washington as soon as practicable, and the Convention shall come into force on the day of the exchange of ratifications.

In faith whereof, the respective plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at the City of Washington, the second day of March, in the year of our Lord one thousand nine hundred and twenty-three.

Charles Evans Hughes [seal]
Ernest Lapointe [seal]

711.428/712

The Secretary of State to the British Ambassador (Geddes)

WASHINGTON, *March 5, 1923.*

EXCELLENCY: Referring to the convention for the protection of the halibut fishery of the North Pacific Ocean, signed between the United States and Great Britain on March 2, 1923, I have the honor to inform you that the Senate on March 4, 1923, gave its advice and consent to the ratification of the said convention in a resolution, as follows:

"Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Executive D, Sixty-seventh Congress, fourth session, a convention between the United States and Great Britain, signed on March 2, 1923, for the preservation of the halibut fishery on the Northern Pacific Ocean, including the Bering Sea, subject to the understanding, which is hereby made a part of this resolution of ratification, that none of the nationals and inhabitants and vessels and boats of any other part of Great Britain shall engage in halibut fishing contrary to any of the provisions of this treaty."

Your Excellency will perceive that by this resolution the advice and consent of the Senate to the ratification of the Convention is given subject to the understanding "that none of the nationals and inhabitants and vessels and boats of any other part of Great Britain shall engage in halibut fishing contrary to any of the provisions of this treaty".

I shall be pleased if you will be so good as to bring this action of the Senate to the attention of His Majesty's Government, and express this Government's hope that His Majesty's Government will accept the understanding which the Senate makes a part of its resolution of ratification.

Accept [etc.] CHARLES E. HUGHES

711.428/729

The British Ambassador (Geddes) to the Secretary of State

No. 240 WASHINGTON, *March 28, 1923.*

MY DEAR MR. SECRETARY: In your note of the 5th instant you were good enough to inform me of the text of the Senate Resolution by which the United States Senate, on March 4th, 1923, gave its advice and consent to the ratification of a convention for the protection of the halibut fishery of the North Pacific Ocean. According to this resolution such consent is given on the understanding that none of

the nationals and inhabitants and vessels and boats of "any other part of Great Britain" shall engage in halibut fishing contrary to any of the provisions of this treaty.

I should be grateful if you would let me know what is your understanding of the meaning of the words "any other part of Great Britain." Is the resolution intended to refer exclusively to the geographical entity properly known as Great Britain, namely, England, Scotland and Wales, or is Great Britain, in the mind of the framers of the resolution, intended to be synonymous with the term "British Empire"? Canada as a Dominion of the British Empire cannot, of course, properly be described as "a part of Great Britain." I should be very much obliged for your kind assistance in clearing up this point.

Believe me [etc.] A. C. GEDDES

711.428/729

The Secretary of State to the British Ambassador (Geddes)

WASHINGTON, *April 4, 1923.*

MY DEAR MR. AMBASSADOR: In your note of the 28th ultimo referring to the Resolution of March 4, 1923, by which the Senate gave its advice and consent to the ratification of the convention for the protection of the halibut fishery of the North Pacific Ocean, you inquired in regard to the meaning that it is intended the words "any other part of Great Britain" shall have as they are used in the Resolution. I note your inquiry whether in the mind of the framers of the Resolution "Great Britain" is intended to be synonymous with the term "British Empire."

Senator Lodge, Chairman of the Committee on Foreign Relations of the Senate, informs me that he has conferred with Senator Jones of the State of Washington, who introduced the Resolution in the Senate and that the intention was undoubtedly to cover any part of the British Empire.

I trust that this information will be of assistance.

I am [etc.] CHARLES E. HUGHES

711.428/745

The Secretary of State to President Harding

WASHINGTON, *June 16, 1923.*

MY DEAR MR. PRESIDENT: At the instance of the Canadian Government, the Under Secretary of State, Mr. William Phillips, on

June 14 last proceeded to New York City where he had a conference with Mr. Alexander Johnston, Canadian Deputy Minister of Marine, in regard to the Convention with Canada covering the halibut fisheries. The following is a brief summary of the message conveyed by Mr. Johnston to Mr. Phillips.

Mr. Johnston explained that the Senate reservation to the Convention between the United States and Great Britain, signed March 2, 1923, for the protection of the halibut fisheries, had placed the Canadian Government in an extremely embarrassing position. Believing that the protection of the Canadian industry in the Pacific was purely an American and Canadian interest, the Canadian Government had negotiated and signed the treaty without the usual approach to the Foreign Office. It is true that the Canadian Minister of Marine, who signed the Convention with the Secretary of State, was duly authorized to do so by the British Government, but the signature of the British Ambassador had not been placed on the Convention. The Canadian Government had insisted that this Convention had no concern with Great Britain or the Empire. The fishing experts on both sides of the border had worked up the terms of the Convention, which as a matter of fact had been drafted in Washington and was an American document with only one or two insignificant and verbal changes offered by the Canadians.

Mr. Johnston pointed out the impossibility of Australia, New Zealand or the British Isles ever becoming competitors in the halibut fishing industry: distance and the resulting costs rendered this impractical. In fact, he thought even the possibility of Japanese competition to be extremely remote.

However that may be, the omission of the British Ambassador's signature from the document had caused a great deal of unfriendly debate in London, and many of the leading British newspapers had condemned Canada for taking the course that it did in dealing directly with the Secretary of State.

The Canadian Government, therefore, was deeply concerned when it found that the treaty had been ratified by the Senate on the understanding that it applied not only to Canada and the United States, but to the whole British Empire. The Senate had indeed by this reservation championed the British cause at the expense of Canada by their insistence that Canada must secure the consent of the British Empire to this Convention. The reservation had placed the Canadian Government in the embarrassing position of being obliged to go down on "bended knees not only to the British Government, but to all of the British self-governing dominions to secure their consent before Canada could be in a position to carry out legislation of purely

domestic character." As it was impossible for the Canadian Government to do this, the Convention and reservation could not be ratified by the Canadian Parliament and the treaty must, therefore, be considered as dead.

While it was felt that a treaty would have been preferable, the Canadian Government now proposed as a solution of the difficulty the passage of acts by both Governments embodying the terms contained in the signed Convention. Mr. Johnston added that the Canadian Government was willing to present a bill, a copy of which is attached herewith,[5] to Parliament and to have it passed before its adjournment on June 30, provided some intimation can be given that the United States Government, on its part, will introduce similar legislation as soon as Congress meets in December.

Upon being asked by Mr. Phillips whether, if the President should decide to resubmit the Convention to the Senate for ratification without the reservation and assurance could be given to the Canadian Government to this effect, the Canadian Government would ratify the present Convention without the Senate reservation, Mr. Johnston replied that, while he could not commit the Prime Minister, he thought that his Government would be willing to ratify the Convention on this understanding. Mr. Johnston promised, however, to make inquiries on his return to Ottawa and advise us accordingly.

It would seem, therefore, that two alternatives are now open.

1. To resubmit the treaty to the Senate, omitting the Senate reservation.
2. To agree now, (and to so advise the Canadians) to recommend legislation similar to "the act for the protection of the Northern Pacific Halibut Fishery", which the Canadian Government is prepared to have passed before June 30.

I am [etc.] CHARLES E. HUGHES

711.428/745

The Under Secretary of State (Phillips) to President Harding

WASHINGTON, *June 18, 1923.*

MY DEAR MR. PRESIDENT: I beg to refer to the Secretary's letter to you of June 16, reporting a conference between Mr. Johnston, Canadian Deputy Minister of Marine, and myself, in regard to the Convention with Canada covering the halibut fisheries. You will recollect that I asked Mr. Johnston whether, if the President should

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[5] Not printed.

decide to resubmit the Convention to the Senate for ratification without the reservation, the Canadian Government on its part would ratify the Convention at once without the Senate reservation.

Mr. Johnston now reports, after submitting the question to Ottawa, that the Canadian Government is prepared to ratify the treaty as signed and pass the legislation contemplated by Article IV on some reasonable assurance by us that the treaty would be introduced in the forthcoming session of Congress and approved without any reservation.

I should be grateful if you would be so kind as to indicate what response you wish me to make to Canada.

I am [etc.] WILLIAM PHILLIPS

711.428/747

President Harding to the Secretary of State

WASHINGTON, *June 20, 1923.*

MY DEAR MR. SECRETARY: Replying to yours of June 16th, referring to the interview between Under Secretary Phillips and Mr. Alexander Johnston, Canadian Deputy Minister of Marine, in regard to the Convention with Canada covering the halibut fisheries, I have already suggested to you in a personal interview that I thought it desirable to withhold the submission of the Treaty carrying the Senate reservations, for ratification. I would be glad to resubmit the Treaty to the Senate and ask for its ratification without reservation. I am hoping that this may be accomplished by paving the way in advance of the submission. This much may be said to Mr. Johnston in perfect good faith. Of course, it is never possible for the Executive to give absolute assurance concerning the action of the Senate.

It will be wholly agreeable to me to have you say further that in case of the Senate's failure to ratify I will be very glad to recommend to the Congress protective legislation, such as has been given consideration by the Canadian Government. The advance enactment by the Canadian Parliament would doubtless expedite congressional enactment here. I can not help believing, however, that the Senate may be brought to realise the desirability of sanctioning the Treaty negotiated with Canada, without reservation.

Very truly yours,

WARREN G. HARDING

711.428/763

The British Chargé (Chilton) to the Secretary of State

No. 764 WASHINGTON, *September 6, 1923.*

SIR: With reference to my note No. 618 of July 27th last[6] relative to the Northern Pacific Halibut Fishery Convention, I have the honour to inform you that in view of the terms of the Resolution passed by the Senate at the time of the ratification of this Convention the Government of Canada find it difficult to put into force the Act recently passed by the Canadian Parliament in execution of the Convention.

In these circumstances and under instructions from my Government I have the honour to ask you to be so good as to inform me whether there is any prospect of the United States Senate, when it reassembles in December, being willing to withdraw the Resolution attached to the ratification and to ratify the Convention in the form in which it was signed.

I understand from the Dominion Government that unless such ratification could be obtained before the middle of November it would be impossible for the close season provided for by the Convention to become effective this year. As, however, the Senate will not meet until December it seems clear that it will not be possible to put the Treaty into effect this year. In these circumstances I have further the honour to enquire whether the United States Government would agree to a simultaneous public announcement by the United States Government and the Government of Canada, on a date to be agreed upon between them, that the close season shall not be effective during the 1923–1924 season.

I should be most grateful to receive an expression of the views of the United States Government on these two points at your early convenience for communication to the Dominion Government.

I have [etc.] H. G. CHILTON

711.428/764

The British Chargé (Chilton) to the Secretary of State

No. 822 WASHINGTON, *September 28, 1923.*

SIR: With reference to my note No. 764 of September 6th relative to the Northern Pacific Halibut Fishery Convention, I have the

[6] Not printed.

honour, at the request of His Excellency the Governor-General of Canada, to draw your attention to the difficulties arising out of the present uncertainty whether the close season provided for by the Convention will, or will not, be effective this year.

The Governor-General of Canada points out that preparations for continuing fishery throughout the winter have to be made a considerable time beforehand. It will thus be appreciated that if there is to be a close season this year—which would presumably begin on November 16th, the date specified in the Convention—it is important that fishermen and others have reasonable warning before the closing actually takes place, so that they may avoid incurring much expense in needless preparatory arrangements for winter fishing.

On the other hand, if there is to be no close season in the coming winter fishermen and buyers are equally embarrassed as, owing to the uncertainty that now exists, they cannot make their usual contracts for obtaining and delivering supplies of halibut. Further, I understand that all those directly connected with the industry both in the United States and in Canada are agreed not only as to the great need for the protection prescribed in the Convention but as to the desirability of such protection becoming effective this year.

But, as far as I am aware, the United States Senate will not meet until sometime in December, so that, even if the Senate were then to withdraw their previous resolution and to ratify the Convention in the form in which it was signed, it would appear impossible to put the Convention into effect this year. If this is so, the Dominion Government feel strongly that some immediate action is necessary in order that some measure of protection may be afforded during the coming winter. The Governor-General has, therefore, informed me that if the Government of the United States will be prepared immediately to take such action as may be within their power to prohibit the landing in the United States ports of halibut taken in the Pacific during the three months beginning November 16th next, pending ratification of the treaty by the United States Senate, the Government of Canada will likewise be prepared, on their part, to prohibit the landing in Canada of halibut caught in the Pacific during the said three months.

In these circumstances, I have the honour to ask you to be so good as to inform me, at the earliest possible moment, whether the United States Government are in a position to take the action suggested by the Dominion Government and, if so, whether they would be good enough to do so with the least possible delay in order to avoid further embarrassment to the Pacific halibut fishing industry.

On the other hand, should the United States Government find it impossible to take such action as a measure of temporary relief and in the event of there being no likelihood of the Convention being re-submitted to the Senate in time to make it effective this year, the Governor-General of Canada requests me to enquire whether the United States Government would agree to an intimation being sent out to the Pacific halibut fishing industry from Ottawa and Washington simultaneously on October 1st next to the effect that there will be no close season this year.

I have [etc.] H. G. CHILTON

711.428/764

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *October 4, 1923.*

SIR: I have the honor to acknowledge the receipt of your notes No. 764 of September 6 and No. 822 of September 28, 1923, with reference to the convention concluded between the United States and Great Britain on March 2, 1923, for the protection of the halibut fishery of the Northern Pacific Ocean.

With reference to the situation as presented in your notes, I have the honor to advise you for the confidential information of the Canadian Government that the President has expressed his readiness to resubmit the convention to the Senate with a view to obtaining the advice and consent of the Senate to the ratification of the convention as signed. Since it appears to be improbable that the Senate will convene before the first week in December, there does not seem to be any probability of obtaining reconsideration of the convention by the Senate in time to bring its provisions for the establishment of a close season into operation during the winter of 1923–1924.

With reference to the proposal of the Government of Canada to afford temporary protection to the Pacific halibut fishery by prohibiting the landing of halibut taken during the three months beginning November 16, 1923, on condition that the United States is prepared to take similar action, I have the honor to inform you that the Executive is without authority to make and enforce regulations of the character necessary to accomplish the plan suggested by the Government of Canada.

In view of the foregoing, I have the honor to inform you that the Government of the United States is prepared to join the Government of Canada in a public announcement to be made simultaneously from Washington and Ottawa to the effect that the close season provided by the convention will not be effective during the season 1923–1924.

I should be pleased to receive a draft of the statement which the Canadian Government proposes to make public. It is suggested that

the announcement might be made on October 15, 1923, if that date be agreeable to the Government of Canada.

Accept [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

711.428/767

The British Chargé (Chilton) to the Secretary of State

No. 872 WASHINGTON, *October 9, 1923.*

SIR: With reference to my note No. 869 [7] of the 8th instant regarding the Halibut Fishery Convention between the United States and Great Britain, I have the honour to state that I have now received a telegraphic communication from His Excellency the Governor-General of Canada stating that the Dominion Government will be glad to issue on the 15th instant, simultaneously with the United States Government, a statement on the lines indicated in the note which you were so good as to address to me on the 4th instant.

The Canadian Government propose the following as the draft of this statement:

"NORTHERN PACIFIC HALIBUT CONVENTION

As the time when the closed season provided for by the above-named Convention should commence is now quite near, the question of whether or not such a season could be made effective this year has formed the subject of a series of notes which has recently passed between the Government of the Dominion of Canada and the United States Government. As a result of this exchange of notes, and in order to avoid any embarrassment to the halibut fishing industry by reason of the continued uncertainty as to the extent to which its business would be affected this year by the Convention, it has been decided to intimate to those engaged in the industry both in Canada and in the United States, that there will be no closed time for halibut during the winter season of 1923–1924."

I have the honour to request that you will be so good as to inform me at your earliest convenience whether the above draft is acceptable to the United States Government.

I have [etc.] H. G. CHILTON

711.428/767

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *October 12, 1923.*

SIR: I have the honor to acknowledge the receipt of your note No. 872 of October 9, 1923, stating with reference to the Convention

[7] Not printed.

signed by the United States and Great Britain on March 2, 1923, for the preservation of the halibut fishery of the Northern Pacific Ocean, that the Canadian Government will be glad to issue on October fifteenth simultaneously with this Government a statement that there will be no close season for the Pacific halibut fishery during the winter of 1923–1924.

I would suggest that the reference to the notes which have been exchanged in regard to the establishment of the close season during the year 1923–1924 be omitted from the public statement which it is proposed to make and that the statement be modified to read as follows:

"NORTHERN PACIFIC HALIBUT CONVENTION

"As no binding agreement has been reached concerning the closed season provided for by the above-named Convention which is now approaching, notice is hereby given to those engaged in the halibut fishing industry both in Canada and in the United States, that there will be no closed time for halibut during the winter season of 1923–1924."

Steps will be taken to make the statement public in the United States on October eighteenth [8] and to cause it to be communicated to those who are engaged in the halibut fishing industry.

Accept [etc.]

For the Secretary of State:
WILLIAM PHILLIPS
Under Secretary

711.428/763 : Telegram

The Under Secretary of State (Phillips) to the Consul General at Ottawa (Foster)

WASHINGTON, *December 17, 1923—1 p.m.*

Please convey following personal message from me to Mr. Alexander Johnston, Canadian Deputy Minister of Marine and Fisheries:

"The Department has difficulty in construing certain sections of the act for the protection of the Northern Pacific halibut fisheries passed by the Canadian Parliament in June, 1923. Section 3(*a*) defines offenses by persons without reference to nationality in territorial waters of Canada. Section 3(*b*) defines offenses by nationals and inhabitants of Canada with reference to prohibited waters. Section 4 defines offenses by persons without reference to nationality in respect to ports and places in Canada and with respect to prohibited waters. The Department understands that Canadian territorial waters are included in Section 3(*b*) and Section 4 as well as in Section 3(*a*). Section 5 would seem to make every vessel, regardless

[8] The statement was given to the press on Oct. 18.

of nationality, liable to seizure and forfeiture if used by persons in the commission of acts made offenses by Sections 3 and 4. Section 9 provides that every vessel which is foreign or not navigated according to the laws of the United Kingdom or of Canada may be seized and shall be forfeited if they commit certain acts in the territorial waters of Canada. Questions therefore arise: (1) whether the provisions of Section 9 operate to qualify any of the provisions of Sections 3, 4 and 5; (2) if the provisions of Section 9 do so operate, to what extent; (3) if they do not so operate, what is the purpose of them. The principal question is whether the effect of Section 9 is to exclude from forfeiture vessels flying the British flag so that they can engage without fear of forfeiture in halibut fishing irrespective of the restrictions of the Convention and of the other sections of the Act. If British vessels can so engage, the next question is whether, despite the immunity of British vessels from forfeiture, Section 4 operates to render the owners or masters of vessels or other persons within the scope of the act engaged in halibut fishing contrary to the terms of the Convention guilty of the offenses described in the act and subject to its penalties although they are owners or masters of British vessels or other persons acting on British vessels. Any information which you could give me in explanation of these questions would be appreciated. It would be helpful for me to know that the views which you may be able to send me are in harmony with the interpretation of your Department of Justice."

William Phillips

711.428/778

The Consul General at Ottawa (Foster) to the Secretary of State

No. 4215 Ottawa [*undated*].
[Received December 31, 1923.]

Sir: In response to instruction of December 17th, I now have the honor to forward herewith, copy of a letter I have received from Mr. A. Johnston, Deputy Minister of Marine and Fisheries, in reply to the personal message conveyed to him by me, on behalf of the Honorable William Phillips, Under Secretary of State.

I have [etc.] John G. Foster

[Enclosure]

The Canadian Deputy Minister of Marine and Fisheries (Johnston) to the Consul General at Ottawa (Foster)

Ottawa, *28 December, 1923.*

Sir: Referring to your letter of the 19th instant,[9] I would be very much obliged if you will convey to Mr. William Phillips, Under-Secretary of State, Washington, D. C. the following message;

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[9] See telegram of Dec. 17 from the Under Secretary of State to the consul general at Ottawa, p. 480.

Immediately following the receipt of your message through the Consul General for the United States resident here, the questions raised by you were referred to the Department of Justice. I am now in receipt of a communication from the Deputy Minister of Justice in the following terms:

"Referring to Mr. Found's conversation with Mr. Edwards, in which he asked to be advised with regard to the questions raised by the Consul General of the United States in his personal message to yourself of the 19th instant, I am of opinion that questions 1 and 2 in said letter are to be answered in the negative, and that with regard to question three, it is to be observed that section 9 makes a foreigner subject to forfeiture for two additional causes which do not apply to Canadian or British vessels, namely (1) preparing to fish and (2) entering territorial waters for a prohibited purpose. It does not in my view relieve British vessels from seizure and forfeiture for breach of any of the provisions of the Treaty or of the other provisions of the Act".

I hope the view expressed in the communication from the Department of Justice will be satisfactory to you. There is certainly no intention on our part to relieve British vessels from seizure and forfeiture for breach of any of the provisions of the Treaty. If any reasonable doubt arises in the mind of anyone that this would be possible under the legislation of last session, steps will be taken to remedy it during the next Session of Parliament.

I regret the delay in replying to your letter, which is accounted for by the non-arrival of the opinion of the Department of Justice, until this morning.

I have [etc.] A. JOHNSTON

TERMINATION OF THE CANADIAN PRACTICE OF GRANTING PORT PRIVILEGES TO UNITED STATES FISHING VESSELS

711.428/773

The British Chargé (Chilton) to the Secretary of State

No. 995 WASHINGTON, *November 21, 1923.*

SIR: At the request of His Excellency the Governor-General of Canada, I have the honour to inform you that the Dominion Government has had under consideration the system of granting *modus vivendi* licenses to United States fishing vessels for the purpose of enabling them to purchase bait, ice, seines, lines and all other supplies, and also for the transshipment of catch and the shipping of crews.

Lord Byng of Vimy desires me to point out that the legislation under which this system was established was enacted by the Parliament of Canada in 1892, and from that date until the year 1918 licenses were regularly issued to United States vessels in accordance with its provisions. During that period attempts were made to

secure for Canadian fishermen some privileges in United States ports. The efforts in this direction were unsuccessful until the year 1918, when arrangements were concluded on the recommendation of the International Fisheries Commission appointed that year whereby privileges were granted reciprocally in either country to the fishing vessels of the other.[10] These privileges were extended in both the United States and Canada under the provisions of war legislation.

When the United States war legislation ceased to be effective on the 1st July, 1921, however, the privileges enjoyed by Canadian fishing vessels in the ports of the United States were terminated.[11] The Government of Canada were at that time urged from many quarters to adopt a similar course as a matter of sound public policy but took the view that the privileges of using Canadian ports which had been extended to United States vessels for upwards of thirty years should not be terminated hastily. In deciding to continue the policy effective since 1892, the Dominion Government were influenced by the hope that the United States Government would ultimately recognise that Canada was entitled to some compensation for the privileges extended to United States vessels in Canadian ports, and further, that it would be recognised that the granting of reciprocal privileges during the years from 1918 to 1921 had not prejudicially affected any United States interests, and that on further consideration the Government of the United States would be disposed to restore them. Such, however, was unfortunately not the case. The United States Government have not only not made provision for the restoration of the arrangement of 1918, but have by tariff provisions imposed additional duties upon Canadian fish seeking the markets of this country.

In the meantime renewed demands for the termination of the privileges now enjoyed by United States fishing vessels in Canadian Atlantic ports have reached the Dominion Government from many quarters.

After the most careful consideration the Canadian Government have now decided that as from the 31st of December, 1923, licenses as provided by Section 3 of Chapter 47 of the Revised Statutes of Canada shall not issue to fishing vessels of the United States but that instead thereof, the provisions of the Treaty of 1818 shall be effective as from that date.

I have [etc.] H. G. Chilton

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[10] For recommendations of the Commission, see *Foreign Relations*, 1918, pp. 441–457.

[11] See *ibid.*, 1921, vol. I, pp. 288 ff.

711.428/773

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *November 28, 1923.*

SIR: The receipt is acknowledged of your note No. 995 of November 21, 1923, informing this Government that the Canadian Government has decided that from the 31st of December, 1923, *modus vivendi* licenses as provided by Section 3 of Chapter 47 of the Revised Statutes of Canada will not be issued to fishing vessels of the United States and that after that date their rights will be governed only by the provisions of the Treaty of 1818.

Information as to the decision of the Canadian Government has been communicated to the appropriate authorities of this Government in order that public announcement may be made for the information of interested persons.

Accept [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

NEGOTIATIONS FOR A NEW TREATY BETWEEN THE UNITED STATES AND CANADA TO LIMIT NAVAL ARMAMENT ON THE GREAT LAKES

711.42131/169

Memorandum by the Secretary of State of a Conversation with the Prime Minister of Canada (Mackenzie King) and the Canadian Minister of Defense (Graham), July 12, 1922

[Extract]

Mr. Chilton, the British Chargé, was present. The interview was had at the request of Mr. Mackenzie King.

Premier King said that several questions had arisen at the last session of the Canadian Parliament and it was thought to be advisable to take them up directly, and he had come to Washington for that purpose. The Secretary expressed his gratification at the visit.

1. *Vessels of War on the Great Lakes.* Premier King said that he felt that this was an opportune time in view of what had been accomplished at the recent Washington Conference to bring up the question of vessels of war on the Great Lakes. He pointed out that for one hundred years this arrangement had been pointed to as indicating what could be done by nations which desired to live in amity, and that it was desirable that the Rush-Bagot Agreement [12] which contained certain provisions hardly suited to modern conditions should

[12] Of Apr. 28 and 29, 1817; see Miller, *Treaties*, vol. 2, pp. 645 ff.

be remodeled, the arrangement being placed in suitable and permanent form by treaty.

Premier King said that he understood that there was no ulterior purpose on the part of the United States but that the Canadian people had viewed with some apprehension the increase in the American naval force on the Great Lakes. There were now a number of large vessels, about sixteen, on the Great Lakes which were armed. And that recently a request had been made that the *Wilmington* should go through and this had been held up pending an adjustment. There were also revenue cutters which he understood carried arms.

Premier King said that the arrangement had been due he believed to the desire of the naval militia in various states bordering on the Great Lakes to have training vessels and no doubt the vessels were to be used exclusively for training, but they carried guns and these guns were used in target practice. Premier King said that no doubt it had not engaged the attention of the American people especially, but the Canadians did not like this increase of naval forces and the fact that the United States already have at present a considerable naval force has led to propositions in the Canadian Parliament that Canada should have a similar naval force. Canada could not well afford to put out money for such a purpose and yet it was rather difficult to resist the demand if the United States maintained its ships, as at present, for its naval militia. Premier King deprecated our beginning anything like competition in equipment in our naval militia on the Great Lakes and thought that the United States would render a great service in following the policies of its recent Conference by entering into an agreement with Canada which should determine exactly what should be permitted, and which would prevent the growth of naval forces.

Premier King and Mr. Graham both alluded to ship building on the Great Lakes and the fact that the proposal might meet with opposition from those who would like to build war ships at their yards. They said that they thought this objection could be met as there was no objection to the building of such ships provided their guns were not placed until they had left the Lakes. Mr. Graham suggested that Canadian ship yards might desire to build also and he thought that there would be no objection merely to the building of ships, but only to arming them.

The Secretary said that the matter had not engaged his attention and he had not been aware that there was any apprehension developing among the Canadian people with respect to any naval force of the United States on the Great Lakes. He knew very well that the notion of the use of any such a force against Canada never occurred to anyone and he supposed, without having inquired into the matter, that the use of training ships to which the Premier had re-

ferred simply resulted from the natural desire of the young men in the cities bordering on the Great Lakes to have the same opportunities for naval training that were provided in the Atlantic Coast cities where the naval militia had been developed. The Secretary recalled when he was Governor of New York that the naval militia engaged a good deal of attention from the State Government and had been well provided for. He was quite sure that this was the explanation of the matter.

The Secretary said that he was most sympathetic with the idea of continuing the tradition of the absence of offensive and defensive preparations along the Canadian frontier; that we had referred to this as a unique manifestation of international friendship and we must maintain it. The Secretary felt sure that there was no reason for apprehension on the part of the Canadian people and he would be glad to enter into negotiations to see what arrangements could be made which would modernize and suitably carry out the purpose of the Rush–Bagot Agreement.

The Secretary suggested that it would be well for concrete proposals to be made and asked if the Canadian Government would furnish a more definite statement of just what was desired. The Secretary would be glad to take it under consideration, again emphasizing his deep interest in the maintenance of historic friendship between the two peoples. The Premier agreed that such proposals should be submitted.

711.42131/60

The British Chargé (Chilton) to the Secretary of State

No. 538

His Britannic Majesty's Chargé d'Affaires presents his compliments to the Secretary of State and, with reference to the memorandum of His Majesty's Ambassador, No. 483, of June 22nd [13] respecting the question of permission for the United States Ship *Wilmington* to enter, unarmed, the waters of the Great Lakes for duty in connection with the training of Naval Reserves and Naval Militia of Ohio and Kentucky, has the honour to inform him that a communication has been received from the Governor-General of Canada stating that, as the Prime Minister and the Minister of National Defence are now visiting Washington with a view to discussing the general question of Naval vessels on the Great Lakes, it is thought advisable to delay a reply to the Secretary of State's communication of June 13th [13] until the matter has been jointly considered.

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[13] Not printed.

The Department of National Defence of Canada point out that as this vessel does not replace any other vessel it would be an addition to the Naval strength of the United States in these waters.

WASHINGTON, *July 13, 1922.*

711.42131/60

The Secretary of State to the British Chargé (Chilton)

The Secretary of State presents his compliments to the Chargé d'Affaires ad interim of Great Britain and, with reference to Mr. Chilton's note of July 13, 1922, relative to the U.S.S. *Wilmington*, begs to inform him that, during the recent visit of the Prime Minister of Canada to this capital, the general question of naval vessels on the Great Lakes, to which Mr. Chilton referred in his note, was the subject of conversations between Mr. Hughes and Mr. Mackenzie King.

It is the understanding of the Secretary of State that concrete proposals for an agreement in this matter will be submitted to the United States Government in the near future by the Canadian Government, and therefore he presumes that the question of granting permission to the *Wilmington* to enter the waters of the Great Lakes will be taken up by the Canadian Government in connection with such proposals.

WASHINGTON, *July 24, 1922.*

711.42131/64

The British Ambassador (Geddes) to the Secretary of State

No. 887 WASHINGTON, *November 28, 1922.*

SIR: During their visit to Washington last July the Prime Minister of Canada and the Minister of National Defence took occasion to open discussions with you on the subject of a revision of the Rush–Bagot Agreement of April 28th, 1817, limiting the naval forces to be maintained by the United States and Canada on the Great Lakes. At this meeting it was suggested that the principles contained in the Rush–Bagot Agreement should be embodied in a new treaty in which due regard would be paid to the changed conditions of the times, and it was arranged that the Canadian Government should furnish the Government of the United States with a memorandum showing the extent and disposition of the armament at present maintained on the Great Lakes, together with a draft treaty containing the proposals of the Dominion Government in regard to this question.

I now have the honour, by request of the Government of Canada, to transmit herewith, for the consideration of the United States Government a copy of the draft treaty in question, together with a memorandum [14] showing the strength of the naval vessels now stationed on the Great Lakes.

The Dominion Government would be glad to receive in due course the views of the United States Government in regard to the terms of the draft treaty.

I have [etc.] A. C. Geddes

[Enclosure]

Draft Treaty for the Limitation of Naval Armament on the Great Lakes

Preamble

His Majesty the King, etcetera, and the United States of America,

Desiring through the abolition of their naval armament on the Great Lakes, to contribute to the maintenance of the peace and good understanding that has happily so long subsisted between them, and

Having to that end agreed to adapt to present day conditions the principles of the Agreement between Great Britain and the United States of America concluded at Washington on the 28th and 29th April, 1817, and to supplement by provisions relating to the Great Lakes the Treaty between the United States of America, the British Empire, France, Italy, and Japan for the Limitation of Naval Armament, signed at Washington on the 6th February, 1922.

Have resolved etcetera

Article One. The present Treaty shall apply to the waters of the Great Lakes, the waters connecting the Great Lakes, the international boundary waters of the St. Lawrence River, and the waters of Lake Champlain.

Article Two. No armed vessel shall be maintained on the waters designated in Article One by either High Contracting Party except in accordance with Article Three; nor shall there be passed, for any purpose whatsoever, from the sea into the waters designated, by either High Contracting Party, any vessel, either armed or unarmed, which has been designed, built or used for Naval purposes, without a mutual agreement beforehand.

Article Three. Such vessels may be maintained on the waters designated in Article 1 by either High Contracting Party as may be necessary for revenue and police duties.

[14] Not printed.

The numbers, specifications and armament of such vessels shall be agreed upon from time to time between the Canadian and American Governments.

Such vessels shall not be used on the waters designated in Article 1 for Naval or militia training or for naval manoeuvres.

ARTICLE FOUR. No vessel built on the waters designated in Article 1 for naval purposes shall have any offensive or defensive armament placed on board while it is in these waters.

Any such vessel shall be removed from these waters within six months of the date when it is ready for launching.

Each High Contracting Party shall promptly inform the other of any such vessel to be built on these waters within its jurisdiction, communicating the date of the signing of the contract, the date when it is ready for launching and its main dimensions.

ARTICLE FIVE. Should either of the High Contracting Parties become engaged in War which in its opinion affects the naval defence of its national security it may, after notice to the other High Contracting Party, suspend for the period of hostilities its obligations under Article 4, provided that it shall notify the other High Contracting Party that the emergency is of such a character as to require such suspension. On the cessation of hostilities this suspension shall terminate and Article 4 shall resume its full force and effect.

ARTICLE SIX. The present Treaty shall be ratified in accordance with the constitutional methods of the High Contracting Parties and shall take effect on the exchange of the ratifications, which shall take place at Washington as soon as possible.

It shall remain in force until two years after one of the High Contracting Parties has given notice to the other of an intention to terminate it.

Within one year of the date on which such notice of termination has been received the High Contracting Parties shall meet in conference.

The present Treaty shall supersede the Agreement between Great Britain and the United States of America which was concluded at Washington on the 28th and 29th April 1817.

711.42131/69

The British Embassy to the Department of State

AIDE MEMOIRE

In a confidential note dated January 3rd [15] the Secretary of State was informed that the Canadian Government were most anxious to arrange, if possible before January 31st next, for the signature of the

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[15] Not printed.

treaty between the United States Government and the Government of Canada in regard to naval armament on the Great Lakes. On the date mentioned the Canadian Parliament will open and the Canadian Government are very desirous of laying the treaty before Parliament at its opening session. On January 8th the Secretary of State replied [16] that the State Department would endeavour to expedite as much as possible the consideration which the American Government were giving to the matter.

His Majesty's Embassy are anxious to learn whether the American Government are now hopeful of proceeding to the signature of the treaty before the 31st of January next.

WASHINGTON, *January 18, 1923.*

711.42131/64

The Secretary of State to the British Ambassador (Geddes)

WASHINGTON, *May 12, 1923.*

EXCELLENCY: With your confidential communication No. 887 under date of November 28, 1922, you were good enough to transmit to me at the request of the Canadian Government a copy of a draft treaty designed to supplant the Rush-Bagot Agreement of April 28, 1817, and also a memorandum concerning the strength of naval vessels now stationed on the Great Lakes. You informed me also that the Dominion Government would be glad to receive in due course the views of the Government of the United States in response to the terms of the draft treaty.

I now have the honor to inform you that after the most careful consideration of the terms of the Canadian draft treaty, the Government of the United States, in order to facilitate the negotiation of an arrangement acceptable to both countries, has deemed it expedient to embody its own views in the provisions of a fresh draft treaty. A copy of that draft is transmitted to you herewith, and in parallel columns a copy of the Canadian draft [17] is set forth.

The following explanatory statement will make clear the position of the United States and will, it is hoped, reveal its effort to give practical effect to the high purpose animating both Governments by means of provisions enabling each to carry on its own domestic activities unhampered by unnecessary restraint.

The Preamble, adverting to the bond of peace happily long subsisting between the two countries, refers to their desire to "perpetuate the spirit" of the Rush-Bagot Agreement by an appropriate conven-

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[16] Not printed.

[17] Canadian draft printed *ante*, p. 488.

tion. It is believed that this simple yet definite statement suffices. The reference in the Canadian draft of the Treaty for the Limitation of Naval Armament, signed at Washington, February 6, 1922, seems to be hardly necessary, as there is no real connection between the two and it is deemed to be desirable to preserve the historic independence of the agreement relating to the Great Lakes.

Article One follows the Canadian draft except that there are added the words "the waters tributary to the Great Lakes", thereby somewhat enlarging the area of the waters designated.

The first clause of Article Two is identical with the Canadian draft. The second clause of the former, however, concerning the passage of vessels from the sea to the Lakes differs from the Canadian draft. The plan proposed by this Government does not forbid the passage of vessels of the two classes referred to in Article Three (those necessary for the enforcement of police laws and regulations, and naval vessels or merchant vessels converted to naval use); but it simply confines the class for the passage of which a mutual agreement beforehand is requisite to naval vessels other than of the character described in Article Three. Thus this clause when read in connection with Article Three has a twofold purpose. It gives sufficient latitude with respect to the passage of vessels which ought to be permitted to have access to the Lakes without special consent; and further, it excludes passage without that consent to the type of vessels normally not entitled to the privilege. It is believed, moreover, that the precise terms of the second paragraph of Article Three with respect to naval vessels or merchant vessels converted to naval use amply suffice to cover treatment to be accorded those ships.

The Canadian draft of Article Two which is framed on a different theory would serve to bar passage without previous consent not only to naval vessels whose presence on the Lakes was permitted, but also to any vessels well outside of that service, and used for public or private purposes, if they had been previously designed, built or ever used for any naval end. It is suggested that the American draft contains all sufficient safeguards and imposes no unnecessary restriction.

In Article Three the American draft makes differing provisions for two distinct class of vessels concerned. The first paragraph relates to such vessels "as may be necessary for the enforcement of police laws and regulations". These are ships employed for purely domestic purposes, such as enforcement of revenue laws, police protection, rescue work and the like. It is firmly believed that their number, specifications and armament should not be subjected to international agreement from time to time. On the other hand, to allay all possible fears or misconception as to their use, the American

draft provides that their armament is to be limited to such as is appropriate to the purpose to be served, and also that they shall not be used on the waters designated for militia training, for naval maneuvers or for naval training other than that of their regular crews. It is also declared that they shall never be used for hostile purposes—even in time of war. Thus this first paragraph as it stands forbids every improper use of such vessels contrary to the spirit of the treaty, yet at the same time gives reasonable latitude for the enforcement of police laws and regulations which impose a peculiarly heavy burden on the authorities of the United States.

The second paragraph of Article Three concerns naval vessels or merchant vessels converted to naval use. It is provided that they may be maintained "for training purposes only", that they shall never be used for hostile purposes on the Great Lakes—even in time of war, and that "the number, specifications and armament of such vessels shall be the subject of agreement from time to time between the American and Canadian Governments".

It is believed that the foregoing distinctive treatment accorded the two classes of vessels referred to in Article Three is closely responsive to the actual requirements of the present day. For that reason it is calculated to eliminate all unnecessary friction and thus to enable both countries to unite the more strongly for the abolishment of warlike acts on the Great Lakes.

According to Article Four no vessel built on the waters designated in Article One for naval service in other waters shall have any offensive or defensive armament placed on board, while in the waters designated in that Article. It will be noted that the words "in other waters" are a variation from the corresponding paragraph of the Canadian draft. Other differences in the phraseology between the two drafts of this Article are slight and require no comment.

Articles Five and Six of the two drafts are substantially alike.

In conclusion permit me to add that the Government and the people of the United States have been profoundly impressed by the practical value of the Rush-Bagot Agreement which despite its terms long since unresponsive to actual conditions has, through liberal and friendly interpretations on both sides of the boundary, served the real purpose for which it was concluded. It is with the warm desire to perpetuate the spirit of that Agreement by a fresh convention which by the reasonableness and flexibility of its terms may in no way weaken the common purpose of the two Governments that the accompanying draft treaty has been prepared.

I have the honor to request that you be good enough to transmit the treaty together with the views expressed in this communication to the Canadian Government.

Accept [etc.] CHARLES E. HUGHES

[Enclosure]

American Draft of Treaty for the Limitation of Naval Armament on the Great Lakes

Preamble

The United States of America and His Majesty, the King, etc.,

Desiring to strengthen the bond of peace which has long happily subsisted between them, and in particular to perpetuate the spirit of the arrangement commonly called the Rush-Bagot Agreement, concluded between them April 28 and April 29, 1817, by an appropriate convention, have appointed to that end their plenipotentiaries, etc.

. The President, etcetera.

Article One. The present Treaty shall apply to the waters of the Great Lakes, the waters tributary to the Great Lakes, the waters connecting the Great Lakes, the international boundary waters of the St. Lawrence River, and the waters of Lake Champlain.

Article Two. No armed vessel shall be maintained on the waters designated in Article One by either High Contracting Party except in accordance with Article Three; nor shall there be passed, for any purpose whatsoever, from the sea into the waters designated, by either High Contracting Party, any naval vessel other than of the character described in Article Three, either armed or unarmed, without a mutual agreement beforehand.

Article Three. Such vessels may be maintained on the waters designated in Article One by either High Contracting Party as may be necessary for the enforcement of police laws and regulations. The armament of vessels engaged in the enforcement of police laws and regulations shall be limited to such armament as is appropriate to that purpose. Such vessels shall not be used on the waters designated in Article One for militia training, for naval maneuvers or for naval training, other than that of their regular crews; nor shall they ever be used for hostile purposes—even in time of war.

Naval vessels or merchant vessels converted to naval use may be maintained for training purposes only, in the waters designated in Article One, provided the vessels so maintained shall never be used for hostile purposes on the Great Lakes—even in time of war. The number, specifications and armament of such vessels shall be the subject of agreement from time to time between the American and Canadian Governments.

Article Four. No vessel built on the waters designated in Article One for naval service in other waters shall have any offensive or defensive armament placed on board while it is in the waters designated in Article One.

Any such vessel shall be removed from those waters within six months of the date when it is ready for launching.

Each High Contracting Party shall promptly inform the other of any such vessel to be built on those waters within its territory, communicating the date of the signing of the contract, the date when it is ready for launching, and its main dimensions.

ARTICLE FIVE. Should either of the High Contracting Parties become engaged in war which in its opinion affects the naval defense of its national security, it may, after notice to the other High Contracting Party, suspend for the period of hostilities its obligations under Article Four, provided that it shall notify the other High Contracting Party that the emergency is of such a character as to require such suspension. On the cessation of hostilities this suspension shall terminate and Article Four shall resume its full force and effect.

ARTICLE SIX. The present Treaty shall be ratified in accordance with the constitutional methods of the High Contracting Parties and shall take effect on the exchange of the ratifications, which shall take place at Washington as soon as possible.

It shall remain in force until two years after one of the High Contracting Parties has given notice to the other of an intention to terminate it.

Within one year of the date on which such notice of termination has been received the High Contracting Parties shall meet in conference.

The present Treaty shall supersede the Agreement between the United States of America and Great Britain which was concluded at Washington on the 28th and 29th April, 1817.

CANADIAN LEGISLATION AUTHORIZING THE PROHIBITION OF THE EXPORTATION OF PULPWOOD [18]

611.429/1012a

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *July 5, 1923.*

SIR: The Department of State has been informed of the resolution which the Canadian Parliament adopted last week, authorizing the Governor in Council, by regulation, to prohibit the exportation from Canada of pulpwood of the variety, kind, place of origin or having the particulars of identification or ownership or production described in the regulation.

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[18] For previous correspondence concerning efforts to secure removal of restrictions upon exportation of pulpwood from Canada, see *Foreign Relations*, 1921, vol. I, pp. 299 ff.

You will, of course, appreciate that this is a matter of serious importance to this country and it is impossible for this government to contemplate the suggested action without grave concern. I shall be glad to have full information upon the subject as soon as possible, especially with respect to any action intended by the Canadian Government, in order that the Government of the United States may give appropriate consideration to the questions presented.

Accept [etc.] CHARLES E. HUGHES

611.429/996

The Secretary of State to the President of the American Paper and Pulp Association of New York (Henry W. Stokes)

WASHINGTON, *July 6, 1923.*

SIR: The Department has received your letter of June 28, 1923,[19] concerning the resolution passed by the Canadian House of Commons on June 26, 1923, authorizing the Governor General in Council to prohibit exportation from Canada of pulpwood.

In reply you are informed that the text of this resolution, as reported in the official House of Commons debates, is as follows:

"That it is expedient to amend section seven of the Export Act, chapter fifty of the Revised Statutes, 1906, as enacted by chapter thirty of the Statutes of 1914, by providing that the Governor in Council may by regulation prohibit the exportation from Canada of pulpwood of the variety, kind, place of origin or having the particulars of identification or ownership or production described in the regulation."

You will note, therefore, that the question of what prohibition of export, if any, is to be made is left in the hands of the Canadian Government and will, I feel sure, be carefully studied by it before any action is taken.

You may be assured that the Department of State has given and will continue to give close attention to this matter.

I am [etc.] For the Secretary of State:

LELAND HARRISON
Assistant Secretary

611.429/1010a: Telegram

The Secretary of State to the Consul General at Ottawa (Foster)

WASHINGTON, *July 7, 1923—5 p.m.*

Department's telegram July 5th.[19]

The American interests concerned in the outcome of the resolution authorizing the Governor in Council to prohibit the exporta-

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[19] Not printed.

tion of pulpwood have made the most earnest representation as to the enormous importance of this subject in the United States. If such a prohibition of export should be carried into effect and maintained, a large number of the newspapers, including many of the most important journals, would go out of business. In fact, almost all the newspaper interests in the country would be immediately and disastrously affected. It is at once apparent that public opinion throughout the United States would be profoundly stirred. Perhaps in no other way would public sentiment be more quickly aroused against what would appear to be unfriendly and unnecessary interference with popular and business interests in this country.

The Department has suggested that representatives of the American interests immediately involved, should proceed to Ottawa and acting on behalf of these interests should emphasize the very real seriousness and danger involved in the situation.

The Department feels that it is scarcely conceivable that the Canadian Government would, in fact, carry out the prohibition of pulpwood to the United States; that, however, in view of the very decided vote in favor of such action, it is necessary that the Canadian Government should realize that the friendship and commercial interests and good relations between the two countries would be vitally affected and that this Government would of course not submit to any such Act subjecting its general welfare without retaliation of a far-reaching character.

The foregoing is sent to you for your confidential information and guidance and not in any way as a formal communication to the Canadian Government or officials. You may, however, use such portions of it, as may seem to you desirable, in your conversations in informally expressing the seriousness with which the matter is regarded.

HUGHES

711.419/17½

Memorandum by the Secretary of State of a Conversation with the British Chargé (Chilton), July 16, 1923

[Extract]

Mr. Chilton said that he had presented the inquiry of the American Government to the Canadian Government and he handed to the Secretary a note in reply.[20] This note said that he had been advised by the Governor-General that the provisions of the Act in question conferred upon the Governor in Council power to prohibit

[20] Notes dated July 5 and 16, *ante*, pp. 494 and 498.

the exportation of all or any class of pulpwood at any time. His Excellency added that a Royal Commission will shortly be appointed to inquire into the whole question and full opportunity will be given to all parties interested to appear and give evidence before the Commission. It was added there was no likelihood of any action being taken to give effect to the provisions of the law until this inquiry had been completed.

The Secretary said he was gratified at this because he was sure such a complete inquiry would bring out all the pertinent facts. Mr. Chilton said that hope had been expressed that the American Government would understand that this was a domestic question in Canada and would not raise any question of the right of the Canadian Government in the matter.

The Secretary said, of course, he recognized that it was a domestic question in the sense that it related to the power of the Canadian Government with respect to exports, but it was that sort of a domestic question which had the most direct relation to the interests of the people of the United States. The Secretary said that the American Government had domestic questions, but when the exercise of our authority in relation to them was deemed to affect the interests of Great Britain, the British Government never hesitated to bring the matter strongly to our attention; that delegations had come over here to present their views to Committees of Congress in order that our action in such matters could be taken with full understanding of the consequences.

The Secretary said that no [*a more?*] serious action could hardly be taken by Canada with respect to American interests. The Secretary pointed out that it was not simply a question of American manufacturers but it was a question of the paper supply of American publishers; that American publishers had contracts and that their supply of paper depended upon the carrying out of these contracts, and that these in turn depended upon the pulpwood supply. There was so much in this country; there was so much in Canada and it could easily be estimated as to just what was required from Canadian sources. The Secretary said that the Canadian Government must realize that in this matter if they proceeded along the lines suggested that they would be taking the American newspapers and our publishers by the throat, and that one could hardly imagine a case in which there would be a more serious and immediate reaction on the part of the American public. Mr. Chilton said that he supposed that the Secretary meant that this would lead to retaliation. The Secretary said he did not care to indulge in any threat of retaliation. He did not like to talk about retaliation; he wished the matter to be discussed in the most friendly way. It was per-

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fectly apparent that if Canada started an economic war of this serious character, it would be continued and that the American Government would have abundant means of protecting itself against such injuries. The Secretary said he did not like to discuss the details of such matters, as he felt sure the Canadian Government, when it understood all the facts, would not authorize such a prohibition and he was gratified, as he had said, that full inquiry was to be made.

611.429/1019

The British Chargé (Chilton) to the Secretary of State

No. 591 WASHINGTON, *July 16, 1923.*

SIR: I have the honour to refer to the Note which you were good enough to address to me on the 5th instant advising me of the interest taken by the United States Government in the resolution recently adopted by the Canadian Parliament authorizing the Governor in Council to prohibit the exportation of pulpwood from the Dominion.

I did not fail to acquaint the Governor General of your desire to be furnished with full information on the subject especially with respect to any action contemplated by the Canadian Government, and I have just received a telegram from His Excellency stating that the resolution you mention and the Act founded thereon were assented to at the end of the last session of Parliament. The provisions of the Act confer upon the Governor in Council power to prohibit the exportation of all or any class of pulpwood at any time. His Excellency added that a Royal Commission will shortly be appointed to enquire into the whole question and full opportunity will be given to all parties interested to appear and give evidence before the Commission. There is no likelihood of any action being taken to give effect to the provisions of the law until this enquiry has been completed.

I have [etc.] H. G. CHILTON

ESTABLISHMENT OF A JOINT BOARD OF CONTROL TO SUPERVISE THE DIVERSION OF WATERS FROM THE NIAGARA RIVER

711.4216 Ni/149

The Secretary of State to the British Ambassador (Geddes)

WASHINGTON, *February 3, 1923.*

EXCELLENCY: My attention has been called to a situation regarding the use of the waters of the Niagara River just above the Falls,

which it is considered renders desirable a measure of closer cooperation between this Government and the Government of Canada in the proper preservation of the interests of the two countries.

You may recall that by Article V of the Boundary Waters Treaty, concluded between the United States and Great Britain, January 11, 1909,[23] the High Contracting Parties agreed that it was expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream might not be appreciably affected but that the object should be accomplished with the least possible injury to investments already made in the construction of power plants on each side of the River under grants of authority from the State of New York and under licenses authorized by the Dominion of Canada and the Province of Ontario.

It is provided by the treaty that for power purposes the diversion of water shall be limited to a daily aggregate of 20,000 cubic feet per second in the State of New York, and to 36,000 cubic feet per second in the Province of Ontario.

I am informed that on the American side of the River there are at present installed turbo-generators capable of using 23,500 second-feet if operated to maximum capacity, and that a new plant of the Niagara Falls Power Company will, when completed, have a capacity of 10,000 second-feet, thus giving a total installed capacity expressed in second-feet of 33,500 or 13,500 in excess of the diversion permitted by treaty.

It is stated that on the Canadian side the turbo-generators at present installed are, according to estimates, capable of using more than 33,000 second-feet and that the Queenston Plant of the Ontario Hydro-Electric Commission will use approximately 10,000 second-feet when the present project for installing five turbines and generators shall have been carried out, giving a total installed capacity of 43,000 second-feet, or 7,000 second-feet in excess of the diversion permitted by the treaty.

I am informed that upon the completion of these new installations it will be necessary, in order to prevent any violation of the treaty, that some plants on each side of the boundary be operated at less than maximum capacity, or used only as emergency units. This Government contemplates requiring this in connection with the operation of plants on the American side and it is presumed that plans to accomplish the same purpose have been or will be formulated by the Canadian Government. It is conceivable, however, that if the Canadian and American authorities adopt different methods for making the measurements uniform results may not be

[23] *Foreign Relations*, 1910, p. 532.

obtained. In view of the interest which both countries have in the diversion of waters from the Niagara River, it is thought that some arrangement should be made for controlling and measuring the waters diverted on each side of the boundary with a view to securing uniformity of results and proper observance of the treaty provisions.

It is believed that the desired results could be accomplished by placing under a joint board of control to consist of at least one representative designated by each government, the duty of supervising the agencies heretofore established or which may hereafter be established by the two countries for ascertaining the amount of water diverted; also the duty of passing upon the accuracy and sufficiency of the methods in use and compiling, for the use of the two governments, data regarding diversion of water. I am informed that in the case of the United States, the matter could be handled by the Corps of Engineers of the War Department, acting through its agent, The District Engineer, at Buffalo.

I shall be glad if you will bring this matter to the attention of the Canadian Government and will inform me of its views on the subject.

Accept [etc.] CHARLES E. HUGHES

711.4216 Ni/156

The British Chargé (Chilton) to the Secretary of State

No. 615 WASHINGTON, *July 25, 1923.*

SIR: I have the honour to inform you that, upon receipt of the letter which Mr. Phillips was so good as to address to me on July 10th last [24] enquiring the attitude of the Dominion Government in regard to the suggestions made in your note of February 3rd last to Sir Auckland Geddes relative to the use of the waters of the Niagara River, I did not fail to remind the Governor-General of Canada of this question and to ask the present position in the matter.

I now have the honour to inform you that the suggestions contained in your note for the creation of a Niagara Control Board for the purposes stated therein are agreeable to the Dominion Government, and that they have appointed Mr. W. J. Stewart as their representative on the Board.

I have [etc.] H. G. CHILTON

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[24] Not printed.

711.4216 Ni/157

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *August 21, 1923.*

SIR: I have the honor to acknowledge the receipt of your note No. 615 of July 25, 1923, informing me that the suggestion contained in my note of February 3, 1923, for the creation of a Niagara Control Board for the purpose of measuring and supervising the diversion of water from the Niagara River is agreeable to the Government of the Dominion of Canada and that it has appointed Mr. W. J. Stewart as its representative on the Board.

The information which you communicated was transmitted to the Secretary of War, who has informed me in reply that Major Paul S. Reinecke, Corps of Engineers, United States Army, 540 Federal Building, Buffalo, New York, has been appointed as the representative of the United States on this Board. I should be grateful if you would inform the Canadian Government of the appointment of Major Reinecke.

Accept [etc.] CHARLES E. HUGHES

CHILE

THE TACNA-ARICA QUESTION

(See pages 364 ff.)

CHINA

COLLAPSE OF THE GOVERNMENT OF LI YUAN-HUNG AND THE ELECTION OF TSAO KUN TO THE PRESIDENCY OF CHINA[1]

893.002/111 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 5, 1923—noon.*
[Received January 5—9:35 a.m.]

8. Presidential mandate January 4th, appoints General Chang Shao-tseng Prime Minister. This appointment was ratified by Parliament December 29th. Following are appointed Acting Ministers: Foreign Affairs, Alfred Sze; Interior, Kao Ling-wei; Finance, Liu En-yuan; Navy, Li Ting-hsin; Justice, C. T. Wang; Education, Peng Yung-I; Agriculture and Commerce, Li Keng-yuan; Communication[s], Wu Yu-lin; Prime Minister concurrently appointed Acting Minister of War.

SCHURMAN

893.002/113 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *January 25, 1923—11 a.m.*
[Received January 25—9:10 a.m.]

31. Senate yesterday confirmed Cabinet members excepting Sze who failed with 99 votes out of 204.[2] Sze was third lowest in House vote January 18. I have reliable information that the reason for Sze's defeat was that in Cabinet meetings he opposed the re-arrest of Lo Wen-kan[3] after a judicial tribunal had acquitted him.

The present Cabinet is under the control of militarists and politicians who overturned the Cabinet of Wang Chung-hui[4] by arbitrarily arresting Lo Wen-kan with the authority of the President.

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[1] For previous correspondence regarding political affairs in China, see *Foreign Relations*, 1922, vol. I, pp. 681 ff.
[2] General Huang Fu replaced Sze as Minister for Foreign Affairs on Feb. 9.
[3] Minister of Finance in Cabinet of Wang Chung-hui.
[4] In Nov. 1922.

This action was instigated by the Speaker of the House. Sze did not appreciate the political situation or the nature of the forces with which he was allied.

My telegram no. 8 of January 5, noon. Cheng Keh has taken the post of Minister of Justice, C. T. Wang having declined to serve.

SCHURMAN

893.00/4907 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *March 9, 1923—2 p.m.*
[Received 4:20 p.m.]

76. My 66, February 24, 5 p.m., and 75, March 8, 1 p.m.[5] Yesterday evening Chang Shao-tseng Cabinet resigned en bloc.[6] At Cabinet meeting which lasted from 12:30 to 4 o'clock outstanding matters discussed were recent student activities, financial situation and ultimatum from militarists.

Students notably in Peking have since formation of Cabinet protested and paraded against Peng Yung-I as Minister of Education. They had very generally the sympathy of their teachers, and Chancellor Ts'ai of National University Peking resigned and went away on strike. Apparently in protest against Government and police, who interfered with their recent lantern demonstration, some students have now sent telegram to Sun Yat-sen addressing him as President of China denouncing Premier and especially President Li and inviting Sun to lead his troops into Peking, drive away these two tyrants, and dissolve the illegal Parliament.

I have frequently reported in addition to yesterday's telegram how desperate the financial situation is. I now add this side light. I spent an hour and half with Minister for Foreign Affairs on 7th going over my answer in Coltman case,[7] urging prompt execution wireless contract,[8] and pointing out that in China's interest something if only one overdue interest installment should be fair [*paid?*] to Abbott[9] before he met newspaper men in San Francisco next month, after spending several months here in endeavor to get his loan repaid. In regard to last, Minister of Foreign Affairs said he had had the matter much in mind since receiving my note of a few days before[10] and had consulted with the Minister of Finance who shared his sentiments and

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[5] Neither printed.
[6] The resignations were not accepted by the President.
[7] See p. 709.
[8] See p. 783.
[9] John J. Abbott, vice president of the Continental and Commercial Trust and Savings Bank, Chicago.
[10] Not printed.

latter had promised him to keep for Abbott all the money that came into Treasury and he hoped they might have twenty thousand or thirty thousand dollars.

Militarist ultimatum came from Wu Pei-fu and Tsao Kun. The announced policy of Premier has been to effect the peaceful unification of the country and to hasten the promulgation of the constitution. Constitution waits on Parliament which has reported little progress not only since this Cabinet came in but since its convening on August 1st. Premier without waiting for constitution announced program of unification by means of conferences with tuchuns and other military and political leaders. Wu Pei-fu without any proclamation but by military measures embarked on policy of unification by force with the aim apparently of adding to his present central block of Honan, Hupeh and Hunan the adjoining Provinces of Kiangsi, Fukien and if possible Kwangtung on the southeast and also it is reported Szechuan on the west (where the local militarists have again started hostilities). To strengthen his position Wu has been demanding that the Peking Government appoint his Generals Sun Chuan-fang and Shen Hung-ying as respective tulis, that is, tuchuns under change of terminology, of Fukien and Kwangtung. If Premier consented Sun Yat-sen at least would not attend unification conference and Premier refused. Tsao Kun having now joined Wu in their ultimatum demanding the appointments, the only course open to the Cabinet was to resign. In a telegram to provincial authorities giving reasons for resignation Premier says, "attempts have been made recently to usurp authority in Kwangtung and there are signs of war on every hand. Peace is in jeopardy and there seems to be no remedy. To resort to force would be to stultify our original intentions; to sit idly by only permits the aggravating of the situation." I am informed through ordinarily reliable channels President told Cabinet he would leave office if they insisted on resigning.

SCHURMAN

893.002/121 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *April 9, 1923—10 a.m.*
[Received April 9—4:37 a.m.]

98. My 93, March 29, 5 p.m.[11] By Presidential mandate yesterday resignation of Huang Fu is accepted and Wellington Koo appointed Acting Minister of Foreign Affairs.

SCHURMAN

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[11] Not printed.

893.00/4942: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *April 10, 1923—6 p.m.*
[Received April 10—12:48 p.m.]

102. Rumors that fighting may begin in the near future between Chang Tso-lin and the Chihli Party army of Generals Tsao Kun, Wu Pei-fu, and Feng Yu-hsiang have come to us recently from both civilian and military quarters ordinarily well informed.

From reliable American citizen I now learn that agents of Tsao Kun have three times approached his firm, one as late as today, with the request that the firm should import poison gas, or failing that, the constituents thereof from America and that delivery in China within two months was absolutely necessary. One of the agents mentioned as a reason why Tsao Kun should have a supply of poison gas that Chang Tso-lin was manufacturing it in Mukden with the aid of Russian and German chemists.

SCHURMAN

893.00/4961: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *April 27, 1923—6 p.m.*
[Received April 27—11 a.m.]

123. My 102, April 10, 6 p.m. Reports of impending hostilities between Fengtien and Chihli forces actively circulating and perturbing Chinese civilian population. The situation seems to be that both sides are energetically and even feverishly preparing for eventualities but each declares that it has no intention of beginning an attack on the others. Japanese Minister Obata who departed yesterday for Tokyo on leave in farewell audience with the President 25th expressed earnest desire of Japan that hostilities between Fengtien and Chihli should not occur and President replied that he was doing his utmost to avert them.

SCHURMAN

893.51/4283: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 4, 1923—7 p.m.*
[Received 9:10 p.m.]

130. My 127, April 28, 4 p.m.[12] In view of the multiplying rumors of war between Chihli and Fengtien forces and convincing

[12] *Post*, p. 539.

evidence that troops and supplies were being pushed forward by both sides greatly to the anxiety of civilian population, the American, French and British Ministers and Japanese Chargé d'Affaires had a conference with Prime Minister this afternoon in which we informed him of the position we had taken with regard to Minister of Finance's proposal for a loan from the Consortium, and declared we should be compelled to withdraw the recommendations we had made to our respective Governments, if fighting was likely to occur in North China. We acknowledged the receipt of assurances from the Chinese Government that the popular anxiety was without foundation, and stated that we had read similar assurances in the newspapers from the highest military authorities on both sides, but we could not reconcile with these declarations the indisputable facts of the advance of troops and the requisition of carts, etc. While we believed that the Government and the leaders on both sides did not desire war, we apprehended an outbreak of hostilities as a mere result of the juxtaposition of armies whose outposts were now in contact with one another. We suggested that, as a guarantee of peace, the forces on both sides be withdrawn and a neutral zone established, and that the Central Government direct that such steps be immediately taken. Prime Minister replied that his emissaries had just returned from Mukden and would go tomorrow to Paotingfu, and that he could now assure us that the crisis was passed. For this reason he had been hopeful of peace, now he was confident of it. He added that he had good ground for believing, not only Chang Tso-lin, as well as the Chihli leaders, would withdraw their troops from their present advanced positions, but that the former would also soon declare his allegiance to the Peking Government.

Prime Minister thanked us for our benevolent helpfulness to China. We said that our Governments, who would strongly deprecate the outbreak of hostilities, were desirous of helping China in all proper ways to maintain peace for the benefit of the Chinese people. A copy of this message has been mailed to Tokyo.

SCHURMAN

893.002/128 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 7, 1923—10 a.m.*
[Received June 7—4:45 a.m.]

201. Entire Cabinet resigned yesterday afternoon and the Premier with his family left for Tientsin. The reason given is Presidential encroachment on the rights and privileges of a responsible Government. There were differences between the President and the Cab-

inet, but the Cabinet had also been opposed by Parliament, it had no funds to make the necessary settlements at the approaching dragon boat festival and it was faced with many other difficulties, including Lincheng outrage.[13] Back of all other reasons, however, is the plan of Tsao Kun's followers to force Li Yuan-hung out of the Presidency and put Tsao Kun in his place. The attacks on the Cabinet as a first move was expected by all well-informed observers at any time.

SCHURMAN

893.002/129 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 7, 1923—3 p.m.*
[Received 3:45 p.m.]

203. My 201, June 7, 10 a.m. Lunched today with Koo who, along with Yen and two speakers of Parliament, spent forenoon in conference with President. It is present intention to accept Cabinet resignation. Still uncertain who will head new Cabinet as no one wants to take financial responsibility of passing dragon boat festival for which at least $4,000,000 is needed and nothing in sight. Conference is to be resumed this evening.

Recalling points in long talk Yen had with me here June 3rd and remarks of Koo today, I surmise following is program of Chihli Party: First, installing new Cabinet with Yen as Prime Minister and Koo, Minister of Foreign Affairs; secondly, forcing Li Yuan-hung out of the Presidency; thirdly, temporary assumption of Presidential functions by Yen Cabinet; and fourthly, election of Tsao Kun to the Presidency. The execution of this program may be frustrated by strategy of President, or by governmental bankruptcy, or by withdrawal from Peking of Kuomintang members leaving Parliament without quorum for electing a President, or by other circumstances.

SCHURMAN

893.00/5032 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 9, 1923—10 a.m.*
[Received June 9—9:30 a.m.]

208. My 203, June 7, 3 p.m. Peking police quit at 6 o'clock this morning. Members of my staff civil and military have been going

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[13] See pp. 631 ff.

about ever since and report everything quiet and shops open. General Munthe's Legation Quarter force of four companies remain on duty. It is not believed that the police struck for pay as they received a few days ago 50 percent of their over-due wages.

I am informed by trustworthy gentleman who called on me at 7 o'clock this morning and who had already seen the President that Minister of Interior, who controls the police, Minister of Marine and Minister of Justice have directed the action of the police for the purpose and in the expectation of compelling the President to abandon his office, thus preparing the way for Tsao Kun; that General Feng Yu-hsiang is cooperating with them (he had already shown himself a supporter of Tsao Kun) but that certain members of Chamber of Commerce and educational associations and of the gentry are endeavoring to induce General Wang Huai-ching to march his troops from near the summer palace into the city; and that the issue depends on whether Feng or Wang arrives here first. My informant, who is friendly to President, reports that President declares he will not leave city till his successor is elected and, while he cannot in the absence of police go to Presidential offices, he will remain in his own house where he has hitherto lived and whither, at an early hour this morning, he caused the Presidential seal to be brought.

President spent yesterday in conference with the result as reported that Yen or Koo was to have been named Premier, though with no solution of financial difficulty.

I will promptly telegraph any new developments. Although no danger to foreigners is apprehended, I am watching the situation closely and already had a consultation with military members of my staff between 7 and 8 o'clock this morning.

SCHURMAN

893.00/5033 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 9, 1923—2 p.m.*
[Received June 9—9:43 a.m.]

210. The foreign Ministers have received an identic despatch from Feng Yu-hsiang, inspector general of the Army, and Wang Huai-ching, commander in chief of the Metropolitan forces, in which they assume complete responsibility for the maintenance of order and the protection of foreign interests.

Officials of the Ministry of Foreign Affairs have delivered this despatch in person, accompanying it with a statement from the Government that the only cause of the police strike is arrears of pay and that no disturbance is to be apprehended.

Nevertheless, I believe that the principal motive of the strike is political and expect to see the President quit.

SCHURMAN

893.00/5034 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 9, 1923—8 p.m.*
[Received June 9—1:12 p.m.]

211. My 210, June 9, 2 p.m. Strike ended. Reasons obscure. No change in Peking. Koo has just informed me that he has requested President to drop his name from further consideration for premiership.

SCHURMAN

893.00/5044 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 13, 1923—2 p.m.*
[Received June 13—7:28 a.m.]

220. My 215, June 12, noon.[14] President left for Tientsin at 1:25 p.m. today accompanied by Vice Minister of War.

No excitement.

SCHURMAN

893.00/5047 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 14, 1923—8 a.m.*
[Received June 14—5:50 a.m.]

221. My telegram no. 220, June 13, 2 p.m. Afternoon 13th dean of the diplomatic corps received the following letter from Li Yuan-hung. "Finding I cannot perform freely the duties of my office, I am going to Tientsin. Please inform diplomatic body." Li Yuan-hung was held at Tientsin central station for about twelve hours during which time negotiations were carried on. As a result he (1) confirmed his resignation and instructed the Cabinet to call election, and (2) telephoned one of his wives, who was in the French hospital facing this Legation, to turn over Presidential seals which she had there in her charge and which up to that time she absolutely refused to give up. Li Yuan-hung was then allowed to proceed to Tientsin East where he went to his house in the foreign concession.

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[14] Not printed.

General Wang Huai-ching and Feng Yu-hsiang sent a note at midnight repeating assurance that they would be responsible for peace and order in the city and for the safety of Americans.

Yen and Koo, who dined here last night and who talked freely with me in private about the situation, fear it will be difficult to secure the constitutional number of votes for the election of a new President as Parliament is divided into about forty groups of which none controls more than a fraction the requisite number of votes. Yen feels strongly the necessity of preserving at least the semblance of regularity. He suggested, nevertheless, in case [the] parliamentary election proved impracticable, that some one might be called to Presidential office by public opinion as expressed by leaders and others in the provinces. Yen and Koo left here about 10:30 o'clock to attend a conference of Cabinet members and political leaders.

City is peaceful.

SCHURMAN

893.00/5111

The Secretary for Foreign Affairs of the Canton Government (Chao) to the Consul at Canton (Tenney) [15]

CANTON, *June 29, 1923.*

SIR: I have the honor to enclose herewith for your information copy of a Manifesto issued this day by the Generalissimo addressed to the Foreign Powers.

Will you be good enough to forward it to your Minister at Peking with the request that the same be communicated to your Government?

I have [etc.] CHAO CHU-WU

[Enclosure]

Manifesto Issued by Dr. Sun Yat-sen, June 29, 1923

The Chinese people have suffered long and heavily under the burden of militarism which has brought in its train civil war, disunion, and anarchy. The recent deplorable bandit outrage on one of the trunk railways, though startling to the outside world, is, to the long-suffering Chinese people, but another incident of innumerable similar happenings in places little known, another count in their indictment against their oppressors. When it is pointed out that within a radius of one hundred miles of Lincheng, adjoin the territories of five provinces under the military jurisdiction of the most prominent and powerful Militarists of the North whose soldiery number officially

[15] Copy transmitted to the Secretary of State by the consul at Canton in despatch no. 288, July 2, 1923; received Aug. 1.

half a million, it will be realised what the extent of the evil and the futility of militarism is. When the events transpiring in Peking during the last twelve months, to take a no longer period, are recollected, during which time a so-called president has been pushed into office and dragged out of it, and a bewildering number of premiers and cabinets have been set up and pulled down, all solely at the pleasure of the Militarists to gain their own ambitions, it will be realised what the extent of the unruliness and the fickleness of the Militarists is. The Chinese people have in no uncertain voice time and again repudiated the claim of such men to be their rulers and have longed for the blessings of peace and unity in the land.

Conscious of the sentiment of the country and convinced that the urgent needs of China are the disbandment of superfluous soldiery and the establishment of a united and efficient government, I last year suggested a meeting of the principal political and military parties in conference having for its agenda the disbandment of troops throughout the country by general agreement and the subsequent employment of the men in productive works of public utility, the establishment of a central government which should receive the support of all the provinces and perform the functions and discharge the duties of an enlightened, progressive, and democratic government, the agreement on a constructive programme for the Central Government and the provinces, and the settlement of those political questions on which the future peace and good government of the country and the smooth relations between the Central and Provincial Governments depend. Such a Disarmament Conference was little to the liking of the Militarists as it would deprive them of the tools on which they depended for the realisation of their unholy ambitions and was like "asking the tiger for his skin." While they dared not openly oppose the proposal, they were evasive in regard to the question of disarmament which was really the crux of the whole matter. At the same time they sent expeditions and subsidised traitors to make war on the provinces of Kwangtung, Szechuen and Fukien and thus by their action defied the entire Chinese people.

They have been enabled to do this through their possession of the historic seat of the Central Government which gave them the recognition of the Foreign Powers. But the Peking Government is not in fact or in law a government, does not perform the primary functions or fulfil the elementary obligations of a government, and is not recognised by the Chinese people as a government. The Foreign Powers, who must all along have realised the farce of their recognition, have been prompted to do so by the notion that they must have some entity, though it be a nonentity, with which to deal. However, by their action, they have given Peking moral prestige and financial

support in the shape of revenues under foreign control so that the Peking Government has been enabled to exist by virtue of foreign recognition and by that alone. Unconsciously perhaps, they have thus done something which they have professed they would not do, that is, intervened in China's internal affairs by practically imposing on the country a government repudiated by it. They have by supporting a government which cannot exist for a single day without such support, hindered China from establishing an effective and stable government which the Washington Conference agreed "to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself." They have by prolonging civil war, disorder, and disorganisation, injured the interests of their own nationals whose trade and business with China have naturally suffered loss and inconvenience. Even technically the recognition of Peking has been of no convenience to the Legations as owing to the fact that Peking's writ does not run in the provinces, they have often to deal direct with the Provincial authorities, and the absence of a recognised Central Government is no real inconvenience when it is recalled that such was the case for a period of twenty months between the fall of the Manchu Government and the recognition of the Republic. On the other hand, it is absolutely certain that non-recognition of the Peking Government, involving as it does the loss of prestige and important sources of revenues, will compel the Militarists to agree to disbandment and unification.

The lack of even the form of government and the struggle for empty titles in Peking at the present juncture constitute a particularly opportune moment for the Foreign Powers to withhold their recognition from Peking until a government is established which can fairly claim to be representative of the country and command the respect and support of the provinces. The Chinese nation awaits from the Powers this *démarche* which is demanded by every consideration of justice to China, the principle of non-intervention, solemn international compact, and the interests of the Foreign Powers themselves.

Sun Yat-sen

893.00/5085 : Telegram

The Minister in China (Schurman) to the Secretary of State

Peking, *July 13, 1923—10 a.m.*
[Received July 13—9:35 a.m.]

257. Following received:

"Mandates July 10, 1923. The Acting Minister of Finance Chang Ying-hua, having several times earnestly requested permission to resign, he is hereby relieved of his acting post.

Wang Ke-min is appointed Acting Minister of Finance.

Seal of the President by the Cabinet.

Countersigned.

Premier and Minister of War, blank.
Minister for Foreign Affairs, blank.
Minister of the Interior, Kao Ling-wei.
Minister of Finance, blank.
Minister of Marine, Li Ting-hsin.
Minister of Justice, Cheng Ke.
Minister of Education, blank.
Minister of Agriculture and Commerce, blank.
Minister of Communications Wu Yu-lin."

Functioning Cabinet of five members was reduced by resignation of Minister of Finance to four which is less than a majority of original nine. Koo told me yesterday that he and Wang Ke-min would assume office next week and Koo was appointed by mandate of President Li. Latter, however, claims that, before leaving Peking June 13th, he issued mandates (though they were not published) accepting resignations of all members of Cabinet except Li Ken-yuan, Minister of Agriculture and Commerce, whom he appointed Premier concurrently and who countersigned the mandates, but diplomatic body has hitherto taken no note of this claim.

Parliament has accomplished nothing in 11 months and is utterly discredited. Of its members so far as can be ascertained 80 are in Tientsin, 100 in Shanghai and 670 in Peking, of whom considerable fraction have been promised traveling expenses to go south and are believed to be waiting higher competitive bids. Parliamentary constitutional commission has not for weeks been able to get a quorum and a meeting yesterday brought together only 470.

With no President, no Premier, and such attenuated and paralyzed organs of government themselves of questionable validity, the case for withdrawal of recognition from Peking is stronger than ever it was before. Sun Yat-sen has a manifesto [16] in which adroitly connecting the usurping Peking militarists with the Lincheng outrage, he demands that the foreign powers withhold recognition of Peking " until a government has been established which can fairly claim to be representative of the country and can command the respect and support of the provinces", and Sun Yat-sen's demand for withdrawal of recognition is supported by leading British newspapers in Shanghai.

Whether the threat of withdrawing or withholding recognition from Peking is a measure that might wisely be adopted to produce pressure for some specific international purpose is a question I am carefully considering in connection with Department's telegrams

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[16] *Ante*, p. 511.

numbers 138, undated,[17] received July 11, 9 a.m., and 121, June 23, 3 p.m.,[18] and, while I have not reached a definite conclusion, I incline tentatively to the view that the demonstrable attendant risks would outweigh any probable advantages. But, on the general issue of withdrawal of recognition on account of the deterioration and impotence of the Peking Government, my opinion remains unchanged. I take the liberty of quoting [apparent omission] (as radio communication was then uncertain) in which I forecast the present decline of the Peking Government and discussed the problem of withdrawing recognition in writing that are equally valid today: "All things considered, I look for increasing disintegration with military control of provinces and practically no central government. Yet, if Legations were withdrawn from Peking, relations with rehabilitated China would be embarrassed, peace between other nations with interests in China put in jeopardy and the lives and property of foreign nationals left in the meantime to grave and intolerable risks."

I hope some way may be found of settling Lincheng affair without raising at any rate formally the question of withdrawal of recognition from Peking.

SCHURMAN

893.002/132 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *July 23, 1923—5 p.m.*
[Received July 23—9 a.m.]

262. Wellington Koo took office today as Minister for Foreign Affairs.

SCHURMAN

893.00/5186

The Minister in China (Schurman) to the Secretary of State

No. 1738 PEKING, *August 17, 1923.*
[Received September 21.]

SIR: With reference to my telegram No. 283, of August 12, 11 a.m.,[19] regarding the probability of an outbreak of hostilities between the Military Governors of Kiangsu and Chekiang Provinces, I have the honor to transmit herewith a copy of the joint note on

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[17] Dated July 9, *post*, p. 677.
[18] *Post*, p. 666.
[19] Not printed.

the matter which my French, British and Japanese Colleagues and I addressed to the Ministry of Foreign Affairs on August 11th.

I have [etc.] JACOB GOULD SCHURMAN

[Enclosure]

The Ministers of the United States, France, Great Britain, and Japan to the Chinese Minister for Foreign Affairs (Wellington Koo)

PEKING, *August 11, 1923.*

YOUR EXCELLENCY: We, the undersigned Ministers of the United States, France, Great Britain and Japan, have been disturbed of late by recurrent reports that there is the possibility of an outbreak of hostilities between the high provincial authorities of Kiangsu and Chekiang. While entirely ignorant of the degree of credence to be attached to these reports we nevertheless feel it our duty to remind the Chinese Government of the enormous foreign interests that exist in the region of Shanghai, which the Chinese Government is by treaty under obligation to protect, to call attention to the incalculable losses and injuries which would inevitably result to those interests from the conduct of military operations in the region indicated, and to emphasize in the most solemn manner the inescapable obligations of the Chinese Government effectively to prevent loss of life and property to members of the foreign community in and about Shanghai.

We, the undersigned, are constrained to add that in the event that the Government of China, or the authorities of the provinces concerned, fail to afford to these legitimate interests the protection which it is the right of our respective nationals to expect, we shall hold the Chinese Government accountable for all consequent injuries and shall adopt such measures and utilize such means as are available to us to afford requisite protection to foreign residents, and to our trade and property, at or near Shanghai.

Accept [etc.]

JACOB GOULD SCHURMAN
C. DE FLEURIAU
RONALD MACLEAY
Y. YOSHIZAWA

893.002/137

The Minister in China (Schurman) to the Secretary of State

No. 1818 PEKING, *September 12, 1923.*
[Received October 18.]

SIR: I have the honor to refer to my telegram No. 288 of August 15, 6 p.m., regarding the appointment of Mr. Chang Hu as Acting

Minister of Finance,[20] and to inform the Department that the Cabinet on September 4, 1923, issued a number of Mandates appointing Huang Fu Acting Minister of Education, and Yuan Nai K'uan Acting Minister of Agriculture and Commerce. Also the Vice-Minister of War, General Chin Shao Tseng, was ordered temporarily to take charge of the affairs of the Ministry. These appointments fill the vacancies in the Cabinet with the exception of the post of Premier. It will be remembered that Huang Fu was appointed Acting Minister for Foreign Affairs on February 3, 1923, and continued in office until about March 25, 1923, when he was given leave of absence. A translation of the Mandates of September 4th is transmitted herewith.[20]

I have [etc.] JACOB GOULD SCHURMAN

893.00/5213 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 5, 1923—5 p.m.*
[Received October 5—10:14 a.m.]

332. Tsao Kun elected President this afternoon by 48 [*480*] votes, being 37 above number necessary to elect. No enthusiasm, no crowds, only police, soldiers and rickshaw men in streets. I was only foreign Minister present.

SCHURMAN

893.001 T 78/1a : Telegram

The Acting Secretary of State to the Minister in China (Schurman)

WASHINGTON, *October 10, 1923—1 p.m.*

216. Your No. 328, October 2, 1 p.m.[21]

In view of the situation indicated in the final paragraph of your telegram the Department desires to be informed when Tsao Kun will formally assume office and whether the Diplomatic Body have taken, or propose to take, any action which would directly, or by implication, recognize him as President of China. In view of the very special circumstances now existing, the Department is refraining from sending this year the felicitations customarily tendered on October 10 to the head of the State.

PHILLIPS

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[20] Not printed.
[21] *Post*, p. 701.

893.001 T 78/1 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 10, 1923—5 p.m.*
[Received 7:27 p.m.]

337. My 336, October 9, 5 p.m.[22] Tsao Kun inaugurated today, received Chinese officials, and delivered address containing sensible observations on education, public revenues, and expenditures, military retrenchment, unification through cooperation of different leaders.

[Paraphrase.] The diplomatic corps had demanded the following assurances which were contained in the address: [End paraphrase.]

"All the friendly powers wish China well but it will not be a fitting response to their well-meant intentions if we do not fully discharge our duty of giving protection to the lives and property of their nationals in China. I shall hold all officials and officers responsible for the execution of this duty. . . .[23] In recent years the friendly powers have rendered much assistance to China and it is for us to do our utmost in fulfilling the treaty obligations and in readjusting the foreign debts and thereby further promote the friendly relations between China and the foreign powers".

SCHURMAN

893.001 T 78/2 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *October 11, 1923—7 p.m.*
[Received October 11—6:15 p.m.]

341. Your no. 216 of October 10. Tsao Kun took office yesterday as previously reported, but the diplomatic corps will not take part in official or social courtesies until the Chinese Government gives us assurances of compliance with the demands in the Lincheng notes. It is expected that these will be given within a few days. When they are received and found to be satisfactory we shall indicate our willingness to attend the President's diplomatic reception. It is known that he is anxious to hold it at the earliest possible date.

SCHURMAN

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[22] *Post*, p. 705.
[23] Omission indicated on the original telegram.

893.001 T 78/3 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *October 12, 1923—11 a.m.*
[Received October 12—7:16 a.m.]

342. My no. 341 of October 11. This afternoon the dean of the diplomatic body will see the Chinese Minister for Foreign Affairs. If the assurances regarding the Lincheng affair are [apparent omission] the President will hold the diplomatic reception on October 15. Am I authorized to be present and extend congratulations?

SCHURMAN

893.001 T 78/4 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 12, 1923—1 p.m.*
[Received 6:35 p.m.]

345. Sun Yat-sen telegraphs dean of the diplomatic corps nation opposed to Tsao Kun because he is illiterate, looted Peking 1912, mainly responsible for Lincheng outrage and especially because illegally and corruptly elected. Says Chinese people regard Emperor [*sic*] as treason and usurpation and their representative leaders are now forming "a National Government".

Last paragraph follows:

"I have to request foreign powers and their representatives in Peking to avoid any act which could be construed by new Peking usurper as an intimation or assurance of international recognition and support. The foreign recognition of Tsao Kun would perpetuate internecine strife and disorder and would be envisaged by Chinese people as a frustration of their declared will regarding an act which cuts at moral fiber of the national character."

Sun Yat-sen's own position is almost desperate. Supported by Yunnan troops who control him, unpopular in Canton on that account and also on account of oppressive tariff law and levies and sales of temples and other semi-public property, unable to overcome Chen Chiung-ming, he does not control the whole of Kwai-ping [*Kwangtung?*], has no jurisdiction over any other province and has little beyond his personal prestige to support him.

Chang Tso-lin told me last month with great bitterness that Tsao Kun's election would be to China [apparent omission]. He would doubtless like to see it upset but his present policy as he assured me, and I believe, is to confine his activities to Manchuria. He would however give moral support to Sun Yat-sen's opposition.

As to the Anfu leaders Tuan Chi-jui and Governor Lu Yung-hsiang of Chekiang, the former has no military forces and the latter will be held up by Governor Chi Hsieh-yuan of Kiangsu.

Other leaders with troops are too far away and not important enough to count.

Chihli Party which at present is a unit in support of Tsao Kun controls everything from the great wall to the Yangtze and some provinces beyond. Tsao's greatest danger apart from impossibilities of his task are the rivalries within his own party.

In connection with Sun Yat-sen's manifesto I have the honor to refer to my 321, September 22, 1 p.m.[24] Diplomatic body desires to act on Canton application as soon as Lincheng settlement has been effected.

[Paraphrase.] British Legation has been instructed that British Government wishes at all costs to keep Canton authorities from disrupting Chinese customs service. [End paraphrase.]

SCHURMAN

893.001 T 78/3 : Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *October 12, 1923—6 p.m.*

220. Your no. 341 of October 11 and 342 of October 12. The Department does not understand whether or to what extent the diplomatic corps has committed itself to the recognition of Tsao Kun's government if satisfactory assurances are given by it regarding the Lincheng affair.

If these negotiations leave the diplomatic corps free to withhold recognition without embarrassment, I wish your opinion as to whether it would be better to do so for the present. Also inform me whether you think that the country at large will recognize Tsao Kun and whether his administration seems to give promise of ability to rule the country as the Government of China. Please also inform me with respect to other relevant considerations including the attitude of the other powers.

HUGHES

893.001 T 78/5 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 14, 1923—2 p.m.*
[Received October 14—12:11 p.m.]

346. Your telegram number 220, October 12, 6 p.m. somewhat garbled was decoded October 13, 11 p.m. My telegram 345, October

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[24] *Post*, p. 552.

12, 1 p.m., will have furnished you additional information. The general feeling seems to be that the Chihli Party under Tsao should be given a fair chance to show what they can do. Tsao has followed up assurances of inaugural address reported in my telegram of October 10, 5 p.m., by issuing mandate calling on provisional [*provincial*] officials to suppress banditry and protect foreigners. He has focused attention of the Chinese on the gravity of the problem of protecting foreigners.

Assurances with respect to other demands of our Lincheng note of August 10th are contained [in] a note from the Foreign Office to be dated October 15th[25] the day of the Presidential diplomatic reception which is to be in the hands of the dean of the diplomatic corps this evening. I have this morning seen the draft of it and discussed it with the dean and my British and French colleagues. We agree that it is reasonably satisfactory and should be accepted. I learn that is also the view of the members of the diplomatic body generally. The note accepts the supplementary indemnities in principle which Koo's earlier note rejected. The proposal of collaboration in the preparation of the railway police scheme is assured by oral understandings between the dean and the Ministry of Foreign Affairs supplementing the vaguer language of the note. As to penalties the note states that the Ministry of War which had been instructed to determine "the punishment" to be inflicted upon Military Governor Tien have decided upon relieving him of his post and that a mandate will be issued to that effect.

Agreement having been reached on the Lincheng we received invitations dated October 13th to attend President's diplomatic reception October 15, 11 a.m., and it is understood that all Ministers are to attend. I have this morning gone over with the dean and the French Minister the draft of the brief address in which the dean is to present the congratulations of our Governments and of their representatives in Peking. While, as explained in my 328, October 2, 1 p.m.,[26] and 336, October 9, 5 p.m.,[27] my object and the object of my colleagues all along has been to use the Presidential crisis to secure compliance with our Lincheng demands, it has not been necessary at any time to raise the question of recognition or nonrecognition, the issue being made solely on the point of whether the diplomatic body would or would not agree attend a Presidential diplomatic " reception " to be held at an early date. I must add however that my colleagues assume that unless recognition is specifically refused

[25] Note, *post*, p. 706.
[26] *Post*, p. 701.
[27] *Post*, p. 705.

or withdrawn it will automatically continue. The dean and the French and British Ministers emphatically repeated their views to me this morning. That I think is the unanimous view of the members of the diplomatic body. They regard Tsao Kun's election as merely bringing about a change of administration. It would seem impossible therefore to avoid the automatic result of recognition without taking positive action to the contrary. And there is no member of the diplomatic body who believes that desirable at present. All with whom I have spoken are confident that Government will approve the course they are taking. Tsao will be recognized and have pretty effective jurisdiction over China between the wall and the Yangtze and even further south. It seems to me very desirable that he and his party should have the good will of the powers in their attempt to govern China.

[Paraphrase.] All the indications are that in case the powers withhold recognition from Tsao Kun Japan will not join them. The Japanese have a special advantage because the Japanese Minister has as yet not been received by any President of China. It would make a great stage effect to have a special diplomatic reception. [End paraphrase.]

I am attending the reception tomorrow morning and trust that you will approve the decision I have taken in the absence of specific instructions for which there is now no time.

SCHURMAN

893.001 T 78/6 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 15, 1923—1 p.m.*
[Received October 15—9:12 a.m.]

348. My 346, October 14, 2 p.m. All Ministers attended President's reception to diplomatic body at 11 a.m. today. After President's address and dean's reply President shook hands and conversed with each Minister. He made inquiry of me regarding President Coolidge's health and said China was thankful to America for President Harding's good will and helpfulness, that he understood President Coolidge also was well disposed towards China and that he hoped the friendship between the two countries would continue. I replied that the American Government and people earnestly reciprocated that sentiment.

SCHURMAN

893.00/5269 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *November 10, 1923—5 p.m.*
[Received November 10—4:42 p.m.]

365. Following is summary of the political situation:

President Tsao Kun is carrying out a policy of conciliating leaders of rival factions and the likelihood of a coalition against the Chihli Party is visibly decreasing. The Anfu Party controls no force except that of Lu Yung-hsiang in Chekiang Province. Tuan Chi-yi, who is a possible leader of the Anfu Party, has been given the offer of a pension as a reward for past services. He has declined to receive it but has made favorable comment about the President, referring to him as an honest man who is a worthy colleague of the Pei-yang Party.

Negotiations are taking place with Chang Tso-lin. According to reliable information the restoration of his titles and honors has been offered and also the return of the war munitions left in Chihli by his army at the time of the fighting in 1922. So far Chang has not been able to secure a promise that he will be reinstated in control of the Provinces of Suiyuan, Chahar and Jehol, which would place him in control of the Kupeikou Pass, 60 miles from Peking, and practically in control of the district of Sandakan [*Shanhaikwan?*]. No one expects, however, that Chang Tso-lin will come inside the Great Wall for the present or even next spring unless the attack is joined by the anti-Chihli factions. Even should the Anfu Party wish to cooperate with Chang Tso-lin, Chi Hsieh-yuan at Nanking would paralyze the first movement of Lu Yung-hsiang's forces.

As for the Kuomintang Party, Sun Yat-sen's fortunes are near their lowest ebb again. It is reported that while the Sun faction is still in control of Canton they are very nervous and have proclaimed martial law. This information is contained in a telegram dated November 9, which I have received from the consul general at Canton in answer to my inquiries, and also in a telegram of the same date, which the inspector general of customs has received from the commissioner of customs at Canton. There are increasing indications that Sun Yat-sen is preparing to flee. This is especially indicated by the transportation of Sun followers and their belongings to Hongkong. General Chen Chiung-ming, who is now advancing against Canton along the Canton-Kowloon Railway, got as far as Sheklung, 40 miles from Canton. However, he was compelled to retreat because of lack of support. It is expected that he will soon return to Canton.

A strong popular demand that civil strife cease is reenforcing military conditions and the conciliation policy of Tsao Kun. All the people, both Chinese and foreign, want peace, especially the commercial classes. They are for that reason inclined to give the new President a fair trial. In spite of the general and loud criticism of the Tientsin faction of the Chihli Party, the people prefer bad government to continued fighting in the vague hope of better government.

Expenses have not been reduced, troops have not been disbanded, and there is no relief to the financial situation. A commission under Yen is investigating the facts regarding the debts, but I had a talk with Yen a few days ago, and he seemed pessimistic as to a solution of the difficulty. I was informed by Padoux [28] that they had gone far enough to find out that the revenue from the anticipated customs surtax would not be sufficient to fund the debts and leave a margin for the Chinese Government. He made the suggestion that tobacco be heavily taxed as is done in other countries.

As yet no Premier has been appointed. Yen was the choice of the military men while Speaker Wu Ching-lien . . . was demanded by the Tientsin faction. President Tsao Kun has nominated as a compromise candidate Sun Pao-chi. Sun is a brother-in-law of Yen and is the Chinese chief of the customs service. He is thoroughly a gentleman, but I think he may be too mild and timid to achieve success. Under the influence of the Speaker, Parliament has failed to ratify the nomination as yet, but they can hardly continue in opposition to the first nomination made by the President whom they have just elected and the prestige of Speaker Wu seems to be on the decline.

In the meantime the business of government is at a standstill. If there was anything lacking to more completely paralyze it, the lack was supplied by the gold franc issue which was voted by Parliament against the claims of France and other countries concerned. . . . My French colleague was going home on leave, but he has received instructions from Poincaré [29] to remain at his post until a settlement of this matter is reached.

SCHURMAN

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[28] G. Padoux, French citizen, adviser in the Chinese Bureau of Audit.
[29] French Prime Minister and Minister for Foreign Affairs.

UNSUCCESSFUL NEGOTIATIONS FOR A CONSORTIUM LOAN TO CHINA FOR THE PURPOSE OF CONSOLIDATING THE CHINESE FLOATING DEBT[30]

893.51/4134 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 4, 1923—11 a.m.*
[Received 11:10 p.m.]

5. On December 23rd, at request of group representatives, British, French and Japanese colleagues and I addressed a joint note[31] to the Minister for Foreign Affairs drawing attention to failure of the Chinese Government to meet certain of their obligations to foreign creditors and takes [*taking*] exception to preferential treatment of the Chinese internal loans to the detriment of the interests of our nationals who are creditors of the Chinese Government and holders of foreign loans guaranteed by that Government. Note requested that in future "surplus customs revenues should be applied no longer exclusively to the service of internal loans but also to the liquidation of foreign debts and obligations guaranteed by the Chinese Government."

I had a long conference with Aglen[32] evening 3d. He says above note continued [*combined?*] with a statement which he made to financial commission has alarmed Chinese bankers and financiers, depressed bonds and scared off purchasers. Shanghai Chamber of Commerce, bankers association and native bankers association have telegraphed him in protest and demand customs and salt revenue be preserved exclusively for internal loans. Aglen says $24,000,000 paid from customs and salt for service internal loans last year of which 21,000,000 from customs.

[Paraphrase.] Aglen told me that he is going to recommend the cessation of the amortization payments on the Chinese internal loans which amount to more than half of the $24,000,000, this saving to be used to pay as much of the interest on the foreign debts as it will cover. He says that he will have the opposition of the Chinese bankers, but he believes that his recommendation will be accepted, as otherwise the Government has no means of meeting the demand of the four foreign Ministers. This demand he considers to be entirely just. [End paraphrase.]

Customs revenue 1922 amounted to Haikwan taels 58,600,000 an increase of 4,100,000 taels on previous record collection of 1921.

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[30] For previous correspondence regarding a Consortium loan to China, see *Foreign Relations*, 1922, vol. I, pp. 761 ff.

[31] Not printed.

[32] Sir Francis Aglen, inspector general of Chinese Maritime Customs.

Owing to unfavorable exchange however increase in gold is only 215,000 pounds sterling.

[Paraphrase.] Aglen also told me that foreign business has decreased but that there has been a great increase in Chinese business. He says that foreign business men, especially middlemen, are being systematically crowded out by Chinese. Many foreign firms are on this account in a shaky condition and they are being carried by the banks. He told of a famous British company which last year lost $2,000,000. [End paraphrase.]

Aglen sees no way by which Government can effect settlements at Chinese New Year which comes on February 16th. Agrees with other observers that this year will be very critical for China.

Aglen expressed earnest hope special tariff conference [33] might be hastened. I replied that entire revenue from 2½ percent surtax would probably be devoted to service foreign debts. Aglen declared would be great advantage to China [apparent omission] unsecured and inadequately secured foreign debts were out of the way.

Aglen says Government has already earmarked entire increase customs revenue from 3½ to 5 percent effective for administrative and military purposes. Christian General Feng's 30,000 troops now here in Peking have not been paid for nine months. Aglen also mentioned schools and diplomatic service.

SCHURMAN

893.51/4129 : Telegram

The Secretary of State to the Ambassador in Japan (Warren)

WASHINGTON, *January 12, 1923—3 p.m.*

2. Referring to Department's instruction of November 23, 1922,[34] the Japanese Chargé d'Affaires in a note to the Department dated December 28 [35] stated

"Upon the question now under discussion, the Japanese Government have no other desire than to adhere to the policy which they have consistently pursued heretofore, and they are not unprepared, under that policy, to continue the consideration, in common with the other Powers concerned, of the probable effects of further loans to China, and of the time and method of furnishing them. They are moreover inclined to believe that the special tariff conference soon to be convened might well provide a fit occasion for the Powers

[33] The reference is to the conference provided for in art. II of the Washington Conference Treaty Relating to the Chinese Customs Tariff, printed in *Foreign Relations*, 1922, vol. I, p. 282. The deposit of ratifications of this treaty did not take place until Aug. 5, 1925. The Special Tariff Conference convened at Peking Oct. 26, 1925.

[34] Not printed; repeated substance of note of the same date to the Japanese Embassy, printed in *Foreign Relations*, 1922, vol. I, p. 794.

[35] See *ibid.*, p. 797.

interested to consider in concert the general question of the financial reorganization of China. They hesitate, however, for the reasons enunciated above, to change their view that it would be premature to extend immediate financial assistance to the Peking Government. It is therefore hoped that the Japanese view as set forth above may commend itself to the favorable reception of the Government of the United States and that no step that would involve a grave departure from the policy previously agreed upon among the Powers concerned may be taken at this time."

[Paraphrase.] The Department has been informed, however, that your British colleague in a telegram sent on December 18 reported to his Government that the Japanese Government has no objection to the submission to the Consortium of the question of the Chinese floating debt and that the only objection of the Japanese is to making of a loan to the Chinese Government in the near future.

Apparently the Japanese Government's original objection to a loan was based on two reasons: first, that it would be merely supporting one Chinese faction; and second, that in the Chinese proposal no provision was contemplated for the refunding of the Nishihara loans[36] to the Ministry of Communications. However, when the British Government again urged upon the Japanese the desirability of considering China's proposals and indicated that in its view such consideration should include the Nishihara loans, the Japanese Government agreed to the extent reported in your British colleague's telegram of December 18 referred to above.

Considering the seeming ambiguity of the attitude of the Japanese Government as indicated by the difference between the Japanese note and your British colleague's telegram, it is the wish of the Department that you confer with the British Ambassador at Tokyo and in consultation with him endeavor to find out whether the Japanese are opposed to any loan whatever to the Chinese Government, at least prior to the special conference on the Chinese tariff, or merely to a loan which would give the Chinese Government free funds in addition to the amounts used for funding operations. [End paraphrase.]

HUGHES

893.51/4154 : Telegram

The Ambassador in Japan (Warren) to the Secretary of State

[Paraphrase]

TOKYO, *January 17, 1923—4 p.m.*
[Received January 17—1:13 p.m.]

2. Your 2, January 12. Mr. Clive, who is the British Chargé in China, Minister Schurman, and myself had a conversation while I

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[36] See *ibid.*, 1918, pp. 122–123, 130–133, 147–148, and 155–159.

was visiting Peking in the course of which Mr. Clive told me that it would be advantageous for the Consortium to continue discussions with the Chinese officials in order to find a means for consolidating both the internal and external Chinese floating debt. I told Mr. Clive that it was my opinion that the Japanese Government would give its consent to having the representatives of the Japanese banking group join with those of the other Consortium groups.

Upon my return to Tokyo my British colleague informed me that Mr. Clive had cabled to him after our conversation and that he had asked Uchida [37] about the matter. The Ambassador's telegram of December 18 to the British Foreign Office to which you refer was based upon this conference.

My British colleague [showed to me] yesterday Clive's telegram and also his own to the Foreign Office.

I asked Uchida after my return whether his Government would consent to having the representatives of the Japanese banking group take part with the other representatives in such discussions. He told me that the Japanese Government would [not?] object and that he would include such a statement in his answer to the American Government's note to the Japanese Embassy November 23.[38]

Uchida handed to me at the Foreign Office on December 26 a copy of his memorandum [39] replying to your note of November 23. As he told me he was cabling it to the Japanese Chargé in the United States for presentation to you, I naturally did not telegraph it to the Department. Uchida thought that his answer expressed his Government's willingness to agree that the representatives of the Japanese banking group might associate themselves with the representatives of the other Consortium groups in continuing the consideration with the Chinese officials of a basis for the consolidation of the Chinese floating debt.

The telegram of December 18 from the British Chargé in China to my British colleague did not relate to any immediate loan and it so stated. I discussed the matter with my British colleague yesterday and later with Uchida. The latter told me that I may state that his Government is willing to have the representatives of the Japanese banking group take part with the others in continuing discussions with the Chinese officials for the purpose mentioned above and that his Government would raise no objection to the making of a loan to China for the single purpose of consolidating and refunding the external and internal Chinese floating debt.

WARREN

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[37] Count Yasuya Uchida, Japanese Minister for Foreign Affairs.
[38] *Foreign Relations*, 1922, vol. I, p. 794.
[39] See memorandum from the Japanese Embassy, Dec. 28, 1922, *ibid.*, p. 797.

893.51/4164 : Telegram

The Ambassador in Japan (Warren) to the Secretary of State

TOKYO, *January 27, 1923—7 p.m.*
[Received January 27—10:32 a.m.]

9. My number 2, January 17th, 4 p.m. Recently the British Ambassador informed me that his Government now suggests that the Japanese Government be asked to consent to a small loan to the Chinese Government above the total of the consolidated external and internal floating debt, so as to provide some free funds if a basis for consolidation is determined. At his request and on my own account, I took the matter up with Count Uchida who yesterday told me that the Japanese Government would not like to have this suggestion made use of as cover for any considerable new loan under present conditions, but that his Government would not object, as he previously stated, to the representatives of the Japanese group of bankers joining in the discussion with other representatives with Chinese Government looking toward the consolidation of the Chinese debt, internal and external, and taking under consideration the advisability of a small additional loan that could be identified with consolidation or refunding loans, provided a basis for consolidation is reached with the Chinese Government.

WARREN

893.51/4164 : Telegram

The Secretary of State to the Ambassador in Japan (Warren) [40]

WASHINGTON, *February 1, 1923—5 p.m.*

12. Your telegrams No. 2 January 17, 4 p.m. No. 9, January 27, 7 p.m.

Japanese Chargé d'Affaires with whom the substance of your No. 2 was discussed by the Division of Far Eastern Affairs and who appears to have telegraphed his Government that its views on the subject seemed closely to approximate ours now advises the Division that he has received from Minister for Foreign Affairs a report of his conversation with Mr. Warren on January 16th from which it appears that Count Uchida intended only to be understood as indicating no objection to the discussion among the Powers of proposals for a funding loan without reference to the Chinese Government's request for a loan. Chargé d'Affaires understands this to mean that Japan consents only to discussion among the interested Powers other

[40] See last paragraph for instructions to repeat to Peking as no. 22. Substantially the same telegram sent Feb. 3, as no. 22, to the Ambassador in Great Britain, with instructions to read to Mr. Wellesley, chief of the Division of Far Eastern Affairs, British Foreign Office.

than China. He also understands from the advices thus far received from his Government that Japan does not favor the idea of a loan making available to the Peking Government any balance of free funds over the amount required for consolidation or funding of debts.

He says he will at once telegraph the Minister for Foreign Affairs suggesting that he take occasion to explain to you the apparent misunderstanding of the attitude of the Japanese Government.

For your information and guidance I should make clear to you that this Government would wish to see the unsecured Chinese debts arranged and the credit of China rehabilitated in advance of the Special Conference on the Chinese Tariff. It therefore favors and understands the British Government likewise favors the view which Embassy's Nos. 2 and 9 above cited seemed to indicate the Japanese Government's willingness to accept, namely, that the Consortium should discuss with the Chinese Government the loan proposals made by that Government with a view to the possibility of negotiating a loan which would cover the consolidation or funding of the floating debt and in addition thereto (if necessary, as would doubtless be the case) such a minimum of funds for approved purposes as would enable the Peking Government to meet its genuine administrative necessities without enabling the controlling faction to strengthen its position as against rival factions.

Repeat to Peking as No. 22 and mail copies of Department's No. 2 and of your Nos. 2 and 9.

HUGHES

893.51/4164 Suppl.: Telegram

The Acting Secretary of State to the Ambassador in Japan (Warren)

WASHINGTON, *February 16, 1923—6 p.m.*

14. Department's telegram No. 12, February 1, 5 p.m. If Minister for Foreign Affairs has not yet taken occasion to resolve the ambiguity as to Japanese Government's attitude towards consortium loan to China you will please consult with British Ambassador and take early opportunity to see Minister and inquire as to Japanese Government's position.

HARRISON

893.51/4188: Telegram

The Chargé in Japan (Wilson) to the Secretary of State

[Paraphrase]

TOKYO, *February 22, 1923—11 a.m.*
[Received February 22—3:58 a.m.]

15. Department's 12, February 1, 5 p.m., and 14, February 16, 6 p.m. I saw Uchida last night and he told me that he must have

failed to give Ambassador Warren a clear understanding of his meaning. Uchida referred to the phrase, "They are not unprepared to continue the consideration in common with the other Powers concerned" used in the note from the Japanese Embassy to the Department December 28, quoted in the second paragraph of Department's telegram no. 2, January 12, 4 [*3*] p.m. Uchida declared that he always had in his mind the Consortium Powers other than China, and that this was the interpretation he had in mind always when he was talking with Ambassador Warren. Uchida is willing to grant authority to the Japanese banking group to negotiate with the banking groups of the other lending countries with a view to making such recommendations to each of the Governments as the groups may agree upon with respect to consolidating the Chinese debts. The question of authorizing their respective groups to enter into negotiations with China on such a basis could then be considered by the Governments concerned. The reason which Uchida gives for this policy is that if negotiations are carried on directly with China the Chinese will assume that the Consortium is prepared to discuss the question on the basis proposed by China. Uchida is not willing to have the Chinese receive such an impression.

My British colleague has informed me that he has reported to his Government that his understanding of Uchida's views are those outlined above.

Uchida says with respect to a supplementary loan in addition to that necessary for consolidation that if it is necessary he does not exclude the possibility of a small advance. He wishes, however, to have the discussion of this question postponed until after the broader consideration of consolidation among the Consortium groups of the lending countries.

WILSON

893.51/4164 : Telegram

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

WASHINGTON, *March 12, 1923—6 p.m.*

49. Department's telegram No. 221 [*22*], February 3, 6 p.m.[41]

Please advise Wellesley that discussions with Japanese Foreign Office have made it clear that the Japanese Government is not prepared to have its group in the Consortium participate in negotiations with the Chinese Government for a funding loan but is willing only that the Japanese group should in common with the American, British and French groups consider and recommend to their respective governments such plans as they may be able to agree upon for

[41] See footnote 40, p. 529.

a consolidation of Chinese debts: the Governments could then consider authorizing their respective groups to undertake negotiations with China on the basis of such recommendations. It is further the position of the Japanese Government that any consideration of the possibility of a small supplementary loan for specified purposes, over and above what is required for consolidation, should be subsequent to the bankers' discussion of the question of consolidation.

In view of this position of the Japanese Government it appears that the most feasible course of action is to have Consortium bankers proceed to consider and recommend a concrete proposal for consolidation as suggested by the Japanese Foreign Office.

Even if it should prove impossible to consummate a loan for this purpose before the assembling of the Special Conference, the previous examination of the subject, and particularly the formulation of a concrete and definite plan for dealing with the unsecured debts, would appear to afford a means of obviating the possibility of the Special Conference being drawn into a general discussion of Chinese finances.

HUGHES

893.51/4251

The British Ambassador (Geddes) to the Secretary of State

No. 276 WASHINGTON, *April 10, 1923.*

SIR: Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform you that the Japanese and French Governments have now agreed with His Majesty's Government that the four Consortium groups should proceed immediately to examine the question of consolidating China's unsecured debts. Inasmuch as the necessary data for the consideration of this question are solely available at Peking, His Majesty's Government consider that the examination could be conducted most satisfactorily by the group representatives at Peking in consultation with the Ministers of the four Powers. His Majesty's Government propose that the four Ministers should first table the loans in default in which their respective nationals are interested and that after a preliminary examination by the Consortium groups the Chinese Government should then be asked to furnish the necessary data with a view to the elaboration of a definite funding scheme. The British Consortium Group have been approached by His Majesty's Government in this sense and have been requested to send the necessary instructions to their representative at Peking.

In conversation between a member of His Majesty's Embassy and Mr. MacMurray [42] on the 27th ultimo it was understood that the American Government was disposed to concur in the examination of this question by the Consortium.

I have the honour to enquire whether the United States Government concur in the proposals outlined above and, if so, to ask that they will be so good as to send similar instructions without delay to the American Group. I have the honour to request the favour of an early reply.

I have [etc.] GEDDES

893.51/4251 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *April 13, 1923—6 p.m.*

61. My No. 46, March 10, 4 p.m.[43]

I am today addressing to the British Ambassador the following self-explanatory note:

"I am happy to advise you that I fully concur as to the wisdom of undertaking without delay such an examination of the possibility of a consolidation or funding arrangement such as might prove feasible for the purpose of rehabilitating the credit of the Chinese Government. To this end I am addressing the American Group of the Consortium with a view to obtaining its cooperation with the other Groups in the examination of this question by the several group representatives at Peking in consultation with the Ministers of the four Powers, as suggested by your Government.

I am also disposed to consider that the most practicable method of procedure would be, as your Government proposes, to have the four Ministers first table the loans in default, in which their respective nationals are interested, and after a preliminary examination by the Consortium Groups to ask the Chinese Government to furnish the necessary data with a view to the elaboration of a definite funding scheme. I am advising the American Group that your Government has requested the British Group to send to their representative in Peking instructions in the sense of this suggested procedure, and am proposing that they similarly instruct their Peking representative."

I am also addressing to the American Group a request to undertake the examination of the matter in the hope that it may prove feasible to dispose of the question of unsecured debts in advance of the Special Conference, or that in any case it may prove possible to elaborate such concrete and detailed plans for consolidation or funding as

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[42] John V. A. MacMurray, chief of the Division of Far Eastern Affairs, Department of State.

[43] Not printed.

would minimize the danger of the Special Conference being drawn into a general consideration of Chinese finances.

Repeat to Tokyo for its information as No. 32, referring to its No. 15, February 22, 11 a.m.

HUGHES

893.51/4251

The Secretary of State to the American Group

WASHINGTON, *April 13, 1923.*

GENTLEMEN: Under date of November 23, the Department transmitted to you copies of correspondence with the British and Japanese Governments[44] concerning the proposals for a new loan to be arranged between the Consortium and the Chinese Government, primarily for the purpose of funding the floating debt of the Chinese Republic; and in a letter of March 29 last[44] I forwarded for your information a copy of the memorandum of the Japanese Embassy, under date of December 28, 1922,[45] in further reference to these proposals. In this letter I also explained to you the view of the Japanese Government, as made clear by further discussions of the matter, to the effect that, while unwilling that the Japanese Group in the Consortium should participate at the present time in negotiations with the Chinese Government for a funding loan, it is willing that the Japanese Group should (in common with the American, British and French Groups) consider and recommend to their respective Governments such plans as they may be able to agree upon for a consolidation of Chinese debts, with a view to the possibility that the interested Governments might then give consideration to authorizing their respective Groups to undertake negotiations with China on the basis of such recommendations. My letter further indicated that the position of the Japanese Government is that any consideration of the possibility of a small supplementary loan for specified purposes, over and above what may be required for consolidation of the Chinese Government's obligations, should take place subsequently to the consideration by the bankers of the question of consolidation.

It thus appears that the Japanese Government is not averse to an initial consideration, among the four international Groups of the Consortium, of the possibility of the Consortium undertaking such funding operations as have been recommended as essential to any plan of reconstruction in China, upon terms mutually satisfactory to the Chinese Government and to the banking interests constituting

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[44] Letters not printed.
[45] *Foreign Relations*, 1922, vol. I, p. 797.

the Consortium. And I have to advise you that in the event of negotiations to that end being undertaken by the Consortium, the Government of the United States would be prepared, for its part, to give to the American Group and to the Consortium such support as was contemplated by its identic note of July 3, 1919,[46] and embodied by the several national groups in a paragraph of the preamble to the Consortium Agreement of October 15, 1920.[47]

In commending to the attention of the American Group a consideration of the question of a possible loan to the Chinese Government for the purpose of enabling it to reestablish its credit and at least in a measurable degree rehabilitate its financial situation, I am of course aware that there is at least a possibility that no satisfactory basis can be found for such an operation. In particular, it is to be apprehended that the revenues available for the purpose of security (notably the surplus of salt revenues, and the surplus of maritime customs revenues as increased by the revision to an effective five per cent of the tariff of import duties, which went into effect on January 17) may be found inadequate for the purpose in view. And you will of course understand that it is not my intention to urge upon you the undertaking of any financial operation which you and your associates in the Consortium might not deem to be satisfactory on its own merits as a financial transaction. Subject to this understanding, however, I feel that it is proper to point out to you the desirability, from the viewpoint of the Chinese situation and of the prospects for a normal and healthy development of American financial and economic interests in that country, of enabling China to rehabilitate its financial situation as early as may be, and preferably in advance of the forthcoming Special Conference on the Chinese Tariff, for which provision was made by the Treaty relating to the Chinese Customs Tariff, signed February 6 last [*1922*].[48] It is to be feared that, should the Chinese Government have failed to cure its present defaults and give adequate assurance against future defaults upon its unsecured debts, it would prove a practical impossibility for the Special Conference to avoid making such a disposition of the proposed customs surtax as would defeat the intention of making that surtax available for constructive purposes for the benefit of China as a whole. And it is to be anticipated that such a result would not only retard the development of the country along those constructive lines in which it is the object of the Consortium to be of assistance, but would create in China a political reaction against the dissipation of the benefits, expected to accrue from the surtax, in merely satisfying the debts incurred through the

[46] *Ibid*, 1919, vol. I, p. 463.
[47] *Ibid*., 1920, vol. I, p. 576.
[48] *Ibid*., 1922, vol. I, p. 282.

extravagance of previous administrations of the Chinese Central Government. It is felt that the funding or other process of disposing of the unsecured debts could be accomplished more satisfactorily in advance of the Conference, by employing as security for the purpose revenues which are already in large part hypothecated for similar uses, than by using for this object the proceeds of the contemplated customs surtax, which the Conference designed for the purpose of constructive assistance to China, and which the Chinese are not unnaturally inclined to regard as a concrete and positive contribution which the Conference provided with a view to the development of China.

It has also to be considered that, as you are no doubt aware, certain of the unsecured debts of the Chinese Government (notably the so-called Nishihara loans[49]) are associated with political questions of a somewhat controversial character; and that whereas they might be dealt with incidentally to a mere funding operation, without giving occasion for any political agitation, it would appear difficult, if not in fact impossible, to consider them in the Special Conference (in whose deliberations there must of course be a large element of political interest) without the danger of raising in an acute form an agitation on the political questions connected with these financial transactions.

It is therefore my own view, as I have learned through Mr. Wellesley (the Chief of the Far Eastern Department of the British Foreign Office, who recently visited Washington for the purpose of consultation with this Government concerning the Special Conference) that it is the view of the British Government, that it would be highly desirable that the question of the unsecured debts of the Chinese Government should be disposed of in advance, and eliminated from the deliberations of the Special Conference. To this end, I beg to invite your attention to the consideration of this matter with a view to the possibility of such a loan as would enable this result to be attained.

It is my hope that it may prove feasible to complete, before the assembling of the Special Conference, all arrangements necessary for the rehabilitation of the credit of the Chinese Government; but even if it should prove impossible to consummate a loan for that purpose in advance of the Special Conference, it is my feeling that the previous examination of the subject, and particularly the formulation of a definite and concrete plan for dealing with the unsecured debts, would itself be of value as a means of obviating the possibility of the Special Conference being drawn into a general discussion of

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[49] See *Foreign Relations*, 1918, pp. 122–123, 130–133, 147–148, and 155–159.

Chinese finances, which I am disposed to consider not only inopportune but dangerous to the success of the objects which the Special Conference was designed to accomplish.

I enclose herewith for your information a copy of a note on this subject from the British Ambassador, under date of April 10, together with a copy of the reply which I am today addressing to him,[50] and would invite your consideration of the procedure suggested in this exchange of correspondence.

I am [etc.] CHARLES E. HUGHES

893.51/4263 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *April 21, 1923—7 p.m.*
[Received April 21—2:15 p.m.]

116. My 106, April 13, 5 p.m.[51] and your 61, April 13, 6 p.m., which crossed.

Group representatives had 4-hour conference April 17th with Minister of Finance. The Minister explained that the Government was in urgent need of funds for administrative and police expenses. He stated that the customs funds being all taken for foreign loans and certain domestic loan services and the salt (of which about $44,000,000 out of $86,000,000 is retained by the provinces) being overloaded with charges, the Government has no means of paying current expenses, not to mention unsecured foreign and domestic loans and debts. The Government therefore desired and intended to bring out a consolidation scheme to cover all foreign and domestic unsecured loans and debts except those of the Ministry of Communication[s] with the hope that the customs funds including the proposed 2½ percent increase would be sufficient to serve such a consolidation loan. The Minister therefore urged on the group representatives the desirability of inducing the special conference to agree to such use of the 2½ percent increase. With a [*the*] Government relieved of pressing needs he was confident a satisfactory consolidation scheme could be worked out. But to so relieve the Government during the period necessary to work out the scheme it was necessary it should have an assured income for expenses to have $3,000,000 per month for eight months beginning in May and he requested the four banks to make the Government advances on those lines to be repaid $5,000 per month beginning January 1924. He emphasized that he must be taken as talking to the four banks' representatives and not to the representatives of the Consortium. He explained that while he personally had

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[50] See *supra*.
[51] Not printed.

every trust and faith in the Consortium and recognized that it alone could be relied on to carry out such if agreed upon, the public and Parliament would strongly object to his "recognizing" the new Consortium. And he further requested that the meeting be kept secret or confidential.

Group representatives replied banks could act only as group representatives of Consortium and question of advancing was inextricably united with question of consolidation. They must have an undertaking that once having begun advances they would be entrusted with the working up (in collaboration with the Government) of a consolidation scheme the execution of which would also be entrusted to them. It was agreed to hold another meeting in a few days to hear from Minister Government's preliminary consolidation scheme if any.

SCHURMAN

893.51/4273

The American Group to the Secretary of State

NEW YORK, *April 27, 1923.*
[Received April 28.]

SIR: As Mr. Lamont [52] is sailing for Europe tomorrow and may not be readily available while the questions relating to China are under consideration, we take the liberty of supplementing our letter of April 26th [53] to cover even more explicitly, if that be possible, some of the points involved that we consider (on a further review of the subject) to be of special if not vital importance.

The only untouched security available for refunding China's debts will be the proceeds of the customs surtax. (As pointed out by Minister Schurman, the revenues of the present customs tariff and of the salt tax are already overburdened). It will be in the power of the Special Conference to impose any conditions it may see fit to the taking effect of the customs surtax. It may avoid any present liens attaching to the proceeds of the surtax. It may cause such proceeds to come to the Maritime Customs Administration with such liens, and such priorities, as it may deem proper. It may limit the lien to foreign debts alone, or it may include domestic debts, on a parity or otherwise, within the liens created by it.

The protection of the interests of the foreign creditors (representing debts aggregating, let us say 150 million gold dollars) as well as the re-establishment of the Chinese Government's credit in foreign markets,—two important objects to be attained,—will necessarily re-

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[52] Thomas W. Lamont, representative of the American group.
[53] Not printed.

quire that the present foreign debts be refunded by a bond so well secured as to be salable by or for the foreign creditors without much, if any, loss.

This means, in our opinion, that a first and preferential lien on the surtax proceeds for the bonds issued in exchange for the foreign debts, should be created. The dependable proceeds of the surtax will not be sufficient to allow the domestic debts to be included, on a parity with the foreign debts, and still accomplish the two objects above mentioned. This is a very important fact to be borne in mind at all times.

We are impressed with the fact that, in view of the prevailing chaotic political conditions, any cash advance to the Chinese Government will not materially advance the settlement of the political conditions (rather the contrary). And we venture to hope that the idea that such an advance will be made will not be encouraged in any authoritative quarters, although this may possibly be not the best time to shatter the hope of the Chinese officials therefor. Possibly the conditions may be improved when the Special Conference convenes; and when it shall have determined what status is to be given to the bonds to be issued for the present foreign debts, there may be a greater willingness than at present to make fresh advances.

We are not unmindful of the larger aspects of the matter, mentioned particularly in your letter of April 13th,[54] but in our study of all the matters involved we are obliged to be governed to no small extent by the practical situation that governed the proposal involving fresh advances by the American banks.

You will, of course, understand that nothing in the foregoing should be understood as modifying our willingness, already expressed more than once, to have the matter of a consolidation of China's debt considered by the four groups' representatives in Peking.

Trusting that you will appreciate our motive in making a résumé in this manner of the views already expressed, we are [etc.]

J. P. Morgan & Co.
For the American Group

893.51/4272 : Telegram

The Minister in China (Schurman) to the Secretary of State

Peking, *April 28, 1923—4 p.m.*
[Received April 28—1 p.m.]

127. My 106, April 13, 5 p.m.,[55] and 116, April 21, 7 p.m. Group representatives had five-hour meeting with Minister of Finance 27th

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[54] Not printed; see telegram no. 61, Apr. 13, to the Minister in China, p. 533.
[55] Not printed.

result of which is embodied in telegram last night to London for four groups[56] which please see.

As a result of a meeting at this Legation this morning following identic telegram was agreed upon:

"The representatives of the four Governments met in conference this morning and discussed the identic telegram of April 27th from the representatives of the four groups reporting the results of their meeting with the Minister of Finance.

The American, British and French Ministers agreed to endorse strongly the recommendations of the four groups on the grounds that it appeared to them highly desirable to profit by the present willingness of the Chinese Government to recognize and deal with the Consortium and because they believe that no scheme for debt consolidation is feasible without advances.

They further believe that the proposed money advances can be combined with [reasonable] control.

They also consider it is necessary to keep alive a central government in Peking.

The Japanese Chargé who has just assumed charge while agreeing that a central government should be kept alive stated that he would refer the matter to his Government with a report of the action taken by the three Ministers. He expressed the opinion that the question centered on the matter of advances".

SCHURMAN

893.51/4276

The American Group to the Secretary of State

NEW YORK, *April 30, 1923.*
[Received May 1.]

SIR: We enclose copy of a cablegram (No. 4592) just received from the British Group, to which the American Group is giving consideration pending receipt of the reply in preparation by Sir Charles Addis.[57]

Respectfully,

J. P. MORGAN & Co.
For the American Group

[Enclosure—Telegram]

The British Group to the American Group

LONDON [*undated*].
[Received at New York, April 30, 1923—12:05 p.m.]

4592. Hong Kong & Shanghai Banking Corp. have received following cable from Peking:

The following is for four groups.

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[56] See *infra*.
[57] Representative of the British group.

Re our wire of April 13th,[58] result of meeting[s] with Minister of Finance April 17th, April 27th, is that Chinese Government are prepared to entrust immediately to the group representatives study of unsecured debt position including Railway debt and furnish them with official assistance, necessary data and to entrust to consortium, provided conditions are suitable issue of consolidation bonds when plans have been approved by Chinese Government. Minister of Finance expressed desire in view of large proportion of domestic debt that Chinese Banks may be allowed to participate. The foregoing is entirely contingent upon the consent of the groups to authorize monthly advances averaging silver $3,000,000. for ten months including unpaid arrears for March and April secured on Salt Revenue repayment commencing January 1924 with alternative of repayment from debt consolidation bond issue. Advances are required exclusively for civil, administration, police and maintenance of peace and order in Peking. Expenditures will be made in accordance with list to be presented to Parliament and will be audited by Board of Audit and published in Government Gazette. Minister of Finance asks for reply at earliest possible date and intimated he cannot wait longer than a fortnight. He has received telegram from Chinese Minister, London, communicating offer from Crisp of loan with immediate advance, and have also offer from Chinese Banks but realises that it will be safer in the end if he can come to terms with the Consortium. As evidence of serious intention of Chinese Cabinet, we should mention that Minister of Finance has requested us to proceed with drafting of agreement in order that it may be presented to Parliament immediately upon receipt of your reply agreeing to advances. On our part we are convinced that the present willingness of the Chinese Government at length to deal with the consortium should be met without hestitation and we strongly urge you to send us reply at the earliest possible moment authorizing us proceed on the lines indicated. If it does not suit the groups to remit funds, we suggest banks here could make the advances against Chinese Government silver bonds to be placed on market in China as required.

Sir Chas. Addis is preparing for consideration of groups' proposed joint reply which will follow later.

893.51/4293

The American Group to the Secretary of State

NEW YORK, *May 11, 1923.*
[Received May 12.]

PROPOSED CONSOLIDATION LOAN

SIR: Referring to our letter of May 5th,[59] we enclose copy of cablegram No. 4616 received by us yesterday from Messrs. Morgan,

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[58] Not found in Department files.
[59] Not printed.

Grenfell & Co., London, giving text of the message cabled on May 10th to Peking in reply to the joint telegram from the four group representatives of April 28th.[60]

This cablegram also contains text of another joint message from the Peking representatives to which we call your particular attention, and should be glad to receive your observations thereon.

Respectfully,

J. P. Morgan & Co.
For the American Group

[Enclosure—Telegram]

Messrs. Morgan, Grenfell & Co., London, to Messrs. J. P. Morgan & Co.

London [*undated*].
[Received at New York, May 10, 1923—2:30 p.m.]

4616. 2107. Following telegram despatched to Pekin today with approval of T. W. Lamont:

The following is for four groups. After careful consideration of your joint telegram of April 28th, it is with much reluctance and regret that we find ourselves unable to agree to your proposals with regard to cash advances.

In our view the effect of the considered Consortium policy of abstention from administrative advances has, on the whole, proved of benefit to conditions in China, and we are not convinced that the time has yet come to abandon it, nor does the present Cabinet appear to contain a sufficient element of stability to justify such a course or to afford reasonable hope of forming the nucleus of a stable central government.

It is recognized, however, that the question of cash advances may arise in a different form in connection with the floating debt, the examination of which was authorized in our telegram of April 30th, and with which we hope it may still be possible for you to proceed.

Hongkong & Shanghai Banking Corp. have today received following cable from Pekin dated May 9th which has crossed the above:

The following is for four groups. *Re* our telegram of April 28th, in view of recent outrages on Tientsin-Pukow Ry.[61] which is regarded here as gravest act of barbarism since Boxer siege, it is evident that our negotiations cannot be pursued on the lines contemplated, but on conditions of far-reaching nature which doubtless will be fully considered by our governments. We consider, however, that if your Ministers here had authority to promise financial assistance on conditions to be determined by them and as part of debt consolidation scheme, it would give them powerful leverage in securing acceptance of their demands which the Chinese fully expect to be of a drastic

[60] See telegram from the British group to the American group, *supra*.
[61] See pp. 631 ff.

nature. It appears to us that the powers have a great opportunity now of putting an end to military misgovernment in this country, which is a rapidly increasing danger to life and property, and is a fundamental obstacle to any attempt at reform.

Sir Charles Addis proposes to reply that message has been communicated by groups to their respective governments whose observations are awaited. Cable if you approve.

893.51/4339

The American Group to the Secretary of State

[Extract]

NEW YORK, *June 20, 1923.*
[Received June 21.]

SIR: Referring to our letter of June 15th,[62] we now enclose . . . four copies of the Consortium Council Report . . .

. . . .

Respectfully,

J. P. MORGAN & Co.
For the American Group

[Enclosure]

Report of the Council of the Consortium, Adopted at a Meeting Held May 28, 1923, in the Office of the Banque de l'Indo-Chine, Paris [63]

Present.
Sir Charles Addis, K.C.M.G.
Representing the British Group
Monsieur R. Thion de la Chaume
Representing the French Group
Mr. Thomas W. Lamont
Representing the American Group
Mr. Kanji Yano
Representing the Japanese Group

In attendance.
Mr. J. Ridgely Carter
Mr. R. Gosse
Mr. W. E. Leveson
Monsieur R. Saint Pierre
Mr. Jeremiah Smith
Mr. C. F. Whigham
Mr. F. Sutton
Mr. H. Suzuki

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[62] Not printed.
[63] Released to the press July 2, 1923.

1. The Council of the China Consortium, having under review recent telegrams from their Representatives in Peking, as well as Press messages and comments bearing on the present economic and political situation in China, consider that a general statement of the policy of the Consortium may be at this time of interest to the public.

2. The policy of the Consortium, namely the substitution of international co-operation for international competition in the economic and financial affairs of China, has been definitely affirmed and endorsed in a larger sense by China and the Powers in the Treaty signed at Washington on February 6, 1922.

3. The Treaty is in effect an undertaking by the Powers to respect the sovereign rights of China, to preserve her territorial integrity and to provide her with a free and unembarrassed opportunity to develop her economic resources and maintain for herself an effective and stable government.

4. The Consortium is an appropriate instrument for giving effect to this policy. It is not designed as a permanent organisation, but rather as a temporary bridge by which China may be assisted to pass in comparative safety through the difficult period of transition from an unsettled to a settled state of government.

5. What has already been accomplished appears to justify the belief that the Consortium has been constructed on sound lines, and may reasonably be expected to fulfil the purpose for which it was designed with due regard to the natural susceptibilities of the Chinese on the one hand and the security of the foreign investor on the other.

6. It is popularly supposed, and occasionally asserted, that the main object of the financial Groups composing the Consortium is to harvest undue profits reaped from loans forced upon China under the protection of their respective governments. This is not the case. On the contrary it has been by their consistently refraining from lending that their principal success has been achieved in encouraging the utilisation of native savings before recourse is had to foreign capital, and in arresting the profligate expenditure which was heading the country straight for bankruptcy. It is not too much to say that the Consortium has helped to stimulate and foster a sane and independent public opinion in China, and, by putting a stop to the menace of financial penetration arising from indiscriminate and unproductive foreign borrowings, is helping to conserve the integrity of the country.

7. Much still remains to be done, and until their work has been accomplished the several Groups of the Consortium are convinced that they would not be justified in having regard merely to their own

convenience by resuming their freedom of independent action. They are reinforced in this conviction by the consideration that the Consortium appears to form the chief barrier between China and the policy of Spheres of Interest which prevailed during the last decade of the XIXth century. It will be remembered that it was during that period, known as the "Battle of the Concessions," that definite claims to exercise preferential rights over specific geographical areas of China were advanced by different Powers. If these claims had been maintained the disintegration of China must have followed. Any backward step towards the resumption of a similar policy might well be expected to produce similar results.

8. The pressure upon modern nations to discover and develop outlets for their trade is increasing, and China presents to-day by far the largest undeveloped field for commercial expansion. If the restraint at present exercised by the co-operative action of the Consortium is removed, the resort to the pressure of individual agents in competition with each other would appear to be inevitable. From that it might be but a step to the intervention of foreign governments in order to protect the vested interests acquired by their nationals in different parts of China, and Spheres of Interest, with consequences disastrous to China, would once more be established.

9. It is more in the interests of China for the Powers to deal with her as a whole rather than separately, in co-operation rather than in competition with one another. It is the aim of the Consortium to assist China in the building up of her credit until some day like other nations she can borrow for her requirements on the strength of her national credit, without the necessity of recourse to specific security or supervision of expenditure. When that day comes it will be time enough to talk of disbanding the Consortium. Until then the Consortium must remain intact and, with the approval and support of the Governments, continue to perform with patience the functions assigned to it.

10. It is the settled policy of the Consortium to refrain from interference in the internal political affairs of China. The present political upheaval in that country precludes the immediate hope of giving practical effect to any Consortium proposals for an administrative loan. Conditions, however, change so rapidly that the Groups must always stand prepared for action in anticipation of the time when China shall have again attained to such degree of political peace and security as to afford a reasonable prospect of a stable government.

11. Industrial Loans, in which railway loans are included, are in a different category. Provided adequate security can be obtained there seems to be no reason why the further development of railway

communication in China, in itself a potent means of political unification, should wait upon the solution of her administrative problem.

12. It is recognised that an essential part of any scheme for the financial reorganisation of China is the consolidation of the floating debt, and a scheme for such consolidation is at present under consideration by the Group Representatives in Peking.

13. A certain portion of the Chinese public appears to be under the delusion that in some way or other the object of the Consortium is to obtain control of China's finances and railways. If such a delusion really exists, it can only be due to a mistaken reading of every public announcement which has been made on the part of the Groups.

14. It has repeatedly been stated that interference with the domestic politics of China has no part in the programme of the Consortium, that the reorganisation of China's finances must come from China herself, and that the role of the Consortium is limited to an endeavour to assist the Chinese Authorities, if requested to do so, in re-establishing economic and financial equilibrium.

15. It would be futile to ask the foreign investor, to whom the Consortium stands in the relation of *quasi*-trustee, to subscribe to a Chinese loan until he is satisfied that its proceeds will be properly expended and his capital duly returned to him at maturity. It is indisputable that this necessitates some measure of supervision, but no more control than the minimum actually required to provide the adequate degree of security without which it would be impossible to issue a foreign loan.

16. It is the policy of the Consortium to assist in building up the general credit of China on such secure foundations that all outside intervention may be gradually eliminated and the entire control of loan service and expenditure may finally pass into the hands of China herself.

17. There appears to be some misunderstanding in China with regard to the suggestion that the Land Tax might at some future date be utilised as a source of security for a supplementary administrative loan should the other revenues of the country prove insufficient for that purpose, or be already fully pledged. That the collection of Land Tax should be remodelled on the lines of that of the Maritime Customs, i.e., placed under foreign supervision, formed no part of the suggestion, and was not even discussed. Neither the application of foreign control to the collection of Land Tax, nor specific hypothecation of that security, came within the scope of the conclusions reached at the Consortium Conference at New York in

October, 1920. The project of a loan secured on the Land Tax was not then and is not now under consideration by the Consortium.

C. S. Addis
R. Th. de la Chaume
Thomas W. Lamont
K. Yano

893.51/4401 : Telegram

The Minister in China (Schurman) to the Secretary of State

Peking, *September 18, 1923—6 p.m.*
[Received September 19—1:28 a.m.]

316. Following is identic telegram addressed by British, French and Japanese Ministers to their respective Governments:

"Referring to the groups representatives' telegram of today's date.[64]

The four Ministers decided that the proposals submitted to the four salt banks for monthly advances to certain public bodies for the payment of the police *gendarmerie* and certain educational establishments in Peking was a disguised annuity by the Chinese Government for a loan for administrative purposes and as such should be regarded as consortium business. The grant of such advances, however, would appear to be in conflict with the policy of the four Governments as explained to the groups in beginning. The examination of China's debt position by the four group representatives in consultation with the Ministers has now reached a stage that further progress cannot be made towards the elaboration of a definite consolidation scheme or the investigation of China's unpledged assets with a view to finding fresh security for a consolidation loan without the cooperation of the Chinese Government. Experience has shown that such cooperation will not be forthcoming except on the condition of the making of monthly advances for administrative expenses.

The question arises whether it is desirable to make such advances to the present Government which no longer rests on any legal basis and cannot be said at present to offer the necessary guarantees for the negotiation of such an important matter as the consolidation of China's debts.

While the political conditions are worse than they have been, it is nevertheless possible that there may result from the Presidential crisis which began on June 13th an improvement in the Peking Government with such a reasonable degree of stability and efficiency as would warrant the consortium in taking up with it the consolidation of the loans and in that event the four Ministers would recommend that advances be made for moderate administrative expenses.

Subject to these observations, the four Ministers concur in the telegram received the four groups."

Schurman

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[64] Not printed.

893.51/4405: Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *September 21, 1923—10 a.m.*
[Received 12:14 p.m.]

319. My no. 316 of September 18 and telegram quoted therein resulted from three long conferences which met in the American Legation in one of which the four Ministers took part and in the other two the Consortium representatives in addition to the four Ministers.

It is my own opinion that there will not be set up in Peking in the near future any government strong enough to warrant loans for administrative uses. The long continued process of governmental disintegration I think will probably continue whether Tsao Kun becomes President as appears likely or the anomalous and futile existence of the present governing Cabinet is maintained. The general expectation is that the Presidential crisis will not be continued after the national fete day, October 10.

The Consortium representatives and the Ministers of the four Consortium Powers are very anxious to have the Peking Government cooperate in preparing a plan for the consolidation of the Chinese debt. The Peking Government has shown no interest in the subject as yet. It has appointed a Chinese financial adjustment commission of which Yen is President. This commission offered to appoint the Consortium representatives as advisers but without the same personal status as the other foreign experts. The commission had its first meeting September 19.

In case there is no opportunity for the Consortium to do anything prior to the meeting of the special tariff conference it is not unlikely that at that meeting the Chinese Government will present a plan of its own for debt consolidation using the additional security supplied by the new revenues from surtax customs and that such a plan would be accepted by banks in non-Consortium countries and even by independent banks within the Consortium countries, the result of which would be the practical elimination of the Consortium.

Should the disappearance of the Peking Government follow the elimination of the Consortium, a contingency which is not improbable, not the theory but the fact of spheres of influence in China would confront us. Whether this would be fortunate or unfortunate for other nations, it would be unfortunate for both America and China.

SCHURMAN

893.51/4411 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *September 29, 1923—4 p.m.*
[Received September 29—1:11 p.m.]

326. My 320 [*319*], September 21, 10 a.m. Consortium representatives telegraphed London 28th with respect to acceptance Yen's invitation to them individually and personally to become advisers financial readjustment commission.

I recommend acceptance as they are the only Peking foreign bankers invited and it looks like a Chinese way of getting in touch with Consortium officials without recognizing Consortium.

My French, British and Japanese colleagues are telegraphing in same sense.

SCHURMAN

893.51/4411 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *October 8, 1923—6 p.m.*

214. Your 326, September 29, 4 p.m.

Department perceives no objection to acceptance by American Group representative of advisership to Financial Readjustment Commission, and Group has been so advised.

HUGHES

893.51/4416

The American Group to the Secretary of State

NEW YORK, *October 9, 1923.*
[Received October 11.]

SIR: We acknowledge receipt of your letter of October 8th (FE 893.51/4411)[65] enclosing copy of telegram of September 29th from the American Minister at Peking relative to the invitation to the Consortium representatives personally to become advisers to the Financial Readjustment Commission. We note the Department in its reply to Minister Schurman saw no objection to the acceptance by the American Group's representative of this invitation. You will have observed from the cable of September 28th (4862) received by us from London,[65] and of cable 2377 dispatched in reply thereto on

[65] Not printed.

October 1st,[66] that the Consortium Groups have already expressed approval of the Peking representatives serving on this Commission, even though it be in their individual capacity.

Respectfully,

J. P. MORGAN & Co.
For the American Group

893.51/4418 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 15, 1923—4 p.m.*
[Received October 15—10:30 a.m.]

350. My despatch number 1265, January 2.[66] French, British, and Japanese Ministers and I addressed joint note to Chinese Foreign Office October 12,[66] referring to joint note of December 23, last;[67] drew attention to recent mandate providing for permanent continuation of the scheme for securing service of the internal loans on customs surplus resulting from the effective 5 percent tariff and its extension to the service of Chinese portion of the $96,000,000 loan of 1922 thus exempted [*preempting?*] for the service of these internal loans the whole surplus accruing from the present customs tariff and precluding the use of the latter as security for any general debt consolidating scheme.

Our note embodied formal protest against this action and reminded Chinese Government that certain debts and obligations now in default were contracted by the Chinese Government before date of conclusion of some of these internal loans and also that under the terms of the agreement for such foreign loans the Chinese Government engages in the event of default to provide from other sources sums necessary for payment. We pointed out that such foreign loans are entitled to automatic priority which recent action of Chinese Government entirely ignores.

Text of note [66] will be made public tomorrow and will be forwarded by pouch.

SCHURMAN

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[66] Not printed.
[67] Not printed; see telegram no. 5, Jan. 4, 1923, from the Minister in China, p. 525.

NAVAL DEMONSTRATION AT CANTON BY THE UNITED STATES AND OTHER POWERS TO AVERT SEIZURE OF THE CUSTOMS BY THE LOCAL AUTHORITIES

893.00/4819 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 16, 1923—5 p.m.*
[Received January 16—9:34 a.m.]

20. Following from Consul at Canton:

"January 16, 11 a.m. Yunnan-Kwangsi army occupied Samshui. Chen Chiung-ming left Canton believed for Hong Kong. Local troops ready to change sides."

SCHURMAN

893.00/4823 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 18, 1923—11 a.m.*
[Received January 18—5:16 a.m.]

22. Following from Canton:

"January 17th, 8 p.m. Part of Kwangtung forces withdrew to Waichow January 15th. Yunnan-Kwangsi forces began arriving on the 16th at Canton in large number coming in today. No opposition offered."

SCHURMAN

893.00/4824 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 19, 1923—11 a.m.*
[Received January 19—6:54 a.m.]

24. Following from Canton:

"January 18, 7 p.m. Referring to my telegram of January 16th, 11 a.m. Chen went to Waichow not to Hong Kong. Situation at Canton confused as there is no leader here recognized by all military forces in the city."

SCHURMAN

893.00/4835 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 26, 1923—1 p.m.*
[Received January 26—9:37 a.m.]

32. Consul at Canton telegraphs Hu Han-min, sympathizer of Sun Yat-sen, inaugurated civil governor yesterday.

SCHURMAN

893.00/4856: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *February 15, 1923—11 p.m.*
[Received 12:18 p.m.]

58. Following from Shanghai:

"February 15, 4 p.m. Sun Yat-sen and staff sailed today steamship *President Jefferson* for Hongkong."

SCHURMAN

893.00/4876: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *February 22, 1923—10 a.m.*
[Received February 22—3:43 a.m.]

64. Following from Canton:

"February 21, 4 p.m. Sun Yat-sen arrived at Canton today."

SCHURMAN

893.51/4419: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *September 22, 1923—1 p.m.*
[Received 6 p.m.]

321. Republic of China, Generalissimo's Headquarters, Department of Foreign Affairs, Canton, C. C. Wu, Secretary, presents to diplomatic body through note dated September 5, Jamieson,[68] senior consul, "the claim of the Southwestern provinces for their share of the customs surplus." Note continues:

"There is no doubt that there is an ample surplus remaining after the foreign obligations charged on the customs revenues are paid and that at present it goes to pay past debts contracted by Peking. It thus sets free other revenues which are employed by the Northern militarists to make war against the Southwest. These Provinces are then forced to raise funds to meet attacks funded by what rightly are their own moneys. They therefore suffer a double loss: loss of funds which should be used for constructive purposes and which turned over to Northern militarists are actually used to institute war against them and loss in that for every one of these dollars employed against them they have to raise one or more dollars in self-defense. Such a situation is not only impossible but also insufferable. It has been tolerated so long already it obviously cannot be endured any longer."

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[68] James W. Jamieson, British consul general at Canton.

In memorandum Wu shows this claim has already been recognized and six installments paid up to March 1920, and even when the Canton Government resumed its functions after the disruption in 1920 not only the inspector general of customs but all the members of the diplomatic body were ready to renew recognition of the claim when " at the last moment a despatch was received by the American Minister from the State Department which caused the funds to be paid over to the Peking Government." [69]

The American position, memorandum continues, was in the interest of "the recognized Government of China" but there does not exist today and has not existed for years in Peking a Government of China. Lincheng proves that.[70] So does the language of the arms embargo of 1919.[71] The so-called government at Peking "has been and is at best one of the political factions of the country which by its accidental possession of the offices and archives of the former seat of the Central Government has been able to receive the diplomatic fiction of recognition. This faction has been and is making war upon the Government at Canton and the people of the Southwestern Provinces as witness the fighting and bloodshed still going on in the Provinces of Kwangtung and Szechuan. To have the customs revenues which have been collected in these Provinces and which can be used for constructive purposes locally turned over through a diplomatic fiction and technicality to their enemies to be used in killing their own sons and causing suffering and hardship on their people is nothing short of the intolerable."

If it is objected that at present there is no surplus from the customs revenue, memorandum points out this is due to Peking administration having pledged it in March 1921, for the service of certain internal loans, which pledge, however, cannot be recognized as valid. If the Peking militarists "choose to use their portion of the surplus to meet their obligations contracted in the past that is their affair. But they cannot use Southwestern portion of the surplus for their purposes. The Southwest cannot be expected to bear a share of these Peking debts particularly as it is notorious that some of them represent loans proceeds of which at various times were used for political and warlike purposes against the Southwest. Moreover it is notorious that the bonds of some of these loans are held not by the people generally but by a few banks and individuals who by heavy discounts obtained them as speculative and profiteering transactions."

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[69] Documents relating to the refusal by the diplomatic corps to recognize the claims of the Canton Government upon the accumulated customs surplus are printed in *Foreign Relations*, 1921, vol. I, pp. 491 ff.

[70] See pp. 631 ff.

[71] See note from the dean of the diplomatic corps to the Chinese Acting Minister of Foreign Affairs, May 5, 1919, *Foreign Relations*, 1919, vol. I, p. 670.

However even after the deduction of the Southwestern portion of customs surplus ample funds remain for the aforesaid objections [*obligations*] if the original terms of Peking's own order are observed, for the order of March 1921 assigned "in case customs surplus was insufficient two other sources of revenue, one, the surplus of salt revenue to the amount of 14 millions per annum and, two, wine and tobacco revenues to the amount of 10 millions per annum". But these two quotas have been paid only 7 or 8 times and the entire burden otherwise thrown upon customs surplus.

Southwestern Provinces would use their share of these funds for constructive purposes to wit: municipal improvements, Canton, $2,-000,000; provincial roads, $2,000,000; currency reform, $4,000,000; river conservancy, $1,000,000; sericulture and agriculture, [$]800,000; education, [$]2,100,000; suppression of piracy including purchase of armored motor launches $1,000,000; total [$]12,900,000.

Jamieson declares Generalissimo's administration can speak only with authority for a section of Kwangtung albeit a very large section. Nor would contemplated appropriation of revenue be acceptable to Kwangsi, Yunnan, etc. If therefore the claim were favorably considered by diplomatic body Canton could only "receive a pro rata share of customs surplus receipts" based on contributions made to general revenue by the customhouses in territory, admittedly under control of the Generalissimo's Headquarters.

Jamieson concludes as follows:

"In ordinary circumstances the question might well be discussed solely from the point of view of equity and political expediency but other considerations have been introduced which in the present temper of certain hot heads connected with Sun's Government may have very far-reaching consequences. These individuals are determined that if they are not to receive the share of the surplus to which they say they are entitled Peking shall receive no cash of customs revenues of any kind from Canton or other ports within their sphere of operations. It is not, as it was at one time, intended to seize the customhouses and administer them by force. It is however proposed to declare these ports free ports i. e. to collect no dues or duty on goods entering the port but thereafter to levy on all merchandise in Chinese hands such taxes or exactions as they may see fit to impose up to any amount. That is simply carrying out to a logical conclusion the theory at present partially in practice that once foreign goods after payment of import duty are in the hands of Chinese they can be taxed ad libitum.

Due warning has of course been conveyed against the folly of thus antagonizing the powers but is being disregarded.

It will be remembered that it was the Military Government of the South which in spite of solemn diplomatic protests first laid hands on the entire revenue of the gabelle and then instituted the 20 percent wine and tobacco tax thus giving a [lead] which other provinces

were only too ready to follow. Were they therefore to carry this threat of making Canton a free port into execution it is not unreasonable to assume that the example would be followed elsewhere with results to the customs administration which would lead to complete disintegration."

On dean's circular now circulating I have like my British colleague made the observation that I must refer this matter to my Government to reserve my comments for the proposed meeting of the diplomatic body.

This morning I have had conversation with Major Olivecrona, engineer in chief Kwangtung conservancy works and acting Swedish consul in Canton, who talked with C. C. Wu September 5th on this subject. He believes Canton Government, if their application is denied, will issue their threat of making Canton a free port and that even if Chinese customs service were backed by foreign gunboats it would not be possible to collect customs duties in the face of passive resistance, smuggling, etc. The issue involved seems to be the disintegration of the customs service which would appeal strongly to the cupidity of all provincial tuchuns.

Both the Peking and Canton Governments are weaker and less substantial and authoritative than in 1920 and the latter at least has a much more restricted jurisdiction.

[Paraphrase.] The best course perhaps would be for the diplomatic corps not to take any action at present on the application but to use it as the basis for making a solemn appeal to the Chinese people urging them to take steps to unite their distracted country, to put down militarism and banditry, and to set up national and provincial governments which will protect the life and property of both Chinese and foreigners. In a conversation which I had recently with Chang Tso-lin at Mukden, he volunteered the advice that the diplomatic corps should state to the Chinese people, forcibly but without threatening intervention, that the present chaotic conditions must cease as they are a menace to peace and to foreigners.

The possibility of using the Canton application to influence the Government at Peking in connection with the demands regarding the Lincheng affair would be another reason for delay. [End paraphrase.]

On the Canton side there is undoubtedly some risk in postponing a decision. But there is a possibility Chen Chiung-ming coming back to power as Sun has alienated the Cantonese by his arbitrary conduct, heavy and vexatious taxes and the use of Yunnan troops against them.

I have the honor to ask for instructions.

SCHURMAN

893.51/4419 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *October 20, 1923—3 p.m.*

226. Your telegram No. 321, September 22, 1 p.m.

With reference to the request for releases of customs funds to the Canton Government the Department maintains its previous position that the Diplomatic Body deals with customs surpluses only as trustees for the recognized Government of China.

As to the proposed suppression of Custom Houses in territory controlled by Canton and the levying on foreign merchandise of taxes in lieu of import and export duties, this Government would of course regard such action as a subversion of the treaty basis of foreign trade with China.

HUGHES

893.00/5271 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *November 14, 1923—4 p.m.*
[Received November 14—9:34 a.m.]

367. Telegrams dated yesterday received from consul general, Canton, and commander South China Patrol state Chen Chiung-ming captured Sheklung 12th. Sun's forces are retreating into Canton, indications that battle may be fought in the vicinity White Cloud Mountain near eastern suburbs. United States ship *Asheville* at Canton and arrangements being made to protect Americans.

Colonel Cheney is now in Canton.

SCHURMAN

893.00/5272 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *November 16, 1923—4 p.m.*
[Received November 16—9:15 a.m.]

369. My 367, November 14, 4 p.m. Following telegram has been received from consul general at Canton:

"November 15, 3 a.m. Retreating soldiers continued to pour into Canton yesterday. Sun has established line just outside city to make last stand and serious fighting expected within 24 hours. No disorders in Canton so far."

Following radio received from commander South China Patrol dated November 15, 6 p.m.

"Upon request consul general and with approval of Sun as protection against possible looting nine marines with arms landed at American mission at Tungshan east of Shameen in direction of tentative battlefield. Sun troops entrenching near White Cloud Mountain about four miles Tungshan. Sun still in city well and optimistic. His aeroplanes unable to locate advancing enemy but battle expected within two days. No disorder in city. Sun gunboat *Yung Fung* shifting berth to threaten supposed line enemy advance."

SCHURMAN

893.51/4430: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *November 27, 1923—noon.*
[Received November 27—5:54 a.m.]

376. Your 226, October 20, 3 p.m. communicated confidentially to consul general at Canton who now telegraphs me:

"Norman [72] informing me confidentially Sun Yat-sen is seriously considering attempt to seize Maritime Customs at Canton, being urged by Eugene Chen and other ill-advised supporters. Department has not been informed."

Chen Chiung-ming's advance seems to have halted for the present, and Sun Yat-sen appears to have taken a new lease of life.

For the Minister:
BELL

893.51/4430: Telegram

The Acting Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *November 30, 1923—5 p.m.*

240. Your telegram 376 of November 27, noon. Can you inform the Department what action foreign powers chiefly interested contemplate in case customs are seized?

PHILLIPS

893.51/4432: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 1, 1923—4 p.m.*
[Received 6 p.m.]

379. My 276 [*376*] November 27, noon. Situation in Canton is deteriorating. Commander South China Patrol informs me Sun's

[72] R. S. Norman, American citizen, adviser to Sun Yat-sen.

troops have driven back Chen's forces and reoccupied Sheklung. Condition appears to be one of stalemate which may endure indefinitely. Sun is in desperate straits for money and all information available here from consular, customs and other official sources in Canton indicates he seriously contemplates seizing customs and not declaring a free port as he originally threatened. See Legation's 321, September 22, 1 p.m.

Diplomatic body at meeting this morning resolved that they should inform Sun that customs surplus when automatically released at end of year passed out of their control and that they were not in a position to advise the Government of China as to what disposition should be made of it. I shall telegraph text of communication when finally adopted.

Possibility of Sun seizing customs on receipt of this communication or prior to its receipt being hardly [*fully*] recognized by the diplomatic body, dean was authorized to despatch today to senior consul at Canton (British consul general) the following telegram:

"The diplomatic body have been informed that Doctor Sun Yat-sen and the local government of Canton without awaiting a reply to the appeal which they had addressed to the dean for reconsideration of previous decision with regard to the allocation of the customs surplus have threatened to take over temporarily the administration of the Chinese Maritime Customs at Canton. The diplomatic body request that you will in your capacity of senior consul warn the local government of Canton that they are not prepared to admit any interference with the Chinese Maritime Customs and that in the event of any such attempt being made they will take such forcible measures as they may deem fit to meet the situation."

[Paraphrase.] Your telegram No. 240 of November 30, 5 p.m. Yesterday the Ministers of France, Great Britain, Italy, and Japan and myself, acting as the representatives of the powers which have warships in Chinese waters, informally had a preliminary conference with the dean of the diplomatic corps for the exchange of views as to possible action should Sun Yat-sen attempt to seize the customs. My British colleague revealed that he and the British consul general at Canton some weeks ago had prepared a tentative scheme for the blockade of Canton and the prevention of all ships, both foreign and Chinese, from entering or leaving. This plan had in view the declaration by Sun Yat-sen of Canton as a free port and in view of the change in Sun's intentions it was not passed. There were objections too numerous to list apart from the sufficient objection that the plan was not feasible. We also discussed the question of landing marines or sailors in advance so as to forestall any effort to seize the customs. This idea was abandoned, however, as it is reported that Aglen [78] opposes it and

[78] Sir Francis Aglen, inspector general of Chinese Maritime Customs.

it might be considered provocative by Sun Yat-sen and also give rise throughout China to charges of undue foreign interference. The Ministers of France, Great Britain, and Italy, and myself, strongly favored some kind of demonstration with the vessels now at Canton (British) or to be sent there at once (French and Italian). We favored placing such forces under the direction of the consular body, allowing the latter considerable latitude with respect to what action if any, except actual warfare, should be taken in case the customs were seized by Sun Yat-sen. My Japanese colleague in a speech expressed himself as being personally in favor of such a plan but said it would be necessary for him to obtain from his Government authority for such instructions to the Japanese vessels now at Canton or to be sent there. My British, French and Italian colleagues seem to fully possess such authority. I agreed to refer the matter to my Government.

The Ministers of France, Great Britain, Japan and Italy at a meeting today repeated the views set forth above.

I have conferred with the naval and military attachés. The latter was in Canton two weeks ago. They both approve of this plan. The naval attaché recommends the concentration of the *Asheville* and *Pampanga* (now at or near Canton) and possibly another vessel at Canton and the sending to Whampoa of perhaps four destroyers. Considering everything I recommend my agreement to the plan set forth above. Although I realize that it is open to objections, it is the best plan that can be devised here. I strongly feel that we should not permit the Southern customs to be lost without making an effort to prevent it. Short of war, I favor any measures to prevent what would mean inevitably the absolute breaking up of the Chinese Maritime Customs, on the revenues of which, as the Department is aware, we are dependent by treaty for the loan and indemnity payments. None of the foregoing has been communicated by me to our consul general at Canton, the commander in chief of the American Asiatic Fleet or the commander of the South China Patrol. I ask for full instructions as soon as possible and respectfully recommend that the foregoing plan be approved. [End paraphrase.]

For the Minister:

BELL

893.51/4434 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 4, 1923—1 p.m.*
[Received 4:51 p.m.]

381. My 379, December 1, 4 p.m. I have received following from consul general at Canton:

"December 3, 12 noon. Norman has just informed me that Sun Yat-sen will have a conference this afternoon to decide whether to attempt to seize Maritime Customs. There are now 4 British and 2 French warships in port and British and French Admirals also here, indications being that these powers will declare blockade if Sun attempts seizure of customs. If port is blockaded I am of the opinion we should join therein because failure to do so on our part would cause complications and strengthen Sun position. At the same time however I believe we should reserve freedom of action. Urge definite instructions be sent this consulate general and commander of the South China Patrol outlining generally position we should assume."

I have replied:

"December 4, 12 noon. Your December 3, 12 noon. Diplomatic corps on December 7th [*1st*] after despatching telegram to senior consul[74] of which you are aware discussed steps to be taken. Plan for blockade had been considered in view of Sun's threat to declare open port but was abandoned in view of the fact that latest official reports from you and others indicated he had now reverted to plan of seizing customs. Question of landing sailors or marines to forestall seizure not favored but British, French and Italian Ministers strongly favor demonstration by war vessels which they hope will cause Sun to desist from seizure. In the event of his seizing customs they favor placing naval forces at Canton at the disposal of consular body giving latter considerable latitude as to what action if any short of actual warfare should be taken in the event of seizure.

Japanese Minister and I telegraphed our Governments for instructions and I shall telegraph you immediately upon receipt.

I am repeating your December 3, 12 noon, to the Department."

Commander South China Patrol telegraphs that there are 2 French, 4 British, 1 Japanese, 2 American warships at Canton, also British commander in chief and French senior naval officer on station, and that he has informed British Admiral he cannot join in any force action in the absence of instructions.

In view of urgency I request immediate instructions for myself and for the commander South China Patrol.

For the Minister:

Bell

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[74] See third and fourth paragraphs of telegram printed *supra*.

893.51/4435 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 5, 1923—noon.*
[Received December 5—9:45 a.m.]

384. My 381, December 4, 1 p.m. Following from consul general at Canton:

"December 4, 5 p.m. Conference referred to in my December 3, noon, postponed until this afternoon. Situation appears to be somewhat calmer and there seems to be possibility Sun may postpone final decision for the present. Understand that British-French plan does not contemplate blockade unless other measures fail."

[Paraphrase.] I am afraid that in case the naval demonstration referred to in my no. 379 of December 1 takes place without the participation of the United States it may encourage Sun Yat-sen to believe that our Government sympathizes with his claims to the revenues from the Southern customs, whereas he will probably abandon the idea of seizing the customs if he feels that there is no sympathy for him in any quarter. Also, a demonstration of this sort in defense of foreign treaty rights and the integrity of the Government of China conducted without American participation must inevitably create the impression that the United States is content to play a role subordinate to those played by France, Great Britain, Italy and Japan. [End paraphrase.]

For the Minister:
BELL

893.51/4432

The Secretary of State to President Coolidge

WASHINGTON, *December 5, 1923.*

MY DEAR MR. PRESIDENT: I have the honor to inform you that a situation has recently arisen at Canton, China, which appears seriously to threaten the integrity of the Chinese Maritime Customs. The local Canton Government, under the leadership of Sun Yat-sen, and in professed independence of the recognized Government of China, is threatening to seize the Canton Customs House and to collect on its own behalf and for local official purposes the Customs revenues of that port.

Our immediate interest in the question lies in the pledge of the revenues of the Chinese Maritime Customs as security for the payment of the Boxer Indemnity. The Customs revenues have hitherto been uniformly respected by local factions; and, should

the threatened seizure actually be made, it is altogether likely that the precedent will be quickly utilized by other local and provincial governments, thus resulting in the complete disintegration of the Customs.

It is the opinion of the representatives in Peking of the Powers principally interested, in which our own Legation concurs, that there should be a concentration at Canton of the available naval units of the Powers having war vessels on the China station for the purpose of deterring the Canton Government from its threatened course of action. The financial and military position of the Canton Government is weak; and it is confidently believed that a show of force will be sufficient to achieve the desired end of maintaining the integrity of the Customs.

Before, however, seeking the cooperation of the Navy Department in this course of action, I desire to submit the matter for your consideration. In view of the urgency of the situation, I have the honor to request that I may be informed of your views thereon as soon as you may find it convenient so to do.

Faithfully yours,

CHARLES E. HUGHES

893.51/4436

President Coolidge to the Secretary of State

WASHINGTON, *December 5, 1923.*

MY DEAR MR. SECRETARY: I have your letter of December fifth, in which you bring to my attention the situation which has recently arisen at Canton, China, and advise me that it is the opinion of the representatives in Peking of the Powers principally interested, in which our own Legation concurs, that there should be a concentration at Canton of the available naval units of the Powers having war vessels at the China station for the purpose of deterring the Canton Government from its threatened course of action, and ask for my views. I think the naval units should be sent. Please seek the cooperation of the Navy Department to this end.

Very truly yours,

CALVIN COOLIDGE

893.51/4432 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *December 5, 1923—4 p.m.*

243. Your No. 379, December 1, 4 p.m., and No. 381, December 4, 1 p.m. The Department believes that it is of the utmost importance to maintain the integrity of the Customs revenues, and that the

seizure of the Canton Customs as threatened by Sun would not only result in the general disintegration of the said revenues, but would also imperil the whole system of treaty rights under which foreign trade with China is carried on. The Department therefore approves of your concurrence in the warning to be despatched by the Dean to the Senior Consul at Canton as quoted in your telegram above mentioned. With a view to averting the threatened seizure of the Customs, it also approves of the plan for a concentration of naval units as recommended by the several ministers whose governments have warships on the China station. The Department is conferring with the Navy Department with a view to appropriate instructions being issued to the Commander-in-Chief of the Asiatic Fleet and the Commander of the South China Patrol for the cooperation of the Navy in such measures, short of actual warfare, as may be deemed advisable. It is being suggested that the naval forces assigned for this purpose be guided by the advice of the Legation and the Consulate General at Canton to the fullest extent compatible with their military responsibilities.

Report immediately all developments in the situation.

HUGHES

893.51/4437 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 6, 1923—11 a.m.*
[Received December 6—6:31 a.m.]

385. Following from commander of South China Patrol.

"December 5, 11 p.m. Local authorities today delivered to British consul general reply to note from diplomatic corps. Reply states that [at] the expiration of two weeks all payment of money collected by Maritime Customs Canton to Peking Government must cease. Will transmit full text when available. One Japanese destroyer arrived today and Italian gunboat expected tomorrow from Peiho River. Leveson states he regrets I cannot join British and French if action becomes advisable."

Admiral Leveson is commander in chief British China squadron.

For the Minister:
BELL

893.51/4432 Suppl. : Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *December 6, 1923—12 noon.*

244. Our 243, December 5, 4 p.m. The commander in chief of the U. S. Asiatic Fleet and the commander of the South China

Patrol have been instructed by the Navy Department that it is important that the customs should not be seized by Sun Yat-sen. They are ordered to concentrate available ships at Canton for a naval demonstration and also to take necessary measures short of actual warfare. They are to cooperate with other powers for this purpose. The naval commanders are to be guided in general by the advice of the Consulate General at Canton and the Legation at Peking.

HUGHES

893.51/4439 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 6, 1923—7 p.m.*
[Received December 6—3:38 p.m.]

386. Your 243 December 5, 4 p.m. repeated to Canton with following additions:

"Bear in mind the following:

1. There is for the most part at all events no question of any blockade at Canton.

2. No measures to forestall seizure of customs by Sun are contemplated. It is considered preferable that he should be made to take the first step and in view of his postponement of active measures for at least two weeks it is hoped that he will take no action. In the event of naval concentration or demonstration not producing the desired effect on Sun such further measures as may appear necessary will be considered in the light of such information consular corps and senior naval officers present may communicate.

Japanese Minister has as yet received no instructions from his Government."

For the Minister:
BELL

893.51/4441 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 8, 1923—10 a.m.*
[Received December 8—8:12 a.m.]

389. My 385, December 6, 11 a.m., and 379, December 1, 4 p.m. dean of the diplomatic corps has received through senior consul at Canton following reply to telegram of December 1st to Sun:

"In reply I have to draw attention to the fact that Chinese Maritime Customs is first and last a Chinese Government service and as such subject to the orders of the Government, at least with regard to those ports within its jurisdiction and control. As customs revenues collected in Southern ports are and have been remitted to Pe-

king and Peking has been sending against the South one military expedition after another which are financed indirectly by these Southern revenues, this Government intends to order Commissioner of Customs to cease such remittances and to retain funds for local use. There is no interference with customs contemplated nor has there been taking of administration of customs threatened. This is a purely Chinese internal affair and does not affect foreign powers. They are concerned only in protection of loan and indemnity services charged on the customs and even after action intended there is still a large margin in customs revenues for such services. In this connection it should be noted that lien of foreign creditors is on customs receipts of the country as a whole and not methods of any specific ports.

If foreign powers should resort to forcible measures it would clearly be an action of intervention in China's internal affairs in favor of Northern militarists.

On September 5th I had the honor to address a communication to the dean of the diplomatic corps requesting foreign representative to instruct commission of bankers after service of foreign obligations charged on the customs revenues to hand over surplus unconditionally to the inspector general of customs who will be requested to remit a pro rata share to the South and to refund surplus accumulated since March, 1920, due to the South. On September 28th I was informed by telegraph that question was being considered by diplomatic body. After this Government has waited three months to a day for a reply in vain, it seems hardly reasonable for diplomatic body to complain of precipitous action on the part of this Government. In deference, however, to their representations and as proof of conciliatory spirit actuating this Government, it will refrain from taking any definite action for another two weeks in order to await this decision."

For the Minister:
BELL

893.51/4444 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 9, 1923—2 p.m.*
[Received December 9—1:06 p.m.]

391. My 386, December 6, 7 p.m. Following from American consul general Canton:

"December 8, noon. Your telegram of December 6, 7 p.m. received and carefully noted. In my opinion Sun intends to carry out threat to seize customs in spite of two weeks' postponement. Sun has just given statement to local representative of Associated Press declaring Canton Government intend to require Commissioner of Customs to hold all revenues collected within its territory at disposal of this Government so long as customs revenues from rest of China are sufficient to meet foreign commitments charged on China's Maritime Customs. Report by mail follows."

[Paraphrase.] If the consul general is right and Sun Yat-sen means business the question will face us as to whether or not we should take the customhouse before Sun does, and, by the use of force, prevent him from taking control of it. My French colleague informs me that the French Admiral favors this. The admiral has but just arrived on the China station. Our naval attaché thinks that Sun will not try to take the customhouse if we occupy it first, but that if he takes it first he will resist if we try to dislodge him. I shall telegraph our consul general to inquire of the senior United States naval officer at Canton as to his views on the wisdom of taking the customhouse and tomorrow I will consult other ministers who are interested and cable the Department. I will let you know before I commit the Department to anything further. I am aware of the fact that in case the foreign powers take the customhouse, Sun Yat-sen may meet that move by declaring Canton to be a free port. That would leave us to either declare a blockade, which personally I do not approve, or give up the contest. Any way you look at it, it is an awkward situation.

The Government here is giving indications of becoming restive. The day before yesterday Koo told me that the Chinese were bombarding him with inquiries as to the action of the foreign powers at Canton. I told him that to pretend that we were not looking after our own interests would be affectation. I begged him, however, to keep in mind that by so doing we also were doing a kind and friendly act for the Chinese Government in assisting it to keep its principal source of revenue intact. It seems to me that Koo's feelings are torn between gratification that probably his customhouse will be saved to him and anguish that the saving is going to be done by foreigners. In general the Peking Government feels the same, and in high official circles there appears, curiously enough, a kind of sneaking sympathy for Sun Yat-sen's claims I have requested Ferguson [75] to see President Tsao Kun to explain to him the situation and try to convince him that it is unwise to look a gift horse in the mouth and that he ought to be thankful for what the powers are doing. Ferguson agreed that he would do so at the earliest favorable opportunity. He declares himself to be heartily in favor of the attitude of the powers. [End paraphrase.]

. . . .

For the Minister:

BELL

[75] J. C. Ferguson, American citizen, adviser to the Chinese President.

893.51/4443 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 10, 1923—11 a. m.*
[Received December 10—4:50 a.m.]

393. My 391, December 9, 2 p.m. I have today received the following memorandum from the Chinese Foreign Office dated December 8th:

"According to newspaper reports the war vessels of Great Britain, France, Italy, Japan and the United States of America are assembled in the harbor of Canton and marines armed with machine guns are prepared to land at Canton. Inquiry is made as to whether or not the American Minister has received reliable reports regarding this grave piece of news and what the purpose thereof is. The Chinese Government considers the assembling of foreign war vessels at Canton as a matter of very grave importance and requests that a detailed reply be made promptly in order that the matter may be considered and dealt with."

Other foreign ministers mentioned have received similar communications and we are to have a conference to discuss reply.

For the Minister:
BELL

893.51/4445 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 11, 1923—4 p.m.*
[Received December 11—12:23 p.m.]

396. My 393, December 10, 11 a.m. At meeting of the diplomatic body today it was decided that they should reply as a whole to Foreign Office memorandum since the five powers mentioned therein were not acting as individuals but jointly on behalf of all powers represented in China. Dean was accordingly authorized to address to Foreign Office following note which will be sent this afternoon.

"My colleagues desire me to inform Your Excellency in answer to your inquiry addressed to a certain number of them that the report of the landing troops in Canton is as yet unfounded but that the powers who dispose of war vessels in Chinese waters have, in conformity with the unanimous opinion of the diplomatic body, despatched war vessels to Canton with a view to prevent the threatened seizure of customs funds which would endanger the security for the indemnity of 1901 and for the loans concluded previous to that year."

For the Minister:
BELL

893.51/4447: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 11, 1923—5 p.m.*
[Received 6:47 p.m.]

397. My 379, December 1, 4 p.m., and despatches 1847, September 29,[76] and 1912, November 9.[76] Diplomatic body today adopted following communication to senior consul Canton which was telegraphed to him this afternoon by the dean.

"With reference to your letters dated September 7th [77] and October 24th[76] last on the subject of the claim put forward by the Government of Doctor Sun Yat-sen in Canton to a share in the customs surplus after the foreign obligations charged on the customs revenues are paid, I have the honor to inform you that this question was duly considered by the diplomatic body. The conclusion arrived at, which I am designated to request you to bring to the notice of the Canton authorities concerned, was to the effect that the granting or the refusal of such a claim does not lie within the province of the diplomatic body.

The signatory powers on the final protocol of September 7th, 1901 [78] derive from that protocol the right to ensure the priority of the payment of interest and amortization of certain foreign loans secured on the customs revenues previous to 1901 and of the payment of interest and amortization of the indemnity mentioned in article 6 thereof, but no treaty right has been conferred upon them to decide for what purpose the Chinese Government should use the funds which at the end of each year shall remain at the disposal of that Government after the services of the said loans and indemnity shall have been entirely provided for. Moreover by the agreement between the diplomatic body and the Chinese Government of the 30th January, 1912,[76] the former were practically appointed trustees of the Maritime Customs revenues for the protection of the above-mentioned obligations but that agreement did not confer upon the diplomatic body the power to allocate surplus.

As to the payments out of the surplus of customs receipts for certain domestic loans, to which Mr. C. C. Wu in his letter to you [79] refers, I have to point out that the diplomatic body are in no way concerned with the service of these loans which was instituted without their previously having been consulted.

Finally, I may perhaps remind you that the arrangement by which the then existing constitutionalist government at Canton was handed over a certain percentage of the customs surplus in 1919 and 1920 was arrived at between that government and the Chinese Government in Peking. Diplomatic body on that occasion neither took the initiative nor did they act as intermediary for the conclusion of that arrangement. It is evident that they could not do so now either."

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[76] Not printed.

[77] Not printed; see telegram no. 321, Sept. 22, from the Minister in China, p. 552.

[78] *Foreign Relations*, 1901, Appendix (Affairs in China), p. 312.

[79] See telegram no. 321, Sept. 22, from the Minister in China, p. 552.

It is left to discretion of senior consul whether in view of local conditions he shall present this reply to local Canton Government at once or wait until expiration of two weeks' delay. See my 389, December 8, 10 a.m.

It was further decided that when we had heard from senior consul that he presented the message the diplomatic corps should communicate all correspondence had with Sun to the Chinese Foreign Office and make it public.

For the Minister:
BELL

893.51/4450

The British Chargé (Chilton) to the Secretary of State

No. 1061 WASHINGTON, *December 12, 1923.*

SIR: Under instructions from my Government I have the honour to inform you, with reference to Dr. Sun Yat-sen's threat to seize the customs at Canton, that the first results of the joint naval demonstration seem to have been satisfactory. The situation, however, is still uncertain and I am desired by His Majesty's Government to express the hope that, if further action is necessary to defend the customs, the United States Government will cooperate therein with all means at their disposal.

I have [etc.] H. G. CHILTON

893.51/4432 Supp.

The Secretary of State to President Coolidge

WASHINGTON, *December 13, 1923.*

MY DEAR MR. PRESIDENT: With reference to my letter of December 5, 1923, concerning the situation which has recently arisen at Canton, China, threatening the integrity of the Chinese Maritime Customs, I have the honor to inform you that at the present moment war vessels of the principal Powers are assembled at or in the vicinity of Canton for the purpose of obviating the seizure of the Customs at that port by the party headed by Sun Yat-sen. The latest telegraphic despatches from the Legation at Peking indicate that as yet Sun has taken no overt step in this direction; and the weight of opinion in China inclines to the view that he will not attempt to make such seizure by force in the face of the combined opposition of the foreign Powers. It is, however, not impossible that he may make some demonstration rather than calmly admit defeat.

With this contingency in mind, the Consul General at Canton reported to the Legation at Peking on December 10 as follows:

"Canton: December 10, 6 p.m. Referring to your telegram of December 9, 3 p.m.,[81] Have consulted British and French colleagues, also commander South China Patrol. We all agree that although we overestimated some overt act by Sun he should not be permitted to seize customs building. British consul general favors plan mapped out some years ago to place warship in front of the customs building and if Sun attempts forcibly to occupy, powers to land marines and occupy building themselves, meantime customs archives and funds to be transferred to premises French concession Shameen whence customs will continue function. I am in full accord with this plan although it may lead to armed clash because it seems more logical to prevent Sun seizing building than to attempt to dislodge him later.

"All information reaching me tends to show Sun will order customs commissioners to turn over surplus and upon commissioners refusing Sun will send his own appointee to demand possession. I doubt if Sun will go to extent of using force but he may do so because his financial position is desperate. In any event I believe struggle has just begun. Sun can use propaganda, boycott and strike if he does not try force."

The above quoted telegram was transmitted by the Legation to the Department on December 11[82] with the statement that the Legation was in accord with the views of the Consul General as outlined in the first paragraph of his telegram and with the request that the Department give its definite approval of this plan.

I concur in the views of the Consul General and of the Legation. Before, however, issuing instructions to this effect, I deem it advisable again to seek your approval, inasmuch as such instructions contemplate the possibility of our naval forces participating with those of the other foreign Powers in forcible measures in the event of overt action on the part of Sun.

Faithfully yours,

CHARLES E. HUGHES

893.51/4455

President Coolidge to the Secretary of State

WASHINGTON, *December 14, 1923.*

MY DEAR MR. SECRETARY: Replying to your letter of December 13th concerning the situation at Canton, China, threatening the integrity of the Chinese Maritime Customs, I approve of your issuing instructions in accordance with the views expressed in the telegram from

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[81] Not found in Department files.
[82] Legation's telegram not printed.

the Consul General at Canton, which you quote and in which views you advise me you concur.

Very truly yours,

CALVIN COOLIDGE

893.51/4453 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 14, 1923—11 a.m.*
[Received December 14—9:20 a.m.]

399. My 397, December 11, 5 p.m. Senior consul at Canton telegraphs he will deliver communication to Sun today.

American consul general, Canton, telegraphs December 13, 6 p.m.:

"Conditions are quiet but tense. Commander of South China Patrol ordering four destroyers to arrive Canton Saturday. General opinion of consular body Sun will not act before Monday."

This looks as though Jenkins expected Sun to take some step before the expiration of two weeks' delay. See my 389, December 8, 10 a.m., and 392 [*391*], December 9, 2 p.m.

Four destroyers mentioned are part of a force of six destroyers which commander in chief United States Asiatic Fleet despatched from Manila December 11th, and which arrived in Hongkong December 15th [*sic*]. They have landing force of marines on board. Please reply by telegraph to my 394, December 11, 3 p.m.,[83] last paragraph.

For the Minister:
BELL

893.51/4456 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 15, 1923—10 a.m.*
[Received December 15—4:20 a.m.]

402. My 399, December 14, 11 a.m. From commander of South China Patrol:

"December 14, 9 p.m. Conference of Naval officers agreed that United States, England, France, Portugal and Japan be represented in landing force if used. Chinese press indicates Government is starting antiforeign agitation. It states enormous customs revenues needed to reduce taxes and cost of living are being held by the Powers".

For the Minister:
BELL

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[83] Not printed.

893.51/4446: Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *December 15, 1923—noon.*

250. Your telegram 391, December 9, 2 p.m. Department believes that Sun Yat-sen should not be allowed to seize customhouse at Canton. The plan of the consular body outlined in the telegram from the consul general to the Legation December 10, 6 p.m.,[84] is approved.

HUGHES

893.51/4459: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 15, 1923—5 p.m.*
[Received December 15—2:17 p.m.]

403. Following from American consul general at Canton:

"December 14, 2 p.m. . . .

At meeting last evening consular body decided to transmit diplomatic body's reply to Sun Government today. See senior consul's telegram of December 13th through the American naval attaché.[85] Consular body also decided to address informal communication to commander in chief Chinese forces warning him that if Sun attempted to seize customs, powers would place marine guards in customshouse without contemplating any infringement Chinese sovereignty, powers being actuated by the utmost friendliness.

Plan outlined my telegram of December 10, 6 p.m.,[84] adopted by the consular body. Naval commanders now working out details."

For the Minister:
BELL

893.51/4463: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 16, 1923—11 a.m.*
[Received December 16—9:42 a.m.]

405. Your 250, December 15, noon. Substance communicated to Jenkins.

Following just received from Jenkins:

"December 15, 4 p.m. Norman informs me that on (19th?) Sun will order commissioner of customs to retain revenues collected at Canton but that Sun promises not to follow up with any forcible

[84] See letter from the Secretary of State to President Coolidge, Dec. 13, p. 569.
[85] Not found in Department files.

action for the present. Believe this will ease situation as Norman thinks that further negotiations [might] now be possible. Senior consul telegraphing above to dean. Our destroyers and additional British ships arriving tomorrow. Antiforeign propaganda continues, meeting of labor unions called for tomorrow."

Radio from commander of South China Patrol states four American destroyers with marines and British gunboat with marines arrived last evening.

For the Minister:
[BELL]

893.51/4450

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *December 18, 1923.*

SIR: I have the honor to acknowledge the receipt of your note No. 1061 of December 12, 1923, relating to the situation at Canton, China, and the apparent success thus far of the joint naval demonstration. With reference to the action which is being taken by this Government on behalf of the integrity of the Customs, I am happy to inform you that, on December 5, instructions were issued for a concentration at Canton of the available American naval units; and that, on December 15, further instructions directed the Commander of the South China Patrol to cooperate with the naval commanders of the other foreign Powers in the plan which had been approved by the Consular Body at Canton for preventing the seizure of the Canton Customs House.

Accept [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

893.51/4465 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 18, 1923—10 a.m.*
[Received December 18—3:55 a.m.]

410. My 406, December 17, 11 a.m.[86] Following from American consul general at Canton:

"December 17, 11 a.m. About 70 French marines landed in French concession Shameen yesterday and are now being housed in former French post office building. Understand this was done because of lack quarters on board ship. British also landed men their part Shameen for drill. Neither Sun nor any other official of local gov-

[86] Not printed.

ernment attended mass meeting yesterday. Norman intimates confidentially general commanding local troops will keep order and prevent any outbreak against foreigners. Have no assurance, however, that mass meetings and agitation will cease. Presence of our ships helping. Norman says that Sun will deliver order to customs commissioner 19th as planned and await reply.["]

For the Minister:
BELL

893.51/4466 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 18, 1923—11 a.m.*
[Received December 18—4 a.m.]

411. Following from American consul general at Canton:

"December 17, 11 p.m. Propaganda attacks tending to concentrate on the United States due to the disappointment at finding us with others possibly because of our force here largest. American Minister accused in the newspapers of having favored Tsao Kun election. Sun cabled manifesto American people complaining our ships threatening Canton."

See my despatch 1924, November 15.[88]

For the Minister:
BELL

893.51/4467 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 19, 1923—11 a.m.*
[Received December 19—3:56 a.m.]

412. My 411, December 18, 11 a.m. Following from American consul at Canton:

"December 18, 5 p.m. Referring to my telegram of 17th concerning propaganda attacks. I shall pay no attention unless they become so provocative as to endanger American lives and property in which case I propose to warn local authorities they will be held strictly and personally responsible."

Following from commander of the South China Patrol:

"Conditions quiet but tense. Small Chinese cruiser anchored near station assigned U.S.S. *Pampanga* and small British gunboat. Larger British gunboat ordered here for use if necessary, destroyers too large for this purpose. Propaganda attack on the United States

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[88] Not printed.

continues, and if they put lives and property in danger, American consul general will warn authorities that they will be held responsible."

For the Minister:
BELL

893.51/4472: Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *December 21, 1923—3 p.m.*
[Received December 21—12:16 p.m.]

416. My telegram no. 415 of December 20, 4 p.m.[89] The following telegram dated December 20, noon, has been received from our consul general at Canton:

I understand that Sun Yat-sen's order to the customs commissioner was delivered late yesterday. I hope soon to have a copy. There is a general feeling among Europeans and Americans that the diplomatic corps should bring pressure on the Government at Peking for the allocation of all the customs surplus proportionally among the provinces for constructive work. In this way Sun's face would be saved and any force and justice which his argument may have would be destroyed. If this plan is at all feasible I urge it although I am aware of the attitude of the Department in 1921. I understand that Aglen is in constant negotiation with C. C. Wu, but I am not aware of what Wu proposes to offer. Yesterday the local government delivered a note to the consular body asking the reasons why foreign warships were at Canton. The consular body answered that Sun Yat-sen threatened to seize the customs and that the ships would leave as soon as assurances were given that this would not be done.

I may add to the above telegram from the consul general that not having received the text of Sun Yat-sen's message and the answer given by the customs commissioner I am not ready to recommend to the Department what future action should be taken. Sun may collapse within a few weeks if he fails to get the customs revenues, but I doubt that Cheng Chiung-ming has the ability to drive him from Canton. Sun may, however, gain added prestige from his resistance to the foreign powers and this may enable him to hold on for a while longer. The foreign governments evidently cannot maintain the present naval forces and landing parties indefinitely at Canton. We cannot afford merely to drift and so future plans should be agreed upon at an early date.

For the Minister:
BELL

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[89] Not printed.

893.51/4476: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 22, 1923—11 a.m.*
[Received December 22—10:53 a.m.]

417. Following from senior consul, Canton, to dean of the diplomatic corps sent December 21, 10 a.m.:

"Sun late last night issued an order to commissioner of customs instructing him to hold in custody at the disposal of his Government all customs revenues collected within the jurisdiction thereof for current year after deduction of sums due in respect of foreign obligations. Same procedure to be followed monthly hereafter and accumulation of surplus since March 1920, to be made good out of customs revenues. Inspector general of customs is to be asked to comply.

Letter signed by C. C. Wu is short: asserts right to all revenues within jurisdiction; after foreign obligations are met surplus of customs is theirs; cites precedent of 1919 and 1920; Central Government being unconstitutional and unrecognized by people because others [*sic*] surplus; diplomatic body in letter of December 11 have acknowledged they cannot interfere therewith, hence right of this Government uncontestable."

Following from American consul general at Canton:

"December 21, 3 p.m. Sun order handed commissioner of customs December 19. Text telegraphed to inspector general. Senior consul telegraphing outline public sentiment [*statement?*] issued by Canton Government in view of which consul general's body [*consular body?*] decided warships now here should remain. Situation unchanged. Chinese newspapers beginning to demand recall of Dr. Schurman and myself."

Following from commander of South China Patrol:

"December 21, 6 p.m. Order of local government to the commissioner of customs communicated to inspector general. Following up order Government today published long statement in English rehearsing previous letters and arguments and stating if order not obeyed will appoint new customs officials. Consular body of opinion that naval vessels here should remain. Local authorities protest against use of radio addressed only to American consul general, who replied cannot admit naval vessels not within rights in using radio for official communications. My opinion is that destroyers will remain here at least 10 days."

For the Minister:
BELL

893.51/4478 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 24, 1923—3 p.m.*
[Received December 24—10:43 a.m.]

419. My 417, December 22, 11 a.m. Following just received from commander of South China Patrol:

"December 22, 6 p.m. French captain and gunboat with marines and small Portuguese gunboat departed yesterday. British senior naval officer and cruiser with half marines left today. I agree with American consul's opinion that Sun will not seize customhouse but will establish own customs. Present situation possibly be [omission?] by the diplomatic body inducing Peking Government to allocate Canton surplus to foreign administered constructive work in this Province. British suggested I send two destroyers to Hongkong for Christmas if not needed here. Force here unnecessary at present but due to local newspapers singling out United States for attack American consul and I agree press might interpret any reduction as weakening and therefore augment attack. Particular attack on United States due to participation being wholly unexpected and attack continued in hope of influencing public opinion in the United States."

For the Minister:
BELL

893.51/4481 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 26, 1923—2 p. m.*
[Received 2:50 p. m.]

422. My 417, December 22, 11 a. m. I have just seen telegram sent December 22 by senior consul, Canton, to dean of the diplomatic corps as follows:

"Following up letters of [*to?*] commissioner, Government have today published statement in English for the press. After rehearsing contents of the former it goes on to say that on December 12th diplomatic body having confidentially stated contention that they have no right to interfere in customs surplus, matter rests between this Government, Central Government and inspector general. Powers are not justified in sending ships to assist Peking. If order to commissioner be now [*not?*] obeyed Sun will appoint new officials to carry out the work. Point is raised that security for foreign obligations is revenue not buildings or other customs property. If new officials are installed therein powers have equally no right to interfere. Customs revenue outside Canton is more than ample to meet all obligations and change of officials cannot effect service thereof. Final point is that Boxer indemnity is punitive measure now out of date and practically abandoned in favor of Chinese interests.

In view of above consular body are of opinion that foreign men-of-war at present in port should remain."

Commander of Yangtze patrol states that rumors along the river are to the effect that if Sun seizes Canton customs the military commanders along the Yangtze will seize customshouses within their reach.

Sir James Jamieson, British consul general and senior consul, Canton, long overdue for home leave, is leaving almost immediately and will be replaced by Bertram Giles, a very able official. This is a routine matter, but I am apprehensive that his departure coupled with departure of half British marine contingent (see my 419, December 24, 3 p. m.) and continued pressure on Hongkong Government may create impression that British Government is weakening.

[Paraphrase.] I have no reason at all to think this is the case but I very respectfully venture to suggest that it may be advisable for you to speak of this matter to the British Ambassador. You might make the observation to him that you hope the selfish interests of Hongkong will not be allowed to break the solidarity of the powers on this question of policy, probably the most important that has come up since the Conference at Washington. [End paraphrase.]

For the Minister:

BELL

893.51/4483 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 27, 1923—4 p.m.*
[Received December 27—11:20 a.m.]

423. Following telegram has been sent American consul general at Canton:

"December 27, 3 p.m. Your December 21, 3 p.m.[91] I understand Aglen has replied through commissioner of customs to Wu. I have not seen text but understand he refers to various international agreements and explains why it is impossible for him to comply with request but lets Sun down as easily as possible.

Your despatches 37, 38 and 40 received today.[92] Your conduct of this delicate and difficult affair very gratifying to the Legation. It is absolutely essential that solidarity of foreign powers should be preserved. Who becomes senior consul on Jamieson's departure?"

For the Minister:

BELL

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[91] See telegram no. 417, Dec. 22, from the Minister in China, p. 576.

[92] Not printed.

893.51/4481 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *January 3, 1924—3 p.m.*

1. Your No. 422 December 26, 2 p.m.

For your information. In an interview with the British Chargé d'Affaires on December 29, I took occasion to remark that I had been somewhat disturbed by recent information from Canton to the effect that half of the British marine contingent had departed and that there was pressure on the Hongkong Government presumably by British interests which might have consequences creating the appearance that British support was weakening; and that I wished to convey to the British Government the earnest hope that the solidarity and cooperation at Canton would be maintained, and that nothing would be done which would indicate that the British were not as earnest in this cooperation as they had been. The Chargé d'Affaires replied that he had no information on the subject.

HUGHES

ATTITUDE OF THE AMERICAN GOVERNMENT WITH RESPECT TO CERTAIN CHINESE INTERNAL TAXES

893.512/161

The Vice President of the Standard Oil Company of New York (Cole) to the Secretary of State

NEW YORK, *May 4, 1923.*
[Received May 10.]

SIR: While your department is no doubt fully informed with regard to the interior taxation question in China, we are taking the liberty of placing you in possession of advices of our Shanghai management of the more recent activities of the provincial authorities.

Certain Provinces which have been deprived of likin on foreign imports have instituted local taxation approximating the amount paid for Customs transit passes and give in exchange passes which actually exempt shipments from further taxation within that province. The best example of this is at Kiukiang where the equivalent of the transit pass is collected by the Provincial Authorities and complete immunity from further taxation is accorded. During the past few months the Provincial Authorities in Kiangsu have been negotiating with us for the payment of a Provincial tax which would exempt our cargo from further impositions and relieve us of the necessity of taking out Customs transit passes. Chekiang

Province has also had a Provincial system of taxation, which under certain conditions enables us to ship without transit pass. Even where such a course has made a possible saving to the Company, we have not been active in trying to conclude arrangements with the Provincial Authorities along these lines as it does not seem entirely fair to deliberately evade treaty provisions and deprive the Central Government of legitimate revenue.

The fact that some of the Provincial Governments are awake to the possibilities of obtaining increased revenue in this way without encountering official protest leads us to believe that such arrangements will be extended to other Provinces unless the general scheme of taxation is altered. It should be particularly noted that the taxation substituted for the transit pass is not termed "likin". On the other hand the only tax which the Chinese Government has agreed to abolish to compensate for the increased Customs revenue is termed "likin" in the Treaties of 1903.[93] Unless this term is more fully defined it is obvious that the Provincial Authorities, if not the Central Government, will substitute other forms of taxation which will defeat the purpose of permitting an increase in Customs import duty. The generally accepted definition of the term "likin" is transit duties whereas the Provincial taxation takes the form of consumption taxes levied in various ways.

In addition to the proposals received from Provincial Governments, a Chinese, representing himself as an agent of the Peking Government, has recently put before us a scheme for national taxation of foreign kerosene imports. This scheme has also been put up to the Asiatic Petroleum Co. The plan calls for the collection of a 2 percent ad valorem tax in addition to transit pass, to be paid in lieu of all further interior taxation. The importer has the alternative of paying the equivalent of the transit pass duty to the Tax Office instead of to the Customs, making a total payment of 4½ percent ad valorem on cargo not covered by transit pass. The plan would be effective in all provinces except Kwanghai [*Kwangsi?*], Kwangtung, Kueichow, Yunnan and the Manchurian provinces. The natural reaction to such proposal is to ignore it for the following reasons:—

1. The operation of the plan would be based on a private agreement between the importers concerned and a department of the Chinese Government and regardless of the attitude adopted by the officials of the foreign government concerned. It is doubtful whether or not any real assistance could be given to enforce the terms of the agreement in the face of efforts to raise the rates or against additional levies which might be imposed by provincial authorities or other departments of the Government.

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[93] *Foreign Relations*, 1903, pp. 91 and 551.

2. The authority of the Central Government to enforce the terms of such an agreement in the provinces is certainly open to question.
3. Any formal recognition given to such agreement by the governments of the nationals concerned would certainly tend to undermine the treaty provisions on the subject.

On the other hand, as pointed out above, there seems to be an awakening on the part of the provincial governments to the possibilities of obtaining a greater share of the duties now levied, and also of increasing the amount of such duties. Such demands coming from the provincial authorities cannot be ignored, and it seems wise to take advantage of any opportunity offered to direct and control the amounts and forms of the additional duties.

If there is any possibility of the Central Government instituting nation-wide tax on foreign imports to be paid in lieu of existing internal revenue and/or Customs' surtax, we believe that an agreement as to the proportion of such collections which will be allocated to the Provincial Governments is necessary to the success of the proposal. This suggestion applies equally to the proposed increase in Customs import duties imposed in lieu of internal taxation.

Yours very truly,

STANDARD OIL COMPANY OF NEW YORK,
H. E. COLE, *Vice President*

693.003/730

The Tobacco Merchants Association of the United States to the Secretary of State

NEW YORK, *May 8, 1923.*
[Received May 9.]

MY DEAR SIR: On behalf of the tobacco industry, including tobacco growers, manufacturers, dealers and exporters, we most earnestly petition your Honor to take all needful steps to secure the abrogation of the decree or legislation recently passed or promulgated by the local authorities of the Province of Chekiang, China, levying an ad valorem tax of 20% on cigarettes.

It is our genuine conviction that the imposition of such tax, by any of the provinces of China, constitutes a distinct violation of the treaties and understandings with the Peking Government, and we respectfully submit that this is not only a matter of concern to American tobacco growers and exporters, but also to all other industries interested in Chinese markets, for, if this action of the Chekiang authorities should be permitted to stand unchallenged, similar situations affecting many of the American industries are

likely to follow, not only in Chekiang but in the other provinces of China as well.

It is to be noted that this tax is levied in treaty ports, as well as in other parts of the province.

We beg leave, therefore, to register our earnest protest against this unauthorized tax levy and sincerely trust that you may deem it proper to take this matter up with the Chinese Government with a view to securing the repeal of this tax measure.

With grateful appreciation of the consideration we are sure you will give this matter, we are

Respectfully yours,

TOBACCO MERCHANTS ASSOCIATION OF THE UNITED STATES,
CHARLES DUSHKIND, *Counsel and Managing Director*

893.512/132

The Secretary of State to the Minister in China (Schurman)

No. 405 WASHINGTON, *May 22, 1923.*

SIR: The Department has received your despatch No. 1231 of December 14, 1922,[94] with reference to the principles involved in a protest against the imposition of Famine Relief Surcharge Tax Stamps upon documents affecting the trade of the nationals of the Treaty Powers, and with particular reference to the collection of this tax through stamps affixed to likin receipts in Hunan, as reported by the Vice Consul in charge at Changsha. You refer to the special report of the Committee of the Diplomatic Body, as transmitted in your despatch No. 590 of April 26, 1922,[94] and to the note sent by the Dean to the Chinese Foreign Office, as submitted in your despatch No. 618 of May 4, 1922;[94] and state that, as no expression of opinion relating to the propriety of the Dean's note has been received from the Department, you have assumed that your assent thereto met with the Department's approval.

In the Dean's note to the Foreign Office of April 26, 1922, it is stated:

> "that the revenue collected by means of the proposed famine relief surcharge stamps would in fact amount to a tax imposed upon the commerce conducted by the nationals of the Treaty Powers and would consequently be in contravention of the treaties whereby the taxation of such commerce is strictly defined and limited."

This statement would appear to be true only in part.

It may well be that the tax cannot legally be imposed on nationals of the Treaty Powers, but it is not believed that the single reason

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[94] Not printed.

advanced, namely, that the revenue collected by means of stamps amounts to a tax on commerce, is of itself sufficient.

It appears from Article IV of the regulations published in the Chinese Government *Gazette* of March 13, 1922, that the stamps are to be affixed to four different kinds of documents. The Article reads:

"The said stamps shall be affixed to documents in accordance with the following regulations:

> (*a*)—Stamps shall be affixed to freight receipts issued by all Government owned railways to an amount equal to 5% of the freight tariff.
>
> (*b*)—Stamps shall be affixed to certificates authorizing the building of privately owned railways, and to certificates authorizing the creation of privately owned steamship lines to an amount equal to 10% of the fee for the issuance of such certificates.
>
> (*c*)—One ten cent stamp shall be affixed to each telegram sent from one part of the country to another.
>
> (*d*)—A one cent stamp shall be affixed to each special delivery letter, and each registered letter sent through the Government posts.

"Famine Relief surcharge stamps shall not be required in any cases not covered by the above stipulations."

It is, of course, generally known that under our treaties with China goods imported or exported, unless duty free, bear a fixed rate of duty and (except in the case of inland shipments for which transit passes have not been obtained by the shippers) are not subject to any charge in the nature of a tax or duty other than as prescribed by the tariff schedule. (Articles II and V, Treaty of 1844 (Malloy [Vol. I,] page[s] 197–198) and Articles XI and XII of the Japanese Treaty of 1896 (Customs Treaties,[95] Vol. II, pages 1336–7). Therefore, the documents referred to under (*a*) of the regulations, in so far as they concern shipments of goods on which the import or export duty of 5% has been paid, and, in the case of inland shipments, where the transit pass privilege has been availed of (Rule 7 of the Tariff Schedule annexed to the Treaty concluded November 8, 1858, (Malloy, Vol. I, page 231)) cannot properly be subjected to the stamp requirement, since this would constitute an additional charge on the privilege of shipping merchandise, which would be in contravention of the above cited provisions of the treaties. These treaty provisions, however, apply only to goods which have been imported into China or which are being exported from China, and do not apply to native goods employed in commerce

[95] China, Imperial Maritime Customs III, Miscellaneous series no. 30: *Treaties, Conventions, etc., between China and Foreign States* (Shanghai, 1908).

within China. It is not known to what extent American citizens or other foreigners engage in this latter class of trade, but the distinction is worthy of mention. In this connection reference may be made to the instruction which the Department addressed to the Legation at Peking May 4, 1914,[96] in which it was stated that "The Department is of opinion that a stamp tax upon bills of lading, shipping companies' receipts, consignees' receipts and other documents relating to imported or exported goods is technically a contravention of the letter of the treaties, since the stamp duty will slightly increase the tariff duty." The Department added that it did not believe that the Treaty Commissioners, when stipulating that the payment of import duties and commutation transit tax or half-duty should exempt the goods "from all further inland charges whatsoever", and that "exports having paid transit tax should be exempt from all internal taxes, import duties [*sic*], likin, charges and exactions of every nature and kind whatsoever saving only export duties," had in mind the levy of a stamp duty upon the shipping papers. It expressed the opinion that the commissioners had in mind only duties, under a variety of names, upon the goods themselves, and authorized the Legation to consent to the levy of a stamp tax on condition that other governments should also consent.

As to the other documents mentioned in Article IV of the regulations quoted above, namely, those under (*b*), (*c*) and (*d*), it is believed that a different situation exists, and that if the stamp requirement as to these documents is to be declared illegal, the illegality must be based upon some treaty provision other than those concerning the duty leviable upon imported or exported goods. Obviously, the requirement under (*b*) that certificates authorizing the building of privately owned railroads and the creation of steamship lines shall bear stamps can not be considered a tax upon commerce. The requirement under (*c*) that a stamp shall be affixed to each telegram sent and under (*d*) that special delivery and registered letters sent through the Government posts shall each bear a one cent stamp might, by a rather strained construction of the law, be regarded as an indirect tax upon commerce when the telegrams or letters pertain wholly to commercial matters; but to lay down the general proposition that such form of taxation is contrary to the treaty provisions regarding import and export duties and transit charges is, it is believed, bordering on the extreme.

The right of a government to lay taxes upon its nationals and upon the person and property of aliens coming within its domain is a fundamental attribute of sovereignty, the exercise of which, within reasonable limitations, can not properly be questioned in the

[96] *Foreign Relations*, 1914, p. 122.

absence of a specific undertaking on the part of the government to forego the right. There appear to be no specific provisions in any of our treaties with China under which exemption from the form of tax provided for under (*b*), (*c*) and (*d*) above could be claimed for nationals of this Government. In fact by Article IV of the Treaty of 1903 between this Government and China, (Malloy, Vol. I, page 261), which has to do with the abolition of likin, the right of China to impose forms of taxation other than those specified in the article was specifically recognized. The provision reads:

"Nothing in this article is intended to interfere with the inherent right of China to levy such other taxes as are not in conflict with its provisions."

It is realized that Article IV has not been brought into operation because of the failure of China to take steps to abolish the likin system, but this stipulation was apparently not in the nature of a *quid pro quo* arrangement or of a concession by this Government to China, but was merely the formal recognition by this Government of an existing right, the reasons for which are explained in the exchange of notes which took place at the time of the signing of the Treaty. The note which the American Commissioners addressed to the Chinese Commissioners in reply to one from the latter reads as follows:

"In framing this Treaty we have endeavored to recognize the right of China as a sovereign state to levy such taxes as are not in conflict with the provisions of this Treaty which is intended to extend the commercial relations between, and promote the best interests of, the people of the two countries. With this end in view, we inserted at your request in Article IV the clause 'Nothing in this Article is intended to interfere with the inherent right of China to levy such other taxes as are not in conflict with its provisions.' We, with Your Excellencies, appreciate the fact that this clause is comprehensive and conserves to the fullest extent the sovereign rights of China except as specified in this Treaty." (MacMurray's China Treaties,[97] Volume I, page 451; also despatch from Peking, March 10, 1914, 893.512/31.[98])

It would seem, therefore, that this Government is not in a position to claim exemption for its nationals from payment of the stamp tax provided for under paragraphs (*b*), (*c*) and (*d*) of the regulations, unless it can do so by virtue of provisions in a treaty between China and some other power and of the favored nation provisions in the Treaty of 1903 (Article III) and earlier treaties. Apparently the broadest treaty provisions regarding the exemption of

[97] John V. A. MacMurray (ed.), *Treaties and Agreements with and concerning China*, 1894–1919 (New York, Oxford University Press, 1921).
[98] *Foreign Relations*, 1914, p. 119.

foreigners from "obligations" in China are those contained in Article XL of the Treaty of 1858 between China and France (Customs Treaties, Vol. I, page 622). This Article reads:

"Art. XL.—If the Government of His Majesty the Emperor of the French shall consider it desirable to modify any of the clauses of the present Treaty it shall be at liberty to open negotiations to this effect with the Chinese Government after an interval of ten years from the date of the exchange of the ratifications. It is also understood that no obligation not expressed in the present convention shall be imposed on the Consuls or Consular Agents, nor on their nationals, but, as is stipulated, French subjects shall enjoy all the rights, privileges, immunities, and guarantees whatsoever which have been or shall be accorded by the Chinese Government to other powers."

While this provision is not entirely free from ambiguity, it is understood that it has been invoked in the past as a complete exemption of French citizens from all forms of taxation in China not agreed upon in the Treaty, and that it could be, and probably has been relied upon by the Diplomatic Body in opposing the stamp tax here in question, although the Dean's note of April 26, 1922, does not so indicate. It goes without saying that whatever rights may be claimed under this Article by the French Government for its nationals will also accrue to American nationals by virtue of the favored nation treatment to which they are entitled.

These treaty provisions, namely, those in Article IV of our Treaty with China of 1903, and those in Article XL of the French Treaty, appear to represent the two extremes in dealing with Chinese fiscal affairs. In the former it is declared that China shall be free to levy such taxes as are not in conflict with the provisions of that Treaty and in the latter it is declared that China shall not impose upon French nationals any obligation not expressed in the (Convention) Treaty.

It is hoped that the above observations may be of value to the Legation in the consideration of questions of taxation as they affect foreign interests. Apart from the possible legal sanction for foreigners, whether rightly or wrongly, to claim exemption from all forms of taxation in China, the Department suggests that, between the two extremes presented by the French Treaty of 1858 and our own treaty of 1903, an equitable medium might be found which would allow a reasonable exercise by China of the ordinary sovereign rights in fiscal matters, and at the same time prevent abuse of power through the imposition of undue burdens or vexatious restrictions upon foreigners residing or doing business in China. On this point, you are referred to the Legation's despatch No. 149, of March 10, 1915 [*1914*], in which the portion beginning with

paragraph 3, page 4,[99] appears to be pertinent. In this connection, however, you should not fail to bear in mind the principle, as set forth in the Department's instruction, No. 90, of May 4, 1914, that this Government can consent to the collection from American citizens of only such taxes as the other foreign governments may consent to as affecting their own nationals.

With reference to the particular question of inland taxation, which formed the subject of Vice Consul Meinhardt's despatch of December 8, 1922,[1] the Chinese Government has made with the Powers an arrangement of a special character which provides for the commutation of all such taxes by the flat payment of an amount equal to one half of the import or export tariff. Although there is no compulsion upon the foreign merchant to take out a "transit pass" for this purpose, and, although he is at liberty, in the alternative, to pay likin, the manifest purpose of the arrangement is to free the foreign merchant from the annoyances and inequities of the native system of inland taxation, leaving the Chinese authorities in unrestrained control of this branch of taxation. If they choose to increase this tax, there would appear to be no reasonable ground for protest on behalf of foreign merchants, either as to the amount of increase, or as to the method of its collection. Neither would the use of stamps to collect such an increase appear to afford any basis for such action. The contention that the stamp tax in this connection is not likin, but a new and different tax, does not appear to the Department to be tenable.

The memorandum of the Chinese Secretary under date of October 3, 1922,[1] enclosed with your despatch under consideration, appears to take note of this aspect of the question; for, after quoting the Chinese Foreign Office to the effect that it had issued instructions to the Peking Octroi stations to exempt from this tax such goods as were covered by transit passes, but not so to exempt native merchandise, or foreign merchandise not covered by inward transit passes, it states: "The Chinese Government thus unequivocally accepted the position of the Legation that the additional surtax to which the Legation had not consented was improper and should be rescinded". It is evident, however, that the Foreign Office in its note of December 23, 1920,[1] expressly reserved the right, which it claimed, to levy such a tax upon foreign merchandise not proceeding under an inland transit pass. On page 3, the same memorandum of the Chinese Secretary, in referring to the deliberations of the Special Committee of the Diplomatic Body appointed to examine into this subject,

[99] *Foreign Relations*, 1914, p. 121 (3d par.).
[1] Not printed.

states "this was held to be an additional tax on foreign commerce not authorized by treaties and in contravention thereof, especially since, as frequently developed, these additional taxes could not be avoided by means of transit passes." It would, therefore, appear, at least by inference, that the Special Committee of the Diplomatic Body did not regard stamp taxes on likin as coming within the same category as other taxes and charges from which the foreign merchant had not by treaty an alternative which would permit him to commute inland charges.

In view of these considerations, the Department is of the opinion that there is no proper ground for protesting against the imposition of the Famine Relief Surcharge Stamps upon likin receipts. Unless, however, the matter seems to be of sufficient actual importance, it is not suggested that you should at this time take occasion to define more explicitly to the Dean the Department's views upon this point, but should await the occurrence of some opportunity favorable to a further discussion of the issues involved.

The Legation may desire to communicate the substance of the Department's opinion on this subject to the Vice Consul in charge at Changsha in connection with his despatch No. 343 of December 8, 1922, a copy of which appears to have been sent to the Legation.

I am [etc.] CHARLES E. HUGHES

893.512/161

The Secretary of State to the Vice President of the Standard Oil Company of New York (Cole)

WASHINGTON, *May 29, 1923.*

DEAR SIR: The Department has received your letter of May 4, 1923, relating to the subject of taxation in China and particularly to the evidences recently apparent of the desire of Chinese provincial authorities to obtain possession for themselves of the inland transit revenues normally accruing to the Customs authorities from the funds derived from the issuance of "transit passes" covering the transportation of foreign goods to interior points. Your frank statement of the problems confronting your company in this respect is fully appreciated, as well as your reluctance to take any action which might tend to undermine the treaty provisions on the subject.

As you are aware, the Treaty Relating to the Chinese Customs Tariff, signed at Washington on February 6, 1922,[3] provides for a Special Conference to meet in China within three months after the coming into force of the treaty for the purpose of taking steps

[3] *Foreign Relations*, 1922, vol. I, p. 282.

to prepare the way for the speedy abolition of likin. Since the treaty has not yet been ratified by all the signatory Powers, it has not yet come into force; but the Special Conference, at such a time as it may convene, will naturally carefully consider such facts, and the problems arising therefrom, as are presented in your letter.

The conditions which you describe have already been receiving the attention of the Minister at Peking, who has reported thereon to the Department in his despatch No. 1457 of April 4, 1923.[4] In this despatch, it appears that the facts contained in your letter have already been transmitted to the Minister. A copy of your letter, however, is being transmitted to Peking for such further comment as the Minister may be able to make on the subject.

I am [etc.]

For the Secretary of State:
J. V. A. MacMurray
Chief, Division of Far Eastern Affairs

693.003/730

The Secretary of State to the Tobacco Merchants Association of the United States

Washington, *May 31, 1923.*

Gentlemen: The Department has received your letter of May 8, 1923, reporting the levying by the authorities of the Province of Chekiang of a tax of 20% ad valorem upon cigarettes and requesting that steps be taken to effect the abrogation of this tax, which is alleged to be contrary to the treaties between China and the United States. You state that this tax is levied in treaty ports as well as in other parts of the Province.

The existing treaties provide for a tariff of 5% ad valorem on American goods imported into China from the United States, or upon goods imported into China by American citizens. If such goods are shipped beyond the treaty ports into the interior of the country, the local transit taxes, known as "likin" may be commuted by the payment of a further half duty, or 2½% ad valorem. The Chinese Government is not considered to be legally entitled to assess any greater or other duties thereon.

The contravention of treaty rights of which you complain has already been brought to the attention of the Minister in Peking, who, in his despatch No. 1457 of April 4, 1923,[4] has reported that the authorities of Chekiang Province during the past winter pro-

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[4] Not printed.

posed to levy a tax of 20% ad valorem on all cigarettes and cigars sold in that province. Upon the receipt of this information from the Consul-General at Shanghai, the Minister addressed a communication to the Chinese Foreign Office, protesting against these regulations as being in violation of the treaty rights enjoyed by American merchants in conveying their products into the interior under transit pass. On March 25, 1923, the Minister received a telegram from the Consul-General at Shanghai, stating that the tax had become effective; whereupon the Minister addressed a further note to the Foreign Office, requesting that immediate steps be taken to secure the cancellation of these regulations. Although the Department has not as yet been informed of the result of these representations, it believes that both the Minister and the Consul-General at Shanghai are making every effort to obtain the early abrogation of these regulations. At the same time, the fact must be recognized that, in many parts of China, including the Province of Chekiang, the authority of the Peking Government is not paramount and an increase of interference by the provinces with the treaty arrangements in regard to the taxation of foreign goods must be borne in mind as a possible contingency.

A copy of your letter is being forwarded to the Legation at Peking for such further comment as the Minister may be able to make on the subject.

I am [etc.]

For the Secretary of State:
J. V. A. MacMurray
Chief, Division of Far Eastern Affairs

893.512/176

The Minister in China (Schurman) to the Secretary of State

No. 1678

Peking, *July 13, 1923.*
[Received August 14.]

Sir: I have the honor to acknowledge the receipt of the Department's instruction No. 410, of May 31, 1923,[6] regarding the levying of a tax of 20% upon cigars and cigarettes, and transmitting a copy of a letter of May 8, 1923, from the Tobacco Merchants Association of the United States protesting against this tax. In this connection I have the honor to refer to my despatch No. 1563 of May 23, 1923,[6] with regard to the imposition of this tax in Chekiang and Fukien Provinces in which I reported that on May 16, 1923, the Ministry of Foreign Affairs had notified me that this tax had been discontinued

[6] Not printed.

in Fukien Province beginning from April 10, 1923. Upon receipt of this note I requested reports from the Consuls at Foochow and Amoy as to whether or not the tax had actually been discontinued. The Consul at Foochow replied that he had been informed by the Civil Governor that the tax was suspended from April 10, 1923, as stated by the Ministry of Foreign Affairs, and further that the Foochow selling agents of the firm of Liggett and Myers Tobacco Company had informed him that tax was never actually collected. The American Vice Consul in Charge at Amoy, however, reported that the tax had not been discontinued. It appears that this tax is collected by the Southern Fukien Wine and Tobacco Revenue Tax Office, which is under the control of General Tsang Chih-p'ing and is not collected by the Fukien Wine and Tobacco Tax Administration. In view of the fact that this tax is apparently still being collected in Amoy I have addressed a further note to the Ministry of Foreign Affairs, a copy of which is transmitted herewith,[7] requesting that instructions be issued to the authorities of Southern Fukien to discontinue the levying of this tax on goods of American merchants sold at the treaty ports or conveyed into the interior under transit passes and on the goods of those American Tobacco companies having agreements with the Wine and Tobacco Administration.

I have [etc.] JACOB GOULD SCHURMAN

693.003/732

The Secretary of State to the Minister in China (Schurman)

No. 479 WASHINGTON, *September 29, 1923.*

SIR: The Department has received your despatch No. 1589, of June 4, 1923,[7] relating to the controversy between the Powers and the Chinese Government whether transit passes free the goods covered thereby from "all further inland charges whatsoever", as stated in the English text of the Japanese Treaty of 1896,[8] or from charges in transit only, as asserted by the Chinese Government. In view of the general failure to obtain redress in claims arising from this cause, and of the fact that the British and Japanese Legations have practically abandoned their efforts to obtain exemption from destination taxes of imported goods covered by transit passes, you suggest that the Legation be instructed to discontinue its protests to the Chinese Government on this subject. You also suggest that the matter might be brought up at the Special Conference on the

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[7] Not printed.

[8] China, Imperial Maritime Customs, *Treaties* (Shanghai, 1908), vol. II, p. 1332.

Chinese Tariff as an instance of the failure of the Chinese Government rightly to interpret and enforce treaty stipulations regarding taxation.

While the Department fully appreciates the difficulties which the Legation has encountered in dealing with this question, it believes that it would be unwise to make a change of policy in the period intervening before the meeting of the Special Conference. The subject is one which must be considered in detail by that Conference; and it is thought preferable that the position of this Government should appear at that time as having been invariably opposed to taxation of this character. It is, accordingly, suggested that you continue as hitherto to file with the Chinese Government protests against the imposition of destination taxes in such cases as are brought to your attention.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

CONCURRENCE BY THE UNITED STATES IN THE CONTENTION BY CERTAIN POWERS THAT THE BOXER INDEMNITY PAYMENTS SHOULD BE MADE IN GOLD CURRENCY [10]

493.11/878 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 4, 1923—4 p.m.*
[Received 5:13 p.m.]

6. Deferred Boxer indemnity payments were resumed December 31st.

Belgian, French and Italian Ministers have declined to accept payment by telegraphic transfer at exchange rate which at present exchange would reduce amount received to about three-eighths of sum due on basis of payment in gold.

According to article 6 of protocol of 1901 [11] and exchange of notes of July 2nd, 1905,[12] total indemnity constitutes a debt in gold and they argue that this must be paid in gold.

Chinese maintain that debt in gold can only mean gold standard debt as opposed to silver standard debt, that they have only to pay in the currency of each interested country at the rate fixed per tael in 1901 and 1905, and that the fact that paper franc which is currency in three countries has depreciated does not concern them.

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[10] For previous correspondence regarding the Boxer indemnity, see *Foreign Relations*, 1922, vol. I, pp. 809 ff.
[11] *Ibid.*, 1901, Appendix (Affairs in China), p. 312.
[12] *Ibid.*, 1905, pp. 154–157.

Diplomatic body hold broadly that Chinese point of view is untenable and contravenes letter and spirit of existing documents.

Representatives of protocol powers propose therefore to address identic note to Chinese Government supporting contention that debt must be paid in gold. Please telegraph whether I am authorized to join in identic note.

SCHURMAN

493.11/878 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *January 10, 1923—5 p.m.*

7. Your 6, January 4, 4 p.m.

Department feels that it was the clear intent under the Protocol, and so acknowledged by the Chinese Government by exchange of notes of 1905 that the debt should be paid in gold. It would not seem that the fluctuating value of the paper currency of the Protocol powers could be availed of if those powers object. Assuming that the payments will be made in francs, the Governments concerned apparently have the right to insist upon gold francs which, it is understood, have the same gold content now as they had in 1905.

HUGHES

493.11/897 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *February 23, 1923—noon.*
[Received February 23—6:55 a.m.]

65. My 6, January 4, 4 p.m. Your 7, January 10, 5 p.m. The representatives of the other protocol powers, England, France, Belgium, Netherlands, Italy, Spain and Japan, have prepared a note to the Foreign Office which they desire me also to sign, of which the pertinent paragraph reads in translation:

"We the undersigned representatives of the powers signatory to the protocol of 1901 have submitted the point of view expressed in the above-mentioned letter (Chinese Foreign Office to Belgian, French, Italian and Spanish Ministers December 28th, 1922 [13]) to our respective Governments and in reply we have received instructions to inform Your Excellency of the unanimous opinion of our Governments that there can be no doubt that the protocol of 1901 and the arrangement of July 2nd, 1905, establish in an absolutely clear and incontestable manner the fact that the indemnity of 1901 should be paid in gold, that is to say, that for every Haikwan tael owed to each power China should pay the amount in gold indicated in the said article 6 as the equivalent of a tael."

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[13] Apparently no copy was sent to the Department.

This note will not be sent unless I also sign it. I earnestly hope Department will authorize me so to do. Please reply by telegraph.

SCHURMAN

493.11/897 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *February 26, 1923—4 p.m.*

39. Your 65, February 23, noon.

You are authorized to join your colleagues in signing note.

HUGHES

493.11/917 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *April 27, 1923—7 p.m.*
[Received April 27—11:04 a.m.]

124. My Belgian and Italian colleagues recently telegraphed their Governments recommending that if Chinese Government persisted in refusal to make indemnity payments in gold Belgium and Italy should cause postponement of meeting of the special conference on surtax and my French colleague sent his Government a telegram in general sympathy with foregoing but without the specific recommendation. French Minister today received telegram from Poincaré stating that he would postpone meeting of the special conference if gold payments were not agreed to by the Chinese Government.

SCHURMAN

493.11/938

The Minister in China (Schurman) to the Secretary of State

No. 1905 PEKING, *November 5, 1923.*
[Received December 3.]

SIR: With reference to my telegram No. 124, of April 27, 7 P.M., 1923, and to my despatch No. 1450 of April 2nd,[14] and to the previous pertinent correspondence referred to therein, relative to the payment in gold of the Indemnity of 1901 by the Chinese Government, I have the honor to transmit herewith for the Department's information a copy and translation of a further note on this subject which I joined with the Ministers of Belgium, Spain, France and Italy[15] in presenting, on November 3, 1923, to the Minister for For-

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[14] Despatch not printed.

[15] The Minister in China in despatch no. 1915, Nov. 7, reported that the Ministers of Great Britain, Japan, and the Netherlands should be added to this list (file no. 493.11/940).

eign Affairs. This note, which quotes the text of our note of February 24, 1923, has been occasioned by the failure of the Ministry of Foreign Affairs to reply to this prior communication.

I have [etc.] JACOB GOULD SCHURMAN

[Enclosure—Translation [15a]]

The Representatives in China of the Powers Signatory to the Protocol of 1901 to the Chinese Minister for Foreign Affairs (Wellington Koo)

PEKING, *November 3, 1923.*

MR. MINISTER: We the undersigned representatives of the powers signatory to the protocol of 1901 have the honor to remind Your Excellency that on February 24th last we addressed the following note to your predecessor:

"The Ministers of Belgium, Spain, France and Italy have communicated to the representatives of the powers signatory to the protocol of 1901 the contents of the letter which Your Excellency's predecessor addressed to them under date of December 28th last on the subject of the payment of the indemnity of 1900 [*1901*].

"In this letter it is stated that the expressions 'gold debt' and 'payable in gold' contained in article VI of the protocol of 1901 have no other meaning than to designate a gold standard debt with a view to differentiating it from the silver standard debt in which the total amount of the indemnity is expressed; and that the different rates indicated in the protocol cannot be applied to the actual exchange of the sums payable.

"We the undersigned representatives of the powers signatory of the protocol of 1901 have submitted the point of view expressed in the above-mentioned letter to our respective Governments and in reply we have received instructions to inform Your Excellency of the unanimous opinion of our Governments that there can be no doubt that the protocol of 1901 and the arrangement of July 2, 1905, establish in an absolutely clear and incontestable manner the fact that the indemnity of 1901 should be paid in gold, that is to say that for every Haikwan tael owed to each power China should pay the amount in gold indicated in the said article 6 as the equivalent of a tael."

We regret having to state to Your Excellency that the Chinese Government has never replied to this note which, however, was designed to inform it of the unanimous opinion of the powers signatory to the protocol of 1901 on a point regarding the execution of this agreement and we are obliged to bring to Your Excellency's most earnest attention the necessity of settling, in accordance with the treaties in force and in very short order, a question which has been allowed to remain too long in suspense.

We avail ourselves [etc.] [No signatures indicated]

[15a] File translation revised.

493.11/939: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 8, 1923—1 p.m.*
[Received 2:15 p.m.]

290. At a meeting of the representatives of the eight protocol powers held on December 6 it was decided at the suggestion of the French Minister to send an identic telegram to our respective Governments which in translation reads as follows:

"The representatives of the powers signatory to the 1901 protocol record the fact that the Chinese Government have not replied to their communications regarding the payment in gold of the Boxer indemnity; that the Belgian, French, Italian and Spanish installments not having been paid in full for a whole year, the service of this indemnity has not been fully met in 1923 and that in strict law no surplus of the Chinese customs revenue should be declared and paid over to the Chinese Government at the end of this year. However, in practice the customs revenues are paid into the banks designated by the agreement of 30th January, 1912,[16] (namely, the Hongkong and Shanghai Banking Corporation and Russo-Asiatic Bank) to the account of the inspector general of customs who is authorized to draw on this account over his own signature. We request the authority of our Governments to instruct the banks by virtue of the aforesaid agreement to withhold payments from this account until suitable arrangements have been agreed upon and to notify this decision to the inspector general of customs. If this decision meets with your approval it must be given effect to before 31st of this month."

It is distinctly understood that nothing in the foregoing is meant to imply that countries such as the United States which are now receiving regular payments in respect to their share of the Boxer indemnity shall cease to receive them.

[Paraphrase.] I must say that I consider the plan of doubtful wisdom although I did not feel that I would be justified in refusing to submit the above message for your consideration. The inspector general of customs is aware that something of this kind is being considered but he has not been told of the plan. He has intimated to my British colleague that if his drafts are not honored by the Hongkong and Shanghai Bank he will sue the bank in the British Supreme Court for China. I cannot foresee what the court's decision would be, but I know that my British colleague thinks that it is very likely that the inspector general would win his case. Such a verdict would put us in a rather awkward position. Another consideration is that in case the judgment were against the inspector general it would lead to a default in the Chinese internal loans which

[16] Not found in Department files.

at present have the customs revenues for security. Such a result would give rise to a wave of antiforeign sentiment which would sweep over China. I consider the views of my French colleague to be sound and logical, but from the standpoint of expediency I question the wisdom of putting them in effect. Another result might be that the Chinese Government would denounce the 1912 agreement, reverting to the position before that date. I am informed in strict confidence by my British colleague that he is cabling his Government substantially the same. Please cable instructions. [End paraphrase.]

For the Minister:
BELL

893.51/4457

The British Chargé (Chilton) to the Secretary of State

No. 1067 WASHINGTON, *December 15, 1923.*

SIR: With reference to my note No. 1066 of today's date,[17] in which I had the honour to communicate to you the translation of an identic telegram in French which the American, Belgian, British, Dutch, French, Italian, Japanese and Spanish representatives at Peking agreed on December 6th to send to their respective governments,[18] I have the honour to inform you that His Majesty's Government have telegraphed to their Representative at Peking stating that in their opinion the embargo on customs funds being so drastic a measure they feel strongly that it should be reserved for emergencies when important political issues or safety of foreign lives and property are involved, and they consider that to resort to such a step in order to enforce credit claims of individual powers would create a most dangerous precedent.

His Majesty's Government have informed Sir R. Macleay [19] that they are of opinion that the present issue is a purely legal one regarding the interpretation of the 1901 Protocol and, while they think that the French contention is correct, the case seems entirely suitable for submission either to the Hague Tribunal or to some agreed arbitrator.

His Majesty's Minister at Peking has therefore been instructed to put this proposal before the Diplomatic Body in that City with a view to its communication to the Chinese Government, making it clear that His Majesty's Government cannot agree to the suggested embargo.

I have [etc.] H. S. CHILTON

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[17] Not printed.
[18] See telegram no. 290, Dec. 8, from the Minister in China, *supra.*
[19] British Minister in China.

493.11/939: Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *December 24, 1923—4 p.m.*

256. Your No. 390 [*290*], December 8, 1 p.m.

The Department has on this date transmitted to the British Embassy a self-explanatory note as follows:

"I have the honor to acknowledge the receipt of your notes Nos. 1066[20] and 1067 of December 15, 1923, with reference to the question of the payment in gold of the instalments of the Boxer Indemnity due to Belgium, France, Italy and Spain. You quote the text of the identic telegram in French despatched on December 6 by the American, Belgian, British, Dutch, French, Italian, Japanese and Spanish representatives in Peking,[21] and state that instructions have been issued to the British Minister to make it clear to the Diplomatic Body that the British Government cannot agree to the embargo upon Customs funds suggested in the identic telegram above mentioned.

In the light of the Boxer Protocol of September 7, 1901, and of the Agreement of January 30, 1912, as well as in view of the terms of the telegram adopted by the Diplomatic Body on December 11, 1923, for transmission to the Senior Consul at Canton,[22] this Government doubts whether the Powers would, under the terms of the relevant agreements, be warranted in instructing the Commission of Bankers at Shanghai to withhold Customs funds as recommended in the identic telegram of December 6. Instructions have therefore been issued to the American Minister at Peking that this Government cannot participate in the proposed embargo."

HUGHES

493.11/947: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 28, 1923—3 p.m.*
[Received December 28—8:02 a.m.]

426. My despatch no. 1905, November 5. Lengthy identical note dated December 26 just received from Chinese Foreign Office refuses to accept the views expressed in the joint notes of February 24th and November 5th [*3d*] on the principal ground that the provision of law [*protocol?*] fixes gold equivalent of the indemnity in the respective currencies now [*not?*] in gold specie. Many other arguments advanced. Chinese Foreign Office will publish the note today. It will be discussed by the Ministers concerned. Copy by mail.[23]

For the Minister:
BELL

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[20] Not printed.
[21] See telegram no. 290, Dec. 8, from the Minister in China, p. 596.
[22] See telegram no. 397, Dec. 11, from the Minister in China, p. 568.
[23] *Post*, p. 600.

493.11/939 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *December 30, 1923—2 p.m.*

258. Supplementing Department's telegram No. 256, December 24, 4 p.m.

Conversations with French Embassy on the gold franc question suggest that the French proposal which was the basis of Diplomatic Body's identic telegram of December 11 [24] may have contemplated placing a stop not upon all customs revenues in the hands of the Bankers Commission but only upon such portion thereof as would be necessary to meet in gold the Boxer indemnity payments due to France, Belgium, Italy and Spain. This would involve considerations different from those communicated to you in Department's No. 256, which dealt with the broader proposal for a complete embargo. It seems clear that Commission of Bankers is to be considered as the agent of the interested Powers for the purpose and to the extent of assuring payment of indemnities due under the 1901 Protocol as construed by the Powers.

Pending more definite word from French Embassy as to its Government's actual intentions, you may join with your interested colleagues in directing the Bankers Commission to withhold such sums as may be necessary to meet French and other franc payments of indemnity in gold, turning over to Chinese Government only such surplus as may remain thereafter.

Please notify French Legation without delay of the purport of these instructions, and also advise British Legation for its information.

HUGHES

493.11/948 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 1, 1924—1 p.m.*
[Received January 1—10:15 a.m.]

1. Your 258 December 30, 5 [*2*] p.m. Phrase "diplomatic body's identic telegram December 11th" should I assume read "identic telegram December 6th of representatives of eight protocol powers".

British Minister having received instructions not to address such a communication to banks, joint representations became impossible and project was dropped. French Minister says that he would now

[24] See identic telegram of Dec. 6 quoted in telegram no. 290, Dec. 8, from the Minister in China, p. 596.

favor the idea suggested in the first sentence of your telegram under acknowledgment and we shall hold a meeting in a few days after publication of inspector general of customs' annual report regarding customs revenues to consider matter.

For the Minister:
BELL

493.11/965

The Minister in China (Schurman) to the Secretary of State

No. 1999 PEKING, *January 2, 1924.*
[Received January 30.]

SIR: Referring to my despatch No. 1905 of November 5, 1923, and pertinent correspondence relative to the payment in gold of the Indemnity of 1901 by the Chinese Government, I have the honor to transmit herewith for the Department's information copy of a note dated December 26, 1923, from the Ministry of Foreign Affairs upon this subject. Herein the Chinese Government in effect refuses to accept the contentions of the Protocol Powers in the gold franc dispute, stating its opinion that the word "gold" as used in Article VI. of the Protocol of 1901 and in the arrangement of 1905 cannot be reasonably construed to mean anything other than the currencies of the Signatory Powers issued on the basis of their respective gold standards and that whatever exchange rates prevail at present or are likely to prevail for some time in future, favorable or unfavorable to China as compared with the Protocol rates, they cannot be considered as a valid ground either for placing a new interpretation on the said Article VI. or for proposing a radical departure from the mode of payment selected by the Signatory Powers in accordance with the said arrangement.

I have [etc.]

(In the absence of the Minister)
EDWARD BELL

[Enclosure—Translation]

The Chinese Acting Minister for Foreign Affairs (Wellington Koo) to the American Minister (Schurman)

No. 642 [PEKING,] *December 26, 1923.*

M. LE MINISTRE: I have the honor to acknowledge the receipt of the two joint notes, respectively of February 24th[25] and November

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[25] See telegram no. 65, Feb. 23, 1923, from the Minister in China, p. 593.

5th [*3d*] last,[26] which Your Excellency and the Representatives of the other Signatory Powers of the Protocol of 1901 addressed to this Ministry on the subject of the payment of the indemnity of 1900 [*1901*]. I should have made an earlier acknowledgment but for the fact that the importance of the question has rendered it necessary for the Chinese Government to make a careful and comprehensive study.

In the two notes under reply Your Excellency was good enough to inform the Chinese Government of the unanimous opinion of the Signatory Powers that "there is no doubt whatever that the Protocol of 1901 as well as the arrangement of July 2, 1905, provides in a manner absolutely clear and indisputable that the indemnity of 1900 should be paid in gold, i. e., for each Haikwan tael due to each of the Powers China ought to pay the sum in gold which is shown in the said Article VI as the equivalent of one tael."

Since the foregoing expression of opinion follows closely the language of the Arrangement of July 2, 1905, the Chinese Government would have little hesitation to give their concurrence if they felt sure of the precise meaning which the Signatory Powers attach to the phrase "in gold". Judging by the context of the arrangement of 1905 as well as Article VI of the Protocol of 1901 upon which it is based, the Chinese Government are inclined to the view that the said phrase cannot be correctly construed to mean anything but the respective gold currencies of the Signatory Powers in contrast with the Haikwan tael, which is a silver standard and in the terms of which the indemnity of 1900 is stipulated. In other words by "gold" is not meant the gold metal but simply gold currency. This appears clear from Article VI of the Protocol which, while declaring that the four hundred and fifty million Haikwan taels of indemnity constitute a gold debt, fixes the equivalent of the Haikwan tael in gold not as a certain quantity of the gold metal but in the currencies of the Signatory Powers issued on the basis of their respective gold standards. Examination of the available records of the discussion among the Signatory Powers which resulted in the final drafting of Article VI of the Protocol of 1901 leads to the same conclusion.

If there is any doubt as to what was intended to be the manner of payment, it is resolved by the Arrangement of July 2, 1905, which, while declaring the indemnity to be a gold debt, settles definitely and once for all the precise mode of payment. It provides that

"China will make these payments, calculated on the basis set forth above, which fixes the value of the Haikwan Protocol tael in relation

[26] *Ante*, p. 595.

to the money of each country, either in silver according to the price of silver on the London market, or in gold bills, or in telegraphic transfers, at the choice of each Power. China may obtain bills and telegraphic transfers as best suits her interests at any place and at any bank at the lowest price or by public tender, provided that the payments in gold be made to each Power direct on the due date. It is understood that China is responsible for the exact payment of the transfer[s] and the bills. Each Power in accepting the present proposals must inform the Chinese Government which of the three methods cited above is the one it chooses till the debt is extinguished.["]

On the same day (July 2, 1905) by separate Notes addressed to the Waiwupu the Signatory Powers indicated their preference, each for itself, for one or another of the three stipulated methods of payment. The selections made by the Powers signatory of the Notes under reply were as follows:

Methods of Payment	*Country*
For telegraphic transfers in their respective currencies.	Belgium, France, Great Britain, Holland, Italy, and the United States of America.
Provisionally for payment in silver according to price of silver on London market (but in 1906 definitely selected payment by draft)	Spain.
For telegraphic transfers in sterling on London.	Japan.

These selections were proposed and accepted with the express understanding that they were to remain effective "till the debt is extinguished". Ever since the conclusion of the Arrangement of 1905, they have been faithfully applied to the respective countries without interruption, and have heretofore given no occasion for a difference of views in their application.

In their Notes of December 28, 1922,[27] addressed to the Ministers of Belgium, France, Italy and Spain, to which the two Notes now under consideration were intended to be a reply, the Chinese Government did not wish either to place a new interpretation on the language of Article VI of the Protocol of 1901, which has been made clear by the Arrangement of 1905, or to propose a modification of the precise mode of payment stipulated in the said Arrangement. It was and remains their intention to continue to make the indemnity payments

[27] Apparently no copy was sent to the Department.

to the present Signatory Powers as heretofore, each according to its own selected method of payment, in full conformity with the said Article VI as interpreted and amended by the Arrangement of 1905.

I do not understand that by the two Notes under reply the Powers desire to propose a radical change in the established mode of payment: they appear, however, to intimate that the telegraphic transfer should be so effected that the proceeds will not merely amount to the fixed sums in the respective currencies of the Powers but will be in gold specie or the equivalent thereof in value. If this should be the view of the Signatory Powers, the Chinese Government do not feel able to accept it.

Telegraphic transfer is not only the stipulated mode of payment for most of the Powers signatory of the Protocol and has been invariably applied to them in the past ever since the Arrangement of 1905 was concluded, but it is also a method of international exchange of which the meaning and scope are perfectly well-known. The telegraphic transfer rate between China and the gold-standard countries is constantly fluctuating, even more so than that between any two gold-standard countries, as silver is but a marketable metal in those countries that have demonetized it. It fluctuates according as the value of one currency rises or falls in the terms of the other. Such fluctuations may be due to one or more causes: they may be due to an adverse or favorable trade balance, they may be due to currency inflation or depletion of money, or they may be due to a combination of various causes into the intricacies of which it is not necessary to inquire here: but whatever be the cause or causes of fluctuation, it always refers to the money that is current. If therefore for one reason or another specie has been driven out of circulation by currency inflation, as is the case with the francs, the money that can be so purchased must be the money obtainable on the market.

Moreover, exchange fluctuations are unavoidable when payment is required to be made by telegraphic transfer, and since the stipulated medium of payment is the currency of each country, such fluctuations, unfavorable as they may be for the time being to one party or the other, do not appear to constitute a practical ground for abandoning the currency as the medium of payment and adopting specie instead. For it would scarcely be possible to determine at what stage of the fluctuations of the exchange rate should the currency be abandoned in favor of specie to make a settlement.

Indeed, a different application of the chosen method of payment would not only be incompatible with the generally accepted practice of "telegraphic transfer" but also contrary to the intent and purpose

of the Arrangement of 1905. For it will be recalled that no sooner had the first installment of the indemnity been paid than a difference of opinion arose as to the precise nature and extent of the obligation which China had assumed under Article VI of the Protocol of 1901. The controversy was brought about by the unexpected rise of the gold exchange rate which caused a deficit in the respective sums in the gold currencies though China paid the stipulated amount in Haikwan taels. China maintained that while the indemnity of the Signatory Powers was a gold debt it had been converted into silver at the rate stated in the said Article, and that her total obligation was therefore expressly limited to 450,000,000 Haikwan taels with interest at 4% in the bond which she had signed and delivered to the Diplomatic Body, so that she had fully discharged her obligation when she had paid the stipulated amount of Haikwan taels. For nearly three years the Chinese Government declined either to sign the fractional bonds in gold or to make up the deficit on account of payment in silver. It was only after the Powers subsequently agreed definitely to fix the future mode of payment applicable "till the debt extinguished", that they consented to sign the fractional bonds stated in the respective currencies of the powers and in addition to pay to them 8,000,000 Haikwan taels, as compensation for the loss in the gold exchange for the years 1902–1904. The result was the Arrangement of 1905 and the Powers made their selections on the same day.

The Chinese Government accepted the Arrangement of 1905 and, with it, the risks of fluctuation on the exchange rate from month to month and from year to year, because they understood that while they might thus incur losses, as they have in fact incurred from time to time in the past, there might also at times be gains in their favor.

In point of fact the fluctuations of the gold exchange rates have varied from month to month. From July 1905 when the new Arrangement was put into force to November 1917, when by the arrangement between China and certain other Signatory Powers of the Protocol the indemnity payments were suspended for five years,[28] there were actually 140 months during which payments were effected, a few months immediately following the Revolution of 1911 being excepted for no payments were made. As regards the rates of exchange for these 140 months, a good illustration may be found in the fluctuations of the exchange on Paris. During 66 months the rate was favorable to China, as it went above the Protocol rate of 3.75 francs per Haikwan tael; and during 74 months it was adverse

[28] See *Foreign Relations*, 1917, supp. 2, vol. I, pp. 685 ff.

to China as it went below the said Protocol rate. The highest and therefore most favorable rate to China was 6.69068 francs per Haikwan tael for August 1917 and the lowest and therefore least favorable rate was 3.03008 francs per Haikwan tael for November 1914. Although the fluctuations have thus been wide as well as varied, the Powers have always received the stipulated amounts in their respective currencies from month to month and from year to year.

In view of the foregoing considerations, the Chinese Government are of the opinion that the word "gold" as used in Article VI of the Protocol of 1901 and in the arrangement of 1905 cannot be reasonably construed to mean anything other than the currencies of the Signatory Powers issued on the basis of their respective gold standards and that whatever exchange rates prevail at present or are likely to prevail for some time in future, favorable or unfavorable to China as compared with the Protocol rates, they cannot be considered as a valid ground either for placing a new interpretation on the said Article VI or for proposing a radical departure from the mode of payment selected by the Signatory Powers in accordance with the said Arrangement.

I avail myself [etc.] V. K. WELLINGTON KOO

493.11/952 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 7, 1924—3 p.m.*
[Received January 7—10:03 a.m.]

8. My 1, January 1, 1 p.m. Inspector general of customs wrote the dean on January 4 in part as follows:

The 1895, 1896, 1898 and 1913 (reorganization) sterling loans interest and amortization and also monthly indemnity installments due America, Great Britain, Holland, Japan, Portugal, Spain and Sweden were fully paid from customs in 1923. Spanish payments received under protest. Indemnity due Belgium, France and Italy, under instructions from the Chinese Government, were tendered at telegraphic transfer rates for French franc, but the receiving banks, under instructions from the respective Governments, refused acceptance. Sufficient silver has been retained in the loan service accounts at Shanghai to cover these payments not only at telegraphic transfer rates but also at gold parity.

For the Minister:
BELL

EFFORTS BY THE BRITISH AND AMERICAN GOVERNMENTS TO SECURE FROM OTHER POWERS ACCEPTANCE OF THE ARMS EMBARGO RESOLUTION WHICH HAD BEEN PROPOSED AT THE WASHINGTON CONFERENCE[29]

893.113/437 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *February 9, 1923—6 p.m.*
[Received February 9—6:05 p.m.]

46. Your 257 November 6, 6 p.m., 1922.[30] Diplomatic body met today to consider first, arms embargo act regarding which some ministers had only recently received instructions from their governments and secondly proposal to withhold naval assistance to China.

1. With regard to arms embargo Netherlands Minister expressed his objection to the interpretation clause of the identic telegram contained in my 405 October 4, 11 a.m. 1922.[31] Other ministers declared their governments would not join in the embargo unless all nations did, and referred to the noninclusion of Russia. Finally the following statement was unanimously agreed on as a substitute for the identic telegram.

"The measures agreed to of [*by?*] the foreign representatives in China *re* embargo and [*on*] arms would in the main remain ineffective because the majority of the foreign representatives have no legal power to enforce them. In view of continued internal warfare they are however of opinion that as many powers as possible should approve the resolution proposed at Washington[32] without reservations but widening scope by including aircraft other than commercial craft."

2. With regard to proposal to withhold naval assistance to China the Netherlands Minister pointed out that this was matter which ultimately would have to be decided by his Government and in this opinion others concurred. The Japanese representative called attention to the change of language as stated in Department's telegram 15, January 24, 5 p.m.[33] and said that his Government had not been notified of such change. Whereon I suggested that the matter be laid over until the next meeting.

A copy of this message has been mailed to Tokyo.

SCHURMAN

[29] For previous correspondence regarding efforts to prevent the exportation of arms to China, see *Foreign Relations*, 1922, vol. I, pp. 725 ff.
[30] *Ibid.*, p. 744.
[31] *Ibid.*, p. 742.
[32] *Post*, p. 608.
[33] *Post*, p. 617.

893.113/445 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *March 2, 1923—5 p.m.*
[Received March 2—9:22 a.m.]

71. Is President's proclamation of March 4, 1922,[34] regarding export arms and ammunition of war from the United States to China applicable to the Philippine Islands?

SCHURMAN

893.113/450

The British Ambassador (Geddes) to the Secretary of State

No. 209 WASHINGTON, *March 14, 1923.*

SIR: I have the honour to refer to the memorandum from this Embassy No. 464 of June 16th last [35] and to subsequent correspondence on the general question of an embargo on the export of arms and munitions of war to China.

Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to state that, as a result of the discussion held by the Diplomatic Body at Peking on October 3rd last, it is understood that all the members of the Body, with the exception of the Netherlands Minister, forwarded to their governments certain identic recommendations.[35a] These were (1) that the amended draft resolution brought forward at the Washington Conference on January 31st, 1922 (the text of which is enclosed herewith) should be adopted and (2) that the following interpretative note should be appended thereto:—

"This is understood to include aircraft other than commercial aircraft and machinery and materials destined exclusively for the manufacture of arms or the equipment of arsenals".

His Britannic Majesty's Government have now signified to His Majesty's Minister at Peking their approval of these recommendations, and they propose in due course to notify the United States Government of their formal adhesion to the Washington Conference Resolution. As a preliminary measure, however, the Governments of the Self-Governing Dominions and of India have been consulted and their replies are awaited.

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[34] *Foreign Relations*, 1922, vol. I, p. 726.
[35] *Ibid.*, p. 731.
[35a] See telegrams of Oct. 4 and 5, 1922, from the Minister in China, *ibid.*, pp. 742–743.

In communicating to you the above information I am further instructed to enquire whether the Government of the United States propose to adopt the recommendations of the Corps Diplomatique at Peking, as quoted in the second paragraph of this note. I am to add that meanwhile steps are being taken by His Majesty's Government to ascertain the attitude of the other governments represented at Peking on this subject.

I have [etc.] A. C. GEDDES

[Enclosure]

Amended Draft Resolution Regarding Arms Embargo Proposed at the Washington Conference [36]

"1. The United States of America, Belgium, the British Empire, France, Italy, Japan, the Netherlands and Portugal affirm their intention to refrain from exporting to China arms or munitions of war, whether complete or in parts, and to prohibit such exportation from their territories or territories under their control, until the establishment of a Government whose authority is recognised throughout the whole of China.

2. Each of the above Powers will forthwith take such additional steps as may be necessary to make the above restrictions immediately binding.

3. The scope of this resolution includes all concessions and settlements in China.

4. The United States of America will invite the adherence to this resolution of the other Powers in treaty relations with China".

893.113/455 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *March 30, 1923—5 p.m.*

55. Your 71, March 2, 5 p.m.

President's Proclamation not considered applicable to Philippines. The Proclamation, however, was published in Proclamation issued by Governor General at Manila, June 8, 1922,[37] who is considered to have ample power to control exportation munitions.

HUGHES

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[36] For the presentation of the resolution to the conference, its amendment, and its withdrawal, see *Conference on the Limitation of Armament, Washington, November 12, 1921–February 6, 1922*, pp. 1415–1424 and 1466–1492.

[37] Not found in Department files.

893.113/476

The Chargé in Norway (Bailey) to the Secretary of State

No. 223 CHRISTIANIA, *April 21, 1923.*
[Received May 16.]

SIR: I have the honor to refer to the Department's instruction No. 72, dated December 11th last,[38] regarding a proposed agreement to restrain the subjects and citizens of certain countries from exporting to or importing into China arms and munitions of war and material destined exclusively for their manufacture until the establishment of a government whose authority is recognized throughout the whole country and also to prohibit during the above period the delivery of arms and munitions for which contracts have already been made but not executed.

A note dated January 12, 1923, was sent to the Norwegian Minister of Foreign Affairs embodying the proposals set forth in the Department's instruction. A reply thereto dated April 19, 1923 has been received stating that the Norwegian Minister in Pekin may be able to participate in the discussions on the matter, but that the Norwegian Government, by reason of the present laws and regulations on the subject, is not in a position to give him any authorization in advance which might commit the Norwegian Government to any definite course of action. He further states that it seems to be unnecessary for Norway to take such measures in this matter, as an embargo is already in force prohibiting the exportation of arms and munitions from Norway to China, and that during the period this embargo has been in force no export permit has been granted for the exportation of arms and munitions to China.

I have [etc.] JAMES G. BAILEY

893.113/577

The British Chargé (Chilton) to the Secretary of State

No. 550 WASHINGTON, *July 2, 1923.*

SIR: With reference to my note No. 209 of March 14th and to a conversation between Mr. Craigie and Mr. MacMurray on June 22nd relative to the arms embargo resolution recommended by the Diplomatic Body at Peking on October 3rd last, I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to inform you that no further communication has been received by His Majesty's Government from the Netherland Government on this question.

[38] Not printed.

His Majesty's Representatives were instructed on June 25th to obtain the adhesion of all the Governments concerned in the arms embargo question and it would be appreciated by His Majesty's Government if you could see your way to instruct the United States Representative at The Hague to support the representations of his British colleague on this question. His Majesty's Government would also be glad, should you think it desirable, if similar instructions could be sent to the United States Representative at Christiania.

I have the honour to ask you to be so good as to inform me at your early convenience whether you would be disposed to send instructions in the above sense to the United States Representatives at The Hague and Christiania in the hope of expediting the adhesion of the Netherland and Norwegian Governments to the Peking resolution of October 3rd last.

I have [etc.] H. G. CHILTON

893.113/511a : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *July 16, 1923—5 p.m.*

142. The Department has been informed that the British Government has instructed its Minister at Peking that it approves of the recommendations relating to the China Arms embargo adopted by the diplomatic body as stated in its identic telegram of October 3d last. Inquiry has been made whether this Government also proposes to approve of the above recommendations. On this subject the British Government is also sounding out the other Governments represented at Peking.

Your No. 46, February 9, 6 p. m., appears to disclose a more serious failure to attain complete unanimity than that indicated by the inability of the Netherlands and Norwegian ministers to join in the identic telegram agreed to on October 3d. The Department understands, however, that, as the result of discussions between the British and Netherlands Governments, it appears likely that the inability of the latter Government to join in the embargo may be overcome for all practical purposes. The Department's instruction No. 406 May 24th [39] informed you that although the Norwegian Government had expressed its inability to instruct its Minister at Peking to commit that Government to the terms of an embargo, there was nevertheless already in effect an embargo prohibiting the export of arms and munitions from Norway to China. It would, therefore, appear that if the other Ministers at Peking are still in agreement as to the recommendations made in the telegram of October 3d, there would be

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[39] Not printed.

no good reason why their Governments should not adopt those recommendations.

The Department would be pleased to receive a statement of the present status of this question, and your opinion whether there is any objection to this Government informing the British Government of its willingness to accept the terms of an embargo, embodying the text of the amended Washington resolution with the interpretative note (as set forth in your telegram No. 405 of October 4, 11 a.m.[40]) provided that substantial unanimity can be had among the Powers represented at Peking.

The Department feels that, although the embargo of May 5, 1919, may not have been entirely effective, and although a majority of the Powers may not have the legal authority to effect a complete enforcement of its terms, it has nevertheless proved distinctly beneficial and is justified by its results. In view of the difficulty of obtaining the adherence of so many Powers to a new formula, which might not prove more efficacious in practice than that of 1919, the Department is reluctant to see any change attempted, unless definite advantages will clearly result therefrom, and unless there is every prospect of obtaining substantial unanimity.

HUGHES

893.113/518 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *July 31, 1923—11 a.m.*
[Received July 31—9:10 a.m.]

268. Your 142, July 16, 5 p.m. and 145, July 26 [*23*], 5 p.m.[41] Majority members of diplomatic body in Pehtaiho when I went for week end July 26 to 29 consulted with dean, British Minister and others.

Dutch Minister adheres to recommendation of diplomatic body of February 3rd [*9th*] which advises as many powers as possible to approve Washington resolution but widening scope by including aircraft other than commercial craft. Swedish Chargé d'Affaires favors same and can take no further step without consulting his Government. That has been also the position of the Norwegian Minister.

The real difficulty with these and other Ministers is their conviction that any agreement among the powers to have an effective arms embargo would merely enlarge and consolidate the tolerably complete monopoly which Italy has hitherto been enjoying of selling

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[40] *Foreign Relations*, 1922, vol. I, p. 742.
[41] Latter not printed.

arms and munitions of war to the Chinese. Recently 21 carloads of Italian arms and other war material were shipped from Shanhaikwan to Tientsin . . . These materials can now be purchased not only in Tientsin but also through an agency in Peking. My colleagues assure me that if our home Governments can stop this traffic in arms by the Italians it would be easy to secure substantial unanimity in the diplomatic body in regard to their resolution of October 4th [*3d*], 1922, possibly with the interpretative note limited to the inclusion of commercial aircraft.

Unless the Department feels that the lack of unanimity in the Peking diplomatic body at the present time constitutes a reason for contrary course there is in my opinion no objection to informing the British Government that the Department accepts the terms of an embargo embodying the resolution and interpretative note mentioned in preceding sentence.

SCHURMAN

893.113/541

The British Chargé (Chilton) to the Secretary of State

No. 721 WASHINGTON, *August 25, 1923.*

SIR: With reference to my note No. 550 of July 2nd last and to a conversation on the 14th instant between Mr. Perkins of the State Department [42] and Mr. Brooks, First Secretary to His Majesty's Embassy, relative to the Arms Embargo resolution recommended by the Diplomatic Body at Peking on October 3rd last, I have the honour to inform you, under instructions from His Britannic Majesty's Government, that no replies have yet been received by His Majesty's Government to their last representations on this matter to the Norwegian, Dutch and Swedish Governments.

In these circumstances it would be greatly appreciated by His Majesty's Government if you could see your way to instruct the United States Representatives at the capitals of all the Powers participating in the 1919 Arms Embargo Agreement to support the representations of their British colleagues on this question, except in the cases of France, Belgium, Italy and Japan, who have already expressed concurrence with the views of my Government.

I should be grateful if you would be so good as to inform me in due course for communication to His Majesty's Government whether you would be disposed to take action in the sense I have suggested.

I have [etc.]

(For H. M. Chargé d'Affaires)
HERBERT W. BROOKS

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[42] Mahlon F. Perkins of the Division of Far Eastern Affairs.

893.113/563 : Telegram

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

LONDON, *October 5, 1923—1 p.m.*
[Received 8 p.m.]

422. Department's 188, June 29, 3 p.m., 1922,[43] and subsequent correspondence. I am in receipt of a note from the Foreign Office referring to the British Government's proposal (contained in my 303, July 20, 5 p.m., 1922[44]) that the whole question should be reviewed by the diplomatic representatives at Peking before proceeding with the adoption of the resolution covering shipments of arms and munitions of war to China and stating,

"I now have the honor to request that you will inform the United States Government that His Majesty's Government together with the Governments of the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, Newfoundland, the Irish Free State and India are prepared if the other powers concerned agree to do likewise to carry out the provisions of the above-mentioned resolution and to approve the terms [of the interpretative note?] of the diplomatic body at Peking on October 3d, 1922, of which the following is the text: 'This is understood to include aircraft [other than commercial aircraft] and machine [*machinery*] and materials destined exclusively for the manufacture of arms or the equipment of arsenals.' I shall be glad if I may in due course be informed when the other powers concerned have notified their adoption of the resolution and interpretative note."

HARVEY

893.113/541

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *October 17, 1923.*

SIR: With reference to your notes No. 209 of March 14, 1923, and No. 721 of August 25, 1923, on the subject of an embargo on the export of arms and munitions of war to China, I have the honor to inform you that this Government approves of the terms of the embargo as formulated by the Diplomatic Body in Peking on October 3, 1922, and forwarded by the members of that Body, with the exception of the Netherlands and Norwegian Ministers, to their respective governments for consideration. This formula embodies the amended draft resolution proposed at the Washington Con-

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[43] *Foreign Relations*, 1922, vol. I, p. 734.
[44] *Ibid.*, p. 736.

ference, supplemented by the interpretative note, as quoted by you in your note No. 209 above mentioned.

This Government has informed the American Minister at Peking of its approval of the terms of this embargo, and of its readiness to give formal assent thereto, provided that substantial unanimity of action can be had among the several governments represented at Peking. With this end in view, and in accordance with the request contained in your note No. 721 of August 25, 1923, above mentioned, appropriate instructions recommending the adoption of the terms of the embargo, with interpretative note, are being sent to the American representatives in the capitals of the Powers participating in the embargo of 1919 which have not yet signified their approval of the formula under consideration. Similar instructions are also being sent to the representatives to Norway, Sweden, and Peru, which Powers, although represented at Peking, are understood not to have participated in the embargo of 1919.

Accept [etc.] CHARLES E. HUGHES

893.113/577a

The Secretary of State to the Ambassador in Brazil (Morgan) [45]

WASHINGTON, *October 17, 1923.*

SIR: On October 3, 1922, as a result of discussion in the Diplomatic Body at Peking on the subject of the modification of the terms of the existing embargo on the shipment of arms and munitions of war to China, the members of that Body, with one or two exceptions, forwarded certain identic recommendations for the consideration of their respective governments. These recommendations were to the effect that the Powers represented at Peking should adopt as a formula the amended draft resolution proposed at the Washington Conference, a copy of which is enclosed herewith,[46] together with the following interpretative note:

> "This is understood to include aircraft other than commercial aircraft and machinery and materials destined exclusively for the manufacture of arms or the equipment of arsenals."

The Department is instructing the American Minister at Peking of its approval of the terms of this embargo and the interpretative note, and of its readiness to give formal assent thereto provided that substantial unanimity of action can be had among the several governments represented at Peking. This Government has been informed that the British Government has made representations to the

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[45] The same, *mutatis mutandis,* to the diplomatic representatives in Denmark, the Netherlands, Norway, Peru, Portugal, Spain, and Sweden.

[46] *Ante,* p. 608.

Government to which you are accredited with a view to obtaining its approval of the formula under consideration. You are instructed to inform the Foreign Office of the fact that this Government has now signified its approval of the terms of the embargo and that it desires to express the hope that, in view of the importance of unanimity upon this question, the Brazilian Government will see its way to instruct its representative at Peking in a similar sense, i. e., of its approval of the terms of the embargo and the interpretative note, and its readiness to give its formal assent thereto upon there being substantial unanimity of action among the Powers represented at Peking.

I am [etc.]

For the Secretary of State:
William Phillips

893.113/603

The Ambassador in Spain (Moore) to the Secretary of State

No. 145 Madrid, *November 22, 1923.*
[Received December 11.]

Sir: With reference to the Department's unnumbered Instruction of October 17th last,[47] regarding the modification of the terms of the existing embargo on the shipment of arms and munitions of war to China, and directing me to ask whether the Spanish Government would instruct its representative at Peking of its approval of the amended draft resolution and the interpretative note, and of its readiness to give its formal assent thereto upon there being substantial unanimity of action among the Powers represented at Peking, I have the honor to report that I have been informed by the Foreign Office, in a Note dated November 20th, that the Spanish Minister at Peking has already been instructed in that sense.

I have [etc.] Alexander P. Moore

893.113/607

The Ambassador in Brazil (Morgan) to the Secretary of State

No. 2107 Rio de Janeiro, *November 23, 1923.*
[Received December 14.]

Sir: I have the honor to report that on the receipt of the Department's unnumbered instruction of October 17th last, I informed the Brasilian Foreign Office of the fact that the Government of the United States had signified its approval of the terms of the embargo on the shipment of arms and munitions of war to China,

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[47] See footnote 45, p. 614.

and that it expressed the hope that in view of the importance of unanimity upon this question, the Brasilian Government would see its way to instruct its representative at Pekin of its approval of the terms of the embargo and the interpretative note, and of its readiness to give its formal assent thereto upon there being substantial unanimity of action among the Powers represented in China.

Under date of November 17th last, the Minister of Foreign Affairs addressed to this Embassy a note, a copy of the text and of a translation of which I have the honor to enclose,[48] in which he stated that in August last, in answer to an inquiry, the Brasilian Foreign Office notified the British Embassy in this capital that the Brasilian Government preferred to abstain from any agreement relating to the matter because it was not directly interested therein, seeing that no commerce in the export of arms and munitions of war to China is carried on from Brasil, and because this country did not participate in the Washington Conference, which formulated the resolutions which were adopted in October last by the Pekin foreign diplomatic Body.

However, the Brasilian Foreign Office has stated to the British Foreign Office that it would continue to follow sympathetically the attitude of the signatories of the Washington Conference, and that it would repeat its previous instructions to its representative in Pekin, which were favorable to the action taken by the Pekin diplomatic Body, in relation to an embargo on the shipment of arms and munitions of war to China.

I have [etc.] EDWIN V. MORGAN

893.113/616

The Ambassador in Peru (Poindexter) to the Secretary of State

No. 92 LIMA, *December 6, 1923.*
[Received January 3.]

SIR: I have the honor to refer to the Department's unnumbered instruction of October 17, 1923,[49] relative to the modification of the terms of the existing embargo on the shipment of arms and munitions of war to China, and to state that in a note dated November 26th, last, the Minister of Foreign Affairs informed me that the Peruvian Government was entirely in accord with the action taken by the United States Government in the premises; and that the Peruvian representative at Pekin was being instructed to approve the terms of the embargo and the interpretative note.

I have [etc.] MILES POINDEXTER

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[48] Not printed.
[49] See footnote 45, p. 614.

AMENDED AMERICAN PROPOSAL FOR A MUTUAL UNDERTAKING AMONG THE POWERS TO REFRAIN FROM ASSISTING CHINA IN NAVAL CONSTRUCTION[50]

893.113/416 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *January 24, 1923—5 p.m.*

15. Your despatch No. 1169, November 23, 1922.[51]

Further consideration of the formula as proposed in the Department's telegram No. 262, November 11, 7 p.m.,[52] reveals a possible construction obligating this Government to restrain the activities of American citizens or firms which it has no legal means of enforcing. It should accordingly be amended to read as follows:

"The representatives of . . . . agree that the construction of naval vessels, arsenals and dockyards for the account of the Chinese Government or of its administrative sub-divisions or local authorities, or the giving of technical naval assistance, shall not be undertaken by anyone of the said governments, nor shall these governments give any support or countenance to their respective nationals in respect to such activities pending the restoration of a unified government in China."

The Department desires that the American Legation should present this formula to the Diplomatic Body. If this has already been done you will substitute the above amended version for that already presented, orally setting forth your reasons for the proposed change.

Telegraph when any discussions have taken place as contemplated in Department's 270, November 22, 5 p.m.[53]

HUGHES

893.113/539

The Minister in China (Schurman) to the Secretary of State

No. 1689 PEKING, *July 25, 1923.*
[Received August 21.]

SIR: With reference to the last paragraph of my telegram No. 46 of February 9, 6 p.m.,[54] regarding the arms embargo and the proposal to withhold naval assistance to China, I have the honor to transmit herewith for the Department's information a copy of Dean Circular No. 187 of July 13th regarding the agreement of the Nether-

[50] Continued from *Foreign Relations*, 1922, vol. I, pp. 745–761.
[51] Not printed.
[52] *Foreign Relations*, 1922, vol. I, p. 759.
[53] *Ibid.*, p. 761.
[54] *Ante*, p. 606.

lands and Japanese Ministers to the formula proposed by the American Government regarding the question of withholding naval assistance to China.

I have [etc.] JACOB GOULD SCHURMAN

[Enclosure 1]

Circular by the Dean of the Diplomatic Corps in China (De Freitas)

Circular No. 187 PEKING, *July 13, 1923.*

The Dean has the honour to circulate herewith for the information of his Honourable Colleagues, a letter from H. E. The Netherlands Minister[55] regarding a proposal submitted on January 23, 1923, by H. E. the American Minister to the effect that the Representatives of the Treaty Powers in Peking should recommend to their respective Governments the withholding of assistance from China in connection with the construction of naval vessels, arsenals, and dockyards, etc. H. E. The Netherlands Minister has been authorized by his Government to concur in this proposal on condition that it be agreed by other Governments represented in Peking.

Monsieur de Freitas would be glad to learn whether his Honourable Colleagues have received similar authorization.

[Enclosure 2]

Observation by the Japanese Minister in China (Yoshida) on Circular No. 187 by the Dean of the Diplomatic Corps at Peking (De Freitas)

At the Diplomatic Body Meeting of February 9th last, I had an occasion to mention that the latter part of the formula reading ". . . nor shall these Governments give any support or countenance to their respective nationals in securing such concessions, etc." differed in substance from the wording ". . . should not be undertaken by foreign Governments or by their nationals etc." which formed the corresponding part of the understanding proposed by the American Government and agreed to by several Governments in July 1922. H. E. The American Minister was then so good as to explain to me that this discrepancy was due to a certain legal difficulty which had been found afterward by his Government and which, he believed, the other Governments concerned had already been informed of.

[55] Not printed.

Having reported the above to my Government I have been in receipt of a communication to the effect that my Government are willing to accept the proposal which, so far as I understand, has not as yet been made to them by the American Government.

PEKING, *July 16, 1923.*

ISABURO YOSHIDA

893.113/565

The Minister in China (Schurman) to the Secretary of State

No. 1809

PEKING, *September 13, 1923.*
[Received October 13.]

SIR: With reference to my despatch No. 1689 of July 20 [*25*], regarding the question of withholding naval assistance to China, I have the honor to transmit herewith a copy of Dean Circular No. 227 of August 30th,[56] containing a copy of a letter from the Belgian Minister stating that his Government concurs in the proposal which has been made in regard to the matter, provided that all the other interested governments agree.

According to an observation which was made on this subject by the Chargé d'Affaires of Denmark, he has not yet received instructions on the matter from his Government.

I have [etc.]

JACOB GOULD SCHURMAN

893.113/566

The Minister in China (Schurman) to the Secretary of State

No. 1827

PEKING, *September 18, 1923.*
[Received October 13.]

SIR: With reference to my despatch No. 1809 of September 13, 1923, regarding the question of withholding naval assistance to China, I have the honor to transmit herewith a copy of Dean Circular No. 236 of September 14th [56] containing a copy of a letter from the German Minister stating that his Government concurs in the proposal which has been made in regard to this matter.

I have [etc.]

JACOB GOULD SCHURMAN

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[56] Not printed.

FURTHER POSTPONEMENT OF THE MEETING OF THE COMMISSION ON EXTRATERRITORIALITY IN CHINA[58]

793.003 C 73/34a: Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *March 9, 1923—6 p.m.*

45. With reference to Resolution V of the Washington Conference,[59] this Government, while not desiring in any way to circumscribe the work to be undertaken by the Extraterritorial Commission, believes that in view of the complexity of the matters to be investigated it would be advantageous to sound out the interested Powers with regard to a tentative program for the work of the Commission. You will therefore at your discretion discuss with your colleagues, particularly the British and Japanese Ministers, the following indications of the general lines of investigation which this Government would suggest:

1. All foreign courts, laws and procedure existing by virtue of treaty provision or custom.
2. All Chinese courts hearing mixed cases, including special courts such as the international Mixed Courts of Shanghai and Amoy.
3. Chinese law and legal procedure.
4. China's judiciary.
5. The extent to which China has actually respected treaty stipulations relative to extraterritoriality.
6. China's present political condition in its bearing on the legal and judicial systems, with particular reference to the possibility of interference with the course of justice by civil or military authorities.
7. The status of non-treaty power nationals such as Russians, Germans, Austrians, etc.
8. The status of persons of Chinese race who acquire foreign nationality and remain or return to Chinese soil.
9. Extradition and the right of asylum in the Settlement, Concession and Legation areas.

HUGHES

793.003 C 73/41

The Chinese Chargé (Yung Kwai) to the Secretary of State

WASHINGTON, *May 4, 1923.*

SIR: Referring to previous oral exchange of views regarding the time and place for the meeting of the Commission to investigate and report upon extraterritoriality and administration of justice in China as provided in a Resolution adopted by the Washington Conference, I have the honor to inform you that my Government will be pleased to have the Commission meet at Peking on November 1st, 1923.

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[58] Continued from *Foreign Relations*, 1922, vol. I, pp. 822–824.
[59] *Ibid.*, p. 289.

Moreover, I am instructed to request that you will be so kind as to send formal notifications to the Governments of all the interested Powers with regard to the matter.

Accept [etc.] YUNG KWAI

793.003 C 73/41

The Secretary of State to the Chinese Minister (Sze)

WASHINGTON, *May 11, 1923.*

SIR: I have the honor to acknowledge the receipt of your Legation's note of May 4, 1923, advising me of the readiness of your Government to have the Commission on Extraterritoriality in China, provided for in the Resolution adopted on December 10, 1921, by the Washington Conference on the Limitation of Armament, meet at Peking on November 1, 1923.

In reply I have the honor to inform you that the meeting of the Commission at Peking at the time stated will be very agreeable to this Government, and that I have, by way of compliance with the request made in the note, instructed the appropriate American diplomatic officers to communicate copies of the note to all the Governments concerned.[60]

Accept [etc.] CHARLES E. HUGHES

793.003 C 73/42 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 25, 1923—noon.*
[Received May 25—10:34 a.m.]

181. Your number 82, May 11, 3 p.m.[61] Identic telegram sent as follows:

"The Chinese Government having requested that the Commission on Extraterritoriality should meet on November 1, 1923, the representatives of the signatory powers of the treaties of Washington have the honor to inform their Governments that, in view of existing conditions in China, they are of the opinion that the meeting of this Commission should be once more postponed and not convened until they can recommend its assembly."

This was unanimously adopted by my colleagues at informal conference 24th. I explained, however, that I could not commit myself without instructions from my Government. The telegram would, in my opinion, be endorsed by every member of the diplomatic body.

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[60] Copies of the note were mailed to the appropriate American diplomatic representatives on May 11, and, on the same date, a circular telegram was sent instructing that the Foreign Offices be informed that the Chinese Government had indicated that it would be agreeable to have the Commission on Extraterritoriality meet at Peking Nov. 1, 1923.

[61] Not printed.

I share the sentiment expressed with respect to postponement of meeting of Commission from the Chinese point of view, but I thought it possible that you might consider meeting desirable to complete work of Washington Conference. Both British Minister and I opposed a resolution favored by all the others recommending postponement of special surtax conference on the ground that our Governments were in favor of holding it. French Minister stated confidentially that he had learned from private sources that the Washington treaties, though now holding a favorable [place] on the agenda, could not be ratified by French Parliament unless a special personal effort should be made on their behalf by Poincaré.

SCHURMAN

793.003 C 73/42 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *May 28, 1923—5 p.m.*

90. Your telegram No. 181, May 25, noon.

I of course appreciate that under the conditions now prevailing in China it would scarcely be possible to make any progress towards the eventual abolition of extraterritoriality in China. I am considering however whether, in addition to such results as might be accomplished in harmonizing the several systems of foreign jurisdiction in China, it might not be possible for the Commission if convened in the early future to serve a useful purpose by focusing Chinese and foreign attention upon the political abuses which China must find the means to remedy as a necessary condition of obtaining any relaxation of foreign treaty rights. In this connection see Department's telegram No. 45, May [*March*] 9, 6 p.m. I should welcome an expression of your opinion on this question, from the viewpoint that this Government is concerned not to champion the Chinese claim to immediate relief from the burden of extraterritoriality, but to pursue the course which will best tend to bring about conditions of order and stability and enable China to fulfill the obligations as well as to claim the prerogatives of a sovereign state.

HUGHES

793.003 C 73/46 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 1, 1923—11 a.m.*
[Received June 1—11:10 a.m.]

192. Your 90, May 28, 5 p.m. Arguments in favor of meeting of the Extraterritoriality Commission contained in your second and last sentences have been used by me with the diplomatic body and in

private conversation for a long time, but without producing any effect. I again brought up subject in meeting diplomatic body 27th and emphasized the great advantage of getting the political situation in China proclaimed to the world in connection with an investigation by experts into Chinese judicial system and judicial administration. My colleagues, while to a certain extent conceding this point, held that the meeting of the Commission would either create false hopes in the minds of the Chinese or lead to dangerous concessions to them. They consider their opinions as representing practical politics and some expressed doubts whether jurists could make a better report of political conditions in China than foreign governments had already received from their ministers here. Each member being called on by the dean, every one favored postponement of meeting of the Commission as recommended in the identic telegram of May 25, my 181, May 25, noon.

I have to add that the opinion of the foreign community in China is overwhelmingly, I believe unanimously, opposed to the coming of the Commission at the present time and the Lincheng outrage has strengthened their opposition.

On the other hand, the Chinese Government wants to go on with the meeting of the Commission for which I learn privately they have made the necessary preparations.

While not abandoning my own views as to the utility of the meeting of the Commission, I must recognize the universality and intensity of the opposition to it and now also the incongruity between its duties and the task of securing reparations and guarantees which the Lincheng outrage has simultaneously created [apparent omission] the diplomatic body.

Prime Minister in the course of an interview published in this morning's papers said:

"The citizens of China expect an early restoration of the rights of extraterritoriality. The Commission will meet this November in accordance with Washington treaties. This plan I do not think affected by the Lincheng affair since it has no connection with the other. The two questions are different and must be discussed separately and even if one or two powers refuse to talk about giving up extraterritoriality, the Chinese people must exert all the more efforts to secure it and the equality it represents."

SCHURMAN

793.003 C 73/46 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *June 3, 1923—10 p.m.*

99. Your telegram No. 192, June 1, 11 a.m. In conversation with me May 30 Japanese Ambassador referred to question of postpone-

ment of meeting of Commission. He stated that if United States Government thought it advisable to proceed with the work of the Commission in November the Japanese Government would prepare to participate. It was willing to proceed in accordance with views of United States.

While I recognize importance of views expressed by diplomatic body and the difficulties created by conditions in China, and especially by the Lincheng affair, I am reluctant to have the Commission indefinitely postponed. While a temporary postponement might be had, if later this seems to be advisable, I think that we should fully retain the idea of proceeding with the work of the Commission. The resolution of the Conference binds us to nothing but an investigation, but we are committed at least to this, and it may prove to be of considerable value quite apart from the final recommendation. It would be difficult to explain why we should find an occasion for proceeding later under the Treaty for the special customs conference looking to a financial improvement and were not willing even to undertake the sort of investigation which would disclose the actual administration of justice in China. I fully recognize the disadvantage that might result from the disappointment of the Chinese because of an unfavorable report by the Commission, but I do not think that this apprehension should be controlling with respect to our program, as it is not unlikely that the work of the Commission would lead to important constructive suggestions of benefit to the Chinese, apart from any immediately prospective relinquishment of extraterritorial jurisdiction.

In the present circumstances I should prefer to preserve fully the morale of our position by maintaining all our promises. This, instead of being a source of weakness, should add to our strength, and gives us additional leverage as we make the drastic demands which inevitably must be made in the near future in connection with the adequate protection of foreigners. My suggestion would be to hold the question of the Commission in abeyance for the time, reserving the date of November for at least three or four weeks, until we can see our way more clearly to a definite suggestion as to postponement if one is to be made.

HUGHES

793.003 C 73/47½

Memorandum by the Secretary of State of a Conversation with the Chinese Minister (Sze), June 7, 1923

The Minister called by instructions of his Government to say that he understood there was some proposal to delay the Conference on Extra-territoriality. He said that he understood that some of the

members of the diplomatic corps in Peking were favoring this course. The Minister said that while it might probably seem to the Powers that there should be a postponement for a short time he hoped that there would not be an indefinite postponement; that such a postponement would have an unfortunate effect as the Government had looked forward with a good deal of expectation to this Conference and it was one of the matters decided upon at the Washington Conference. The Secretary said that the only reply that he could make at the moment was that the matter was receiving the most earnest consideration and that later the attitude of this Government would be stated to the Peking Government. The Secretary then said that the Minister must understand that conditions in China had given rise to a feeling of great discouragement; that instead of taking advantage of the opportunity afforded by the Washington Conference there had been disintegration; the Chinese Government had not been able to give protection to foreigners; that they had a very restricted area of authority and that they utterly failed to discharge their international obligations. This seemed to be a situation which was growing worse instead of better. The Secretary said there was no better friend of China than he was, but it must be understood that China must afford the basis for assistance and this they were not doing. The Secretary said, of course, it must be understood that he was not directing his statement to the Minister, individually, because he understood the difficulties of his personal position, but it was idle for China to declaim, as she had at the Washington Conference with respect to her sovereignty and her political integrity and her rights as a nation while, at the same time, she failed to provide a Government which could exercise a competent authority throughout her national territory, discharge her international obligations, and afford a basis for the development that all friends of China desired to see. The Secretary referred to recent events in China and to the banditry which existed, and the failure of the Chinese Government properly to cope with the situation.

The Secretary said that all these conditions must be taken into consideration in considering plans for the future and that he was studying the whole matter, including the question what should be done as to the Conference on Extra-territoriality.

The Minister referred to the disappointment in obtaining additional revenue, the delay in providing this revenue and the serious effect upon Chinese finances. He also said he thought that Dr. Schurman, for whom he had the highest respect, had gone a little too far in his speech on Washington's Birthday and had made a rather unfortunate impression. The Secretary said that, of course, it was to be regretted that there had been delay in the ratification of the Washington Conference Treaties, but there was no use of supplying

money to China while it went through a sieve, and that the present difficulty was largely due to the fact that the Provincial Governors paid no attention to the demands of Peking and unless there was a stable government to assist, it was of little use to attempt to provide assistance; that all these matters would have to be carefully threshed out to see what could be done which would aid China, but that China must understand that she could not exhibit before the world inability to protect even the lives and safety of foreigners and at the same time demand foreign assistance.

793.003 C 73/60 : Telegram

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

WASHINGTON, *July 17, 1923—6 p.m.*

189. Your 296, July 14, 1 p.m.[62]

Apart from the fact that the Danish, Peruvian, Spanish and Swedish Governments have recently notified their adherence to the Resolution, no expression of views has been received by this Government from interested Governments other than the British and the Japanese the latter having through its Ambassador here informally indicated its acquiescence in the views suggested by this Government and its readiness to take part in the work of the Commission on November 1 or such definite date thereafter as might be arranged.

HUGHES

793.003 C 73/77 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *September 13, 1923—1 p.m.*
[Received September 13—11:50 a.m.]

312. Your 200, September 13 [*11*], 5 p.m.[63] While continuing to share, as I have always done, the views on the question of principle involved as set forth in the confidential paragraph[64] of your 99, June 3, 10 a.m. [*p.m.*], the present position of affairs in China makes it imprudent to convene the Extraterritoriality Commission in November next. The legal life of the "governing cabinet" has apparently expired on the failure yesterday of Parliament to elect a President within three months of that office becoming vacant as provided in the Presidential election law of the permanent constitution.

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[62] Paraphrased: "It would be appreciated by the British Government if it were informed of the views regarding the convening of the Extraterritoriality Commission expressed to you by the other Governments concerned. Wheeler."

[63] Not printed.

[64] i. e., paragraph two.

Li Yuan-hung has gone from Tientsin to Shanghai where he arrived September 11th. He issued a proclamation that he is still President and in Shanghai to form coalition government for peaceful reunification. He was met on arrival at Woosung by a battalion of troops sent by Ho Feng-lin and is reported to be in communication with Tang Shao-yi and other prominent Chinese. He is domiciled in French concession but on understanding that street crowds are not to assemble.

There is real possibility another "government" in China in the near future with the result of progressive diminution of the now almost negligible authority of Peking. In the circumstances I can only recommend postponement of conference to a more suitable time.

SCHURMAN

793.003 C 73/80a : Circular telegram

The Secretary of State to the Chargé in France (Whitehouse)[65]

WASHINGTON, *September 27, 1923—6 p.m.*

With reference to the Department's instruction of May 11, 1923,[66] concerning the readiness of the Chinese Government to have the Commission on Extraterritoriality meet on November 1, 1923, it appears that at a meeting of the Diplomatic Body at Peking on May 24 all of the ministers (with the exception of the American Minister who abstained from voting pending consultation with his Government) agreed upon the following identic telegram to be despatched to their home governments:

"The Chinese Government having requested that the Commission on Extraterritoriality should meet on November 1, 1923, the representatives of the Signatory Powers of the treaties of Washington have the honor to inform their governments that, in view of existing conditions in China, they are of the opinion that the meeting of this Commission should be once more postponed and not convened until they can recommend its assembly."

Thereafter this Government had occasion to express to the British and Italian Governments its views on the subject namely, that it would be reluctant to see the Commission indefinitely postponed; that while the resolution of the Washington Conference binds the participating and adhering Powers only to an investigation, it was felt that as they are committed to an investigation, it is preferable that the morale of their position should be maintained by keeping all

[65] See last paragraph for instructions to repeat to Brussels, Copenhagen, Lisbon, London, Madrid, Rome, Stockholm, and The Hague. Sent also to Lima and Tokyo, with the omission of the last paragraph.

[66] See footnote 60, p. 621.

promises made; that such a course of action should be a source of strength and should have a bearing on the general question of the protection of foreigners in China; that should the Chinese Government prove unresponsive to the reasonable demands of the Powers designed to secure the elementary rights of foreigners in that country, it would then appear a more opportune moment to consider a further postponement to some definite date of the Extraterritoriality Commission; and that, in the meantime this Government felt that the date of November 1, 1923, should be reserved for the meeting.

Prior to this expression of the view of this Government, the British Government had stated its opinion

"that, in view of existing conditions in China, the date suggested for the meeting of the commission for the investigation of extraterritoriality and the administration of justice is inopportune, inadvisable, and unfair to China, and that the meeting should be postponed to a more opportune date."

In reply to the expression of the view of this Government, the Italian Government stated its opinion that persistent abnormal conditions in China still counsel against holding the meeting in November but in view of the considerations set forth by this Government, the Italian Government does not oppose the meeting for the date indicated if the other Powers participating in the Washington Resolution consent and that general conditions of the country permit thereof. The Japanese Government has stated that if the Government of the United States thought it advisable to proceed with the work of the Commission, it would be prepared to participate. The Belgian Government stated its opinion that the meeting should be postponed, but that it would be prepared to participate in the meeting of the Commission on November 1st next, provided that all the other interested Powers agreed upon that date.

The Department desires you to inform the Government to which you are accredited of the present status of this matter and to say that it is the view of this Government that unless the Powers participating in and adhering to the resolution unanimously agree upon the suggestion of the Chinese Government that the extraterritorial meeting be convened on November 1st next it will be impracticable for such meeting to take place. You are, therefore, instructed to request the Government to which you are accredited definitely to state whether it desires to proceed with the holding of the meeting on November 1st, and if not, to state whether it is agreeable to a postponement to November 1, 1924, provided that such date is acceptable to the Chinese Government.

Repeat the above to London, Rome, The Hague, Brussels, Lisbon, Copenhagen, Stockholm, Madrid.

HUGHES

793.003 C 73/94a : Circular telegram

The Secretary of State to the Chargé in France (Whitehouse)[67]

WASHINGTON, *October 25, 1923—5 p.m.*

Department's circular, September 27, 6 p.m.

In view of the near approach of November 1st, the date on which the Chinese Government had requested that the meeting of the Commission on Extraterritoriality be held, this Government feels it is appropriate to advise the interested Powers of the results of its inquiry as to the acceptability of the proposed date, even though replies have not yet been received from all the Governments addressed.

That inquiry has disclosed that certain of the Powers do not consider it feasible to begin the work of the Extraterritoriality Commission at this time; and in the absence of unanimity of assent it appears impossible to convene the Commission in November of this year as proposed by the Chinese Government.

On the other hand, the majority of the participating and adhering Powers have signified their assent to this Government's suggestion that, in the event that the attitude of any of the interested Powers should require a postponement of the meeting of the Commission, such postponement should be to a definite date—for which purpose November 1st of next year was suggested.

Please so advise Government to which you are accredited; and if it has not already done so, ask it to indicate whether it would be disposed to have the Commission convene at Peking on November 1, 1924, provided that date is acceptable to the Chinese Government.

Repeat to London, Rome, The Hague, Brussels, Lisbon, Copenhagen, Stockholm and Madrid.

HUGHES

793.003 C 73/41

The Secretary of State to the Chinese Minister (Sze)

WASHINGTON, *November 14, 1923.*

SIR: With reference to your Legation's note of May 4, 1923, regarding the time and place for the meeting of the Commission on Extraterritoriality in China, provided for in the Resolution adopted on December 10, 1921, by the Washington Conference on the Limitation of Armament, I have the honor to inform you that the inquiry

[67] See last paragraph for instructions to repeat to Brussels, Copenhagen, Lisbon, London, Madrid, Rome, Stockholm, and The Hague. Sent also to Lima, with the omission of the last paragraph, and to Tokyo, with instructions to repeat to Peking.

made by this Government of the Powers participating in or adhering to the Resolution as to the acceptability of the date, November 1, 1923, suggested in your note, has disclosed that certain of the Powers did not consider it feasible to begin the work of the Commission at that time. In the absence of unanimity of assent, therefore, it appeared impossible to convene the Commission in November of this year as proposed by your Government. On the other hand, the majority of the participating Powers have signified their assent to this Government's suggestion that, in the event that the attitude of any of the interested Powers should require a postponement of the meeting of the Commission, such postponement should be to a definite date, for which purpose November 1 of next year was suggested.

Accept [etc.] CHARLES E. HUGHES

793.003 C 73/105 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 14, 1923—3 p.m.*
[Received December 14—12:45 p.m.]

400. Your 247, December 13 [*12*], 5 p.m.[69] Chinese Foreign Office has just replied by memorandum, dated December 13th, consenting to postponement of convening Extraterritoriality Commission at Peking to November 1st, 1924. Foreign Office states that it is telegraphing to Chinese Minister at Washington to take this matter up with the American Government and expresses the hope that nature of the replies of the various Governments will be transmitted to Chinese Government as they are received.

For the Minister:
BELL

793.003 C 73/105 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *January 14, 1924—5 p.m.*

15. Your No. 400, December 14, 3 p.m. Department's No. 3, January 4, 3 p.m.[69] Inform the Chinese Foreign Office with respect to its memorandum of December 13 that this Government has not been able to obtain unanimity with regard to the convening of the Extraterritoriality Commission on November 1, 1924, as suggested by it. You should, however, refrain from giving any inti-

[69] Not printed.

mation as to the attitude taken by the individual Powers concerned toward the meeting of the Commission.

HUGHES

KIDNAPING OF RAILWAY PASSENGERS NEAR LINCHENG BY BANDITS AND CONSEQUENT DEMANDS UPON CHINA BY THE POWERS

393.1123 Lincheng/1: Telegram

The Minister in China (Schurman) to the Secretary of State

TSINANFU, *May 6, 1923—12 midnight.*
[Received May 7—2:55 a.m.]

Express train which left Shanghai Saturday morning held up by bandits near Lincheng, Shantung, about 2 o'clock Sunday morning; 19 of 26 foreigners, including Powell[70] of *Weekly Review*, held captive; Rothman, British subject, killed; bandits being pursued by small military forces. Situation serious, little information but foregoing received from American on the scene. I have telegraphed Shanghai to inquire if other Americans were on train.[71]

SCHURMAN

393.1123 Lincheng/16: Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State[72]

PEKING, *May 8, 1923—5 p.m.*
[Received May 8—2:25 p.m.]

140. My 138, May 7, midnight.[73] On behalf of the diplomatic corps, dean today made vigorous representations to the Prime Minister, Minister of Communications and Acting Minister for Foreign Affairs demanding that all possible steps should be taken immediately to secure the release of the foreign captives and the Chinese

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[70] James B. Powell, American, editor of the *China Weekly Review*, Shanghai.

[71] Other Americans on the train were L. Lehrbas, L. C. Solomon, Leon Friedman, J. A. Henley, Major and Mrs. R. W. Pinger and two boys, Major and Mrs. R. A. Allen and one boy, Miss Lucy T. Aldrich, Miss Minnie McFadden, Miss Schonberg, Victor Haimovitch, and A. L. Zimmerman. The last two were not captured. Mr. Lehrbas, Mrs. Pinger and one son, Mrs. Allen, Miss Aldrich, Miss McFadden, and Miss Schonberg were soon released or escaped. The others were held as captives. The only woman held after the first day was Mrs. Verea, Mexican, who refused to leave her husband. She was released May 21.

[72] Although telegrams from Peking from May 7 to 17 bear the signature of the Minister, they were apparently sent by the Counselor of the Legation, as the Minister was absent from his post for that period.

[73] Not printed.

Government should pay the necessary ransom afterwards. Strong military action must be taken of course to put down brigandage in Shantung and an official inquiry must be held into the whole affair on which the diplomatic corps must be represented. Prime Minister agreed to everything, promised to pay ransom and to act as rapidly as possible. He volunteered the statement that it was intended to dismiss Civil and Military Governors of Shantung.

At a meeting of the diplomatic corps this afternoon it was resolved that the dean should further inform Chinese Government that the diplomatic corps reserved the right over and above any moral and material damages claimed to demand a progressive indemnity for every day after May 12th that the foreigners remain captive.

British Minister proposed that after the present matter is settled a demand should be made on the Chinese Government for adequate police protection of the Tientsin-Pukow line to be supplied by the railway itself and paid for out of its earnings and that to this end there should be appointed foreign traffic manager, chief accountant, and police officers.

SCHURMAN [*Bell*]

393.1123 Lincheng/25 : Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State

PEKING, *May 9, 1923—4 p.m.*
[Received 5:21 p.m.]

143. Following from Minister at Tsinanfu:

"May 8, 4 p.m. I request that following be telegraphed without delay to Secretary of State.

On arriving Tsinanfu Sunday night May 6th, with naval attaché and learning of capture of Americans and other foreigners by bandits near Lincheng I telegraphed immediately Marshal Tsao Kun, inspector general of Chihli and Shantung, informing him thereof and earnestly urging him to take effective measures for immediate release of captives. He replied 7th, expressing great anxiety and stating he had "telegraphed the Military and Civil Governors of Shantung instructing them to secure the release of the captives immediately and send troops down there to deal with the bandits." I have replied to Tsao Kun that I counted on him to press matters unremittingly and effectively until captives are released, I have also separately seen military and civil governors and impressed upon them need of prompt and effective action and on my suggestion American vice consul and British consul general called together on military governors 7th, making same demand and told him specifically [apparent omission] him responsible for the safety and immediate release of their nationals.

Whitham of Asia Development Company has been most helpful. He sent two of his best men, Naill and Wiesenberg, to Lincheng on repair train 6th, and they arrived there at 5 o'clock same afternoon and have supplied us with most of our information. Their earlier report that two Americans had been killed was withdrawn by them late last night. They report Major Pinger[74] wounded. To enable them to get some sleep Whitham sent this morning another of his men to Lincheng, McCann who speaks Chinese perfectly.

Through letter from Powell dated Sunday May 6th, bandit commander promised that if troops are withdrawn captives will be released. I do not know whether this is mere ruse or reliable promise and holds good. I have abstained and advised vice consul to abstain from giving any suggestions to Shantung authorities as to the methods they should employ in bringing about the immediate release of the captives which is the one thing we insist upon in all official conversations as our right.

At 11 o'clock this morning 8th, I had in company with vice consul long conversation with Military Governor and inquired what he was doing to bring about the release of captives. He said in present chaotic condition of China he felt his responsibility deeply and was doing his utmost. He showed me long telegrams from his military commander at Lincheng dated midnight in which it was stated only 11 foreigners now remained in hands of bandits. This may be true as Wiesenberg reported at 4:30 p.m. 7th, that there were 14. At that time Military Governor said his plan was to surround the bandits and in reply to my inquiry he assured me he had troops enough there. Force of military are pressing bandits closely and the latter are attempting to use captives as hostages. Captives are held in mountains about 10 miles from Lincheng up the [Tientsin-Pukow?] railway. The Military Governor intimates privately and confidentially that after he had the captives [*bandits?*] completely in his power he might negotiate with them for the release of the foreigners but in the meantime his policy consisted of the application of force. I repeated that we had no suggestions to make as to the method he should adopt but we demanded the prompt release of our nationals and I counted on the continuation of energetic action on his part until that result was brought about.

On returning from cooperating [*conference?*] with the Military Governor I found at the consulate following telegram from Naill at Lincheng dated 8th, 9:30 a.m., as follows:

> "Leaving for bandit outpost with French and Italian consuls general. Wu Chang-chih putting every possible obstacle in our path. Can secure immediate release foreigners if we secure proper cooperation from military. Military does not want to negotiate with bandits."

Wu Chang-chih is Shantung military commander. I devoutly hope Naill, who is not embarrassed by official connections, will succeed with his negotiations.

I have directed Major Philoon, assistant military attaché, to proceed to Lincheng to observe and use his best judgment in the matter

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[74] Major R. W. Pinger, United States Army.

of the release of the captives. Consul Davis and Vice Consul Berger have begun already.

Vice Consul Milbourn met all trains northward on 7th, took Miss McFadden and Miss Schonberg to hospital on their arrival at 5 o'clock, afterwards waited several hours at station for Miss Aldrich. He also sent two foreign and two Chinese doctors to Lincheng 7th and induced Military Governor to give him special train for the purpose, and he has arranged with the local American association to have food and clothes at station to meet every north-bound train for the relief of any released captives that may be aboard.

Please tell John D. Rockefeller, Jr., I visited Miss Aldrich and her companions, Misses McFadden and Schonberg, in Shantung Christian University Hospital afternoon. Have called and heard from each separately her story of capture, long marches and liberation. All better morning 6th and forenoon 7th [*sic*]. In spite of hardships undergone and exposure in storm with inadequate clothing and only night slippers to walk in they are quite well, and Misses Aldrich and Schonberg expect to get up in a day or two, the other lady will need some days longer. They will all proceed to Peking. No other released Americans in Tsinanfu. I leave tonight for Nanking."

SCHURMAN [*Bell*]

393.1123 Lincheng/24 : Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State

PEKING, *May 9, 1923—6 p.m.*
[Received 7:35 p.m.]

145. My 140, May 8, 5 p.m. At interview this afternoon between Acting Minister for Foreign Affairs and Counselor of this Legation, former stated that Ministry of Communications had sent supplies of food and clothing which its representatives were attempting to send to the captives through the agency of the natives of the place. He confirmed that Chinese Government would desist from measures against bandits and substitute pacific means which would insure liberation of captives without injury to themselves. He believed but was not certain that negotiations with bandits have begun.

Presidential mandate which appeared to-day orders investigation with a view to the punishment of Civil and Military Governors of Shantung and suspension, pending investigation, of all civil and military officials at the place of the outrage.

My 138, May 9 [*7*], noon [*midnight*] [75]. French Minister took up the matter on 8th with Tsao Kun who expressed great anxiety and at once despatched a representative to the scene of the atrocity.

SCHURMAN [*Bell*]

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[75] Not printed.

393.1123 Lincheng/27: Telegram

The Minister in China (Schurman) to the Secretary of State

SIAKWAN [*Nanking*], *May 10, 1923—11 a.m.*
[Received May 10—6:03 a.m.]

Just before leaving Tsinanfu night 8th I invited Colonel Chang, military aide of Shantung Military Governor, to come to consulate and showed him two telegrams just received from Naill reporting foreign captives without food and were otherwise suffering and would be killed if Chinese authorities refused to negotiate with bandits. I emphasized the extreme importance of immediate release and gave officer copies of the telegrams for Military Governor. Three hours later Milbourne telegraphed me Military Governor informed that he had instructed his Generals Wu Chang-chih and Ho to consult with Naill regarding release of captives. I hope for favorable and speedy result.

SCHURMAN

393.1123 Lincheng/28: Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State

PEKING, *May 10, 1923—3 p.m.*
[Received May 10—8:30 a.m.]

148. My 139, May 8, 11 a.m.[76] Following from Consul Davis, Lincheng:

"Robert Allen, Rowland Pinger released. Their fathers in good condition. Hope others will be released soon. Situation hopeful. Davis."

SCHURMAN [*Bell*]

393.1123 Lincheng/30: Telegram

The Minister in China (Schurman) to the Secretary of State

SHANGHAI, *May 11, 1923—3 a.m.*
[Received May 11—8:12 p.m.]

Lunched 10th at Nanking with Military Governor Chi, powerful adherent of Tsao Kun and lower Yangtze prop of Peking Government, and had long conference with him on bandit outrage at Lincheng. Governor said he sent troops at outset to assure Governor of Shantung and now has advisers at Lincheng to aid in effecting pacific arrangement with the bandits for liberation of foreigners on the understanding that the Chinese Government is to pay ransom to the bandits. Government will consider hereafter policy of bandit ex-

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[76] Not printed.

termination. Government is also endeavoring to get food and clothing to the foreign captives through the natives of the locality.

I replied that this was a case in which time counted for everything, that a day's delay might cause a foreigner's death of starvation or shooting and one such death might precipitate an international complication.

Chinese are always in terror of foreign intervention and Governor concluded by saying he would telegraph instructions to his representatives on the spot along the lines which I had urged.

With Governor Chi, Shantung Military Governor, Peking Government and Tsao Kun all of one mind liberation of foreigners may be expected any time.

SCHURMAN

393.1123 Lincheng/37 : Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State

PEKING, *May 11, 1923—5 p.m.*
[Received May 11—11:50 a.m.]

151. As a result of decision taken by diplomatic body this afternoon, I have sent the following telegram to Consul Davis at Lincheng:

"Chinese Government have agreed to a joint inquiry into the Lincheng outrages on the spot by delegates of different government departments and the foreign consular representatives. You and Philoon should take part in this inquiry which will have for its object to ascertain the circumstances attending the outrage, whether or not there was collusion between the train crew and the brigands and to fix responsibility of the civil and military authorities.

Foreign Office representative on this commission, Thomas King, left this morning for Lincheng. British consul general at Tsinanfu and French and Italian consular officers are receiving similar instructions."

SCHURMAN [*Bell*]

393.1123 Lincheng/46 : Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State

PEKING, *May 14, 1923—3 p.m.*
[Received May 14—2:21 p.m.]

156. Two following telegrams from Davis and Philoon at Lincheng. First reads as follows:

"May 13, noon. Bandits' present conditions are raising Paotzeku [77] siege and the taking all bandits into Chinese Army. Bandits claim to number 8,000 between here and the sea. Military Governor ver-

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[77] A bandit stronghold which had been besieged by provincial troops for several months.

bally has agreed to both conditions. Leaving the details Military Governor. He states that siege raised last night. Anderson[78] and Chinese officials have again gone in endeavor to further negotiations. Prospects of an early settlement are good, although bandits getting short of food, ammunition. Request inform the French Minister, Italian Minister."

Second reads as follows:

"May 14, 11 a.m. Anderson party returned last night report lack of definite agreement on details among chiefs who hold meeting today and promise send in report tomorrow. General terms already reported still acceptable to both sides."

Chinese Foreign Office state they expect negotiations will soon be completed for prisoners' release.

At meeting of the diplomatic body today it was decided that the dean should remind Foreign Office that the requested indemnity had been running since May 12, 12 p.m., see my telegram 140, May 8, 5 p.m. It has not yet been definitely settled whether this progressive indemnity shall be in cash or in the nature of "sanctions", that is, undertakings for proper policing and control of railways in the future.

Diplomatic body also unanimously resolved that the dean should address a note to the Foreign Office stating that the foreign powers expect the Chinese Government to take all proper steps in policing railway lines and guarding trains and that diplomatic body will appoint a commission to travel on trains at the Chinese Government's expense to see that proper steps to these ends are being taken, failing which diplomatic body reserves the right to take any further action necessary. I shall telegraph text of the note when drafted.

A suggestion by the French Minister that foreign countries should place armed guards of foreign vessels on trains was negatived on the ground that, should they be attacked and killed, it might involve us in war with China, to which we could not commit our Governments at this stage.

SCHURMAN [*Bell*]

393.1123 Lincheng/48 : Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State

PEKING, *May 15, 1923—11 a.m.*
[Received May 15—9 a.m.]

157. My 156, May 14, 3 p.m. Following text of note handed afternoon 14th by dean to Acting Minister of Foreign Affairs:

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[78] Roy S. Anderson, an American citizen who played a prominent part in securing the release of the captives.

"With reference to my note the recent outrage on the Tientsin-Pukow Railway at Lincheng, I have the honor to inform Your Excellency that the diplomatic body has decided to insist that the Chinese Government should take immediate steps to reenforce the troops and police guarding the principal Government railways, especially the Tientsin-Pukow and the Peking-Hankow lines and the passenger trains running thereon, and to request Your Excellency to inform me at the earliest possible moment of the nature of the steps taken by the Government to this end.

Further, the diplomatic body with a view to the protection of their interests and to safeguard the lives and property of their nationals, have appointed a commission of foreign officers who will be entrusted with the duty of investigating the measures taken by the Chinese Government to protect the said Government railways from a recurrence of outrages similar to that which has occurred at Lincheng, and for that purpose require that the Chinese Government should undertake to arrange for the free transport of these officers on the railways and for all the necessary facilities for their comfort, etc., these details to be arranged by the Ministry of Communications in conjunction with the administration of the several railways.

I am desired by my colleagues to add that the diplomatic body reserve to themselves the right, on receiving the report of the commission of foreign officers aforesaid to demand in the name of their respective Governments any further increase in the number of troops and railway police or modifications in the measures taken to protect and patrol the railways as may be recommended by the said commission and appear to them to be desirable."

Following also handed at same time by dean to Acting Minister for Foreign Affairs:

"The Mexican Minister has informed the diplomatic body that an official of the Foreign Office called on Mr. Kolessoff, the interpreter of the Mexican Legation, on the 12th instant and showed him the text of a message received from the Chinese consul general at San Francisco, United States of America, stating that the relatives of Mr. and Mrs. Manuel Ancira Verea are ready to pay any ransom demanded in order to obtain their release by the bandits near Lincheng. The same official observed that it would be difficult to deliver the ransom to the bandits as the Mexican Legation had no representative at Lincheng, and this would appear to indicate that the Foreign Office accepts the principle that the ransom may be paid by the relatives of the captives and is contrary to the attitude which the diplomatic body has adopted on this point. The Foreign Office should be aware that the Chinese Government is responsible for the payment of whatever ransom may be necessary and that they should accept no funds from private sources for this purpose."

SCHURMAN [*Bell*]

893.1123 Lincheng/51 : Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State

PEKING, *May 16, 1923—3 p.m.*
[Received May 16—12:18 p.m.]

161. My 159, May 16, 9 a.m.[79] Further consular reports from Lincheng indicate that foreign captives have been taken to Paotzeku and there is nothing to indicate progress in negotiations between Chinese authorities and brigands.

On early morning 13th a band of men, possibly soldiers, attempted to rob a bank in Tangshan. General fright ensued and, as it was feared an attempt might be made to loot railway property, the company of American troops stationed there prepared for action, but fortunately no necessity arose.

On night of 13th bandits held up small village near Pehtaiho and looted shops and salt revenue office.

At meeting of diplomatic body this morning it was decided, in view of unsatisfactory nature of views [*news?*] from Lincheng, that dean should inquire of Chinese Government reason for failure of negotiations and exact information as to what Government had done and was doing, and should also again remind the Chinese Government that the "sanctions" would progressively increase as each day elapsed.

Diplomatic body feels strongly that impotence of Central Government has never been more clearly demonstrated than in this affair and feels also that, as the authority of the Central Government declines, diplomatic body's power is also being progressively lessened and its ability to secure protection for foreign nationals correspondingly diminished. It was decided that representatives of [powers] possessing fleets or squadrons in Asiatic waters should consult their governments and their admirals on the station with a view, should necessity arise, to making a joint naval demonstration at Taku near Tientsin. The idea is that ships should go to Taku for moral effect on Chinese Government and people and to demonstrate that our nationals must be protected and that our just demands cannot be ignored. The foreign representatives would not threaten the Chinese Government or commit themselves in advance towards any particular course of action. They would not even notify Chinese Foreign Office the ships were coming and there would be no salutes to Chinese flag or visits of courtesy to Chinese officials by foreign vessels. The demonstration would simply be to remind the people of China that there is a point beyond which we cannot

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[79] Not printed.

be flouted. British, French, Italian, and Japanese representatives are communicating with their Governments and senior naval officers in this sense, but it is clearly understood that, on receipt of necessary authorization from home Governments, demonstration will not be made until the moment when, in opinion of the representatives here, it will create the greatest effect. I understand our fleet is somewhere between Tsingtau and Chefoo, but, in the absence of naval attaché in Shanghai with Minister, this telegram is being repeated to latter for comment and for consultation with Admiral Anderson,[79a] who is understood to be in Shanghai or on the Yangtze.

Please instruct.

SCHURMAN [*Bell*]

393.1123 Lincheng/54 : Telegram

The Counselor of Legation at Peking (Bell) to the Secretary of State

PEKING, *May 17, 1923—5 p.m.*
[Received May 17—8:53 a.m.]

166. My 161, May 16, 3 p.m. Following translation of memorandum handed by dean to Acting Minister for Foreign Affairs afternoon 16th:

"In view of the assurances received from the representatives of the Chinese Government before the meeting of May 14th, the diplomatic corps believed that it could count upon the immediate release of the prisoners held captive by the brigands of Shantung. The diplomatic corps has been astonished to ascertain that these prisoners have not been freed and that the negotiations entered upon with a view to their release appear to be interrupted for reasons which have not yet been explained. The diplomatic corps again emphasizes the responsibility which devolves upon the Chinese Government in this regard and waits with impatience for it to take without further delay efficacious measures for the liberation of the prisoners. It reserves the right to fix at a later date the nature and scope of the sanctions which the delay in the settlement of this deplorable affair entail and which will be destined to prevent its recurrence.

The dean of the diplomatic corps is directed to recall the undertaking of the Chinese Government regarding the investigation entrusted to the international commission now convened at Tsaochuang and requests to be informed of the instructions sent to the representatives of the Chinese Government. Diplomatic corps is greatly surprised to learn that, on May 14th, the representative of the Foreign Office alleged that he had not received these instructions."

SCHURMAN [*Bell*]

[79a] Admiral Edwin A. Anderson, U. S. N., commander in chief of the Asiatic Fleet.

393.1123 Lincheng/60 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 18, 1923—10 a.m.*
[Received 11:10 a.m.]

168. Returned to Peking at 8:15 a.m., 18th, travelling by special train which I secured for myself at Pukow.

I cut short my trip, first, because I was disquieted by the delay in the release of the captives, and, secondly, because I desired to confer with my colleagues regarding naval demonstration as reported to me by the Legation, see Legation's 159, May 16, 9 a.m. [*161, May 16, 3 p.m.*]

As regards subject of release of bandits [*sic*], I had four hours' conference with Davis and Philoon who under instructions boarded my train at Lincheng evening 17th. They reported that recent [omission] has been due to "great difficulties experienced in arriving at a plan acceptable to all bandit chiefs" among whom "older chiefs who are more of the professional bandit type are inclined towards delay and more unreasonable terms." A delegate from the bandits arrived at the Chinghsing mines Tsaochuang near Lincheng morning 16th and reported that the bandits had selected their representatives and would be prepared to enter into [negotiations?] 17th.

Davis and Philoon are of opinion that if bandits' terms are found acceptable release may occur within two or three days, otherwise new negotiations will be necessary and release may not occur for two or three weeks. They are apprehensive that the situation may be complicated by the number of Chinese officials on the spot, these being Military Governor Tien and his followers representing Shantung; the Kiangsu Commissioner of Foreign Affairs and General Chen representing Governor Chi of Nanking; and, thirdly, the Minister of Communications and his party with whom is now associated General Yang I-teh, the uncrowned ruler of Tientsin where the Minister of Communications has his home. Davis and Philoon report that all real negotiations of any material value towards effecting the early release of the prisoners have up to date been conducted by the Kiangsu group with which Roy Anderson has been associated. The bandits asked that Anderson and Commissioner of Foreign Affairs Wen from Nanking should proceed to their headquarters morning 17th but this plan was made impossible by the act of General Yang and the Minister of Communications who sent an advance party of theirs to the robbers at 6 o'clock morning 17th. Yang and Minister stated that if this party reports favorably they themselves would proceed to the bandits' camp and insist upon the release of all foreign and Chinese captives within three days and that in the event of the bandits not accepting the guarantees offered,

they themselves would offer to remain in the bandits' hands as hostages pending the final putting into effect of the terms.

Delegates of all these officials met me at Lincheng yesterday and presented reports. I urged in reply that they should cooperate harmoniously in effecting the release of the captives and expressed the opinion that international complications would arise if such release were not speedily effected.

I am persuaded that all the Chinese authorities are doing their utmost to effect early release of the captives and the competition now obtaining among them for the credit of the achievement indicates that negotiations have reached a stage when success is probable.

A regular service of supply to the captives has been instituted by Davis and Philoon, and Major Horsfall has been placed in charge of it. By means of it cogs [*cots?*], mattresses, cooking utensils, mess outfits and other supplies are being sent forward.

SCHURMAN

393.1123 Lincheng/61 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 18, 1923—7 p.m.*
[Received 7:15 p.m.]

170. My 161, May 16, 3 p.m. and 168, May 18, 10 a.m. As regards a naval demonstration I think it unnecessary at the present time and also likely to delay the release of the captives. It is unnecessary because all Chinese Government officials are doing their utmost to effect the release of the captives which is also in their own self [interest?]. A naval demonstration would operate to delay the release of the captives because it would exaggerate in the minds of the bandits (who read the newspapers) the importance of the capture they have made and induce them to demand higher terms for their release with the result of prolonging negotiations.

To bring about a speedy release it is necessary to bring pressure or influence to bear not upon the Chinese Government but upon the bandit chiefs. This pressure or influence cannot be exerted by foreigners, only the Chinese Government can exert it. If foreign governments discredit the Chinese Government they weaken it in dealing with the bandits. Without any indication of my own sentiments I very confidentially inquired of Philoon and Davis evening 17th whether a demonstration by foreign navies would expedite the release of foreigners. They both answered in the negative and were strongly of the opinion such demonstration would be a mistake.

The foregoing portion of this telegram was written early this morning but I have held it till I could consult with my British and

French colleagues this afternoon. After presenting my views separately to each I find each in perfect accord with me. The French Minister said that the idea of a naval demonstration was not his proposal, that it had come from the dean (who is the Portuguese Minister) and that it had been pressed by the ministers whose governments had no naval forces in Chinese waters. The British Minister recognized the soundness of my contention that a naval demonstration would have the effect of strengthening the bandits and weakening the Chinese Government and he showed no desire to have such a demonstration made. Though he has not reported the matter to his Government I am strongly opposed to making naval demonstration or seeking authorization to make one in the future in connection with the release of the foreign captives so long as the attitude of the Chinese authorities in this matter remains what it is today.

Some radical step by the foreign powers for the protection of the lives and property of their own nationals and for the establishment of peace and order in China may become necessary in the future. The Lincheng outrage, the kidnapping in Honan, and other violations of foreign rights[80] are sporadic phenomena arising from the collapse of government in China and the usurpation of control by irresponsible militarists who may be provincial tuchuns, local commanders, or bandit chiefs.

SCHURMAN

393.1123 Lincheng/66 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 20, 1923—2 p.m.*
[Received May 20—1:10 p.m.]

174. My 173, May 19, 56 [*2*] p. m. and 172, May 19, 2 p.m.[81] Berube[82] released by bandits to come to Peking and bring message to diplomatic body and the President of China, arrived midnight and met this morning with us Ministers directly concerned and dean of the diplomatic corps. He sees President this afternoon and comes before the entire diplomatic body tomorrow morning.

Berube reports that Chinese troops have not withdrawn and that bandits instructed him to tell diplomatic body that if they are not withdrawn by Tuesday 22nd bandits will shoot two foreign captives.

Berube also reports that bandits will not negotiate till troops are withdrawn and that their terms include in addition to incorporation in Chinese [Army?] with their own chief [and?] his assistant

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[80] See *Foreign Relations*, 1922, vol. I, pp. 860–868.
[81] Neither printed.
[82] Marcel Berube, French citizen captured by bandits at Lincheng.

as commander and chief of staff, and food supplies during negotiations, a guarantee of their security by six foreign powers.

The impossible guarantee demanded of foreign powers may be only part of the bandits' asking price and the threat to shoot some of the captives is not now made for the first time. But the outlook is worse than it has been. The possibility of shooting and the probability of delay in negotiations must be recognized.

SCHURMAN

393.1123 Lincheng/90 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 23, 1923—3 p.m.*
[Received 5:10 p.m.]

176. 1. Following from Davis and Philoon:

"May 23, noon. An investigation shows that troops made several retreats and that yesterday those nearest Paotseku were distanced five miles. There was no fighting yesterday. Three representatives of the gentry went in yesterday [to] urge bandits to make reasonable terms. Bandits showing indications of a desire to negotiate. Morale of prisoners becoming lower. Yesterday they endeavored to get chief state his terms to them with a view to themselves sending these out. Treatment and communications are as before, but they write sanitary conditions are very bad. Anderson returning this afternoon."

2. Tien, Military Governor Shantung, accompanied by Roy Anderson arrived Peking evening 21st from Lincheng. Minister Communications, Wu Yu-lin, also returned. Tien had conference with President immediately after arrival and with Cabinet 22nd. Wu called on dean and American, British, French, Italian and Mexican Ministers afternoon 22nd, talked long time, answered briefly questions we put to him but replies and statement very unsatisfactory. I had three hours' conference with Anderson night of 21st and shorter conference 22nd just before he left for Lincheng on afternoon train. Tien still here. All Chinese notables have [apparent omission] Lincheng.

3. Present situation is as follows: No negotiations with bandits for some days, no fighting though occasional firing which led diplomatic body 21st to protest to Government against non-withdrawal of troops as condition laid down by bandits indispensable to negotiation and (previously) accepted by Government. Military Governor Tien believes force should be applied to bandits and would fight but for danger to foreign captives. That being an international issue, he has come to Peking for instructions. He states that his dilemma [is] as follows: (1) Fight the bandits and foreigners may be killed;

(2) withdraw troops to points designated by bandits and confederate bandits will pour in from the three neighboring Provinces of Honan, Kiangsu and Anhwei, and together take possession of southwestern Shantung. Government cannot resolve this dilemma and commander of Shantung forces prolongs his visit here.

4. During first week or ten days Peking Government and all Chinese authorities were energetically bent on effecting release of captives. Reaction has set in with procrastination, talk, explanations, and mutual recriminations. Near the end of conference mentioned in paragraph 2 Minister Communications intimated diplomatic body had hindered action by Government and expressed a hope they might now have a free hand. I retorted that they had always had a free hand and that they alone were responsible and intimated that the world was appraising the will, ability, and sense of responsibility of Peking Government in discharging its international obligations by its conduct in this affair. When, in another connection he observed that they needed more troops to complete their broken cordon round the bandits, I inquired blandly if they desired the cooperation of foreign troops, he replied in the same tone that they did not at the present time.

5. He remarked with the air of one revealing confidences that he [apparent omission] there was politics in the business. From many concurrent indications I am convinced this is true. The politicians quickly perceived in the work of bandits valuable material for their purposes. Little Hsü[83] and his Anfu supporters and the agents of Chang Tso-lin[84] are using the outrage to discredit the Chihli Party, Peking Government which it largely controls, and its leader Tsao Kun who has been hopeful candidate for the Presidency. In this enterprise they are seeking the cooperation of Sun Yat-sen who has been fighting with success Wu Pei-fu's forces in Kwangtung and if I may judge from long conversations with C. C. Wu, Sun Hung-yi and Tang Shao-yi[85] in Shanghai last week this cooperation is assured. Meanwhile, the criticism of the Chihli Party has given President Li Yuan-hung new hopes of official life and he comes out with the characteristically Chinese statement that he desires a Presidential election so that he may retire from office.

6. The terms and policy of the bandits are now probably inspired by these anti-Chihli politicians. And they are likely to play the game up to the limit of foreign endurance. On the other hand, Chihli Party politicians want the President, Cabinet and Peking

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[83] Hsü Shu-cheng, formerly commander of the army of the Anfu faction in control of the Peking Government which was overthrown in 1920.

[84] In actual control of the government of Manchuria, although in 1922 the Peking Government had issued an order removing him from office.

[85] Leaders in Sun Yat-sen's party.

Government generally as well as the Shantung authorities to share with them the responsibility and the blame. If these parties are left alone, I imagine there will be prolonged negotiations among themselves, endless talk, party compromises, display of military force, satisfaction of bandits and saving everybody's face.

7. The objection to this solution from the foreigner's point of view is that during the time required for its realization some of our fellow nationals on the top of Paotzeku may die of exposure, starvation or disease. The bandits would probably not kill the foreign captives for they are of no value to them when dead but their lives would nevertheless be in danger if the bandits are fiercely or continuously attacked by the Chinese forces or if an attempt is made to starve the bandits out.

8. Americans and Europeans in China greatly stirred up over situation. American Chamber of Commerce, Shanghai, demands foreign negotiations direct with bandits and use of foreign troops to effect release of captives, but I am still of the opinion that we must work through the Chinese authorities and bring pressure to bear upon them whenever they relax their efforts. I have thought it would produce a good effect if the diplomatic body sent an international commission as was provided on my motion last fall for the release of the captured missionaries in Honan and which proved most effective, only in this case I would have commission composed of the commander[s] of the China expeditionary forces in Tientsin. I have summoned General Connor [86] to Peking for a conference this afternoon on this proposal and on the suggestions that have been made for the use of foreign military force which I recognize might conceivably become a necessity in the end but which, as I have already said, I should think a grave mistake at the present time. I have not thought it necessary to call Admiral Anderson who is now on the upper Yangtze into this conference especially as he is to be with me here on June 9th.

9. My own policy is to keep hammering at the Chinese Government for the immediate and safe release of our nationals and to hold up to them their exclusive responsibility. In that connection I will again remind them as I did Minister of Communications yesterday that foreign nations will form their opinion of the nature, character and efficacy of the Peking Government by their action in this case. And I would have it to be [apparent omission] Peking Government alone to determine which means they should adopt to comply with our demands.

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[86] Gen. William D. Connor, commanding American forces in China.

10. The safety and proper care of the captured foreigners is the subject of our constant solicitude. Shanghai American Chamber of Commerce has done splendid work in sending and organizing relief. But voluntary contributions may fail. And I therefore pledged $2,500 gold yesterday from the United States Government in case it was needed for the purchase of food, bottled water, supplies, etc., about to be delivered to the top of Paotzeku for the captives to whom I also sent seven marine corps tents. Up to the present time it is the Americans who have furnished all the supplies to all the foreigners. Chinese have offered money which I have given instructions to refuse. Chinese, however, are feeding the Paotzeku bandits and that is why our food is not entirely stolen.

11. I have the honor to request that I be given a credit of $2,500 gold as a "captives subsistence, supplies and emergency fund" with instructions regarding payments and vouchers.

SCHURMAN

393.1123 Lincheng/88 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 23, 1923—6 p.m.*
[Received May 23—1 p.m.]

178. My 176, May 23, 3 p.m., paragraph 8. Diplomatic body at meeting this afternoon adopted my suggestion of sending international commission to Tsaochwang composed of military commanders at Tientsin or substitutes named by the Legations concerned with instructions to investigate and report upon military situation.

SCHURMAN

393.1123 Lincheng/94 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 24, 1923—5 p.m.*
[Received May 24—8:50 a.m.]

179. Chinese authorities not informed.

In accordance with resolution of diplomatic body consuls at Lincheng have been instructed to convey following message to brigand chiefs:

"[Apparent omission] is delayed or withheld owing to the refusal of brigands to accept reasonable terms offered to them by the Chinese authorities. Foreign governments will hold brigands responsible with their lives for any fatal consequences which may ensue to their nationals as a result of such delay or refusal to treat."

Consuls have been instructed in making this communication to make it quite clear to brigands that they are not authorized to enter into negotiations with them or to give any form of guarantee.

SCHURMAN

893.00/5009: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 26, 1923—noon.*
[Received May 26—6:58 a.m.]

182. Foreign opinion in China unanimously and vigorously declares Lincheng outrage on foreigners (1) is the limit and (2) must be the last. Yet concessions to the bandits for release of foreigners, as was indispensable in Honan last winter and will this summer be indispensable in Shantung, encourage and stimulate fresh attacks. Furthermore, the existing military conditions of China as explained in my published report [apparent omission].

My colleagues and I are thinking and conferring about this problem. The remedies suggested in resolutions of Chamber of Commerce and public meetings by newspapers and responsible individuals include the placing of small foreign garrisons at strategic points on the Yangtze and on the coast in addition to Tientsin, the disbandment of Chinese troops with the aid of foreign military force, foreign control of the railway police by means of foreign officials (among whom a foreign accountant is often mentioned) and foreign supervision of Chinese finance with proper budget and audit system. Even the sweeping away of the Chinese Government and the setting up of an international regency is seriously discussed.

Some of the foregoing proposals aim at the direct protection of foreigners, others by strengthening public administration would, it is argued, indirectly protect foreigners. There is evidence, however, of a disposition to use the Lincheng outrage as a reason for reforming China generally as well as for the protection of foreigners.

Nevertheless, foreign life and property, treaty rights and lawful interests have for some time past been treated with growing disregard by the Chinese and they are now seriously menaced by lawlessness and by bandit outrages, which, if present conditions continue, are practically certain to recur with increasing frequency and probably with larger proportions and more disastrous consequences.

In my conversations with my colleagues on this subject it is highly desirable, in fact almost essential, that I should know whether my Government would approve of any scheme whatever which involved

the extension of the use of foreign force in China for the protection of our nationals in the future. I have the honor to request, therefore, that I be given confidential instructions for my private guidance at your earliest convenience.

SCHURMAN

393.1123 Lincheng/108 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 28, 1923—4 p.m.*
[Received May 28—9:15 a.m.]

185. My 179, May 24, 5 p.m. Telegram from Lincheng May 27, 2 a.m., reports that brigands replied in polite tone and stated that they would do nothing to endanger lives of foreigners and that they would accept reasonable conditions if Chinese Government would offer them. Brigands reiterated their five demands.

Powell returned to Tsaochuang May 27, 6 p.m., with two bandit secretaries, whose safe conduct he guaranteed. This forenoon secretaries were conferring with Assistant Military Governor.

SCHURMAN

393.1123 Lincheng/116 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 29, 1923—4 p.m.*
[Received May 29—11:30 a.m.]

186. Your 91, May 28, 6 p.m.[88] Following are the five demands referred to: (1) Withdrawal of soldiers; (2) Central Government to furnish bandits regularly with food and clothing; (3) ten thousand bandits Plava [*sic*] district to be formed into four mixed brigades under direct control of Central Government which should furnish arms and ammunition; (4) Central Government to give six months' pay in advance, also arrears of pay not to exceed total of six months' pay; (5) upon consent of Central Government to above terms, an agreement to be drawn up between Central Government and bandit chief to be signed in the presence of a representative of diplomatic corps who is to act as guarantor for the proper execution of agreement.

SCHURMAN

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[88] "Your 185, May 28, 4 p.m. Cable the five demands of the brigands. Hughes." (File no. 393.1123 Lincheng/108.)

393.1123 Lincheng/117 : Telegram

The Consul General at Shanghai (Cunningham) to the Secretary of State

SHANGHAI, *May 31, 1923—4 p.m.*
[Received May 31—4:36 a.m.]

Davis reports Allen [89] and Smith [90] released unconditionally. Proceeding Tientsin. Negotiations continuing favorably.

CUNNINGHAM

393.1123 Lincheng/133 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 1, 1923—4 p.m.*
[Received June 5—2:34 a.m.]

193. At a meeting at this Legation afternoon, May 31st, International Commission, General Connor, President, received written instructions prepared as authorized by diplomatic body by five ministers concerned and dean and then in conference with Chinese general who is to accompany them they tentatively arranged the program of their Lencheng visit. Besides two aides-de-camp General Connor takes to assist him Colonel Barnes and Colonel Wainwright, New York state congressman, who arrived here yesterday. Commission left Peking for Lincheng on 4.25 train this afternoon.

SCHURMAN

893.00/5009 : Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *June 1, 1923—7 p.m.*

97. Your telegram of May 26, noon, was referred to President Harding and he fully endorses the view that any attempt to bring comprehensive or general armed pressure to bear upon China would be useless. He agrees that the task would be too great and that it would arouse opposition likely to involve foreign interests in danger wholly out of proportion to the amount of protection afforded. The President also is in accord with the view that the undertaking could only be entered upon with such cooperation from other powers as might involve difficulties and compromises in the policies of this Government and might be the occasion for the entrench-

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[89] Maj. Robert A. Allen, United States Army.
[90] William Smith, British citizen.

ment of other nations in a position which would facilitate ultimately their control over the economic and political development of China. The only condition under which serious consideration could be given to the subject of general intervention in China would be such a degree of disorder and chaos as would be a definite threat to the whole system of foreign interests and residence in that country.

The above statements are not incompatible with the possible use of force limited strictly to an objective so clearly defined that it will not afford any opportunity for its purpose being misconstrued or any pretext for the eventual enlargement of its character and scope for ulterior purposes. The principal reason for any such display of force would be to attempt to restore and increase foreign prestige in China by impressing upon the Chinese people and Government the necessity of respecting foreign nationals and property.

I have had occasion in connection with the Lincheng outrage to consider the feasibility and the possible usefulness of foreign occupation of the railroad from Tientsin to Pukow in an analogous manner to the occupation of the line from Peking to the sea. The purposes of such an occupation would be as stated in the preceding paragraph as well as to guard this line of communications and to form a possible base for foreign cooperation with Chinese forces should it become necessary to demand that banditry in southern Shantung be exterminated. I am not at all convinced that such action is desirable. I would, however, like to have you frankly give me your views on this question and also upon the suggestion made by your British colleague that a railway police be established to give adequate protection to foreign nationals and interests, this force possibly to be under international supervision and paid from railway funds under international control. I also wish your opinion regarding the possibility of placing other trunk lines under the protection of such a police force to guard against bandit raids and also to keep local authorities from unwarranted tampering with the railway revenues or facilities.

The proposed establishment of garrisons along the coast and on the Yangtze River seems to be only the first step toward general intervention. Unless the suggested use of foreign forces to bring about the disbandment of Chinese troops involves only the giving of technical military assistance in carrying out a program of disbandment which is agreed upon, the proposal would imply impossible belligerent support to the faction controlling at Peking.

While I frankly distrust both the political effects and the efficacy of any attempted exercise of general foreign control over the finances of China, I would also be pleased to receive your comment on the possibility of inducing the Chinese Government to accept and carry

out a proper system of budget under the control of an impartial international auditing board.

HUGHES

393.1123 Lincheng/123 : Telegram

The Consul General at Shanghai (Cunningham) to the Secretary of State

SHANGHAI, *June 2, 1923—6 p.m.*
[Received June 2—8:45 a.m.]

Referring to my telegram of May 31, noon [*4 p.m.?*]. Davis telegraphs 2 o'clock this afternoon: Henley,[91] Eddy Elias,[92] Saphiere [92] and Verea [93] unconditionally released.

CUNNINGHAM

393.1123 Lincheng/136 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 6, 1923—4 p.m.*
[Received June 6—1:31 p.m.]

199. My 193, June 1, 4 p.m. Congressman Wainwright left Tsaochuang on June 5, noon, and arrived Peking about noon today in advance of international commission. He reports that "representative of Governor of the Province and the bandits appear to have arrived at an agreement by which every bandit who has of [*a?*] rifle or a pistol will be enlisted in the Army; that the counting of the arms and preparation of a muster roll or enlistment is proceeding; that the bandits are not satisfied with the guarantee of the Government as to their pay, but will be satisfied if Roy Anderson, an American citizen whom they seem to absolutely trust, will guarantee that they will receive their pay for three years, which is the term of enlistment; that Anderson is willing to give his personal guarantee, provided that he is guaranteed in writing, also personally, by Tsao Kun; that harmony appears to have been restored to the bandit camp and the captives not to be suffering in health, though they are getting somewhat low in spirit; and that there is no definite indication of how long it will be before they are released." I asked Congressman if Anderson's guarantee would be interpreted by bandits as guarantee of American Government. He replied that possibility had never occurred to him, but he was convinced that there was no ground for apprehension.

Following released captives lunched with me today: Major and Mrs. Allen and son aged 12 years and Henley. All are perfectly

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[91] J. A. Henley, American citizen.
[92] British citizen.
[93] Mexican citizen.

well and normal except Henley, who is suffering from nervous overstrain.

SCHURMAN

893.00/5029 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 6, 1923—8 p.m.*
[Received June 7—3:36 a.m.]

200. Department's telegram no. 100, June 4.[94]

1. Reference third paragraph Department's no. 97, June 1. I am reliably informed that it would be a mistake for foreign forces to occupy the Tientsin-Pukow Railway unless such occupation becomes necessary in order to secure the release of foreigners still held captive. This is a contingency which I do not consider probable although I will be sure to discuss it with General Connor when he returns. The occupation of the railway would doubtless provoke Chinese resentment and might not only create antiforeign sentiment but also lead to acts of hostility against unprotected foreigners both in Shantung and elsewhere. Also it would surely cause difficulties and dissension among the powers occupying the railway, which would largely offset any advantages that could reasonably be expected to be derived from it. With respect to the suggestion that the railway might be used as a base for exterminating banditry in southern Shantung, I call attention to the facts that all the provinces are cursed with banditry and that the problem is not alone one of making an initial suppression of the bandits, but of permanently freeing the country from this evil. The Chinese themselves must therefore solve the problem.

[2.] Europeans in China, and especially the British, generally favor the idea of foreign-supervised railway police. I had long, separate conferences yesterday with my British and French colleagues and told them that I felt that the most hopeful means of permanent improvement was to stimulate the Chinese themselves to protect their railway service and property. My French colleague was in favor not of controlling officers but of foreign inspectors, and "inspectors" is the word [used?] by the representatives in China of the Consortium in their telegram of May 23. I asked my British colleague whether he favored having the officers chosen from the Great Powers equally or from the small European nations. In reply he suggested that they might be appointed from the countries of the bondholders.

3. The Chinese unaided have not been able to provide the effective police force which is necessary in order to protect the service, prop-

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[94] Not printed.

erty, and collection of revenue of the railways. Probably foreign inspectors would give the Chinese sufficient help, but if it is thought necessary to have foreign controlling officers, now is a good time to secure their appointment. If a time limit were set, I believe that the Chinese would make no serious objection as far as the Tientsin-Pukow Railway is concerned, but there is a need for foreign-trained police, not only on that railway but on all Chinese Government-controlled railways. In my opinion an effort should be made now to induce China to accept at least plans for foreign inspectors.

4. A general like . . . could loot the treasury of a railway in spite of a police force under foreign inspection or supervision. Such a force could, however, protect railway property from raids of neighboring bandits and lawless groups, obtain the revenues collected, and insure regular service of trains, if it had good information service and proper concentration points along the railway line. Just as [on?] one railway line police detachments could be sent from the nearest concentration points wherever needed, so if all the railways had the improved police system, reinforcements could, if needed, be transferred from one line to another. Only a relatively small mobile force with good information service regarding bandit movements near the railway lines would thus be needed to protect the railways.

6 [*sic*]. It is believed that an adequate, reorganized police force with foreign inspection or supervision could be supported with the funds already allocated to the railways for police purposes. These funds are now wasted on a multitude of useless officers, soldiers, and policemen.

7. The Chinese railway police force should be under the supreme control from Peking of either a foreign officer or a Chinese officer with a foreign inspector associated with him. This central authority should not only exercise supreme authority over the force but should also be responsible for paying the officers and men and furnishing them with material.

SCHURMAN

393.1123 Lincheng/138 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 8, 1923—7 p.m.*
[Received June 8—3:42 p.m.]

207. The international commission of which General Connor is president returned to Peking yesterday and presented its report today. The most important points follow:

1. There are probably not more than about 4,000 Chinese troops distributed along a line of 130 kilometers.

2. Within the cordon there are probably not more than 1,200 to 1,600 armed bandits. These are variously armed with pistols and rifles.

3. It is the opinion of the Commission that if the bandits in any province are to be effectively suppressed it is absolutely essential that the soldiers employed should be reliable troops immediately controlled by the Central Government and not provincial troops nor troops coming from the same province in which the operations take place.

4. The measures which have been taken to defend the Tientsin-Pukow Railway are entirely inadequate for its defense against outrages similar to that which took place at Lincheng.

SCHURMAN

393.1123 Lincheng/140 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 10, 1923—10 a.m.*
[Received June 10—6:23 a.m.]

212. Paragraph numbered 8 my 176, May 23, 3 p.m. At conference with General Connor and the naval and military attachés it was unanimously agreed that the 3d battalion of the 15th Infantry should be sent to Tientsin from the Philippines as a gesture with respect to the Lincheng affair. I recommend that this be done as soon as practicable.

I made the above recommendation in my May 29 despatch[95] but I now telegraph it as for some days China has been without a Cabinet, and the President may be forced out. Peking was without police all yesterday and the future is uncertain. If my recommendation is adopted there will be sufficient time for the battalion to be sent on the July transport.

SCHURMAN

393.1123 Lincheng/139 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 10, 1923—7 p.m.*
[Received June 10—2:05 p.m.]

213. Following telegram from Davis and Philoon dated June 9, 8 p.m. received June 10, 5 p.m.:

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[95] Not printed.

Banditti today stated all terms acceptable but requested three more days to complete enrollment. Efforts are being made to effect release Monday.

SCHURMAN

393.1123 Lincheng/141 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 11, 1923—3 p.m.*
[Received June 11—10:47 a.m.]

214. Following from Davis and Philoon at Tsaochuang dated June 10, 8 a.m.: "Satisfactory telegram from Tsao Kun relating [guarantee?]. Disturbances among the provincial troops here may follow departure of foreigners."

In connection with negotiations concerning Anderson's personal guarantee to be covered by Tsao Kun which were mentioned in my telegram no. 198, June 6, 3 p.m.,[96] and referred to above, I telegraphed Davis and Philoon June 7th that they should make certain that it was clearly understood by the bandits that Anderson in no way represented the United States or that his signature to the guarantee would involve the Government of the United States in any way.

SCHURMAN

393.1123 Lincheng/140 : Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *June 12, 1923—2 p.m.*

107. Your 212, June 10, 10 a.m., has been discussed with Secretary Weeks. He is cabling to General Connor for additional information. It is the policy of this Government not to maintain larger forces in China than are necessary to furnish such protection as it is practicable to assure by military means. An increase in our forces would not therefore be approved as a mere gesture not connected with considerations of precaution for the protection of American interests. The telegram under reference does not indicate that a situation exists actually placing American interests in jeopardy in such a manner as to necessitate increasing the Legation Guard or the infantry force on the railway; and I understand from your 200, June 6, 8 p.m., that you do not deem it wise to increase the area wherein foreign troops are now authorized to be stationed to protect foreign interests.

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[96] Not printed.

A fuller expression of your opinion regarding this subject would be appreciated, and also a statement as to what action of a similar nature the other powers may be contemplating.

HUGHES

393.1123 Lincheng/148 : Telegram

The Consul General at Shanghai (Cunningham) to the Secretary of State

SHANGHAI, *June 12, 1923—11 p.m.*
[Received June 12—2:48 p. m.]

Davis telegraphs all foreign captives released this afternoon. It is felt sure that credit is due Consul Davis, Roy Anderson and Commissioner of Foreign Affairs Wen.

CUNNINGHAM

393.1123 Lincheng/156 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 14, 1923—4 p.m.*
[Received June 14—1:15 p.m.]

222. Your 107, June 12, 2 p.m. has been discussed with General Connor and military attachés in conference here today. In explanation of my 212, June 10, 10 a.m., I pointed out in my despatch of May 29 [97] that as I had already informed the Department, the outrage at Lincheng, which has deeply stirred the foreign communities here, is but one manifestation of underlying chaotic conditions liable to produce similar phenomena of greater extent and much more serious and fatal results at any time. I also stated in the despatch that the transfer of troops recommended could not, of course, be regarded seriously as a reenforcement but should be considered to be a gesture to the Chinese in reply to the Lincheng outrage, which they will probably interpret as an intimation by the United States that treaty rights must be observed and that such outrages will not be allowed to continue.

From the above you will observe that the proposed enlargement of the force was not thought of as a mere gesture but as a precautionary measure to safeguard American interests.

To be sure, we do not now have a situation actually putting American interests in jeopardy in a manner to necessitate any addition to our force at Tientsin, but with conditions here so exceedingly un-

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[97] Not printed.

stable such a menace might arise at any time with such suddenness that when it occurred there would not be time to secure more troops. As existing conditions are apt to last a long while it would be of little use to send these troops unless they are to stay for some time.

General Connor and the military attachés concur in the above.

This morning I conferred with my British, French and Japanese colleagues regarding their views with respect to increasing their forces at Tientsin. They all said that they thought there was bound to be a war between the Chihli and Fengtien troops. The suggestion was made by the Japanese Chargé that the railway as far as Shanhaikwan should be kept free of belligerents. The British Minister is considering requesting his Government to bring the British force up to its pre-war strength. I received no intimation from the French and Japanese representatives that they had such intentions.

SCHURMAN

393.1123 Lincheng/153 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 14, 1923—5 p.m.*
[Received 12:47 p. m.]

223. A committee has been appointed by the diplomatic corps to consider basis for recommendations as to demands for settlement of the Lincheng affair by the Chinese Government. The committee consists of the Ministers of Belgium, France, Great Britain, Italy, Netherlands and the United States and the Chargé of Japan.

This committee has met twice and has agreed to making demands under three headings: (1) Compensation; (2) guarantees for the future; (3) sanctions. The committee will meet again tomorrow morning.

There has been little progress as to guarantees and sanctions. Under the first heading, however, it is prepared to include direct losses of objects of value, loss of earnings, personal injury including death and temporary or permanent decreased earning capacity. All agreed on these points.

All but myself also agreed to a proposal that in addition to the kinds of compensation mentioned above there should be an indemnity to each captive for each day he was held, this compensation to be at the rate of $500 for each of the first three days and $100 for each day thereafter. The reasons why I did not agree on this point with the rest of the committee are as follows:

1. Such an indemnity added to the exhaustive compensation for which provision is made would not, in my opinion, be allowed by a court of equity or justice.

2. It brings in a new principle for the assessment of damages against the Government of China.

I ask for instruction in this matter. The British Minister, who is in favor of the indemnity, is also cabling to his Government.

SCHURMAN

393.1123 Lincheng/159 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 15, 1923—6 p.m.*
[Received June 16—2:56 a.m.]

226. My telegram number 223, June 14, 5 p.m. Committee today adopted two guarantees for the future. The first, which I had introduced and earnestly advocated, is as follows:

"Banditry having become a grave menace to the lives, properties and rights of foreigners in China, the diplomatic body intend to keep themselves informed with respect to it and for that purpose they have decided to send into the provinces in which bandits are prevalent their own representatives to examine and report upon bandit conditions and whenever it appears to the diplomatic body that any military governor or other official controlling troops or any other provincial or local official has failed or is failing to protect foreigners in the efficacious manner stipulated in the aforesaid treaty the diplomatic body will demand that the penalties therein prescribed shall be summarily imposed upon the offender with such additional punishment by fine or otherwise as the circumstances may demand or warrant."

The treaty referred to in the foregoing is the final protocol of 1901, annex number 16, last paragraph, see MacMurray page 301. The second guarantee, on which the British Minister has strenuously insisted, with the support of the Belgian, French, Dutch and Italian Ministers, contemplates reforms in the protection of the Chinese railways consisting "of the reorganization of the special Chinese police forces which would be placed under the control of Foreign Office and charged with assuring the protection of the railways that are at present or may hereafter come under the control of the Central Government". A more detailed plan is to be sent later to the Chinese Government.

The British Minister, supported by the above-mentioned colleagues, argued that since the reorganized police forces must be regularly paid it was essential to have foreign accountants, traffic managers, and engineers. To this he said that his Government attached much

importance. But Japanese Chargé d'Affaires said his Government, while favoring an effective police force, was opposed to foreign management of the railways.

No other guarantees for the future were proposed.

As regards sanctions it was decided to demand the punishment of offending civil and military officials and employees of the railway and others after the diplomatic body had received the report of the International Commission of Inquiry and any other information that might come to it from authentic sources.

Other sanctions are the demand for the settlement of outstanding questions of importance affecting all foreigners in China of which the first and dominant is the harbor improvement of Shanghai with the extension of the International Settlement and also the question of the Mixed Court. The remaining sanctions are not yet finally determined.

[Paraphrase.] It was generally felt that the terms which the Commission recommended for the settlement of the Lincheng outrage would not be accepted by the Chinese Government. [End paraphrase.]

In the opinion of the Commission, however, the terms are reasonable. The sanctions include no money indemnities and apart from punishment of individuals they will be as beneficial to the Chinese people as to foreigners.

[Paraphrase.] Assuming that the diplomatic corps adopts the demands of the committee, a serious impasse would result if the demands were resisted by the Chinese Government. My British colleague remarked that if such a situation should develop it would be necessary to use force. He intimated that he would recommend to his Government that the British garrison be strengthened and the fleet be prepared to act. It seemed to me that the expression of the Japanese Chargé was unresponsive to [this proposal?]. None of the other Ministers commented. My British colleague and I walked homeward together. On the way he observed that the Japanese would join if the British and American warships made a demonstration. He was also confident that the Dutch and French would be in complete accord. I said that in my opinion the American Government would be opposed to using force, but that I had received no instructions. While I did not tell the British Minister so, I have thought that in order to secure a settlement of the Lincheng outrage we might use the present political crisis to advantage. [End paraphrase.]

I should be greatly obliged for instructions or suggestions indicating even your tentative attitude with respect to any point in the committee's report or the other matters referred to in this telegram.

SCHURMAN

393.1123 Lincheng/206

The British Embassy to the Department of State

MEMORANDUM

The Corps Diplomatique at Peking are now considering proposals for a settlement of the recent outrage by brigands on the Tientsin-Pukow railway and measures for the better protection of foreigners in the future.

Conditions in China appear to be deteriorating and unless an opportunity is seized to insist on effective guarantees for the safety of foreigners their position will gradually become impossible. His Majesty's Government consider it desirable, moreover, that action should be taken promptly before the effect created by the recent outrage has had time to wear off.

His Majesty's Minister at Peking has proposed the creation of a railway police force under foreign officers, together with increased foreign control over the railway revenues, in order to provide for the payment of the force.

This scheme appears to His Majesty's Government to be the one most likely to produce useful results, but difficulty is to be anticipated in securing its acceptance by China unless the Powers present a united front in the matter.

His Majesty's Government earnestly hope that the United States Government will see their way to accord to their representative at Peking full authority to act in concert with the Corps Diplomatique in demanding such measure as may be required.

WASHINGTON, *June 19, 1923.*

393.1123 Lincheng/163 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 19, 1923—1 p.m.*
[Received June 19—9 a.m.]

229. My telegram no. 223 of June 14, 5 p.m. The committee at its meeting yesterday used the French word *indemnité* to cover all classes of compensation, including the $500 demanded for each of the first three days the prisoners were held and $100 for each day thereafter. This claim is referred to as being a fixed indemnity for the loss of liberty and the moral and physical sufferings and hardships endured by the foreigners while held captive by the bandits.

The objection which I had felt to the proposal as originally made, that it was an arbitrary indemnity for no stated object, is removed

by this change. I recommend, therefore, that it be approved. I made no formal commitment, awaiting an answer to my telegram under reference.

SCHURMAN

393.1123 Lincheng/165 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 20, 1923—5 p.m.*
[Received 7:35 p.m.]

231. My 226, June 15, 6 p.m. Committee today adopted following punishments: General Tien, military governor, Shantung, to be summarily dismissed from office and excluded from office and honors hereafter; General Ho, defense commissioner at Yenchowfu, responsible for southern Shantung, to be dismissed from office and excluded from any military appointment hereafter; General Chang, commander of Tientsin-Pukow Railroad police, to be dismissed from office and excluded from similar service hereafter; and Chao, the officer in immediate command of guard on the wrecked train, to be dismissed from office and never again employed in a police capacity. The first three at the discretion of the diplomatic body to be excluded from the protection of foreign concessions or settlements. Apart from these punishment[s] of all officials, the only other sanction has reference to Shanghai; namely, extension of the settlement, extension and improvement of the harbor and maintenance of the ultimatum [*sic*] arrangements of 1901,[98] 1912[99] and 1916,[99] with regard to the Whang-poo and also the reorganization of the Mixed Court.

Although the note had already been practically completed, I submitted to-day for incorporation in it the following which the committee adopted and decided to use as the concluding section of the note:

"Diplomatic body has already notified the Chinese Government that it will not henceforth regard notices which have already been received or which may hereafter be, from that Government to the effect that certain areas are [apparent omission] time and the diplomatic body now further declares to the Chinese Government that it will interpret all such original notices as acknowledgments on the part of the Chinese Government of the extension of banditry into new areas and all renewals of such notices as acknowledgments of the failure of the Chinese authorities to suppress banditry where it had hitherto prevailed.

If banditry is not suppressed or at least controlled, foreigners are in danger of losing a large part of the rights guaranteed them by

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[98] *Foreign Relations*, 1901, Appendix (Affairs in China), p. 333.
[99] Not printed.

treaty in China. In demanding that China shall be made safe for foreigners the diplomatic body is in effect only asking that China be made safe for the Chinese people themselves. The grave danger to which both foreigners and Chinese are now exposed and of which the Lincheng outrage is only a single manifestation is not due to any lack of military force, for China has more soldiers under arms than any other country in the world. That danger is due to the fact, first, that the soldiers are generally unpaid as was found to be the case in connection with the Lincheng outrage in Shantung and, secondly, that the Chinese Government authorizes or permits the military commanders to use the best national and provincial troops to fight one another and to carry on continuous internecine warfare in different parts of the country greatly to the injury of foreign interests and with incalculable losses and sufferings to the people of China when these forces should be employed for the maintenance of domestic peaceful protection of the people against the depredations of bandits and the control, gradual suppression, and eventual disbandment of the entire wretched system of banditry itself.

If the Chinese Government does not resolutely grapple with the problem of banditry which now threatens to undermine foreign rights and foreign interests in China, if it continues to permit or to tolerate present abuses, the diplomatic body will be forced to consider what further steps must be taken for the protection of foreign life, property rights and interests in a country which though recognized as a member of the family of nations fails to discharge even the most fundamental of the duties which are [inseparably] connected with the rights and privileges of such membership.["]

Committee meets 22nd to pass on draft of report in final form. It is however the sense of the committee that we should not present report to the diplomatic body until we have heard from our Governments what measures they will authorize for the enforcement of the terms of settlement proposed by the committee in the event of the Chinese Government proving recalcitrant. The committee is of opinion that it would be not only humiliating but disastrous if the diplomatic body were compelled to back down after having made demands on the Chinese Government.

SCHURMAN

393.1123 Lincheng/159a : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *June 21, 1923—6 p.m.*

118. Your telegrams 226, June 15, 6 p.m., 231, June 20, 5 p.m. are receiving careful consideration in all aspects, and instructions on the questions involved will shortly be sent you.

In the meanwhile, let me caution you against committing yourself to any phase of action until a homogen[e]ous plan can be authorized.

The suggestions concerning the settlement of outstanding problems of importance affecting all foreigners in China, such as the

improvement of the Shanghai Harbor, the extension of the Shanghai Settlements, and the question of Mixed Courts, appear so little related to the essential purpose of the proposals now under consideration that the Department is not disposed to view with approval their incorporation therein. It is believed that any program of demands to be presented to the Chinese Government should be grounded upon principles of elementary justice whose fairness will instinctively appeal to the Chinese people, and that it would be unwise to include extraneous or debatable questions suggestive of a generally aggressive attitude or of a desire to make use of the present incident for the purpose of obtaining ulterior advantages.

HUGHES

393.1123 Lincheng/166 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 22, 1923—10 a.m.*
[Received June 22—4:58 a.m.]

233. My 223, June 14, 5 p.m. Committee's report also includes among claims for compensation an item for refund of expenses incurred in providing for the captives the means of subsistence and relief. So far as known all such provisions were made by the American Chamber of Commerce, Shanghai. SCHURMAN

393.1123 Lincheng/167 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 22, 1923—10 a.m.*
[Received June 22—5:08 a.m.]

234. My 229, June 19, 2 [*1*] p.m., and 223, June 14, 5 p.m. For exemplary and punitive damages suffered by himself and family in Lincheng outrage, Major Allen has presented claim of $50,000 gold and Major Pinger $60,000. I am informed that Shanghai victims of the outrage are presenting still larger claims. SCHURMAN

393.1123 Lincheng/168 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 22, 1923—4 p.m.*
[Received June 22—11:15 a.m.]

235. My 231, June 20, 5 p.m. Committee today reconsidered section on pecuniary indemnities and decided that diplomatic body would demand only the three following categories:

"1. Indemnities for loss of baggage and other objects stolen or carried off at the time of the attack on the train, the same to be based on the declaration of the parties concerned as agreed by their respective consuls.
B. Fixed indemnities for deprivation of liberty and for the hardships and indignities undergone by all the foreign travelers whilst they were in the hands of the bandits, namely, 500 silver dollars per prisoner per day for the first three days of detention, May 6th, 7th, 8th, and 100 silver dollars per prisoner per day for the following days.
C. Indemnities for the reimbursement of the relief expenses of the prisoners."

The principle of the other two remaining categories, namely, indemnities for loss of earnings and bodily injury including death and indemnities for diminution of earning capacity, is supported and asserted by the diplomatic body, but these claims are to be made by the individual legation.

[Paraphrase.] Although the alleged reason for the change was the danger that the precedent would bring results which in the future would embarrass and overburden the diplomatic body, the immediate incentive was the belief that under the categories named in the preceding paragraph some legation would make an exorbitant claim which the diplomatic body would be obliged to support even though it did not approve of it.

Committee meets Monday, 25th, to consider question of railway police force under foreign control or inspection. [End paraphrase.]

SCHURMAN

393.1123 Lincheng/171 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 23, 1923—1 p.m.*
[Received June 23—9:55 a.m.]

236. Your 118, June 21, 6 p.m. I have taken all along with committee and others the course indicated in your paragraph 2.

As regarding your paragraph 3, I have not hitherto made it clear that the proposed demands with regard to Shanghai constitute the sum total of the progressive sanctions, while [*which*] the diplomatic body on May 9th announced they would impose on the Chinese Government after May 12th if the foreign captives were not all released by the latter date—see my 140, May 8, 5 p.m., and 155 [*156*], May 14, 3 p.m.

Committee is unanimous in the view that these sanctions should not consist of a pecuniary indemnity. The force of your objection that the Shanghai demands are not homogeneous with the essential

purpose which is the protection of foreigners in their treaty rights is fully recognized, but if that criterion is insisted on without reservation, it would seem to make impossible the imposition of any progressive sanctions whatever and thus cost diplomatic body loss of self-respect, prestige and face: such loss would affect disadvantageously the influence of the nations having representatives in the diplomatic body and especially those who had nationals in the Lincheng capture.

I may add that I can speak with a certain detachment in this matter as I was in Shanghai when the diplomatic body adopted and announced the policy of progressive sanctions.

Whatever the sentiments of any particular individual may have been, the committee as a whole has been animated by the desire of dealing justly and in a spirit of moderation with the Chinese. The settlement of Shanghai questions would remove future causes of friction between Chinese and foreigners while equally advantageous to both. And the committee can think of nothing else so suitable to cover the sanction to which the diplomatic body committed itself.

SCHURMAN

393.1123 Lincheng/165a : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *June 23, 1923—3 p.m.*

121. Referring to your telegrams 226 June 15, 231 June 20, and supplementing the Department's 118 June 21, 6 p.m.

The Department would not be prepared to recommend any demonstration in force for the purpose of obtaining the acquiescence of the Chinese Government in any program which may be agreed upon. The temporary transfer to China of the third battalion of the 15th infantry, as recommended in your 222 June 14th is under consideration.

[Paraphrase.] There is only one other suggestion which commends itself favorably to the Department for inclusion in the program being formulated by the diplomatic corps. That is the possibility of stationing at Tsinan a small international force, perhaps not more than 100 men from each national force now garrisoned at Tientsin. This would be specifically a penalty for the outrage at Lincheng and also serve as a warning to the officials of Shantung and of other provinces. Presumably such a plan would have a definite time limit, say one year, at the termination of which period the force would be withdrawn unless their further retention should be made necessary by conditions then existing. In adopting this plan the Powers would disclaim all responsibility for protecting the

railway, the Chinese Government being held fully responsible for that. The Department requests your views regarding this suggestion. It should, however, be kept strictly confidential and you are not to refer to it in talking with any of your colleagues. A plan like that outlined above could obviously not be helpfully proposed by the American Government without the Japanese concurrence in view of all the circumstances connected with the retrocession by Japan of all its rights and claims in Shantung. The Department is contemplating sounding out the Japanese Embassy regarding this suggestion unless you see objections thereto. [End paraphrase.]

The Department approves of the demands for penalties specified in your telegram No. 231 June 20th and of the general proposal with respect to the investigation of banditry in the provinces and the penalties provided for delinquent officials as set forth in your telegram No. 226 of June 15th; but it desires to be informed more precisely as to the nature of the International Commission and whether it is the same as the military commission headed by General Connor.

With regard to the establishment of a railway police force, the Department has received from the British Embassy a memorandum dated June 19th which, after referring to the necessity of effective guarantees for the safety of foreigners in China if their position is not to become impossible states

"His Majesty's Minister at Peking has proposed the creation of a railway police force under foreign officers, together with increased foreign control over the railway revenues, in order to provide for the payment of the force.

This scheme appears to His Majesty's Government to be the one most likely to produce useful results, but difficulty is to be anticipated in securing its acceptance by China unless the Powers present a united front in the matter."

Although the above plan could not be considered separately or apart from other proposals which the Diplomatic Body may contemplate presenting to the Chinese Government, it nevertheless appeals to the Department as being intrinsically meritorious. Such a plan, however, could not be predicated upon other than a purely international basis whose reason and justification would be the general security of foreigners and of their rights of travel and of trade in China; it could not receive the support of this Government, if such a force should be designed and organized primarily for the protection of the financial interests of foreign bondholders or for the rehabilitation of British railway loans. It is suggested that the apprehension of such a purpose in the British proposal may account for the position taken by the Japanese Chargé as stated in your telegram.

It is desirable that you should report in considerable detail upon the nature of the proposals for such an organization and it is suggested that if the foreign personnel should be nationals of countries having but moderate interests in Chinese railways, fears of such an organization becoming mainly devoted to strengthening British financial interests might thus be allayed.

The Department also desires in further detail your views and recommendations as to the possible use of the present political crisis in obtaining the acquiescence of the Chinese Government in any program of demands, through withholding recognition of any new Government which may come into power in the near future. In this connection, it would be essential to ascertain the readiness of the other Powers to join in such action and it would be important to consider any possible complication likely to arise through the discontinuance of releases of the salt and customs surplus.

You will be instructed separately with regard to the claims for damages in behalf of the Lincheng captives.

HUGHES

393.1123 Lincheng/179 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 25, 1923—7 p.m.*
[Received 10:10 p.m.]

238. [Paraphrase.] Your telegram 121 of June 23. With respect to the plan contained in the strictly confidential paragraph,[1] I am strongly in favor of including it in the program of the diplomatic corps with one modification described below.

As you state, this plan provides a specific penalty for the Province of Shantung as well as a warning to other provinces. It could be [considered?] as including the progressive penalties to which the diplomatic corps is [now committed], and it associates force with the diplomatic corps' demands, even though this force is not applied to obtain the acceptance by the Chinese Government of those demands. These ends are all highly desirable. Practically all Americans and Europeans in China would approve this plan. They are at present quite generally blaming their Governments for weakness.

However, the proposed penalty would provoke resentment in Shantung and possibly arouse antiforeign feeling as the people of Shantung are intensely pro-Chinese. This applies especially to the greatest of them, General Wu Pei-fu.

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[1] i. e., paragraph three.

The troops in southern Shantung are poor. The Fifth Division stationed at Tsinan would probably be rated as a class B Chinese division. The military authorities of the Province have an arsenal at Tehchow. By cutting the three railway lines they could isolate Tsinan long enough to wipe out a small body of foreign troops. I venture the suggestion, therefore, that while it would not be risking too much to send a few hundred foreign soldiers to ports like Hankow or Pukow, as a matter of precaution no international force of less than four units of 500 men each should be sent to Tsinan. With this change, which is the modification I referred to in the opening paragraph, I am in hearty agreement with your suggestion. It will, I think, greatly strengthen the note presented by the diplomatic corps. [End paraphrase.]

In reply to your inquiry regarding the nature of the international commission which it is proposed to send when necessary into the provinces to report on bandit conditions, the committee was of the opinion that it should be specially constituted on each occasion and should consist of military attachés, legation secretaries or officers communicating [*connected?*] with forces at Tientsin as might at the time seem most desirable.

I am greatly obliged for the copy of the British Government memorandum upon the proposed railway police force and your comments upon it. As to the instruction that I should report in detail upon the nature of the proposals that may be made for such an organization, I beg to say that, although the committee met this forenoon for the purpose of receiving them, the matter was not considered as the British Legation which has taken the lead in pushing this demand was not represented and no further action is likely before British Minister returns from Shanghai at end of the week.

On the subject of your last paragraph I will report later.

SCHURMAN

393.1123 Lincheng/171a : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *June 26, 1923—6 p.m.*

126. Your No. 236, June 23, 1 p.m. With reference to what are termed progressive sanctions, although the Department agrees with the view of the Committee that these should not consist of a pecuniary indemnity, it disapproves of the proposed demands with respect to Shanghai for the reasons outlined in its No. 118 of June 21, 6 p.m.

It apprehends that these demands would appear to that element in China which is most substantial and most friendly to foreigners, as in fact they appear to the Department, to be prompted rather by hopes of advantage to certain groups of foreign interests than by a regard for the necessity of penalizing the Chinese Government for permitting the outrage to occur or for negligence in freeing the captives thereafter. It is believed that such demands, not affecting the provincial militarists but forcing debatable issues with the Chinese commercial community of Shanghai, would serve to alienate the sympathy of that class from which must proceed the demand for stability and good order in China.

It has been the policy of the Department that the question of Settlement extension should not be confused with other issues. In its instruction No. 330, of February 10,[3] the Department advised you of its opinion that the subject of the reorganization of the Mixed Court should remain in abeyance pending the meeting of the Commission on Extraterritoriality; and as you were advised in its telegram No. 14 of January 22, 5 p.m.,[3] the proposals relating to the improvement of Shanghai harbor are not as yet in such form as to meet with the full approval of the Department, inasmuch as they appear in important matters to depart from the recommendations of the Committee of Consulting Engineers, for the purpose of promoting certain local non-American vested interests. Considered merely from the viewpoint of the several national interests concerned, it would appear that, whereas American nationals were the most numerous among the sufferers from the Lincheng outrage, the demands based thereon would accrue primarily to the benefit of particular interests of other nationalities.

With regard to the suggestion that the self-respect of the Diplomatic Body demands the carrying out of the policy of progressive sanctions announced by it, the Department believes that this situation would be fully met by such suggestions as were contained in the Department's telegram No. 121, June 23, 3 p.m., with respect to the establishment of railway police and the possible stationing of troops at Tsinan, or by some other course of action related to the original incident, free from the imputation of ulterior motives, and clearly designed as a penalty upon the Chinese Government and a warning to the officials both of Shantung and of other provinces.

Your 238, June 25, 7 p.m., just received, is having careful consideration.

HUGHES

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[3] Not printed.

393.1123 Lincheng/186 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 29, 1923—10 a.m.*
[Received June 29—7:47 a.m.]

241. Your 126, June 26, 6 p.m. Conformably to your 116 [*118*], June 21, 6 p.m., at a meeting of the committee morning of 25th I notified committee that you disapproved proposed demands with respect to Shanghai and I accordingly requested as everything in the report was provisional and tentative that Shanghai section be stricken out. Committee in general recognized your reasoning as unanswerable.

SCHURMAN

393.1123 Lincheng/187 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 29, 1923—1 p.m.*
[Received June 29—7:53 a.m.]

242. Your 121, June 23, 3 p.m., last sentence. My 234, June 22, 10 a.m. Major Allen has increased demand for indemnity in behalf of self, wife and son to $150,000 gold.

Holcomb, formerly United States district attorney, Shanghai, who is acting as counsel for four other American victims of Lincheng outrage now in Shanghai has come to Peking to consult Legation regarding their claims and informs me his clients intend to demand $150,000 gold each as exemplary damages.

SCHURMAN

393.1123 Lincheng/191

The British Chargé (Chilton) to the Secretary of State

No. 546 MEMORANDUM

His Britannic Majesty's Chargé d'Affaires presents his compliments to the Secretary of State and, with reference to the memorandum from this Embassy dated June 19th and to the telegram from His Majesty's Minister at Peking, copy of which was left with Mr. MacMurray by Mr. Craigie on the 22nd instant,[4] has the honour to inform Mr. Hughes that the Committee appointed by the Diplomatic Body at Peking to deal with the question of the outrage by brigands on the Tientsin-Pukow Railway have now completed their draft note to the Chinese Government.

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[4] Not printed.

The demands are framed under three heads:—

1. Compensation subject to agreement between His Majesty's Government and the United States Government as to the inclusion of (*b*),

2. Guarantees for the future:—

(*a*) A declaration which commences by recalling the terms of Article 10, Annex 16, of the final protocol of 1901[5] and states that the Diplomatic Body will demand that the penalties therein prescribed be summarily imposed on military governors or other officials controlling troops who fail to protect foreigners against banditry. If considered necessary the Diplomatic Body will send their own representatives into provinces in which brigands are prevalent to examine and report on conditions there. The Diplomatic Body reserve the right of excluding such guilty officials from the protection of settlements and concessions in treaty ports.

(*b*) The Diplomatic Body have decided that existing measures for the protection of the railways are inadequate and that it is their duty to help the Chinese Government to carry out certain necessary reforms which, in their opinion, should consist in the reorganisation of forces of special Chinese police who would be placed under the control of foreign officers. The Diplomatic Body reserve the right, after a more considered study of the question, to present their scheme when elaborated to Chinese Government. (This delay will enable the scheme to include provision for foreign control of accounts of management if agreement can be reached between Powers).

3. Sanctions.

The note will ask that punishment of various officials from the military governor of Shantung downwards, according as they vary in degrees of responsibility for the outrage, be decided by the Diplomatic Body. The note goes on to say that punishment of a few individuals is not a sufficient sanction for the incident and, in order to reassure foreigners who are anxious in regard to their future safety for which the Chinese Government is responsible, the Diplomatic Body have decided to demand immediate settlement of certain questions which have long been in suspense and which are of equal importance for the nationals of all the Powers as for the development of China, viz., (*a*) the extension of the international settlement of Shanghai, (*b*) the extension and improvement of the harbour at Shanghai, (*c*) the maintenance of the Whangpoo Conservancy Board agreement, (*d*) the reorganisation of the Mixed Court.

The note concludes by the declaration of the intention of the Diplomatic Body to obtain from the Chinese Government the above mentioned indemnities, guarantees and sanctions in satisfaction of the brigand incident.

There is no doubt that all non-Asiatic foreigners residing in China are very seriously alarmed at the condition of affairs of which

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[5] *Foreign Relations*, 1901, Appendix (Affairs in China), p. 332.

the recent brigand outrage is the climax, and, in the opinion of His Majesty's Minister at Peking, they will probably consider the demands included in the draft Note as minimum both as regards guarantees for the future and as satisfaction for the incident. The prestige of foreigners in China has undoubtedly fallen since the war, for various reasons, and strong measures are required to re-establish that prestige.

His Majesty's Government approve the draft Note to the Chinese Government with the exception of the demand for the settlement of the four Shanghai questions. In their opinion these questions should be omitted as being irrelevant to the main question of the safety of foreigners and their inclusion would confuse the issue and would expose the Powers to the charge of attempting to exploit the occasion for the purpose of obtaining a favourable settlement disconnected with the main question at issue and a doubt would thus be cast upon the sincerity of the motives of the Powers.

That the Powers cannot expose themselves to a rebuff from the Chinese is obvious, and it is equally clear that the situation calls for firm action. The Powers must therefore be prepared to take such measures as will ensure the acceptance of their minimum demands for the future protection of the lives and property of foreigners in China. If a united policy is adopted by the Powers, and especially by the United States, Japan and Great Britain, and if they are prepared to enforce that policy there is little doubt in the mind of His Majesty's Government that the Chinese will yield long before it becomes necessary to exercise coercion.

There is every probability that, unless the Powers are determined to exact some real guarantees, incidents similar to the recent bandit outrage will recur and an outburst of public feeling would thereby be provoked which may easily precipitate the Powers into commitments greater than those which they at present contemplate. It is extremely difficult to suggest any methods of pressure of a financial or economic character, and in view of the danger of an outburst of public feeling His Majesty's Government are therefore prepared to take part in a naval demonstration, and the question of a possible increase in the North China garrison is being considered by the War Office. His Majesty's Government are, however, averse from the idea of stationing troops in other Treaty Ports and also from the military occupation of railways other than the employment of foreign soldiers as guards on trains, should the Diplomatic Body consider this course desirable.

As an alternative to military occupation, His Majesty's Government propose, however, that, if necessary, the Powers might inform

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the Chinese Government that unless they undertake to establish a special Chinese railway police force under foreign officers the question of the establishment of such a force by the Powers themselves will have to be considered, the expenses to be defrayed out of Chinese sources.

In spite of the very special British interests in the Tientsin-Pukow Railway, His Majesty's Government would be reluctant to act alone but in view of the already excited state of public opinion in the United Kingdom the situation might well develop to a point where, in view of the growing danger to British lives and property, it would be difficult for His Majesty's Government to remain passive.

In communicating the above views of His Majesty's Government to the Secretary of State, His Majesty's Chargé d'Affaires is instructed to enquire whether the United States Government agree to the demands as modified and whether they would be prepared in the last resort to enforce them by cooperating in the application of the measures suggested in this communication.

His Majesty's Chargé d'Affaires would be grateful for an early expression of the views of the United States Government on the subject.

WASHINGTON, *June 30, 1923.*

393.1123 Lincheng/168 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *July 2, 1923—5 p.m.*

133. Your 235, June 22, 4 P.M.

Department perceives no objection to categories of indemnities designated 1, b and c your telegram. Department considers that before agreeing to indemnities of category 1 Consuls should exact convincing evidence of accuracy of allegations of loss of baggage and other property. Department considers that proof of relief expenses under category c should be exacted.

Legation may acquiesce in proposal regarding separate presentation of claims for indemnities for loss of earnings, bodily injury, death and diminution of earning capacity. Your 234, June 22, 10 A.M. indicates tendency to make exorbitant claims. Legation should exact convincing evidence in support of allegations of loss or injury.

HUGHES

393.1123 Lincheng/191

The Secretary of State to the British Chargé (Chilton)

The Secretary of State presents his compliments to the British Chargé d'Affaires, and is pleased to state his general concurrence in the principles set forth in the Embassy's memorandum (No. 546) of June 30, 1923, in reference to the draft note prepared by the committee of the Diplomatic Body at Peking with a view to its presentation to the Chinese Government in connection with the recent bandit outrage on the Tientsin-Pukow Railway.

The American Government regards with the utmost anxiety the situation of danger, not only to the just treaty rights and interests of its nationals, but to the personal security of its citizens resident in China, which has come to exist in consequence of the breakdown of governmental authority in that country, and the weakening of the sense of responsibility on the part of those elements to which the Treaty Powers are entitled to look for the protection of foreign lives and interests. In the recent Conference at Washington, the various Powers possessing interests in China found themselves unanimous in the policy of affording her the fullest and most unembarrassed opportunity to develop and maintain for herself an effective and stable government, and to that end pledged themselves to certain action in specific matters. The course of political development in China since the Conference has thus far, however, been a disappointment to those who had hoped that a fuller measure of opportunity for independent development would hasten the evolution of a more normal and orderly internal administration of the country and make possible the establishment of a governmental entity capable of fulfilling the international obligations correlative to the rights of sovereignty which the Conference had recognized and sought to safeguard for China. The recent bandit outrage at Lincheng affords evidence such as cannot be ignored, that the present unfortunate political disintegration in China involves a failure of appreciation, on the part of the Chinese officials, of their definite responsibilities with respect to the safety and the interests of those sojourning in China under the protection of the Treaties. And it appears to this Government, as to the British Government, necessary that measures should be adopted by the Powers to recall those officials to a sense of their obligation and responsibility in this regard.

With reference to the four proposed demands for the settlement of Shanghai questions, this Government is gratified to note that the British Government recognizes the irrelevancy of these matters to the main question at issue—the security of foreign life and property in China—and the likelihood that the presentation of such demands

would confuse that issue and arouse suspicion of the sincerity of the Powers. Instructions of substantially identical tenor with the views set forth in the Embassy's memorandum had already been transmitted to the American Minister in Peking.

This Government is also in full agreement with the view that the Powers should not expose themselves to a rebuff from the Chinese Government, and that they must be prepared to take such measures as will insure the acceptance of their minimum demands. It appears, in fact, to this Government that the elaboration of a definite program of action in the event of the Chinese Government proving unresponsive to the demands which will be made is fully as important as the formulation of those demands, as the situation would be aggravated unless the Powers were in a position to exert prompt and effective pressure upon the Chinese Government.

With reference to the choice of method for the purpose of achieving the desired end, this Government frankly doubts the efficacy of a naval demonstration as suggested in the Embassy's memorandum: the familiarity of the Chinese with the presence of foreign vessels of war in their ports, coupled with the necessary limitations and the vagueness of action involved in such a course, appear to this Government likely to render such a demonstration ineffective as a means of obtaining the acquiescence of the Peking Government in such demands as may be made. In expressing this view, however, it is not intended to close the door to the discussion of any more concrete plan of concerted naval movements which might appear feasible and suitable to the purpose of impressing upon the Chinese the seriousness with which the foreign Powers regard the state of affairs which has come to exist in China. This Government, moreover, has not yet abandoned the hope that, out of the discussions now taking place in the Diplomatic Body, some plan may be devised which will commend itself for the purpose in view by its relevancy to the principal issue, its practicability, and its promise of exerting the requisite pressure upon the Chinese.

As regards possible methods of exerting financial or economic pressure, this Government has inquired the views of its Minister in Peking as to the possible advisability of the withdrawal of recognition of the present Chinese Government, or the withholding of recognition from any new Government that may seek to assume power in the present political crisis, in the event of a refusal to acquiesce in any such demands as may be agreed to by the Powers—such nonrecognition to involve a suspension of releases of customs and salt surpluses. While hopeful that other means may suffice to induce the Chinese authorities to take the steps requisite to bring about normal conditions of order and security, without necessitating recourse to so

drastic a form of international action, the American Government suggests that the possibility of the eventual discontinuance of recognition to the Chinese Government should be explored with a view to determining whether it would in the final resort prove effective as a means of pressure; and it would be pleased to learn the views of the British Government upon this subject.

WASHINGTON, *July 9, 1923.*

393.1123 Lincheng/159: Telegram

The Secretary of State to the Minister in China (Schurman)[6]

WASHINGTON, *July 9, 1923—6 p. m.*

138. Your telegram 226, June 15, 6 p.m.

[Here follows a summary of the memorandum of June 30 from the British Chargé printed on page 671, and of the Secretary's note of July 9 to the British Chargé printed *supra*.]

On July 7th, Counselor of Japanese Embassy called on Chief of Division of Far Eastern Affairs to discuss British suggestions which appear to have been communicated to Japanese Government substantially as in the memorandum of June 30 to this Government. While it was emphasized to him that detailed discussions and negotiations on this subject must be centered in the Peking Diplomatic Body, the general attitude of this Government was explained to him as set forth in the above summary of reply to the British memorandum and in so much of Department's telegram No. 121, June 23, 3 p.m., as relates to proposed railway police.

Japanese Counselor said that his Government's inquiries in London had elicited no concrete plan for suggested naval demonstration, and that his Government did not favor such a demonstration which might require landing of forces and lead to further complication of the situation.

As to proposed railway police he said his Government in response to inquiries had been advised by British Embassy in Tokyo that British Government's plan contemplates "Foreign officers would presumably be under the Chinese authorities to the same extent as foreign employees in Salt gabelle, etcetera. To insure essential coordination and the regular allocation of funds for the police budget it would seem very desirable to secure appointment of foreign accountants-in-chief and possibly traffic managers associated with Chinese and endowed with properly prescribed functions." He stated that his Government would be favorably disposed towards

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[6] See last paragraph for instructions to repeat to Tokyo as no. 69.

such a plan on the assumption that the choice and distribution of foreign officers would be arranged fairly and with a view to effective results. He said Japanese Government did not favor the British suggestion that railway police might be organized by the foreign Powers in the event of the Chinese authorities failing to do so, as it questions whether such interference in Chinese affairs would be consistent with Washington Conference Treaties.

He said that his Government had not expressed itself on the Shanghai demands, but had merely advised the Embassy that the British Foreign Office did not favor them.

Repeat as No. 69 to Tokyo which it is assumed you are keeping adequately advised of main lines of discussion on this subject.

HUGHES

393.1123 Lincheng/203 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *July 16, 1923—7 p.m.*
[Received July 16—6:43 p.m.]

261. My 241, June 29, 10 a.m. Committee met today and completed draft of note to the Chinese Government which will now be reported to diplomatic body for appropriate action. The only important modification since the omission of the Shanghai demands was the raising of the indemnity for loss of liberty and hardships suffered by the captives as follows: $500 silver per captive per day for the first 3 days, $100 a day for the next week, $150 for the next, $200 for the next, $250 for the next, $300 for the next. For the life of the Englishman $20,000 silver was demanded.

Committee have thought it best to drop altogether the subject of progressive sanctions. This decision was due on the one hand to the impossibility of finding any suitable substitute for the Shanghai demands and on the other hand to a relaxation of feeling in the minds of the Ministers who in early June were most insistent in urging this penalty.

I brought up at the end the question as to what measures should be taken to insure acceptance of the demands made by the diplomatic body in case the Chinese Government should prove unresponsive thereto as discussed in your number 138, undated,[7] received July 11, 9 a.m. The French Minister thought it would be unwise to elaborate a definite program of action in advance and believed we should be in a better position to deal with the matter when we had learned reaction of the Chinese Government. I ventured the opin-

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[7] July 9, 6 p.m., *supra*.

ion that the Chinese Government could be brought to the acceptance of the demands contained in our note through ordinary diplomatic pressure and that the real difficulty would be over the problem of the reorganization of the railway police force under foreign officers which is reserved for a future communication. This view was generally concurred in though the opinion was also expressed that the Chinese would not take favorable action without some delay.

This afternoon Japanese Chargé d'Affaires (the new Minister is to arrive tonight) called on me to discuss further the subject of railway police with respect to which he had hastily indicated to me his Government's views before the committee meeting this morning. It is clear to me that while not formally opposing in principle the British program, the Japanese Government views it with suspicion. The Japanese representative here will, I venture to predict, be found supporting the French Minister's proposal of leaving railway police under Chinese control but subject to foreign inspection and report.

On the merits of the case I must add that this latter program has much in its favor. In the first place it does not relieve Chinese Government of full responsibility for protection of foreigners traveling on railways and, secondly, it does not assume as the British proposal seems to assume that traveling would be safe if only foreign officers were given supreme command of Chinese railway police, whereas, in my opinion, dangers of travel in China will not be greatly reduced till bandits are suppressed in the provinces. In this connection I may report that French Minister some time ago observed to me that in his opinion and that of the Chinese experts in his Legation the plan of sending foreign experts to the provinces to report what the tuchuns are doing for the suppression of bandits which the committee adopted on my recommendation is likely to prove the most helpful and constructive feature of committee's note.

Japanese Chargé d'Affaires told me this afternoon that his Government desired that the subject of railway police should be worked out by the diplomatic agents here. I replied that I believed that was also the view of my Government, which, however, favored in principle the British proposal subject of course to the understanding that its application would be limited to the protection of travelers and not embrace any ulterior objects. I had previously cited to him your attitude in the Shanghai matter as proof of your insistence that the diplomatic body should limit itself exclusively to the object under contemplation, namely, the prevention of future Lincheng outrages.

Committee decided to postpone further consideration of railway police problem till British Minister who [went?] to Pehtaiho a week ago could be present.

SCHURMAN

393.1123 Lincheng/203 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *July 24, 1923—3 p.m.*

147. Your number 261 July 16: 7 P.M.

With reference to elaborating a program of action in the event of the Chinese Government proving unresponsive to the demands of the Diplomatic Body, the Department cannot but feel that it would be hazardous to present a note containing the minimum demands of the Powers without at least having thoroughly explored beforehand such measures as may seem practicable and capable of exerting the requisite pressure upon the Chinese, although it may not be necessary to go so far as a definite agreement to undertake any specified course of action.

Concerning the organization of a force of railway police, it is not the understanding of the Department that the Chinese Government, because of the organization of such a force, is in any degree to be relieved of its full responsibility for the protection of foreigners traveling on railways, or that foreign officers are to be placed in "supreme command" thereof. With reference to the statements made to you on this subject by the Japanese Chargé and his apparent misapprehension of the British proposals, you are referred to that portion of the Department's telegram No. 138 July 9: 6 P.M., dealing with the conversation between the Japanese Counselor and the Chief of the Division of Far Eastern Affairs on the subject of railway police. In the light of its present information, the Department is of the opinion that there is no essential difference between the British proposals concerning railway police, and the French proposals as outlined by you, the basic idea being that foreign officers are to be employed in association with officials of the Chinese Government in a manner similar to that followed in the Customs and Salt services.

With reference to your telegram No. 257, July 13: 10 A.M.,[8] it is not the Department's view that the withdrawal of recognition from the Peking Government would involve withdrawing from Peking the Legations, which would continue to function for the maintenance of *de facto* relations with the Chinese authorities, for the transaction of business among themselves, for the direction of their respective Consular services, and for the exercise of such protection of their national interests as might be possible under the circumstances.

With reference to your despatch No. 1571, May 29th,[9] the War Department, to whom a copy of your despatch was transmitted, has replied—

[8] *Ante*, p. 513.

[9] Not printed; for résumé, see telegram no. 212, June 10, from the Minister in China, p. 655.

"The War Department desires to furnish whatever additional troops the State Department may deem necessary during the present emergency in China. If only a small reinforcement is needed and that only for a comparatively short time, then it would probably be advisable to send the third battalion of the 15th Infantry from the Philippines. But if a larger force were needed, or if it appeared likely that the additional troops would have to remain in China for a considerable time, then the reinforcement would probably have to be sent from the United States.

Therefore, should the despatch of reinforcement[s] be deemed necessary, I would ask that formal request be made by the State Department indicating its desire for additional troops and the mission they are to perform."

In view of these circumstances, the Department is not inclined to request the War Department for the despatch of additional troops at the present time unless you consider reinforcements to be absolutely necessary.

HUGHES

393.1123 Lincheng/206

The Department of State to the British Embassy

MEMORANDUM

With reference to the British Embassy's memorandum of June 19, 1923, relating to the proposal made by the British Minister at Peking for the creation in China of a railway police force under foreign officers for the purpose of providing an effective guarantee for the safety of foreigners, the Secretary of State has to advise the Embassy that on June 23 he instructed the American Minister at Peking to report in detail upon the nature of the proposals for such an organization. From a report by the Minister, dated July 16th, it appears that the Committee of the Diplomatic Body, appointed to formulate the demands to be presented in connection with the settlement of the Lincheng incident, has had considerable discussion on the subject of the proposed railway police, but that, on the date above mentioned, they voted to postpone further consideration of this question until the return of the British Minister, who had been absent at Pehtaiho for a week.

The Committee of the Diplomatic Body has now completed the draft note covering the demands to be presented to the Chinese Government: but it does not appear that there has been any elaboration of the bare principle of a railway police under foreign officers, the details of this plan being reserved for subsequent communication to the Chinese Government. While believing the plan to be intrinsically meritorious, this Government is not in a position to indicate its unqualified support thereof until it is made aware of the practical

details of the proposal. It also believes it somewhat hazardous to incorporate such a demand in the note for presentation to the Chinese Government before the Diplomatic Body shall have formulated the details of the plan with such a degree of precision as to assure substantial accord when final arrangements are to be made with the Chinese Government for the actual organization of the force. This Government shares the view of the British Government, as expressed in the Embassy's memorandum of June 19th, that it is desirable that "action should be taken promptly before the effect created by the recent outrage has had time to wear off". It therefore hopes that the full exposition of the proposal originally made by the British Minister may be expedited, with a view to harmonizing at as early a date as possible the views of the Diplomatic Body and thus preventing any dissipation of influence on the part of the Powers in dealing with the questions arising from the railway outrage of last May.

WASHINGTON, *July 28, 1923.*

393.1123 Lincheng/223

The Minister in China (Schurman) to the Secretary of State

No. 7732 PEKING, *August 14, 1923.*
[Received September 7.]

SIR: With reference to my telegram No. 279, of August 10, 12 noon,[10] regarding the delivery of the note addressed by the Diplomatic Body to the Minister for Foreign Affairs, containing the demands of the Diplomatic Body as a result of the attack upon foreigners at Lincheng, I have the honor to transmit herewith a copy and translation of the note in question.

The text of this note has been published in the press.

I have [etc.] JACOB GOULD SCHURMAN

[Enclosure—Translation]

The Diplomatic Corps at Peking to the Chinese Minister for Foreign Affairs (Wellington Koo)

PEKING, *August 10, 1923.*

MR. MINISTER: In continuation of previous communications addressed to the Chinese Government relative to the Lincheng incident (the attack on an express train on the Tientsin-Pukow line during the night of the 5th–6th May, 1923, in the course of which foreigners were carried into captivity by the brigands), the Diplomatic Body

[10] Not printed.

has the honour to notify the Government above mentioned of the decisions which it has reached concerning:—

(1) The damages which the Diplomatic Body proposes to claim from the Chinese Government for the victims of the outrage;

(2) The guarantees which the Diplomatic Body considers to be necessary for the future; insistence on the responsibility of the military governors and other authorities; measures for the protection of the railways;

(3) Sanctions. Punishment of the officials or employees of the railway who were guilty in this matter of neglect of duty or of complicity with the brigands.

I. Damages

The Diplomatic Body claims damages from the Chinese Government for the foreigners who were the victims of the Lincheng incident.

These damages will be classified into the following categories:

(A) Compensation for loss of baggage and objects which were either stolen or lost at the time of the attack on the train and for individual medical attention rendered to the prisoners during the period of their detention; these will be based on the sworn statements of the persons concerned in the presence of their respective Consuls.

(B) Compensation for the loss of life and of liberty and for sufferings and indignities undergone by all the foreign travelers while in the hands of the brigands; $20,000 Mex. for the foreign traveler who was killed on May 6th at the time of the attack on the train by the brigands; $500 Mex. per prisoner per day for the first three days of detention, May 6th, 7th and 8th; $100 Mex. per prisoner and per day during the week commencing May 9th; $150 Mex. per prisoner and per day during week commencing May 16th; $200 Mex. per prisoner and per day during the week commencing May 23rd; $250 Mex. per prisoner and per day during the week commencing May 30th; $300 Mex. per prisoner and per day during the week commencing June 6th.

(C) Compensation to cover reimbursement of the amounts expended in supplying relief to the prisoners.

In formulating the above mentioned demands for definite indemnities (A, B and C) the Diplomatic Corps declares that the foreign victims of the Lincheng incident are entitled to receive from the Chinese Government supplementary indemnities varying according to individual cases as compensation for bodily injuries, medical attention, loss of earnings and temporary or permanent decrease of earning capacity caused by their captivity or in consequence thereof. Individual demands will be examined and formulated in each case by the Legation of the person interested.

The Diplomatic Corps endorses the demands presented or to be presented separately by several Legations for damages suffered by foreign prisoners of brigands in Honan from June to December, 1922, thereby indicating clearly that the Diplomatic Body has been notified of these demands and approves them in principle.

II. Guarantees for the Future

The Diplomatic Body notes with great regret that the brigands infest not only the province of Shantung but all or a part of the provinces of Chihli, Kiangsu, Honan, Anhui and other provinces and that the means employed at present to suppress them are notoriously inadequate. The first duty of the Chinese Government being to maintain order and protect foreigners and Chinese against violent acts and outrages on the part of the brigands, the Diplomatic Body invites the Chinese Government to take, through the agency of the inspecting generals, military governors, etc., immediate steps to cooperate in organizing with the help of their best troops vigorous operations against the bandits. The Diplomatic Body will eventually instruct the Military Attachés of the foreign legations to follow these operations and report to them.

A. Responsibility of the Military Governors and Other Provincial or Local Authorities

The final protocol for the settlement of the disturbances of 1900[11] (Article X and Annex 16) declares that all the Governors General, Governors, and provincial or local officials are bound to insure in the most efficacious way the protection of foreigners and are responsible for the maintenance of order in the event of new antiforeign disturbances, within the limits of their districts.

It expressly prescribes the following penalties for those who should fail in this duty:

"If, owing to indifference, or rather of voluntary tolerance, great calamities take place, or if treaties should be violated and no immediate steps taken to make reparation or inflict punishment, the Governors-general, Governors, and the provincial or local Officials responsible will be removed and shall not be reappointed to other offices in other provinces, or hope to be reinstated or receive any further honors."

Brigandage having become a grave menace to the lives, property and rights of foreigners in China, the Diplomatic Body will keep itself accurately informed with regard to this state of unrest and

[11] *Foreign Relations*, 1901, Appendix (Affairs in China), p. 312.

for that purpose it has decided on the despatch in case of need of its own representatives into the provinces infested by the brigands in order to examine and report upon the local situation. When it appears to the Diplomatic Body that a Military Governor or officer commanding troops or that a provincial or local official has failed or is failing in his duty of providing protection for foreigners in conformity with the Clauses of the Protocol of 1901 above mentioned, the Diplomatic Body will demand the immediate imposition on the offender of the penalties prescribed therein without prejudice to such additional punishments, fines, etc., as the circumstances may call for.

The Diplomatic Body moreover reserves the right to order the exclusion of these officers or officials from the protection of the foreign concessions or settlements in the treaty ports.

B. MEASURES FOR PROTECTING THE RAILWAYS

The Lincheng incident has clearly shown the danger which foreign travelers at present run on the Tientsin-Pukow Line, which is one of the principal means of communication in China, and on the Chinese railways generally.

From the inquiries which the Diplomatic Body undertook and from the information which it has collected, particularly from the International Military Commission, which it despatched to Lincheng, it transpires that the present system of protection of the Chinese railways is insufficient to insure in an efficient manner the protection of the lines.

The Diplomatic Body considers that reforms are necessary and that it is its duty to aid the Chinese Government to carry these out, by collaborating with them in the task.

The reforms which the Diplomatic Body has in view would consist in the reorganization of the forces of the Special Chinese police who would be placed under the supervision of foreign officers and entrusted with the protection of the Chinese railways.

The Diplomatic Body reserves the right, after a more elaborate study of the question, of presenting as soon as possible to the Chinese Government the scheme which it will have adopted.

III. SANCTIONS

The Diplomatic Body requires from the Chinese Government the punishment of those civil or military officials and employees of the Tientsin-Pukow railway whose complicity with the bandits may be established or whose conduct may be found to have facilitated the crime either by negligence or lack of foresight before, or by inac-

tivity during, the incident or whose attitude may have been found to have contributed to the prolongation of the detention of the foreign prisoners.

Without entering into the details of all the prosecutions to be undertaken in connection with the Lincheng incident, the Diplomatic Body, after having made a careful study of the matter by means of international commissions both civil and military and by other methods, finds it necessary to request the Chinese Government to inflict upon a certain number of persons the punishments which it has determined. The demands of the Diplomatic Body are as follows:—

1. That General T'ien Chung-yu, Military Governor of Shantung, who, as Military Governor of Shantung, was directly and wholly responsible for the maintenance of order and the protection of foreigners in his province, and, as Commander-in-Chief of all the troops in his province, was responsible for the payment, discipline and conduct of his troops, should be summarily dismissed from his present duties, that he shall never henceforth be entrusted with any official duty or mission on Chinese territory and that he should henceforth receive no new honor.
2. That General Ho Feng-yu, Defense Commissioner at Yenchowfu and Commander of the 6th Mixed Brigade of Shantung, who, as Defense Commissioner at Yenchowfu, had responsibilities in Southern Shantung similar to those of General Tien for the entire province and who, after General Tien, was responsible for the continuation of brigandage in southern Shantung, shall be dismissed from his duties and shall never again be appointed to any military command whatsoever.
3. That General Chang Wen-t'ang, Commander of the Tientsin-Pukow railway police, responsible for the discipline and conduct of the police along the permanent way and on the trains of the said railway, shall be dismissed from his duties and shall never again be entrusted with any police duty on railways.
4. That Chao Te-chao, the officer in command of the guard on the train which was attacked on May 6th, responsible for the defence of the train, who was not in uniform at the time of the attack and who took no action and allowed himself to be captured by the bandits, should be dismissed from his present duties and shall never again be employed in a police capacity.

In conformity with the provisions of the last paragraph of Article II–A above, the Diplomatic Body reserves the right to themselves to order the exclusion of these four officers from the protection of the foreign concessions and settlements in the Treaty Ports. The punishment of certain officers, however, does not adequately satisfy the just claims of the Diplomatic Body.

The attack by brigands on the train from Pukow to Peking, the capture of foreign travelers, the length of their captivity, the meas-

ures which had to be resorted to to obtain their release, have proved to the world that foreigners do not enjoy in China the guarantees of safety to which they are entitled. The actual sanction of the Lincheng incident should be found in a strict respect by the Chinese Government and all authorities in China for the rights of foreigners and for the treaties in force.

The Diplomatic Body has firmly determined to guard closely and to maintain by all measures in its power the defense of these rights and the application of those treaties which were solemnly confirmed at the time of the final establishment of the Republic of China, by the declaration communicated to the Legation[s] on October 6, 1913, prior to the publication on the 10th of the same month.[12]

Before terminating this note, the Diplomatic Corps draws the attention of the Chinese Government to brigandage in China which in its present state constitutes a grave danger for the whole country as well as for the rights and interests of foreigners.

The Diplomatic Body has received admissions that the Chinese Government were aware of the existence and recent development of brigandage in China in the official notifications addressed by the latter to the members of the Diplomatic Body respecting the insecurity of certain districts from which the Waichiaopu desired on that account to exclude foreigners from those districts.

The Chinese Government has now recently been warned that these notifications will be only considered as valid for a limited period and the Diplomatic Body hereby declares that henceforth they will consider these notifications as being official recognitions on the part of the Chinese Government of the existence of brigandage in the districts mentioned and all renewals of the said notifications after the fixed time limit as being official admissions on the part of the Chinese Government of their failure to suppress the brigandage in these same districts where they had denied its existence.

The Diplomatic Body aims at suppression of brigandage in China because brigandage threatens the rights and interests of the foreigners under their care. But the Chinese no less than the foreigners suffer from the evils of brigandage and when the Diplomatic Body asks that by the suppression of brigandage foreigners should be guaranteed security in China it is in fact asking that the Chinese should also be guaranteed security in their own country.

The recent development of brigandage with its evil consequences is not always caused by reason of the lack of military forces; there

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[12] See despatch no. 1052, Oct. 13, 1913, from the Chargé in China, *Foreign Relations*, 1913, p. 135.

are at the present time in China more soldiers under arms than in any other country in the world. But these soldiers do not suppress the brigandage either because, not being paid, they refuse to make any efforts and even fraternize with the bandits or, as is generally the case, because the best of them are otherwise employed. As long as the Chinese Government allows the best disciplined troops in China to devote themselves to those civil wars which perpetually afflict one part or another of this great country the national or provincial armies will be diverted from their true task. They will more than any one else minister to the misery and sufferings of the Chinese people instead of acting as their defenders against the outrages and depredations of the bandits.

If the Government of China continues to authorize or to tolerate these abuses, if they do not set themselves resolutely to repress the brigandage which threatens the rights and interests of foreigners in China, the Diplomatic Body will be obliged to consider what further steps should be taken to protect the lives, the property, the rights and interests of foreigners in a country which although it enjoys the rights and privileges accorded to members of the great family of nations has shown itself incapable of fulfilling even the most fundamental of the duties which are inseparably connected with the rights and privileges of membership.

The Diplomatic Body desires the Chinese Government to understand its intention to obtain in reparation for the Lincheng incident the indemnities, guarantees and sanctions enumerated above.

Accept [etc.]

J. B. de Freitas
W. J. Oudendijk
J. A. Barnet
Johan Michelet
Robert Everts
Le Marquis de Dosfuentes
Jacob Gould Schurman
A. Boyé
A. de Fleuriau
V. Cerruti
Ronald Macleay
K. Yoshizawa
C. Bonde
H. H. Schroeder
G. de Bulhões
Juan B. Saldaña
For the Mexican Minister

893.105/18 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *August 21, 1923—10 a.m.*
[Received 1:40 p.m.]

289. Plan for reorganization of Chinese railway police previously submitted by British Minister, was after amendment unanimously adopted by committee August 20th for report to diplomatic body together with draft of covering letter to be sent by dean to the Foreign Office. Japanese Minister gave approval subject to instructions from his Government which it was noted applied to others also.

Reference is made in covering letter to declaration in joint note of August 9th [*10th*] that the diplomatic body considers it to be its duty to aid the Chinese Government in carrying out reforms in the existing railway police system or to collaborate with it in that task. It is not stated, however, whether draft of accompanying plan is meant as a proposal to be considered or an ultimatum to be adopted by the Chinese Government.

Plan provides for the establishment of a directorate of railway police in the Department of the Directorate General of Railways in the Ministry of Communications to be controlled by a Chinese director of railway police and a foreign associate director. Latter shall have equal rank and authority with the Chinese director and shall be appointed by the Chinese Government in consultation with the diplomatic body and on terms acceptable to it. This directorate shall reorganize and manage the police on all railways now or hereafter under the control of the Ministry of Communications. The object of such reorganization is primarily to form an efficient force for the protection of travelers on the railways and for protecting railway property against theft or damage, maintaining order at stations and assisting the railway administration to deal with disorder or the breach of regulations on trains and also to cooperate with provincial authorities by a system of detectives and patrols to prevent attacks on the railways by brigands. To that end the directorate shall employ experienced foreign officers who shall act as instructors and inspectors and it is tentatively suggested that some twenty would be required.

The Chinese director of railway police and the foreign associate director within two months of their appointment shall draw up together a detailed scheme of the reorganization and efficient management of the railway police on the lines of this initial project and with a view to carrying out the objects enumerated therein. This detailed scheme when completed together with the names of the foreign officers to be appointed and the terms of their contracts, shall be submitted in the first instance to the diplomatic body for its approval,

after which detailed scheme shall be put into force and no alterations shall be made in its provisions without the consent and approval of the two directors.

Apart from occasions of the authorized movement of troops all railway property shall be put out of bounds for military officers or soldiers, except when their assistance is called for by the railway police or when traveling with tickets as ordinary passengers.

Plan calls for foreign chief accountants on the railways to safeguard funds for expenses of the new directorate and railway police, and these expenses are treated as part of the ordinary running costs which have priority even over loan obligations. Expenditures already supposed to be incurred in principal railways for police from China amount to $1,600,000 annually. With this sum the new system would begin, and it would provide a force of 6,000 men. Force would be increased as railway revenues under good management improved. But now and always the actual protection of the lines against large organized bands of brigands and the work of bandit suppression in the regions traversed by the railways must remain the responsibility of the provincial governors as set forth in the joint note of August 10.

The following of the plan is quoted verbatim:

"In order that the foreign chief accountants of the various railways may be in a position to furnish without fail or delay the funds required for police expenses, the directorate general of railways will make arrangements satisfactory to the diplomatic body on all lines where such arrangements are not already in force for the safe custody of railway revenue and for its application only to purposes and obligations under the joint supervision of the Chinese managing directors and foreign chief accountants, and as a measure for improving the efficiency of railway operation and increasing the revenue, the directorate general of railways will engage on all lines experienced foreign traffic managers and inspectors to cooperate with the railway police in the due discharge of their functions."

The arrangements of the plan are to remain in force 10 years when Chinese Government and diplomatic body shall determine whether they are to be continued, revised, or abrogated.

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SCHURMAN

893.105/18 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *August 25, 1923—3 p.m.*

185. Your telegram No. 289 August 21, 10 a.m.

Japanese Ambassador called late yesterday afternoon on Chief of the Division of Far Eastern Affairs, saying that he had received

from his Government urgent instructions to consult the Department with respect to what he termed the British plan for control of railway police in China. He indicated considerable anxiety lest this Government should hastily commit itself to certain details of the plan which were felt to be inconsistent with the policies of the Washington Conference and likely to antagonize Chinese feeling.

He said his Government had instructed its Minister in Peking to present to his colleagues four proposed amendments summarized herewith:

(1) To avoid the appearance of the foreign Powers sharing the responsibility of the Chinese Government in consequence of their insistence upon a particular form of organization, the Japanese Government feels that the Diplomatic Body should avoid requiring that the plan of organization should be subject to its approval; it should insist only upon having details of plan communicated to it, and dealing diplomatically with any objectionable points.

(2) Japanese Government feels that to give foreign codirector equal rank and authority with the Chinese director would result in foreign control, and therefore considers that foreigner should be merely an adviser under the Chinese director.

(3) Inasmuch as the functions of chief accountants and traffic managers are avowedly limited to the purpose of providing funds for the police force, Japanese Government feels they should have only powers necessary for that purpose as distinguished from the powers appropriate where their function is to protect bondholders.

(4) Japanese Government considers plan should not extend to all Chinese Railways but only to those most used by foreigners.

Japanese Ambassador was informed that this Government is not committed to anything further than approval of the general principle of foreign assistance in organizing railway police, and that the details of the draft plan are still under consideration.

My own feeling is that under the guise of assuring protection the plan goes too far in the direction of placing in the hands of controlling foreign influences the power of supervision and direction of the finances and operation of the Chinese railways. In view of the strictly limited purposes in view, I do not perceive the necessity for traffic managers on the several roads, nor for giving chief accountants joint control with the Chinese managing directors over entire finances. It would seem to suffice if foreign chief accountant on each line were to have access to all accounts of the road and so much authority as would enable him to compel each month the deposit of the comparatively trifling contribution of the road for police purposes.

I think it is also important that the national status of the foreign police officers and chief accountants should be well understood in advance of the formal presentation of the plan to the Chinese Gov-

ernment. It might well be understood that the Chinese Government should be free to nominate and appoint the personnel subject to the veto of the Diplomatic Body. My own suggestion would be that at any rate the principal officers should be chosen from nationalities possessing no considerable interest with respect to Chinese Railways. You should in any case make it clear that no special right or influence with respect to the organization or personnel of the proposed services in connection with railway police should be recognized as accruing to any nationality by virtue of its financial interest in any of the Chinese railways.

As to the proposed Japanese amendments, the first appears to me well taken in avoiding any positive approval by the foreign representatives which would lend itself to the idea of a divided responsibility. The second suggestion does not seem to me well taken, as the present plan would make the foreign codirector subordinate to the Ministry of Communications, and the proposal to make him merely an adviser would almost certainly deprive him of all power of usefulness. From what has been said above you will understand that I am in accord with the third Japanese amendment and in fact inclined to go further in dispensing with traffic managers. As a practical matter it would doubtless prove difficult to install the plan on all Government railways immediately, and I therefore think that in practice it would be well to adopt the fourth Japanese amendment subject to the understanding that the Diplomatic Body could require the plan to be extended to other Government railways whenever it should judge that circumstances warrant it. I should appreciate receiving from you as promptly as possible an expression of your judgment as to the views I have indicated in regard to the plan itself and the amendments thereto proposed by the Japanese Government.

Mail copy to Tokyo for information.

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HUGHES

893.105/22 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *August 29, 1923—3 p.m.*
[Received August 30—5:54 a.m.]

296. Your 185, August 15 [*25*], 3 p.m. received August 27, 9 a.m. in time to guide me at meeting of committee forenoon August 28th which had been called at the request of Japanese Minister who desired to present amendments framed by his Government to railway police plan heretofore provisionally adopted.

These amendments which he presented to the committee in writing correspond with those mentioned in your telegram. At the meeting committee August 28th three of them were incorporated in report to satisfaction of everybody including Japanese Minister who, however, reserved the right to consult his Government.

First, the proposed foreign associate director was made vice director and the former provision that he should have equal rank and authority with the Chinese director was stricken out and the provision inserted that "it shall be the duty of the Chinese director of railway police to consult the foreign vice director on all matters affecting the railway police."

Second, the detailed scheme of reorganization to be drawn up by the director and vice director shall be notified to diplomatic body but the former provision requiring the approval of diplomatic body before scheme can be put into effect is stricken out though diplomatic body reserves right in accordance with the Japanese amendments to attempt to alter objectionable features by the usual diplomatic methods.

Third, the reorganization is to begin with Peking, Hankow and Tientsin-Pukow lines and to be gradually extended to other railways.

Subject of accountants and traffic maltreatment [*managers*] was freely discussed in light of Japanese amendments and British Minister finally expressing desire to consult his experts, he was asked to draft paragraph for consideration of Committee which agreed to meet August 29. At this meeting the British Minister presented following which was unanimously adopted:

"The entire expenditure for police purposes of each railway shall be met from the gross revenue of that line and the foreign chief accountant of the railway shall be charged by the directorate general of railways with the duty of setting aside, safeguarding and disbursing the necessary funds to meet the budgetary requirements of the railway police.

In order that the provisions of the preceding paragraph may be tentatively carried out on railways where foreign chief accountants are not already responsible for the custody of railway funds the directorate general of railways undertakes to place in the hands of foreign chief accountants on such lines the duty of setting aside, safeguarding and disbursing sufficient funds from the revenues to meet the requirements of the railway police expenditure as provided in article 7."

It was not necessary at any time for me to cite my instructions of which therefore I made no mention. I collaborated with my colleagues in modifying the original tentative report to meet the Japanese requirements, only taking the lead in the discussions when Japanese Minister suggested replacing the proposed foreign associate

director with rank and powers coordinate with the Chinese director by a foreign adviser with no definite functions whatever. I pointed out that the office and rank of adviser had fallen into disrepute and that the setting up of such a nullity was not required even by the terms of the Japanese amendments. Thereupon the compromise already described was agreed to.

I am in entire accord with the views you expressed in your telegram both with regard to the original tentative plan itself and the amendments proposed thereto by the Japanese Government and for the expression of these views generally and even in detail, I have the honor to refer to my telegrams 200, June 6, 8 p.m. and 261, July 16, 7 p.m.

Probably the Chinese Government will reject even this plan. Through an unfortunate leakage newspapers secured a report of the principal features of the so-called British draft and they are conducting, no doubt under Government stimulation, violent propaganda against foreign interference in railway matters. The most to be expected as a result of collaboration with the Chinese Government are: foreign vice director to be consulted, foreign inspectors to report and foreign press publicity for the correction of the most flagrant evils of Chinese railway police administration.

SCHURMAN

393.1123 Lincheng/231 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *September 28, 1923—10 a.m.*
[Received September 28—9:39 a.m.]

325. Your 208, September 26, 5 p.m.[13] Lunching with Koo September 21st he told me reply to Lincheng note would be sent 24th.[13a] I warned him of danger of making issue with the diplomatic body which he would find immovable. He said that note would not entirely satisfy either Chinese or foreigners but he had to take account of Chinese public opinion as diplomatic body also had probably been influenced by foreign opinion in making their demands. It is also true, though I do [*did?*] not say so, that it is harder for a weak government than for a strong one to comply even with just and moderate foreign demands. Koo intimated that dismissal of Tuchun Tien would be the greatest difficulty. I replied it was inevitable. I conjecture, if deemed advisable, thought of a solution by way of Tien's resignation perhaps after Tien had had his face saved by Koo's

[13] Not printed.
[13a] *Post*, p. 696.

reply, as he observed significantly that Tien would be coming to Peking soon enough.[14] I also got the impression from Koo that he was not laying down final positions but left the door open for further yielding.

At the meeting diplomatic body afternoon 27th opinion expressed was that note was conciliatory, well drafted, plausible, but not proof against effective reply. Sentiment was unanimous against modifying any part of the demands of the note of August 10th including the principle of supplementary indemnities for injuries, loss of earnings, etc., which Koo rejects. I was not clear, however, whether the best method was to send a reasonable rejoinder as this might lead to a prolonged discussion in which the Chinese Government would obscure the situation and raise endless questions. Another suggestion therefore was to reiterate our demands and make little or no argument. A third method of procedure was put forward by the German Minister, namely, to hold matters in abeyance, tell the Chinese Government we noted the reform promised in Koo's note and would before replying thereto give them reasonable time to put these reforms into effect.

Another meeting of diplomatic body for further consideration of Koo's reply will be held Monday forenoon October 1st. Diplomatic body as a whole will be able and seems disposed to take more active part in business than was possible in summer when matter was left pretty largely to those of us who remained in Peking.

SCHURMAN

393.1123 Lincheng/257

The Minister in China (Schurman) to the Secretary of State

No. 1852 PEKING, *September 29, 1923.*
[Received October 26.]

SIR: With reference to my telegram No. 323 of September 25, 1923, 10 a.m.,[15] regarding the receipt of the reply to the note addressed to the Ministry of Foreign Affairs by the Diplomatic Body regarding the Lincheng incident, I have the honor to transmit herewith a translation of the note in question from the Ministry of Foreign Affairs.[16]

I have [etc.] JACOB GOULD SCHURMAN

[14] This sentence apparently garbled in transmission.
[15] Not printed.
[16] The Department received a summary of this note from the Associated Press on Sept. 26 and a copy of the text from the Chinese Legation on Sept. 28.

[Enclosure—Translation]

The Chinese Minister of Foreign Affairs (Wellington Koo) to the American Minister (Schurman)

PEKING, *September 24, 1923.*

M. LE MINISTRE: With reference to the Note of the Diplomatic Body of August 10th [17] last relative to the Lincheng incident which Your Excellency handed to me on the same day and of which an acknowledgment was made in due course, I have the honour to inform Your Excellency that the Chinese Government have given their most careful consideration to the contents of the said communication. The fact that it is a collective Note signed by all the Chiefs of Missions of the Diplomatic Body including those Powers whose nationals were happily not found among the victims of the unfortunate incident has impressed them with a sense of its added importance.

The deplorable incident resulted from the attack of a large body of brigands during the night of the 5th–6th May, 1923, upon an express train of the Tientsin-Pukow line near Lincheng on the border of Shantung Province. According to the findings of the Chinese and foreign mixed commission appointed for the purpose it appears that the bandits had clandestinely removed the fish-plates off certain rails near the scene of the incident, caused the train to be derailed about 2:50 a.m. May 6th, indiscriminately plundered passengers and train employees alike, killed one foreign national, and carried a number of other foreigners along with more than a hundred Chinese into captivity.

The very occurrence of the incident cannot be deprecated too strongly. My Government felt as much indignation as could possibly be felt by Your Excellency or the other Members of the Diplomatic Body. The killing of a British subject and the suffering and indignities sustained by other peaceful travellers in the night of the attack and during the subsequent period of captivity have justly called forth a general expression of sympathy and regret. Although several months have elapsed since the incident took place time has not mitigated the sense of outrage with which the Chinese Government review it.

It is, however, reassuring to observe that the incident under consideration, deplorable as it was, was not a case of anti-foreign demonstration nor did it betray any symptom of special animosity against foreigners as such. It arose simply from an act of lawlessness committed by brigands whose object was robbery and capture of innocent passengers as hostages to compel the raising of the siege by

[17] *Ante*, p. 682.

Government troops of the bandit stronghold of Pao-Tse-Ko. The united voice with which the Government and people of China condemned this incident, the more vehemently because the nationals of foreign Powers too were included, as well as the vigorous measure[s] which [were] taken to pursue the bandits and the several expeditions organized by private and official bodies to render succour and relief to the victims, has given renewed proof of the spirit of friendliness with [*sic*] which China entertains towards the foreign nationals within her territory.

Careful consideration of the facts of the case leads to the conclusion that no liability for damages can be predicated of the Chinese Government. In view, however, of the circumstances of their capture as well as the suffering and indignities sustained by them in consequence, I have the honour to inform you that the Chinese Government desire, of their accord, to do, in the fullest measure possible, what is equitable in the way of reparation for the foreign victims of this unfortunate incident. For this purpose they are ready to accept as the basis of classification and assessment the three categories of damages A. B. & C. outlined in Your Excellency's Note under reply. The reason for the progressive increase in the amount of compensation from week to week for captives during the period of captivity, however, does not seem clear, since the delay in their release was due to the adoption of negotiation with the bandits as the safest means of effecting their release, a course which was followed in harmony with the express wishes of the Diplomatic Body.

As regards what is described in Your Excellency's Note as "supplementary indemnities" for individual cases, they appear to be in the nature of indirect, remote or consequential damages and the Chinese Government do not feel themselves in a position to include them in the basis of assessment for the compensation which they propose to give to the foreign nationals justly entitled to it.

Reference is also made in Your Excellency's Note to the claims for damages suffered by certain foreign nationals at the hands of brigands in Honan from June to December, 1922. It may be observed, however, that the Honan case is not closely connected with the incident now under consideration, nor were the circumstances quite similar. The questions of claims for compensation arising therefrom are now being dealt with locally between the Chinese authorities and the Consular representative concerned. The Chinese Government therefore hope that Your Excellency will have no objection to separating them from the discussion of the Lincheng incident.

As regards the "guarantees for the future" proposed in Your Excellency's Note the Chinese Government find it difficult to give

their concurrence and sincerely hope that the Diplomatic Body will reconsider its views. For one thing the final Protocol of 1901 does not appear entirely applicable. That instrument, as it will be recalled, was concluded in settlement of the "Boxer" trouble which had for its object the destruction of foreign life and property and in which there was evidence of connivance on the part of certain officials of the Central Government as well as of the Provinces. Article X and Annex 16 of the Protocol to which reference is made in your Note seems to be clearly intended to meet a situation which happily has not arisen since and which does not exist in the present case.

The attack of the bandits on the express train at Lincheng was directed against Chinese and foreign passengers without distinction. It was not anti-foreign in character nor has there been found any evidence of official connivance or complicity in it. On the contrary, it is an established fact that the military authorities of the Province had been operating against the bandits in the neighborhood of Lincheng and that it was with the object of compelling a relaxation of pressure as well as for the purpose of plunder that this outrageous act was clandestinely prepared and audaciously perpetrated by their fellow-bandits. As soon as the Provincial authorities learned of the occurrence, they spared no efforts to effect the early and safe release of all the foreign captives, which was happily achieved in the end. There was, in short, abundance of goodwill on the part of the officials of the Provinces towards the nationals of foreign Powers. While, therefore, wishing to do everything possible to prevent the recurrence in the future of such incident as that which took place in Lincheng, the Chinese Government believe that application of the Protocol of 1901 would not be an appropriate or necessary guarantee; and if it were insisted upon it might give rise to the just sensibilities of the Chinese people without countervailing advantage to the security of foreign lives and property.

The desire of the Diplomatic Body to see necessary reforms effected in the system of protection of the Chinese railways coincides with the policy of the Chinese Government who, in the earnest hope of effectively safeguarding travel on all the main lines, have made a careful study of the question and adopted measures designed to attain the object in view. The territory covered by the Peking-Hankow, Lung-Hai, Peking-Mukden, and Tientsin-Pukow railways is now divided into four principal districts, in each of which troops are stationed at strategic points along the railway for the purpose of affording protection. In addition, the Ministry of Communications has undertaken to reorganize the special railway police which has

heretofore been established for each Government railway to maintain order on the train as well as at the stations; and in order to avail itself of the experience of other countries in this field of railway management it has decided to engage such foreign expert assistance as, in their opinion, may be necessary or desirable. For this purpose it has created a special department which directed and assisted by competent and experienced officers will have charge of the training of the men, the organization of new units for service, the distribution and inspection of all the forces under its control.

In conveying the above information to Your Excellency I hardly need state that the Chinese Government look upon the whole matter of railway policing and protection as an urgent problem of China's internal administration, (of which they are fully conscious of their responsibility for a practical solution.)[18] The Chinese Government, however, appreciate the interest which the Diplomatic Body takes in this problem and its readiness to collaborate; and while they do not feel free, in loyalty to their duty, to commit themselves to any scheme which the Diplomatic Body may desire to present, I wish to assure Your Excellency that in undertaking on their own initiative to improve the present system of protection of the railways, the Chinese Government will spare no effort to make it fruitful of the best results.

Under the heading of "Sanctions" the Diplomatic Body requests the Chinese Government to impose certain punishments and penalties upon a number of Chinese officials whose names were given in the Note under reply. The gravity of the incident undoubtedly calls for the most condign punishment upon all those responsible for it. If the Chinese Government do not see their way to accede to the request of the Diplomatic Body, it is only because they feel bound by the existing treaties under which the matter of the punishment of Chinese officials as well as of Chinese citizens in general is to be dealt with by China in accordance with Chinese law.

It is not the intention of the Chinese Government, however, either to refrain from punishing at all those who are responsible or from meting out such punishments as are commensurate with the degree of their delinquency. In fact, sincerely desirous of setting a deterring example to the future and stimulating greater vigilance henceforth on the part of all Provincial authorities, they have promptly punished or are already considering for punishment those to whom responsibility could justly be attributed for the incident. By a Presidential Mandate of May 9th, 1923, three days after the attack by the bandits took place, the Ministry of the Interior and the Min-

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[18] Notation on margin of file copy: "Chinese text 'which they have "not disclaimed."' "

istry of War were ordered to consider the punishment for the Military Governor of Shantung, Tien Chung-yu; while the other civil and military officials were forthwith removed from office, pending investigation and further punishment. By a Mandate of June 26th, 1923, Ho Feng-yu, Defence Commissioner at Yanchowfou and Commander of the 6th Mixed Brigade of Shantung, was dismissed from his duties and ordered to await further investigation and punishment. General Chang Wen-tang, Commander of the Tientsin-Pukow railway police, and Chao Te-chao, the officer in command of the guard on the train which was attacked on May 6th, were summarily dismissed from their duties by the Ministry of Communications. Thus the four Chinese officials for whom punishment is requested by the Diplomatic Body have in fact already been punished, or are already under consideration for punishment in conformity with Chinese law.

Judging from the Lincheng incident if there is danger to foreign travellers in the interior of China it is mainly due to brigandage in certain inland districts. (Until the territory through which the Tientsin-Pukow railway runs)[19] is cleared of the bandits who now infest it, such measures as the reorganization of the railway police cannot but be of limited value as a safeguard to the security of its passengers. Realizing the grave menace which brigandage would constitute to life and property in general, if allowed to develop unchecked, the authorities of the Provinces have been for some time directing their energies towards its suppression. With a view to the more effective prosecution of the campaign against the bandits, the Chinese Government have by a Mandate of August 30, 1923, appointed definite officers to undertake it and place select forces of the Provinces (of Shantung, Honan, Kiangsu and Anhui (in text given to press))[20] under a unified command, so that bandits chased by troops in one Province could not escape by simply crossing its border. Considerable progress has since been achieved in this new campaign and it is believed that through this concerted action and persistent effort the evil of brigandage upon which the Note of the Diplomatic Body justly lays special stress may be speedily eliminated.

In closing this communication I wish again to assure Your Excellency that the safety of foreigners in the interior has always been a subject of the deepest solicitude on the part of the Chinese Government. If such untoward event as the Lincheng incident has

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[19] Notation on margin of file copy: "Chinese text does not specify the T.-P. Ry. but appears to refer to Rys. in general."

[20] Notation on margin of file copy: "Chinese text does not mention names of provinces."

nevertheless occurred, it has been due to circumstances which could not have been anticipated. It is, however, the firm intention of the Chinese Government that in the protection of foreign nationals in China no effort should be spared on the part of the Provincial authorities. With this object in view they have once more enjoined the military and civil authorities of the Provinces by a Mandate of August 29, 1923, to afford the fullest protection to all foreigners within their jurisdiction and declared their determination to hold them to a strict accountability in the performance of this essential duty on their part.

The Chinese Government trust that through the series of new measures which they have recently adopted relative to the reorganization of the railway police forces, the suppression of brigandage and the better protection of foreign nationals in the Provinces, the lives, the property, the rights and interests of foreigners in China will be able to enjoy added security throughout the country.

I have the honour to add that an identic communication is being addressed to the other Chiefs of Missions who are signatories of the Note under reply.

I avail myself [etc.] V. K. WELLINGTON KOO

393.1123 Lincheng/237 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *October 2, 1923—1 p.m.*
[Received October 2—11:50 a.m.]

328. My 325, September 28, 10 a.m. At my invitation, the British, French, and Japanese representatives met with me in an informal conference on September 29 in order to consider the reply to be made to the Chinese note of September 24 before it should again be discussed by the diplomatic corps in its meeting on October 1. I presented the two following suggestions for consideration:

1. That the reply should be sent within a few days in view of unwarranted acts.
2. That in its reply the diplomatic corps should merely state that it found in the note of September 24 no reason for changing the demands presented in the diplomatic corps' note of August 10 and that the demands made therein for indemnities, guarantees, and sanctions were renewed.

The first suggestion was endorsed by my colleagues. With respect to the second suggestion my French colleague proposed that in addition to renewing the demands contained in the diplomatic corps' note

of August 10 we should in a few words refute the fundamental contention made in the Chinese note that the outrage at Lincheng was not aimed at foreigners and point out Koo's evasion of the fact that this affair was merely an incident in a general exhibition which was dangerous to foreigners. With these modifications my second suggestion was approved.

When the diplomatic corps met yesterday the program outlined above was gradually developed and was given unanimous approval. The former committee was instructed to draft the reply. It met and reached an agreement, adopting with a few changes a draft which at my request the French Minister had prepared. Tomorrow this draft will be circulated among the chiefs of missions and a meeting of the diplomatic corps will be held on the morning of October 4 to take final action.

This morning in the committee meeting we considered what action to take in case the new Chinese administration refused to comply with our demands. All agreed that it would be necessary to bring to view the possibility of nonrecognition, or else to put such a policy into actual operation.

SCHURMAN

893.105/30 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 3, 1923—6 p.m.*
[Received October 3—10:55 a.m.]

329. My 289, August 21, 10 a.m. Japanese Minister informed me this afternoon that although his Government had objections to committee's plan yet in a spirit of accommodation they would not present them but would approve it.

SCHURMAN

393.1123 Lincheng/237 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *October 4, 1923—1 p.m.*

211. Your 325 September 28, 10 a.m., and 328 October 2, 1 p.m.

The following is the substance of an interview which I had with the Chinese Minister on October 2, in connection with the reply of the Chinese Government on the Lincheng case.

Minister Sze stated that Koo had expressed his appreciation of the Secretary's friendship for China and had hoped that he (the

Secretary) would approve the Chinese Government's reply. Sze referred to Koo's difficult position, and especially to the demand for consequential and indirect damages by way of supplemental indemnities, asserting that he did not think such claims should be pressed, citing such claims in connection with the Boxer uprising. The Secretary said that he was most desirous of aiding the Chinese people in every proper way and that the belief that such outrages as that of Lincheng could be perpetrated with impunity should not be encouraged and that when the Chinese talk of the integrity and sovereignty of China they should maintain a Government capable of discharging its international obligations. The Secretary said that he did not care to discuss the demands but that, while appreciating Koo's difficulties, he did not consider the demands inappropriate; that he understood an answer was under consideration by the diplomatic body and that he believed the demands would remain unchanged. The Secretary referred to that part of the diplomatic body's note relating to supplemental indemnities and said that these claims were not indirect or consequential damages but were direct losses such as could be recovered in any court and that these were individual claims which would be advanced by the respective governments for the nationals concerned.

Minister Sze expressed the hope that the Secretary would recognize that the Chinese Government did not wish to arouse anti-foreign sentiment and that public opinion in China was an important factor. The Secretary replied that he understood the situation but that it was important that the Chinese people should understand that the lives and liberty of foreigners must be protected and that a government adequate for that purpose should be maintained.

Minister Sze referred to the demands having been made upon the basis of the Boxer protocol and pointed out that Koo could not concede this point. The Secretary replied that he did not agree with Koo and that he thought that such cases would fall quite clearly within the terms of the Treaty since it was exactly that sort of thing that the Treaty was maintained to cover. Minister Sze expressed the hope that the Secretary would reconsider and not reach a final conclusion pending further information from Peking. The Secretary said again that he understood the seriousness of the matter and would give it full consideration but that Sze must not suppose that what the Secretary had said was said without due deliberation and that Koo should not be given the idea that there was any probability that the views that had been expressed would be altered.

HUGHES

393.1123 Lincheng/239 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *October 4, 1923—2 p.m.*

212. Department's No. 211, October 4, 1 p.m. 1923.

Minister Sze left at the Department late yesterday afternoon the following copy of a telegram, dated October 3, which he had just received from Minister Koo:

"I hear Diplomatic Corps met formally Monday and decided to maintain original demands en bloc. Views of small Powers were reported moderate but were overruled by the big Powers. I hear counter reply will be very brief though polite. Please intimate to Mr. Hughes sheer insistence on original demands without given reason would create impression that the Diplomatic Corps including America wish to impose its will on China as law in a matter which is clearly subject to negotiation as certain tenor of Mr. Hughes instructions to Mr. Schurman. Waichiao Pu is doing its best in difficult situation, for example I paid Coltman's indemnity[21] out of Ministry's own fund to close the case as Finance Ministry deaf to our appeals."

HUGHES

393.1123 Lincheng/239 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 5, 1923—4 p.m.*
[Received October 5—4: 51 p.m.]

331. Your 213, October 4, 6 p.m.[22] Following translation of diplomatic body's note dated yesterday:

"The diplomatic body have examined with great care Your Excellency's note of September 24 regarding the Lincheng incident and were glad to find in it along with a personal expression of the regret felt in China for that deplorable outrage a positive declaration that the Chinese Government and people were not actuated by any anti-foreign feeling.

The diplomatic body however feel bound to recall that in their note of August 10th they did not declare the existence of an anti-foreign movement in China: they declared the existence of a situation resulting from the development of brigandage in China threatening with danger the life, liberty, rights and property of foreigners residing in this country. In this regard the special character of the Lincheng outrage does not appear to have been understood by the Chinese Government and the diplomatic body are obliged on this important point to rectify the statements contained in Your Excellency's note.

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[21] See pp. 709 ff.
[22] Not printed.

Contrary to these statements it is irrefutably established by the facts themselves that the Lincheng outrage was directed against foreigners.

The instigators of the Lincheng attack declared on many occasions that their purpose was to capture foreigners and to make use of their foreign nationality in order to bring pressure to bear upon the legations charged with the protection of the hostages and through these legations upon the Chinese Government. This purpose the Lincheng bandits succeeded in accomplishing in all its details, and they negotiated with the Chinese Government under cover of their foreign hostages whom they did not release until they had gained their object. Their method was copied from that of the Honan brigands in 1922, it has been imitated since by the Hupeh brigands who murdered their hostage Father Melotto and very recently by the Honan brigands who carried off two foreign women to a fate still unknown. Every foreigner may well fear and does fear the same fate. That is the essential character of the Lincheng outrage.

The diplomatic body had hoped that following this incident the Chinese Government would inaugurate vigorous action against the brigands who infest the country. However the measures in Your Excellency's note of September 24th last remain ineffective as it is not enough to give an order to pursue the brigands but above all it is necessary that the brigands be actually pursued. The local authorities do not manifest at this time any [zeal] in the repression of brigandage which is still rife in most of the provinces and while at the same time their best military forces continue to be employed in those civil wars which bring so much suffering and misery to the captured [*Chinese people?*].

Under these conditions the diplomatic body mindful of the necessity of assurances of [*of assuring*] respect for the life, liberty, rights and property of foreigners in China and desirous of contributing to the restoration of the rule of law and order in this great country find themselves compelled to maintain in their entirety the considerations and conclusions of their collective note of August 10th last. They therefore call upon the Chinese Government to execute the measures indicated in their above-mentioned note."

SCHURMAN

393.1123 Lincheng/241 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *October 9, 1923—5 p.m.*
[Received October 9—12:55 a.m.]

336. My 328, October 2 and penultimate paragraph of my 226, June 15. It was my object to bring about a situation prior to the presidential elections which would make it necessary for the new administration to yield to all the demands of the diplomatic corps note of August 10 regarding the Lincheng outrage or lose the good

will of all the foreign governments. This policy has had an entirely satisfactory result. The diplomatic corps have intimated by unanimous agreement that they would not attend a Presidential diplomatic reception to be held tomorrow after the President's inauguration. The Government and the managers were anxious to invite us to this reception. As a result of this decision emissaries have come to the dean and to the heads of missions to learn on what conditions the Lincheng affair can be settled. The diplomatic corps held meeting today. The dean and Foreign Minister Koo are now in conference. The outlook for a settlement is good.

The chief difficulty is the dismissal of Tuchun Tien. It is possible that the diplomatic corps may accept the compromise of resignation attributed to the Minister for Foreign Affairs in my 325 of September 28. In that event, however, I shall insist that it be stipulated that Tien shall not be appointed to any office in the future.

SCHURMAN

[See also telegrams from the Minister in China, no. 337, October 10, no. 341, October 11, no. 342, October 12, and no. 346, October 14, printed in the section on the election of Tsao Kun to the Presidency of China, pages 518, 519, and 520.]

393.1123 Lincheng/264

The Chinese Minister for Foreign Affairs (Wellington Koo) to the Dean of the Diplomatic Corps at Peking [22a]

[Translation]

PEKING, *October 15, 1923.*

M. LE MINISTRE: I have the honour to inform Your Excellency that the Chinese Government have taken under careful study the Note of the Diplomatic Body of October 4th [22b] in further reference to the Lincheng incident, and while they regret that the observations and assurances of their Note of September 24th last failed to persuade the Diplomatic Body to modify its position, they are nevertheless disposed, in deference to its wishes, to give further consideration to its Note of August 10th last.

As regards the matter of "Damages", Your Excellency will recall that in their Note of September 24th the Chinese Government have declared their intention to do in the fullest measure possible what would be equitable in the way of reparation for the foreign victims of the Lincheng incident, and announced their readiness to accept

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[22a] Transmitted to the Department by the Minister in China as an enclosure to his despatch no. 1889, Oct. 23, 1923.

[22b] See telegram no. 331, Oct. 5, from the Minister in China, p. 704.

as the basis of classification and assessment the three categories of damages enumerated in the Note of August 10th from the Diplomatic Body. There remains the question of the "supplementary indemnities" for individual cases. In the furtherance of that intention I have the honour to state that the Chinese Government are prepared to agree in principle to the inclusion of the damages specified in the said category as an additional basis of appraisement, reserving for later discussion the nature of these damages and the reasonableness of the amounts.

Of the four Chinese officials named under the heading of "Sanctions" in the Diplomatic Body's Note of August 10th last, I stated in my reply of September 24th that three had been dismissed from their duties and the fourth was already under consideration for punishment in conformity with Chinese law. I now have the honour to inform Your Excellency that the Ministry of War which has been entrusted with the duty of considering the punishment for the Military Governor of Shantung Tien Chung-Yu has submitted its report and acting thereupon the Chinese Government have by a Presidential Mandate of October 14th relieved the said Military Governor of his post.[23]

The Chinese Government have been fully conscious of the necessity of repressing brigandage in certain inland parts of the country, which is the more deplorable because its depredations extend to the peaceful nationals of the foreign Powers. It brought about the Lincheng incident and has given rise to the two recent cases in Hupeh and Honan to which reference was made in the Diplomatic Body's Note of October 4th. With a view to its elimination, the Chinese Government had, as was stated in my Note of September 24th, adopted measures to pursue the bandits, and since the receipt of the Diplomatic Body's Note under reply they have despatched renewed orders to the Provincial authorities to redouble their efforts in the prosecution of this essential duty on their part. As regards the reforms to be effected in the system of policing and protection on the principal railways I stated in my last Note that "the Chinese Government look upon the whole matter of railway policing and protection as an urgent problem of China's internal administration, of which they are fully conscious of their responsibility for a practical solution". I wish again to assure Your Excellency, however, that while the Chinese Government cannot commit themselves to the scheme or schemes which the Diplomatic Body intends to present, they fully appreciate the interest which it takes in this problem and its readiness to collaborate.

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[23] In Oct. 1923 the President accepted Tien Chung-yu's "resignation," and simultaneously conferred upon him the honor of elevation to the Chiangchun Fu, or College of Marshals.

The Chinese Government sincerely believe that a vigorous and sustained campaign against brigandage, together with the new measures for the protection of the principal railways, will result in a decided improvement in the situation as regards the safety of travel and residence in the interior of China.

I avail myself [etc.] V. K. WELLINGTON KOO

893.105/37 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *October 18, 1923—4 p.m.*

224. Your No. 346 October 14, 2 p.m.[24]

Please report by telegraph concerning the oral understanding between the Dean and the Ministry of Foreign Affairs relating to the railway police scheme.

HUGHES

893.105/38 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *October 20, 1923—6 p.m.*
[Received October 20—4 : 15 p.m.]

352. Your number 224, October 18, 4 p.m. My 346, October 14, 2 p.m.[24] Koo refused to state in writing that Chinese Government would receive and consider diplomatic body's railway police scheme, whereupon dean threatened to terminate negotiations. Agreement was finally reached by Koo's undertaking to inform Cabinet and President that dean's acceptance of the terms of Koo's letter was conditional on his understanding that Chinese Government without pledging itself to acceptance would receive and consider such scheme of railway police as the diplomatic body might present.

The dean's proposal now is to give the Chinese Government time to submit to the diplomatic body a scheme of their own which is to be framed with the diplomatic body's scheme confidentially before them. French and British Ministers and I today expressed to the dean our willingness that this course should be followed.

Government is in dread of being attacked for sacrificing Chinese sovereignty especially as they have already been accused of conceding Lincheng demands for a mere social courtesy. My abovementioned colleagues and I am [*are*] quite willing to save face of Government and postpone presentation of diplomatic body's railway police scheme if the end can be secured through apparently voluntary action on the part of the Chinese Government.

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[24] *Ante*, p. 520.

Mandate relieving Tien from office dated 14th appeared in official *Gazette* 16th as did a second mandate creating Tien a marshal. As this was in contravention of diplomatic body's note of August 10th which provided that Tien should receive no new honors after dismissal, an informal protest was made by dean resulting in publication in yesterday's *Gazette* of a further mandate explaining that sequence of two mandates first mentioned had been invented [*inverted?*] through error and consequently Tien's appointment as marshal was to be taken as preceding his dismissal from post of Tuchun. On this basis the matter has been allowed to rest.

Koo considered that he had been placed in an invidious position towards diplomatic body as a result of publication of mandates in order in which they first appeared and resigned but on publication of new mandate regularizing proceedings has agreed to continue in office for the present.

SCHURMAN

893.105/38 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *October 24, 1923—5 p.m.*

229. Your telegram No. 352, October 20, 6 p.m.

The Department is extremely disappointed that the exemplary effect of Tien's dismissal should be rendered nugatory by his simultaneous promotion, but must leave to your discretion whether it is possible to obtain a more satisfactory result.

HUGHES

[The Minister in China reported by telegram no. 75, February 23, 1925, the payment by the Chinese Government of $351,567.92 in full payment of Lincheng A and B claims to foreigners (file no. 393.1123 Lincheng/294). No payment was made on the supplementary claims which were presented.]

AMENDS BY THE CHINESE GOVERNMENT FOR THE KILLING OF CHARLES COLTMAN, AN AMERICAN CITIZEN, BY CHINESE SOLDIERS IN THE PRESENCE OF AN AMERICAN CONSUL

393.1123 Coltman, Charles/– : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 12, 1922—4 p.m.*
[Received December 12—11:22 a.m.]

489. Charles Coltman, American merchant, was shot by Chinese soldiers in Kalgan, afternoon 11th, after dispute as to his right to

leave Kalgan in automobile with silver currency. Spinal cord injured. May possibly live but paralyzed. Receiving best medical treatment Peking. Report follows.

SCHURMAN

393.1123 Coltman, Charles/1 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 13, 1922—2 p.m.*
[Received 2:36 p.m.]

492. My 489. Sokobin[26] informs me he was seated in Coltman's car when shooting occurred. I am representing to the Foreign Office that armed attack on American consul was in violation of international law and an affront to the United States Government. Am demanding arrest and trial of offenders and pending Department's instructions I am reserving full rights as to presentation of conditions upon satisfaction of which I shall be able to consider matter as adjusted.

SCHURMAN

393.1123 Coltman, Charles/3 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 15, 1922—2 p.m.*
[Received 8:18 p.m.][27]

495. My 492. Coltman died at 7 o'clock this morning. At 11 o'clock pursuant to appointment made yesterday I called upon Acting Premier and Foreign Minister[28] in regard to Kalgan tragedy and said as impressively as possible:

"I have just come from Mrs. Coltman who is prostrated. I charge Kalgan soldiers with (1) murder of American citizen and (2) firing on the official representative of the United States. Not only Americans but the entire foreign community are deeply aroused. If foreign consuls are not absolutely safe in China the lives of their nationals are in constant jeopardy. This Kalgan outrage has dynamite in it sufficient to stir the whole civilized world. Indeed some foreign ministers have already indicated a willingness to cooperate with me (see my despatch number 11 [*45*], September 29, 1921 transmitting joint note[29]). I want, however, to keep the matter between our two nations. And as a friend to China I say to you solemnly it must be settled at once."

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[26] Samuel Sokobin, consul at Kalgan.
[27] Telegram in two sections.
[28] C. T. Wang.
[29] *Foreign Relations*, 1921, vol. I, p. 516.

Wang began to reply as follows: "I deeply regret the affair and will immediately investigate and"—

I interrupted him and said emphatically:

"No investigations can alter the two issues I have made because nothing can justify the murder of an American citizen or the murderous assault on a consul. Investigations may bring out new details but they are entirely irrelevant to those issues. The thing needed is prompt satisfaction to my Government which is also in the interest of China herself."

Wang indicated he would follow this advice. It was obvious he had realized the enormity of the crime and the gravity of its potential consequence.

In concluding I referred to the necessity of abolishing restrictions on transportation of currency by foreign merchants in their business in violation of treaty rights which the Military Governor at Kalgan was endeavoring to put into effect, and I observed that I mentioned the matter today only because American business in Kalgan was paralyzed and delay was ruinous to our merchants.

Please telegraph instructions regarding satisfaction. I respectfully recommend following: Apology by the Military Governor in such form and under such conditions as we may prescribe and with special regard to the public violation of the consul's dignity; suitable punishment of those responsible for the crime as may be determined; indemnity for Coltman's family; cancellation of prohibition against transportation of currency by foreign merchants as authorized by treaty and reservation of right to present claims for damages in consequence of interruption of business.

I append principal facts in the case which I hope will be sufficient to enable the Department to give instructions.

On the morning of December 11th, Coltman and Stuart L. Wooden informed the consul they wished to leave Kalgan that afternoon for Urga with four automobiles. They urged him to accompany them past the two military guard stations as they had not secured number plates for their cars although provided with permits to leave Kalgan. Wooden informed consul he was transporting about $10,000 in silver currency for use in his business at Urga. Consul escorted cars safely to second guard station where a military officer insisted on searching cars. Consul interposed no objection to search of Chinese passengers or their baggage but refused assent to search of cars or Americans. Officer then inquired whether the cars were transporting any currency. Consul replied about $10,000 property of American citizens. Officer stated order issued that day by Military Governor prohibited export of more than $100 per person and categorically forbade cars to proceed with money. Consul announced his identity and his intention of interviewing superior authorities.

Officer declared himself indifferent whether Sokobin was consul or not and said currency could not proceed. About this time at his order soldiers loaded their rifles. Consul calling for [*called upon?*] the Commissioner of Foreign Affairs and stated that he had not been informed of embargo nor accepted it as applicable to Americans. He therefore refused to recognize its applicability in the present instance insisting that cars would proceed. Commissioner admitted embargo had not been notified to consul or foreign firms and expressed regret but insisted nevertheless silver could not be exported.

Consul returned to cars and took his seat just behind Coltman. Officer had left but guard remained. Latter fully aware of identity consul. After consultation with consul, Coltman and Wooden decided to start. As soon as cars started soldiers withdrew from position beside cars and opened fire on cars and without having called on them to halt or attempting forcible restraint of any kind. Wooden's car untouched proceeded but Coltman stopped his car on hearing shots. After his car had stopped Coltman was hit by bullet. Coltman brought to Peking in special train that night, Wooden returned next day.

[Paraphrase.] The consul later found out that besides personal funds Coltman was carrying $35,000 for Chinese banks. This, however, was not known to the consul or to any Chinese officials when the discussion and shooting took place. The Chinese action was taken on the understanding that the only funds involved were those of American firms. [End paraphrase.]

SCHURMAN

393.1123 Coltman, Charles/3 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *December 20, 1922—6 p.m.*

294. Your 495 December 15, 2 P.M.

Department much perturbed by this further evidence of increasing disregard by Chinese authorities for the rights of American citizens in China and feels that this atrocious act demands that definite steps be promptly taken to atone so far as may be possible for the loss of the life of this American citizen and for the affront to this Government.

[Paraphrase.] Your suggestions regarding amends concurred in except that Department believes removal of the Military Governor should be demanded instead of apologies, if you are reasonably certain of its being accomplished. However the Department is of the opinion that it would be unwise to make demands likely to prove impossible of execution. Therefore the Department leaves to

your discretion question whether removal should be requested. [End paraphrase.]

Advise earning capacity of Coltman at the time of death, number of dependents and their probable financial condition. The fact that Coltman was transporting funds for Chinese banks suggests advisability of issuance of instructions by Legation to consular officers with a view to preventing possible abuse in future of American privileges. Before employment of good offices in such cases consuls should make most careful investigation.

HUGHES

393.1123 Coltman, Charles/7 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *December 22, 1922—3 p.m.*
[Received December 22—8:05 p.m.]

502. My 492 December 13, 2 p.m. I have now received a reply from the Ministry for Foreign Affairs stating that the soldiers fired in self-defense as Sokobin and Coltman had first fired six shots at them which consul states is a lie.

Note further alleges that there was an administrative order prohibiting the exportation of moneys from Kalgan but as stated in my telegram number 495 December 15, 2 p.m. this had not been communicated to the consul or the Legation. Note also states that money belonged to Chinese banks but as previously reported this question was never raised at the time of the incident when money was understood to belong entirely to Americans. Note which is frivolous and unsatisfactory concludes by stating that the Ministry of Foreign Affairs is despatching delegation to Kalgan to make an investigation.

SCHURMAN

393.1123 Coltman, Charles/7 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *December 23, 1922—4 p.m.*

297. Your 502, December 22, 3 p.m., and Department's No. 294, December 20, 6 p.m.

You will doubtless wish to consider the possibility that shots were fired by members of the party which Sokobin from his position of observation misunderstood to be shots from the Chinese soldiers. If you have found or shall find no reason to doubt that the plea of self-defense was not justified by the fact of firing by any member of the party, you may advise the Foreign Office that this Government

fully supports your previous statement to the Minister that no investigation can alter the issues raised, and that prompt satisfaction is essential.

It is feared that the reply of the Chinese Government indicates an intention to treat the matter frivolously and evasively. Should the Government fail to deal with the case energetically and promptly, without quibbling but with manifest sincerity, you may indicate that this Government regards the matter as a test of the degree of confidence which may be placed by it in the Government of China. Should the Government fail of a proper spirit in dealing with this matter, it would have a definite bearing upon the attitude of this Government with regard to the various pending questions, notably the remission of the balance of the Boxer Indemnity, the bill for which has passed the Senate and is now before the House. An early indication of the attitude of the Chinese Government is therefore desirable in order that the Department may determine its attitude in this matter and others.

HUGHES

393.1123 Coltman, Charles/11 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 2, 1923—6 p.m.*
[Received January 2—4:27 p.m.]

2. Subsequent to the receipt of the Department's 297 December 23, 4 p.m. I sent Chinese secretary to Kalgan to make investigation and am entirely satisfied from his report and the consul's that none of the Americans attempted to fire. After careful consideration of the terms to be imposed I have today addressed a note to the Minister for Foreign Affairs refuting contentions advanced in his note of December 21 [30] and demanding:

1. An apology from the Chinese Government for the affront to the American Government and the utter disregard of the rights and persons of American citizens in China.

2. An apology from the Tutung (Military Governor) to the consul. For this purpose the Tutung attended by his staff and in full state shall proceed to the consulate at a day and hour to be named by the consul who shall also prove [*approve?*] in advance the form and terms of the apology.

3. The summary dismissal from the Chinese Army of the Chief of Staff of the Military Governor, the chief adjutant and the third officer, who was present at the guard station, and the permanent exclusion of all of them from the employment in the military or civil

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[30] Not printed; see telegram no. 502, Dec. 22, from the Minister in China, p. 713.

service of the national or the provincial governments of China and in addition the punishment of these three officers for the unjustifiable killing of Coltman by inflicting on the principal offender and also on the abettors or accessories of the act the respective maximum penalties prescribed by law for such crimes.

4. Indemnity for the family of Coltman as determined by the American Government.

5. Cancellation (of) prohibition of transportation of currency by American merchants as authorized by treaty and removal of all obstacles to the exercise of this right.

[6.] Acknowledgment of the right of the American Government to present claims for damages suffered by American merchants in consequence of the interruptions of their business.

[Paraphrase.] With respect to demand number 2 I wish to inform the Department that when Coltman was shot the Tutung was absent from Kalgan attending a birthday celebration at Paotingfu in honor of Tsao Kun who at present dominates the Chinese Government at Peking. [End paraphrase.]

SCHURMAN

393.1123 Coltman, Charles/13: Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *January 3, 1923—10 p.m.*
[Received January 4—12:37 a.m.]

4. My telegram no. 2 of January 2. This afternoon I personally presented note stating our demands. C. T. Wang said that he had intended to send me the report of his investigators in a day or two with an expression of the regrets of the Government for the shooting. He requested that in the meantime I take back my note. He told me the substance of the results of their investigation. Only minor details were affected, except for the charge by the soldiers that the first shooting was by Coltman. Sokobin's testimony and the condition of the pistol which was taken from Coltman directly after the shooting disprove this allegation.

I declined to withdraw my note and declared that if the minor details were all as Wang stated, it did not make any difference whatever in the two great issues which were the affront to the Government of the United States and the slaying of one of our citizens.

. . . I solemnly told him that American-Chinese relations had reached a crisis. The attitude of the United States toward China had always been one of benevolent helpfulness. I cited examples of this. The American Government now wished to know whether it was the intention of the Chinese Government to prevent the United

States from continuing that attitude. The American Government looked upon the Coltman case as a test of the confidence which it could place in the Government of China. My Government considered China's attitude in this case as simply incomprehensible. The obvious thing to do, and the advantageous thing for China, was to immediately give satisfaction, within a day or two. I reiterated the statement that the minor variations in the story were not relevant and I urged Wang to center his attention on the grave and indisputable issues involved.

I talked from 4 to 5:30 o'clock and then left. I received the following at 9 o'clock from Wang:[32]

["] The Chinese Government profoundly deplores the Kalgan incident resulting in the loss of life of an American citizen. The Chinese Government especially regrets the fact that an American consul was present although his identity was unknown at the time when the firing took place thereby placing the safety of the American consul in jeopardy also; for this action on the part of its soldiers the Chinese Government sincerely apologizes to the Government of the United States of America.

I have the honor further to inform Your Excellency that my Government has made a careful investigation into this case and I beg to reserve to myself the future opportunity of communicating with Your Excellency in the immediate future in regard to the same."

I expect there will be discussion, haggling, and delay with respect to other points. Would the Department consider it wise to say something to Chinese Chargé at Washington to be telegraphed to the Government at Peking?

SCHURMAN

393.1123 Coltman, Charles/12

Memorandum by the Chief of the Division of Far Eastern Affairs, Department of State (MacMurray)

[WASHINGTON,] *January 4, 1923.*

The Chinese Chargé, Mr. Yung Kwai, called this afternoon, and told me that he had received from his Government a telegram instructing him to explain to the Department that the Chinese Government was carefully investigating the facts in regard to the murder of Mr. Coltman. He asked if we had any information that we might give him concerning the case. I told him that I was glad of the opportunity to explain to him what had happened, and to convey to him some sense of the extreme seriousness with which this Government regarded the matter. I then read him, practically complete, the telegrams we have received from Peking in the matter

[32] Quotation not paraphrased.

(No. 492, December 13; No. 495, December 15; No. 502, December 22; No. 2, January 2; and No. 4, January 3.)

Upon my emphasizing to him the fact that the Chinese Government did not appear to be conscious of the gravity of the issues involved, he volunteered to send "a strong cable" to the Chinese Foreign Office. . . . I said that . . . I had no objection to letting him know the attitude that this Government had taken as illustrated in its telegrams (No. 294, December 20, and No. 297, December 23). I thereupon read him the substance of these telegrams, omitting the confidential paragraph, in No. 294, and the reference to the remission of the Boxer Indemnity, in No. 297. He said that that would give him an indication of this Government's views; and I emphasized the fact that the reading of this correspondence would have made evident to him that Dr. Schurman was not acting independently, but on the basis of very precise instructions from his home Government, which had fully approved his action in the matter and was prepared to back him to the utmost of its ability. He said he fully realized this and would cable his Government in that sense.

MacM[urray]

393.1123 Coltman, Charles/20

Memorandum by the Chief of the Division of Far Eastern Affairs, Department of State (MacMurray)

[Washington,] *January 13, 1923.*

Mr. Yung Kwai called this morning at my request, and I conveyed to him in the Secretary's behalf an expression of appreciation that this case is now receiving the personal attention of Dr. Alfred Sze as Minister for Foreign Affairs (despite some disappointment that his telegram of January 8 to the Legation here [33] had referred without comment to the Chinese Government's expression of regret which erroneously alleged that the identity of our Consul was unknown at the time the firing upon him and Mr. Coltman took place) and added an expression of hope that the Chinese Government would appreciate the gravity of the situation and would take without delay proper measures of reparation and of punishment.

Mr. Yung Kwai showed some disposition to argue that the case was not altogether clear, as the investigating Committee appointed by the Chinese Foreign Office had reported that, (1) the identity of the Consul was unknown, (2) the soldiers who shot Coltman were acting in order to enforce a local regulation which had long been in effect and fully known to the whole community, and (3) the Coltman party had fired the first shots.

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[33] Telegram not printed.

I told him that these three points were all covered precisely and in detail by the reports of Consul Sokobin, which I had already read to him; and that, to put it bluntly, I felt that his reports were conclusive on these points of fact inasmuch as he is personally known to me as a dependable and level-headed consular officer, whereas the Chinese investigating committee would appear to have depended upon the word of the coolie soldiers who are actually responsible for the crime, as apparently the officer in command had tried to escape responsibility by absenting himself when the actual shooting occurred.

Mr. Yung Kwai then said that he had raised these points not as expressing the views of his Government, but solely as indicating the nature of the report made by the Chinese Investigating Committee, for what it was worth; and that, as a matter of fact, the latest telegram he had received from Dr. Sze had advised him that complete accord had been reached with the American Minister on all points except that of the American party having fired the first shots.

I said that this made an interesting commentary upon the work of the Chinese Committee of Investigation, which had evidently gone up to Kalgan in order to draw red herrings across the trail, and for that purpose had apparently attempted to raise three separate issues of fact, two of which had already been discredited by the Chinese Foreign Office. I added that the whole attitude of the Chinese Government in this case led us to feel that it was not trying to settle the matter justly, but was trying to evade the issues and find excuses for delay and evasion; and that our one hope in the matter was that . . . Dr. Alfred Sze would assure that the Chinese Government . . . realized the gravity of the matter before a very unfortunate situation had been created.

Mr. Yung Kwai again promised to send "a very strong telegram", urging that the Foreign Office should dismiss the minor questions and meet the main issues promptly and fairly.

MACM[URRAY]

393.1123 Coltman, Charles/15 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *January 17, 1923—5 p.m.*
[Received January 17—4:13 p. m.]

21. My telegrams no. 4, January 3, and no. 18, January 14.[34]

1. On morning of January 15 I asked Sze for a conference. We held it yesterday afternoon at his home. In accordance with his wish

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[34] Latter telegram not printed.

we were alone. For more than an hour we informally discussed all aspects of the Coltman case.

2. Sze was apparently frank in stating that in settling the affair it was not simply a matter of justice but also one of practicability. He said that if his Government yielded to our third demand,[35] i. e., punishment for the three officers, either the military authorities would ignore the Government's order or else the order would lead to mutiny. I answered that Tsao Kun[36] controlled the Chinese Cabinet, that the Tutung at Kalgan was Tsao's man, and that Tsao could do anything he wished with the army. Sze also said that it was his own honest opinion that we prejudged the case in making a demand for the dismissal of the three officers and for their exclusion from future service. Pending a conviction by a competent tribunal he would not even have these officers dismissed. He said, suppose a tribunal should find them guiltless? I replied that in that case if we followed his program we would have no punishment at all for the crime. (It was to prevent such a result that I did not at first propose that the entire question of the guilt and punishment of these officers be left to Chinese courts.)

3. Regarding the fourth demand, Sze raised an objection to the word "indemnity", and also to leaving the amount to be determined by the American Government. He said this would form a dangerous precedent for other nations to follow. He wishes the sum limited to $10,000 Mexican. This limitation I intimated would not be acceptable.

4. We can obtain the fifth demand with provisions for securing permits in advance for transportation.

5. Sze objects to our sixth demand and says Premier also strongly opposes it. In my opinion this demand is not of vital importance.

6. An apology from the Tutung to the consul can be had in some form, possibly by a letter which the consul could answer and express his regrets that American merchants had not informed him that they were transporting Chinese silver.

7. Indemnity and the punishment of the three officers remain as real and fundamental difficulties. Sze said that there were two courses, either one of which he was ready to follow; either to have negotiations transferred to Washington or to resign with a public statement of his reasons for doing so.

8. With respect to the suggested resignation I infer that Sze is finding his office a difficult and thankless task. He said he doubted whether he could stand the heavy and constant strain and worry

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[35] For American demands, see telegram no. 2, Jan. 2, from the Minister in China, p. 714.

[36] Inspector General, Chihli, Shantung, and Honan Provinces.

which already is increasing the bad cold and slight illness from which he was suffering when he took office.

9. This case has aroused the interest of Americans and foreigners all over China. The action of the officials at Kalgan, as I told Sze yesterday, was in violation of the basic principle of consular jurisdiction.

Any further instructions or suggestions which the Department may wish to send will be greatly appreciated.

SCHURMAN

393.1123 Coltman, Charles/35 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *January 30, 1923—5 p.m.*
[Received January 30—2:55 p. m.]

36. My 33, January 26, 3 p.m.[37]

1. Saw Premier yesterday afternoon regarding Coltman case. Premier wanted to postpone conversation till after appointment of Minister for Foreign Affairs[38] but I objected declaring matter was urgent (I also felt it important that Premier himself should realize gravity of problem before appointment of Minister for Foreign Affairs).

2. Premier took position that if anyone had unhappily been killed it was a matter for Chinese tribunals to determine. Premier also indicated feeling of conflict between the demands of justice and the demand of friendship with the United States which however he later withdrew.

3. I emphatically repudiated both propositions. As regards justice of our demands I reminded him that an American citizen had been killed and an American consul fired on by Chinese and declared that although both these [were?] atrocious crimes our terms of reparation were not only not unjust but moderate and even considerate. It was true that China and the United States had always been friends; that the United States had often been disinterested helper of China, and that we desired to continue this attitude but it was not true that we were in the Coltman case asking anything on the ground of friendship, we were demanding simply justice and our treaty rights.

4. As to Premier's idea of leaving matter to Chinese tribunals I pointed out that the suggestion was in complete disregard of our right of consular jurisdiction. I had brought with me volume of

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[37] Not printed.

[38] The appointment of Alfred Sze as Minister for Foreign Affairs had been rejected by the Senate.

treaties in Chinese and English[39] and I compelled Premier to read in Chinese article 11 of Chinese-American-Tientsin treaty[40] and article 9 of Chinese-British-Tientsin treaty.[41] It seemed a new point to him. In fact the Chinese newspapers discuss the Coltman case as if consular jurisdiction did not exist.

5. I then declared that for the killing of Coltman and outrage on consul the entire and exclusive responsibility rested on the Kalgan military officers who had trampled under foot our extraterritorial rights, violated the treaty articles just read about, and themselves assumed, although the American consul (was present?), to enforce on American citizens, even by murderous methods, a local economic regulation of which notice had not even been given to us. The death of an American citizen and the insult to the American consul resulted directly from this unlawful exercise of authority by Chinese officers in contravention of our treaty rights.

6. I pressed for an immediate reply to my note of January 3rd in which the demands were formulated and said that my Government regarded the matter as very important and very urgent. I read two sentences from Secretary's telegram number 12, January 18, 6 p.m.[42] indicating that a right solution of the question was essential to the continuance of the sympathetic and helpful attitude which the United States Government had so constantly shown in Chinese affairs and I declared solemnly that the demands would not be altered.

7. Premier replied that he would have to consult others, mentioning specifically Minister of War and Minister for Foreign Affairs but probably having in mind . . . Tsao Kun, and the military clique who are protecting their followers at Kalgan. Premier added he would instruct Minister for Foreign Affairs as soon as appointed to take up this matter and assured me they would not be bound by what preceding ministers had done.

8. In conciliatory manner Premier observed that this matter must not disturb good relations between China and the United States. I said it certainly would unless our terms of settlement were accepted by China. I inquired whether I was correct in understanding that he would not permit matter to result in disturbance of existing good relations. To this question he answered in the affirmative but when I asked categorically whether he accepted our terms of settlement he replied that he must "consult everybody".

SCHURMAN

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[39] Apparently China, The Maritime Customs, *Treaties, Conventions, etc., between China and Foreign States*, 2d ed. (Shanghai, 1917), vol. I.
[40] *Ibid.*, p. 713.
[41] *Ibid.*, p. 404.
[42] Not printed.

393.1123 Coltman, Charles/35 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *January 31, 1923—6 p.m.*

21. Your telegram No. 36 January 30, 5 p.m. is noted with approval and appreciation.

From the enclosure with your despatch No. 1254 of December 23rd[43] as well as from local newspapers received the Department gathers that the military governor of Kalgan was sent by the Chinese Government to conduct the investigation of the Coltman affair and is responsible for the statement that the Consul and Coltman fired first on the guards and for other false statements that have been used by the Chinese authorities to obstruct a settlement. On this assumption, which you will of course verify, I feel that the governor's attempt to protect his subordinates (apparently even to the extent of declining to arrest them) has so far identified him with the case as to place upon him the same responsibility as would have attached to him if he had been present in Kalgan and cognizant of the matter.

It is apparently the intention of the governor and of his military superiors who exercise influence with the Peking Government to delay and to haggle over terms of settlement in the hope of wearing down the patience of this Government to a point where it will accept terms less distasteful to the controlling military faction. If therefore the facts justify such an attitude, I would suggest the advisability of your taking early occasion to see the Prime Minister again, emphasize the period of time that has elapsed without any indication of the Chinese Government's willingness to make a just settlement, point out that the delay is at least in large measure due to the military governor's confusion of the issues in the attempt to protect his subordinates, and state that if full satisfaction has not been given in accordance with your demands of January 3rd within a reasonable time, this Government will consider that the obstructiveness of the military governor is in effect a ratification by him of the action of his subordinates, making him so far responsible for the case that this Government will add to your terms a demand for his dismissal from office.

While inviting your comment or criticism upon this suggestion, I authorize you to act upon it immediately if in your judgment it would expedite a satisfactory settlement of the case. As to what constitutes a reasonable period for settlement, I am inclined to think that February 15th which is two months from Coltman's death would be a suitable time limit, but your comment as to the date is

[43] Not printed.

requested. It might be advisable to refer only in general terms to settlement "within a reasonable period", in the first instance, reserving the communication of a date until the attitude of the Chinese Government may seem to justify the specification of a precise time limit.

HUGHES

393.1123 Coltman, Charles/38 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *February 11, 1923—8 p. m.*
[Received February 11—3:05 p.m.]

48. My 2, January 2, 6 p.m. and 36, January 30, 5 p.m. Following reply (introduction omitted) was received evening 10th from Ministry of Foreign Affairs in which new Minister, General Huang Fu, entered upon duties of office without waiting for parliamentary confirmation morning of 9th instant.

"With reference to the method of settlement, in your note of January 3rd you mention six points. With the exception of the first point, regarding which this Ministry addressed a note to you on January 3rd which is on record, the remaining five points do not perhaps take into consideration the true facts in this case in their order and for this reason there are points which it is difficult for this Government to comply with. However, in consideration of the friendship between China and the United States and with the idea of reaching a settlement of this case at an early date this Ministry after giving the matter thorough consideration has the honor to send you the following further reply: 1. The Tutung of Chahar will in accordance with the spirit of this Ministry's note of January 3rd to Your Excellency prepare a note apologizing to Your Excellency but he cannot apologize to the present American consul at Kalgan, Mr. Sokobin. 2. This Government will issue an instruction to the Tutung of Chahar to examine thoroughly the chief of staff of the Tutung's office, the chief adjutant, and Adjutant Wang who was sent to the place where the affair arose and to punish them according to law as a warning for the future. 3. Out of pity and regard for the family of the American merchant, Charles L. Coltman, it is permitted that the Chinese local officials shall in conformity with precedent consult together and give his family a compassionate allowance as an evidence of sympathy. 4. When American merchants carry specie outside of the district, if the sum is really for use by the merchant in his own business, hitherto permission has been granted and the funds released after due investigation. In the future this will still be done. 5. As to the matter of the delays to the business of American merchants caused by this case and the losses resulting therefrom the Chinese Government is not responsible therefor and regrets that it cannot recognize any claims for indemnity.

It is requested that Your Excellency will thoroughly consider the foregoing method of procedure which this Government considers

to be a very just and equitable one for the settlement of this case and we trust that Your Excellency will find no difficulty in giving assent thereto.

I have the honor to request a reply".

According to the newspapers the Tutung of Chahar has been in Peking most of past week conferring with Government in preparation of foregoing note. The note being very unsatisfactory I have already written to Premier for a conference tomorrow.

SCHURMAN

393.1123 Coltman, Charles/38 : Telegram

The Acting Secretary of State to the Minister in China (Schurman)

WASHINGTON, *February 13, 1923—1 p. m.*

30. Your No. 48 February 11, 8 p.m.

The Department fully concurs in your opinion that the reply of the Foreign Office is wholly unsatisfactory. Please give me your views on Department's telegram No. 21, January 31, 6 p.m.

PHILLIPS

393.1123 Coltman, Charles/42 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *February 14, 1923—8 p. m.*
[Received February 14—8:36 p.m.]

53. Your telegram no. 21 of January 31. When Coltman was shot the Military Governor was absent from Kalgan. He returned there in the ordinary course a few days later. He made a report on the affair, but two officials were sent to Kalgan by the Foreign Office for the special purpose of investigating, and the Foreign Office determined its attitude on the strength of their report at least as much as upon that of the Tutung. I had three long conferences with the entire Legation staff, including all attachés and military officers, and after careful consideration I came to the opinion that as the Tutung had always been friendly to our consul and citizens and as he was absent when the shooting occurred, a due apology from him was sufficient. Since I have received your telegram under reference I have given long and serious consideration to the question and cannot find any reasons for altering my opinion formed after such deliberation.

I feel that it would appear arbitrary and unfair to now demand that the Military Governor be more severely dealt with than was originally asked. Another consideration is that as he is a protégé of Tsao Kun

I do not for a moment believe that we could obtain his dismissal by the present militaristic Cabinet. I also believe that to set a time limit at this juncture would serve no good purpose.

SCHURMAN

393.1123 Coltman, Charles/43 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *February 15, 1923—8 p.m.*
[Received February 15—8:10 p.m.]

56. My 52, February 14, 5 p.m.[44] I stated to the Premier that I was surprised by Minister for Foreign Affairs' reply to my note of January 3d and had come to him for an explanation. On February 3d [I had?] received an oral communication from the Premier through a Secretary of Foreign Office in which after rehearsing settlement Premier was prepared to make, which was substantially that of the reply of February 10th[45] and which I rejected absolutely, Secretary said that Premier believed granting of American terms would disastrously affect Chinese and American relations and prove injurious to American trade but if I insisted on them Premier would grant them.

Premier replied he had not intended to convey latter impression through Secretary. (He [had?] explained that Premier had got to the point of accepting our demands but that the Tutung who came to Peking a few days later convinced him that the military bosses would not stand for it.) Premier continuing recalled his remark at previous interview namely that he deprecated the disturbance of the good relations between the two countries by this affair. I remarked that highly as we prized and desired Chinese friendship we placed above it justice, the lawful rights of our citizens and the dignity of the Nation.

Premier replied that dignity of America had been vindicated by Government's apology, in addition Tutung was ready to apologize to Minister but he could not apologize to consul because of consul's inferior rank. If he should apologize to consul he would lose standing and be compelled to resign especially as consul's conduct in the matter had not been above reproach. Premier observed dignity of China should also be considered.

Premier expressed opinion that we could reach a mutually satisfactory agreement with respect to indemnity but when I mentioned

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[44] Not printed.
[45] See telegram no. 48, Feb. 11, from the Minister in China, p. 723.

compensation of 40,000 taels paid to family Captain of S. S. *Anlan*[46] he differentiated the two cases.

Conversation centered on our demand for punishment of officers. Premier remarked it contained two elements, first, foreign compulsion, secondly, specification of penalties, both repugnant to Chinese sentiment especially the first. Problem Premier declared was to satisfy American demand without violating Chinese sentiment. Premier considered this feasible if American Government would agree to Tutung's voluntarily punishing offenders. He admitted that the officers had been delinquent but claimed they should be punished in a way that would recognize the authority of the Tutung.

I inquired how under Premier's proposal we could be assured of the certainty of the punishment of the three officers who were responsible for the shooting and of the extent of the equivalence of the Tutung's punishment to that demanded by us, adding that, the highest possible crime needed for atonement the severest penalties. Premier replied he would be willing to guarantee to me that the action to be taken by the Tutung would be satisfactory to us and as Minister of War as well as Premier he could bring it about, that the Tutung either under the terms of the law or in the exercise of his administrative discretion would do substantially what we had demanded. I added the stipulation that the punishment of the officers should not be put on other grounds than their responsibility for the shooting.

I remarked that our demands had been fixed by my Government, that I thought it unlikely it would modify the terms of the third demand but that I would submit his proposal if he sent it to me in writing.

Further conference on subject with Minister for Foreign Affairs this afternoon.

I reserve comments for subsequent telegram.

SCHURMAN

393.1123 Coltman, Charles/44 : Telegram

The Acting Secretary of State to the Minister in China (Schurman)

WASHINGTON, *February 19, 1923—5 p.m.*

35. Your telegrams 56, February 15, 8 p.m., 59, February 16, 12 noon.[47]

With reference to the contention of the Prime Minister that the officers concerned should be punished in a way that would recognize

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[46] Captain Carley, a British subject, was killed in 1917 when the S.S. *Anlan* on the Yangtze River was fired upon by Szechuanese soldiers.

[47] Latter not printed.

authority of the Military Governor, this Government must consider such an attitude as evidence of the impotence of the Peking Government, but must continue to look to the Central Government as responsible for the fulfillment of China's obligations and for the due protection of American citizens and their interests. This Government is indifferent to the procedure by which the Chinese Government may arrange for the satisfaction of your third demand, provided that its Consul at Kalgan is enabled to witness the infliction of the penalties.

PHILLIPS

393.1123 Coltman, Charles/47 : Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *February 23, 1923—4 p.m.*

37. Your 61, February 17, 6 p.m.[48] and 63, February 18, 8 p.m. It would be a great disappointment to the Department were it to prove impossible to have more effectively deterrent punishments imposed than the mild penalties imposed by the Tutung. The Department however relies upon your judgment and recommendations in determining as to whether we may hopefully insist that more satisfactory action be taken by the Chinese officials.

It is felt that in order to have any substantial value the punishments should be imposed publicly in the consul's presence.

At your discretion you may inform the Chinese Government that any affirmative action upon the remission of the remainder of the Boxer Indemnity during the session of Congress about to expire has been made impossible by the attitude of the Chinese Government in respect to the Coltman case, and that a continuation of this attitude would prevent the Department from recommending to the next Congress such remission.

HUGHES

393.1123 Coltman, Charles/72

The Minister in China (Schurman) to the Secretary of State

[Extract]

No. 1410 PEKING, *March 14, 1923.*
[Received April 11.]

SIR: Referring to my despatch No. 1378 of February 28, 1923,[48] I have the honor to transmit herewith a copy of a note which I received on March 3rd from the Minister for Foreign Affairs trans-

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[48] Not printed.

mitting a communication he had received from the Military Governor at Kalgan submitting a formal apology for the death of Mr. Coltman and what purports to be an apology for the attack upon the American Consul at Kalgan.

I also enclose a copy of a note which I presented to the Minister for Foreign Affairs on March 7th, in reply to his note of February 10th,[49] rehearsing the situation and reiterating my demands in respect of the most important of the unfilled conditions. I also enclose a memorandum [49a] of the conversation I had with the Minister for Foreign Affairs on the occasion of presenting this note and which had largely to do with the question of the punishment of the guilty officers, in the course of which the Minister for Foreign Affairs stated that he had received information from Kalgan direct three days before that two of these officers had been dismissed. . . .

. . . .

I have [etc.] JACOB GOULD SCHURMAN

[Enclosure 1—Translation]

The Chinese Acting Minister for Foreign Affairs (Huang Fu) to the American Minister (Schurman)

F. O. No. 380 [PEKING,] *March 2, 1923.*

SIR: I have the honor to recall that on February 10, 1923,[49] this Ministry addressed to you a Note in reference to the matter of the American merchant at Kalgan, informing you of the measures taken in connection therewith, which communication I have the honor to assume you received and noted.

A despatch has now been received from Military Governor Chang Hsi-yuan, as follows:

"At the time this case originated I was not in Kalgan, being absent on official business, and in consequence of this fact an incident was created wherein an American merchant was so wounded that he died. For this I desire to express sincere apologies. At that time the American Consul at Kalgan was present at the scene of the occurrence. This was certainly most unexpected and is the cause of even greater regret on my part.

"I have prepared this special letter of apology and request that it be transmitted to the American Minister in Peking."

I have the honor, Mr. Minister, to inform you of these facts and to express the hope that you will take note of them.

A formal despatch.

SEAL OF THE MINISTRY OF FOREIGN AFFAIRS

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[49] See telegram no. 48, Feb. 11, from the Minister in China, p. 723.
[49a] Not printed.

[Enclosure 2]

The American Minister (Schurman) to the Chinese Acting Minister for Foreign Affairs (Huang Fu)

No. 432 PEKING, *March 7, 1923.*

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note of February 10th in reply to my note of January 3rd, which demanded that the Chinese Government make atonement, so far as might be possible, for the shooting and death of an American citizen, Mr. Charles L. Coltman, and the affront offered to the American Government through the firing on Mr. Samuel Sokobin, the American Consul.

Of the six demands made by me under instructions from my Government for the expiation of this crime the first, namely the apology by the Chinese Government, has already been complied with. I understand also from Your Excellency's note that there will be no further attempts on the part of the Chinese authorities to prohibit the transportation of currency by American merchants for use in the conduct of their business. If this be corrected the fourth of my demands has also been satisfied.

With regard to the sixth demand contained in my note of January 3rd, while formally reserving the right of my Government to present in the future claims for damages suffered by American merchants in consequence of the interruption of their business. I am not desirous of going further into the matter at the present time.

Of the six demands made in my note of January 3rd there remain unsatisfied the following, namely: the second, which calls for an apology from the Tutung to the Consul; the third, which requires the summary dismissal from the army and permanent exclusion from the Chinese service of the Chief of Staff, the Chief Adjutant, and Adjutant Wang, and, in addition their punishment under Chinese law for the killing of an American citizen; and, the fourth, which stipulates for the payment of an indemnity, to be determined by the American Government, to the family of Mr. Coltman.

In Your Excellency's note of February 10th the following substitutes are proposed in lieu of compliance with the foregoing demands, namely:

"1. The Tutung of Chahar will in accordance with the spirit of this Ministry's note of January 3rd to Your Excellency prepare a note apologizing to Your Excellency, but he cannot apologize to the present American Consul at Kalgan, Mr. Sokobin.

"2. This Government will issue an instruction to the Tutung of Chahar to examine thoroughly the Chief of Staff of the Tutung's office, the Chief Adjutant and Adjutant Wang who was sent to the

place where the affair arose, and to punish them according to law as a warning for the future.

"3. Out of pity and regard for the family of the American merchant, Charles L. Coltman, it is permitted that the Chinese local officials shall in conformity with precedent consult together and give his family a compassionate allowance as an evidence of sympathy."

As to the first of these proposed substitutes it must be observed that the affront to the American Government having been publicly offered to the American Consul in Kalgan the indignity cannot be obliterated without public expiation by the Tutung in Kalgan.

In view, however, of the objection urged on the ground of difference in rank between the Tutung and the Consul, I am willing so far to modify the second demand contained in my note of January 3rd as to agree that the Tutung's apology shall be made to the Government of the United States and presented by him to my personal representative, who will be the Counsellor of this Legation, at the Consulate in Kalgan, on a day and at an hour to be named by me,—the form and terms of the apology having also been approved by me in advance.

As to the second substitute it is understood that up to the present time no punishment has been inflicted upon the Chief of Staff and the two other officers. Yet whether they intended it or not, they and especially the Chief of Staff who exercised that day the highest authority are responsible for the greatest crime which could be committed against a friendly nation, namely, the killing of its citizens and the firing on its officials. That retributive justice moves so slowly in China must be a source of profound astonishment and regret to jurists all over the world who follow the history of these proceedings, and their anxiety will not be allayed by the fact that Your Excellency in desiring to settle this case is moved, not by a sense of outraged justice, but by special considerations growing out of the friendship between China and the United States. For my own part, while I am gratified with this manifestation of good will to America and shall in the future as in the past seek by all legitimate means to promote the friendship between our two peoples, I make my appeal not to friendship but to justice when I demand in the present case for the Chief of Staff and the other offending officers a punishment commensurate with the enormity of this crime they have committed against the citizens and government of the United States.

As to the third substitute, namely the permission to the Chinese local officials to give, out of pity and regard, a compassionate allowance to the family of Mr. Coltman, I have only to observe that it is altogether inacceptable.

I have already indicated the modifications I am willing to make in the first of the unsatisfied demands, namely, the apology from the Tutung. For the rest I have, in the circumstances, no alternative to renewing, as I herewith formally renew, the two remaining unsatisfied demands in the form in which they were made in my note of January 3rd, being as follows:

"3. The summary dismissal from the Chinese army of the Chief of Staff, the Chief Adjutant and the third officer described above and the permanent exclusion of all of them from future employment in the military or civil service of the National or the Provincial Governments of China; and, in addition, the punishment of these three officers for the unjustifiable killing of Mr. Coltman by inflicting on the principal offender and also on the abettors or accessories of the act the respective maximum penalties prescribed by law for such crimes.

"4. Indemnity for the family of Mr. Coltman as determined by the American Government."

In requesting an early reply, I avail myself of this opportunity to extend to Your Excellency the renewed assurances of my highest consideration.

JACOB GOULD SCHURMAN

393.1123 Coltman, Charles/56 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *April 7, 1923—7 p.m.*

59. With reference to the Department's No. 44 March 9, 6 p.m.[50] you are requested to report upon the present status of the Coltman case, and the prospects of a satisfactory settlement. If there exists any impression in the public mind that the case has been settled to the satisfaction of this Government by such partial measures as the Chinese Government has thus far taken, or that this Government is permitting the case to drop out of sight, you are authorized in your discretion to make an appropriate public statement.

HUGHES

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[50] Not printed.

393.1123 Coltman, Charles/77 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *April 18, 1923—8 p.m.*
[Received April 18—8 p.m.]

112. My telegram no. 101 of April 10, 4 p.m.[51] On the evening of April 13 I met Koo socially and had a lengthy private conversation regarding the Coltman case. I warned him that the relations between our countries would be seriously affected if the case was left unsettled and insisted that China would have to satisfy our demands. His acceptance of the appointment as Foreign Minister awaits confirmation by Parliament, yet he appeared to feel responsibility in the matter and said he would talk with the President about it the next day. The following evening he called me on the telephone and reported that he had done so. He said that the President had conferred with the Cabinet regarding the case and that the Vice Minister for Foreign Affairs would inform me on Monday, April 16, as to the results of this conference. Sunday I learned from other entirely reliable sources that Koo had telegraphed Tsao Kun substance of my conversation.

Recently through effective intermediaries I have been impressing Tsao Kun with the danger that the Chinese attitude respecting the Coltman affair would alienate the United States. On April 14 General Feng Yu-hsiang, the Christian general, who had just returned from a visit to his chief, Tsao Kun, sent a trustworthy messenger to me expressing his concern regarding the present status of the issue. It was arranged that I should confer with Feng on the morning of the 16th. In order to secure his cooperation I had personally explained all phases of the case to General Feng several weeks ago. At that time I know he at once made representations to the Department of War.

On the 16th as arranged I had separate conference of nearly two hours in each case with Feng Yu-hsiang and with the Vice Minister for Foreign Affairs who at present is the Acting Minister. Feng stated that he was speaking for Tsao Kun as well as for himself although his visit was unofficial. He said that neither of them was officially connected with or had any responsibility for the action of the Tutung at Kalgan who was in another command. However, they were concerned about the action of General Chang Hsi-yuan, the present Tutung, as he was a good friend of both Feng and Tsao and also because Tsao had recommended him for the position,

[51] Not printed.

while Feng when Tuchun of Shensi had been his superior and in 1922 had brought him to Chihli to assist in the campaign against Chang Tso-lin.

A large part of Feng's remarks consisted of expressions of regret and appeals that the strong nation, the United States, should deal kindly with the weak nation, China. I found it necessary to say to him that justice as well as benevolence was among the principles on which states conducted their relations with each other. I added that no sacrifice on China's part was involved in our demands in the Coltman affair. Feng did not have any adequate idea of the character of extraterritorial rights and when I explained the system and illustrated its flagrant violation in the Coltman affair he became somewhat excited. However he greatly regretted the occurrence and on the whole was sincerely desirous of helping to settle the case. He was nonplussed and gave no answer when I inquired what settlement he would propose.

The Acting Minister said that his object was not to review the legal arguments but to seek to obtain a speedy settlement by frankly talking over the situation. He had the gist of his remarks on a paper before him written in Chinese. He was very considerate and was anxious to reach an understanding. . . .

I am convinced that the only way to get any nearer to our complete demands is by the use of diplomatic pressure, hurtful to China, either by the Department or by the concerted action of the powers.

Although three of the six demands originally presented are still unsatisfied, the Chinese consent to have our Government determine the size of the indemnity to be paid by China to the family of Coltman, of course subject to final acceptance by the Chinese Government, is a decided advance over any suggestion or proposal before made by the Peking Government.

The fate of the Tutung is a matter of grave concern to the Peking Government. Their argument is that since he has already made an apology to the Minister of the United States, which he has done, no additional demand should be made upon him. I presume that no Chinese would look at the case differently. Replying to my statement that it was necessary to have some public act of atonement at Kalgan, the Acting Minister called attention to the fact that such public expiation was supplied by the summary dismissal of the three officers. This action would be known to population of Kalgan and in the country far beyond.

The Chinese Government has made a marked advance in meeting our demand with respect to punishment. It now consents that the chief of staff be punished like the others and that all three officers be summarily dismissed. I asked what was the reason that these

officers should not also be excluded permanently from the Chinese service and brought to trial for killing an American citizen. The reply of the Vice Minister was that there was no way to bring them before the courts and that it would be a deprivation of the rights of citizenship to permanently exclude them from public service. No official in China, civil or military, could put such a decree in effect without authority of a court decision.

I have been going on the assumption that the Peking Government will accept the plan of settlement recommended by the Vice Minister. Possibly they may not, but if they do I recommend that the Department accept the terms.

It may be wise to give me instructions to secure certain further concessions if possible, but with the provision that although I am to present and urge them they may be dropped if it should be found that they make a speedy settlement impossible. . . .

SCHURMAN

393.1123 Coltman, Charles/77 : Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *April 26, 1923—5 p.m.*

73. The Department has given your 112, April 18, 8 p.m., the most serious consideration, especially as you recommend that the terms therein suggested for the settlement of the Coltman case should be accepted.

While I am disappointed at the second proposal of the Chinese Foreign Office, I am inclined to think that it must be accepted as the most that can be obtained with respect to the punishment of the officers, unless you are able to secure assurances that within the limits of its executive authority the Chinese Government will discountenance their being employed in the future by any of its military subordinates.

Proposal number three, with respect to compensation to the Coltman family, of course is satisfactory.

The first proposal, that relating to the apology by the Tutung, I do not consider satisfactory. His letter which you received through the Foreign Office and enclosed in your despatch 1410 of March 14, ignores the conditions you had made as to the manner and form of his apology, and to my mind does not even convey any real acknowledgment of regret for the affront to the United States in the person of its consul. The part of the letter wherein the unexpected presence of the consul is referred to impresses me, as I think it must others, not as an apology but as an equivocal expression by which

fault is imputed to the consul instead of to those who were guilty of the attack. To be acceptable to the American Government the Tutung's apology must contain a clear-cut, unambiguous expression of regret for the attack on the consul in place of the sentences referred to above.

Regarding the manner of the apology, my only concern is that it should be as formal and as public as in other cases in which Chinese officials have had occasion to make apologies to the representatives of other States whose nationals had been killed or whose officials had been subjected to indignity or jeopardy by agents of the Government of China. I suggest two alternatives which you may present. The Tutung may apologize at the Kalgan consulate to your personal representative (as you proposed in your note of March 14 [7] to the Foreign Office[53]) or apologize with similar formality to you personally at the Legation. I leave the details to your discretion, but I desire you to be guided by the principle that the apology should be given in such a public and formal manner that it will be generally known that the Tutung has not been able to escape responsibility for the safeguarding of American lives and for the respect which is due to American officials.

I would be heartily sorry if, as you indicate, no satisfactory settlement can be obtained without the use of diplomatic pressure hurtful to China, but I have made it clear from the beginning of this case that this Government would regard the spirit in which it was dealt with as a test of the good will and responsibility of the Government at Peking.

HUGHES

393.1123 Coltman, Charles/80 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *May 4, 1923—1 p.m.*
[Received 3:36 p.m.]

129. Your telegram 73, April 26, 5 p.m., was received April 28. On that day I saw the Acting Minister for Foreign Affairs and informed him that my Government could not accept his proposed settlement. It was a great disappointment to him and he urged me to cable the Department asking for reconsideration. I told him that I must refuse to telegraph again unless I had some new proposal, as I already had strongly presented his case. He replied that he would have to consult many people if he took the case up again and that the result would be uncertain. I remarked that as so much progress

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[53] *Ante*, p. 729.

had been made already, I had hopes of a satisfactory adjustment of the two remaining points, the barring of the offending officers from Government employment in the future and a satisfactory personal apology by the Military Governor either at the Legation or at the Kalgan Consulate. The Acting Minister repeated his previous argument on the former point, that such exclusion was practically involved under Chinese law by dismissal. Personally I think that may not be much inferior to the Government's promise that the officers will not be given service again. The Acting Minister finally agreed to take up with the persons concerned the question of an apology by the Military Governor.

On April 30 I went to Paotingfu early in the forenoon and returned to Peking about 2 o'clock the next morning. At Paotingfu I had lunch with Tsao Kun and we had a conversation lasting about five hours, of which more than a third was devoted to a private discussion chiefly concerning the Coltman case. I told Tsao Kun the salient facts, and outlined the progress of the negotiations with the Chinese Foreign Office. I stated that there could be no settlement without a satisfactory apology from the Military Governor and I invited him to cooperate in bringing that about. He made some inquiries, criticized the delay and mismanagement of the case by the Chinese Government, and promised to have the Military Governor offer a suitable apology at the Legation. I was assured by Tsao Kun that I need have no doubt regarding the agreement to this plan by the Military Governor as he was one of Tsao Kun's followers. Tsao Kun promised to telegraph the Military Governor to come to Paotingfu immediately. Upon his arrival the matter would be explained to him and his consent obtained to what was wanted of him. I told Tsao Kun that I appreciated his cooperation in arriving at a settlement of the case.

. . . .

SCHURMAN

393.1123 Coltman, Charles/81: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 5, 1923—1 p.m.*
[Received May 5—9 a.m.]

131. Your 73, April 26, 5 p.m. My 129, May 4, 1 p.m. Lieutenant General Chang Hsi-yuan, tutung of Chahar, came to Legation at 10:15 this morning and apologized for the firing on the American consul and Coltman (in the latter case with fatal results) and, on behalf of my Government, I accepted the apology. I had urged Tsao Kun that the apology should be made this week and, although

Koo wanted to postpone it so that the case could be settled in its entirety, Tsao Kun has complied with my wishes. I urge, nevertheless, that the Department fix the amount of the indemnity at the earliest possible date, and also give me instructions as to the time and manner of payment.

[Paraphrase.] I note that the proposed punishment of officers is acceptable to the Department as the most that can be obtained. Undoubtedly this is the case. [End paraphrase.]

SCHURMAN

393.1123 Coltman, Charles/81 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *May 16, 1923—6 p.m.*

83. Your telegram No. 131 May 5, 1 P.M. appears to conclude satisfactorily the settlement of points other than that of indemnity for Coltman's death; but the Department thinks it advisable that in any eventual correspondence closing the case the Legation should make it clear that this Government reserves the right to protest in the event of its being found hereafter that the dismissed officers have again been taken into military service under the Chinese Government.

You will doubtless find it desirable to avoid the possibility of prejudicing action on the several claims to be made in behalf of Coltman's estate, by withholding until those claims have been finally adjusted any indication of this Government's satisfaction with the other terms of settlement of the Coltman incident.

In the absence of any precise indications of Coltman's earning capacity, which it is appreciated would be almost impossible to estimate because of the continuous interference with his business by the Chinese authorities, the Department considers, in the light of all facts thus far known to it, that the indemnity for his death might properly be fixed at gold dollars 25000.

. . . .

HUGHES

393.1123 Coltman, Charles/87 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *May 26, 1923—3 p.m.*
[Received May 26—7:02 a.m.]

184. My 171, May 19, 11 a.m.[54] Note from Foreign Office dated yesterday states chief of staff on petition Ministry War and General

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[54] Not printed.

Staff was dismissed by Presidential mandate, and chief adjutant and Adjutant Wang dismissed by Ministry of War; and Chinese Government accepts our demand for $25,000 compensation.[55]

SCHURMAN

REFUSAL BY THE UNITED STATES TO RECOGNIZE THE APPLICABILITY OF CHINESE MARTIAL LAW TO AMERICAN CITIZENS OR TO AMERICAN NAVAL VESSELS

893.00/4544

The Secretary of State to the Minister in China (Schurman)

No. 208 WASHINGTON, *August 18, 1922.*

SIR: Reference is made to the Legation's despatch No. 707 dated June 7, 1922,[56] enclosing copies of correspondence from the American Consul at Tsinan regarding the declaration of martial law by the Chinese authorities at Tsinan and certain territory along the Tsinan-Foochow [*Tientsin-Pukow?*] and Shantung Railways. The Legation requests an expression of the views of the Department on the general subject of the applicability of martial law to persons possessed of extraterritorial privileges in China.

The Department is of the opinion that a declaration of martial law by the Chinese authorities can not operate so as to deprive American citizens in China of any rights or privileges which they are entitled to enjoy by virtue of stipulations contained in the treaties concluded between China and the United States. American consular officers in China, however, may in an appropriate case render all proper assistance to the Chinese authorities in maintaining peace and order and in preventing or suppressing participation by American citizens in any improper or unlawful acts. The Department, therefore, is in substantial accord with the view expressed by the American Consul at Tsinan in the communication of May 2, 1922,[57] addressed to the Special Commissioner of Foreign Affairs at that city.

In the absence of a particular case arising requiring such action, the Department does not consider it necessary to make any comments concerning the particular provision of the Chinese regulations which accompanied the communication dated April 25, 1922,[57] from the Special Commissioner of Foreign Affairs.

I am [etc.] For the Secretary of State:

WILLIAM PHILLIPS

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[55] On Sept. 20, the Chinese Acting Minister for Foreign Affairs transmitted a draft for $25,000 to the Minister in China in payment of this claim.

[56] *Foreign Relations*, 1922, vol. I, p. 825.

[57] Not printed.

893.00/5321

The Minister in China (Schurman) to the Secretary of State

No. 1952 PEKING, *November 26, 1923.*
[Received December 28 (?).]

SIR: Referring to the Department's instruction No. 208, of August 18, 1922 (File No. 893.00/4544) in regard to declarations of martial law by the Chinese authorities, I have the honor to transmit herewith copies of despatches Nos. 28 and 30, of November 14, 1923, and November 19, 1923,[58] respectively, from the American Consul-General at Canton, in which he reports having taken the position with the *de facto* authorities at Canton that he was unable to admit a right on the part of the local authorities to interfere with the free movement of American naval vessels in the performance of their duties, this declaration having been elicited by an attempt by the local authorities to impose restrictions on the movements of American men-of-war owing to a declaration of martial law in the region affected. I have the honor to transmit, also, a copy of my reply to Mr. Jenkins of today's date,[59] in which I approve the action taken by him, subject to the comment that it would in my opinion, have been desirable to add a phrase indicating that the movements of American vessels are based upon Treaty stipulations and are guided thereby.

Upon receipt of the Department's approval of such a step I desire to circularize the American Consuls in China in regard to this incident, supplementing a previous circular transmitting a copy of the Department's instruction of August 18, 1922, referred to above.

I have [etc.]

(In the absence of the Minister)
EDWARD BELL

[Enclosure 1]

The Commissioner of Foreign Affairs of Kwangtung Province (Fu) to the American Consul General at Canton (Jenkins)

[CANTON,] *November 7, 1923.*

SIR: I have the honor to inform you that this office has received an instruction from the Secretary of Foreign Affairs at the Headquarters, reading as follows:

"This office is in receipt of a communication from Chief of Staff Lee Lieh Chun stating that in view of the fact that the military

[58] Despatches not printed; the enclosures to despatch no. 28, however, are printed *infra*.
[59] Not printed.

operation is now at its zenith, all the strategic zones around Fu Moon, Chang Chow, I Moon and Wang Moon as well as other important entrances at the mouths of various rivers have been declared under martial laws, whereas men-of-war and vessels belonging to all nations are now only permitted to enter the port every day from 7 A.M. to 4 P.M. In case any foreign man-of-war desires to travel in the interior rivers, she is requested to inform the Consul concerned to notify the Department of Chief of Staff 48 hours in advance so that instructions may be issued in order to avoid misunderstandings.

"The Commissioner of Foreign Affairs is therefore asked to write to the Consuls of the various Powers to this effect promptly."

Having received the above instruction, besides separately notifying all concerned, I have the honor to send this despatch for your information and hope that you will kindly inform all men-of-war and (vessels) of your country to take note of the above.

With compliments. FU PING CH'ANG

[Enclosure 2]

The American Consul General at Canton (Jenkins) to the Commissioner of Foreign Affairs of Kwangtung Province (Fu)

CANTON, *November 13, 1923.*

SIR: I have the honor to acknowledge the receipt of your letter of November 7, 1923, relative to martial law having been declared in certain zones and stating that men-of-war of foreign nations are only permitted to enter the port between 7 A. M. and 4 P. M. It is also observed that advance notice is desired relative to the movements of men-of-war on rivers in the interior.

In reply I have the honor to inform you that my Government can under no circumstances admit of any right on the part of the local authorities to interfere with the free movement of American naval vessels in the performance of their duties, and that should any unpleasant incidents occur in this connection the responsibility will rest with the Chinese authorities.

I have [etc.] DOUGLAS JENKINS

893.00/5321

The Secretary of State to the Minister in China (Schurman)

No. 556 WASHINGTON, *January 29, 1924.*

SIR: Reference is made to your despatch No. 1952, dated November 26, 1923, transmitting copies of two despatches from the Consulate General at Canton regarding an attempt on the part of the local Chinese authorities to interfere with the free movement of American naval vessels in certain regions stated to have been affected by a declaration of martial law.

It appears that the Consul General at Canton in a communication dated November 13, 1923 addressed to the local Commissioner of Foreign Affairs, took the position that this Government could under no circumstances admit of any right on the part of the local authorities to interfere with the free movement of American naval vessels in the performance of their duties, and that the Legation has approved the action of the Consul General, subject to the comment that it would have been desirable for him to have added a phrase indicating that the movements of American vessels are based upon treaty stipulations. You state that upon receipt of the Department's approval you intend to circularize the American consuls in China in regard to this incident.

Article IX of the Treaty of 1858 concluded between China and the United States [60] provides in part as follows:

"Whenever national vessels of the United States of America, in cruising along the coast and among the ports opened for trade for the protection of the commerce of their country or for the advancement of science, shall arrive at or near any of the ports of China, commanders of said ships and the superior local authorities of Government shall, if it be necessary, hold intercourse on terms of equality and courtesy, in token of the friendly relations of their respective nations; and the said vessels shall enjoy all suitable facilities on the part of the Chinese Government in procuring provisions or other supplies and making necessary repairs."

In view of the foregoing treaty stipulations the Department approves of the Legation's suggestion that it would have been desirable for the Consul General to have made it clear to the local authorities that the movements of American war vessels in Chinese waters are based upon treaty stipulations, and perceives no objection to the Legation circularizing the American consuls in China in the manner suggested in the despatch under acknowledgment.

I am [etc.] CHARLES E. HUGHES

INCREASE OF LAWLESSNESS ON THE UPPER YANGTZE RIVER AND RECOMMENDATIONS BY AMERICAN OFFICERS IN CHINA TO REENFORCE THE AMERICAN GUNBOAT PATROL [61]

893.00/4952

The Minister in China (Schurman) to the Secretary of State

No. 1422 PEKING, *March 20, 1923.*
[Received April 17.]

SIR: I have the honor to report that during a visit which Rear-Admiral W. W. Phelps, commanding the Yangtze Patrol Force of

[60] Malloy, *Treaties*, 1776–1909, vol. I, p. 214.

[61] For previous correspondence concerning measures for the protection of American commerce on the Yangtze River, see *Foreign Relations*, 1921, vol. I, pp. 519 ff.

the United States Asiatic Fleet, paid to Peking in November last he laid before me certain views with regard to the tranquilization of the situation on the Upper Yangtze River in Szechuan, which situation, as the Department is aware, has given rise to much anxiety within the past two years. As a result of these conversations, Admiral Phelps requested Rear-Admiral Kobayashi, of the Imperial Japanese Navy, the Senior Force Commander of the Yangtze, to call a conference of the force commanders (representing The United States, Great Britain, France and Japan) to consider the question. This conference was held in Shanghai last month, as a result of which my British, French and Japanese colleagues and I each received a communication from the four senior naval officers transmitting a copy of a communication which they proposed to forward through their respective legations at Peking and the consular officers in Szechuan to the Chinese authorities and all commanders of district troops who have or may have in the future any connection with strife in the Province of Szechuan.

At a conference of my British, French and Japanese colleagues and myself the substance of the senior naval officers' communication was approved, but it was decided to alter its form to that of a memorandum which was to be transmitted by the respective Consuls to the appropriate Chinese civil and military authorities in Szechuan.

This course was adopted as it was felt that while the views of the senior naval officers should be communicated to the local authorities the communication should reach the latter from the consular officers of the Powers as being more in consonance with usage and with the duties and dignity of the consular officers, rather than from the naval officers direct.

The form of joint communication from the four Consuls at Chungking to the local authorities was also decided upon, as well as a form of identic despatch to the four Consuls at Chungking instructing them in the premises.

It was also decided to address a note to the Waichiao Pu transmitting a copy of the naval officers' memorandum and requesting that the Chinese Government, who must be held ultimately responsible for conditions on the Yangtze, should pay most serious attention to this communication and should take the necessary steps to accomplish the object in view, namely, the cessation of attacks on and interference with foreign shipping by Chinese soldiers on the Upper Yangtze.

I have received a despatch No. 57, dated February 27, 1923, from the American Vice-Consul in Charge at Chungking, copies of which I understand he has forwarded direct to the Department of State,[62] in which he expresses quite groundless fears that the prerogatives

[62] Not printed.

and dignity of the Consular Body would be ignored in the communication to be addressed to the authorities of Szechuan. My communication of March 19th to Mr. Spiker, which forms Enclosure No. 4 [63] to this despatch, will, I am confident, remove his anxiety on this score.

I have [etc.] JACOB GOULD SCHURMAN

[Enclosure]

The Representatives in China of Japan, the United States, France, and Great Britain to the Chinese Acting Minister for Foreign Affairs

The Undersigned Representatives of Japan, The United States of America, France and Great Britain have the honor to call the most serious attention of the Acting Minister for Foreign Affairs to the outrages repeatedly committed during recent years against the vessels of their respective mercantile marines on the Upper Yangtze by the military forces of contending factions in Szechuan. It will be within the knowledge of His Excellency that these vessels, peacefully plying on the waters of the Upper River between Ichang and Chungking in accordance with their Treaty rights, have again and again, in spite of reiterated protests, been fired on from the shore to the danger of foreign life and property and in violation of the friendly relations existing between China and the Powers concerned.

Although the Chinese Government is responsible for the safety of shipping upon the Chinese rivers, the duty of protecting the shipping of their nationals against these piratical attacks by bands of irresponsible soldiery falls upon the naval forces of Japan, The United States, France and Great Britain stationed on the Upper River for that purpose, and the Undersigned have the honor to transmit herewith copy of a memorandum on this subject, drawn up by the Senior Officers commanding these forces, which the Consuls of the Powers concerned at Chungking have been instructed by the Undersigned to present to the civil and military authorities in Szechuan. It is requested that the Chinese Government, who must be held ultimately responsible, will pay most serious attention to this communication and will take the necessary steps to accomplish the object in view, namely, the cessation of these attacks on, and interference with, foreign shipping by Chinese soldiers on the Upper Yangtze.

Y. OBATA
JACOB GOULD SCHURMAN
A. DE FLEURIAU
RONALD MACLEAY

PEKING, *March 19, 1923.*

[63] Not printed.

[Subenclosure]

Memorandum by the Senior Officers in Command of the Naval Forces Respectively of Japan, Great Britain, the United States and France Operating on the Yangtze River

During the last two years our Mercantile Vessels, legally flying our respective flags and legally trading on the Upper Yangtze River, have been repeatedly attacked and fired on from the shore, thereby endangering the lives of our nationals.

Further, these vessels have been boarded and searched by bands of soldiers in spite of the respectful protests of the Masters thereof.

This constitutes an outrage against our respective flags and a violation of the amenities due from one great Power to another.

Against these attacks and indignities our respective Consuls have repeatedly protested without result.

Wherefore viewing the future with great concern we, the undersigned, the present Senior Officers commanding respectively the Naval Forces of Japan, Great Britain, The United States and France operating on the Yangtze River, have mutually decided that the Treaty rights of our Nationals must be maintained in accordance with the usages of International Law and the common courtesies of friendly Powers.

We therefore request with the friendliest of feelings that such orders be issued as will render the recurrence of such episodes impossible in the future.

The Senior Naval Officers in Command of the Naval Forces of the friendly Powers operating on the Yangtze River.

KENZO KOBAYASHI
Rear-Admiral, I.J.N.
P. MACLACHLAN
Rear-Admiral, R.N.
W. W. PHELPS
Rear-Admiral, U.S.N.
E. STEVA
Capitaine de Frigate, M.F.

Done at Shanghai this nineteenth day of February, 1923.

893.811/530

The Minister in China (Schurman) to the Secretary of State

No. 1605 PEKING, *June 13, 1923.*
[Received July 10.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 369 of April 6, 1923,[64] regarding the inade-

[64] Not printed.

quacy of the American naval forces on the Upper Yangtze, and to inform the Department that I have requested the Consul-General at Hankow and the Consul at Chungking to forward to me for transmission to the Department any information on the matter which might be useful in bringing before Congress the necessity of increasing and strengthening the force on the Yangtze.

I regret to learn, however, from the enclosure to the above mentioned instruction that the Navy Department saw fit to include in its next budget estimates for only two river gun-boats. I consider the region bordering the Yangtze one of the chief centers of unrest in China, and the interference to which American religious and commercial enterprise is there subjected constitutes a grave menace to American prestige in China. The proper policing of the river would to a great extent obviate these dangers and would thereby create an area of quiet and safety which might gradually be extended over neighboring districts. I believe that at least six new river gun-boats should be provided for this purpose and I cannot too strongly urge upon the Department the pressing necessity of taking every possible step to assist in expediting any measures which may be deemed advisable to gain this end. The present naval force on the Yangtze, with its equipment, is laboring under almost insurmountable difficulties, and there is a general feeling of apprehension among all who realize that under the present conditions adequate protection to American lives and property in the region of the Yangtze cannot be afforded.

I shall send the Department all available material to bring before Congress. In the meantime I urgently recommend that the Navy Department itself be convinced of the necessity of raising the estimates which it has already included in its budget for additional river gun-boats.

I have [etc.] JACOB GOULD SCHURMAN

893.00/5108 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *July 27, 1923—1 p.m.*
[Received July 27—10:03 a.m.]

264. Following telegram received from commander of Yangtze patrol dated July 23rd.

"On July 17th General Chow, commanding Kweichow troops and guarding the right bank of river opposite Chungking, treacherously revolted and went over to the first army, crossed river and took Kiangpei cutting off Chungking from down river. On July 20th S.S. *Alice Dollar* was shot at by his troops on her way to Chung-

king. On July 21st *Alice Dollar* on departure was escorted by *Monocacy*, Lieutenant Commander Nielson, both *Alice Dollar* and *Monocacy* were shot at. *Monocacy* returned the [fire] with her battery. Attack on American flag wholly unjustified and unprovoked. On July 22nd *Palos* reported conditions normal at Chungking; General Chow Hsi-cheng has retreated to Kweichow. It would appear that *Monocacy* action has defeated a forcible attempt to establish an illegal blockade of the river whereby foreign community in Chungking would have been cut off."

For the Minister:
BELL

893.811/538

The Acting Secretary of the Navy (Roosevelt) to the Secretary of State

27403–340:23 WASHINGTON, *August 6, 1923.*

SIR: I wish to acknowledge receipt of your letter (FE–811.34/259 893.811/530) of 21 July 1923,[65] enclosing a copy of a telegram dated 11 July 1923 from the American Association of South China, emphasizing the need of further protection in that part of China, and also enclosing a copy of despatch No. 1605 of 13 June 1923 from the American Minister at Peking, in which he recommends that at least six new river gunboats be constructed for service in Chinese waters.

This Department realizes the grave condition of affairs in China and the necessity of adequate naval protection for American interests. Orders have recently been issued for the commissioning of two vessels of the minesweeper class, now at Honolulu, for service in the lower Yangtze River. While these vessels are not entirely satisfactory for river gunboat duty, in that they are of comparatively deep draft, they are the best type of ship the Navy at present possesses for use in reenforcing our Yangtze Patrol. These vessels should arrive on their station in about two months. The Department has put in its estimates for the Budget to be presented to the next session of Congress, a request for the construction of six river gunboats for service on the Yangtze River. If the situation in China continues grave with prospects of becoming worse, the Department will consider recommending to Congress a special appropriation for the immediate construction of these gunboats. It will further recommend that these boats be built on the Asiatic Station in order to expedite their being put in service and for economy in the cost of building.

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[65] Not printed.

The Department of State's opinion as to the desirability of asking for an emergency appropriation for the construction of these gunboats would be greatly appreciated.

Respectfully,

T. ROOSEVELT

893.811/538

The Secretary of State to the Secretary of the Navy (Denby)

WASHINGTON, *August 20, 1923.*

SIR: I have the honor to acknowledge the receipt of your letter of August 6, 1923, in which you state that two vessels of the minesweeper class, now at Honolulu, have been ordered for service in the lower Yangtse River and that the Navy Department has put in its estimates for the budget to be presented to the next session of Congress a request for the construction of six river gunboats for service on the Yangtse River.

In reply to your inquiry as to the Department's opinion as to the desirability of asking for an emergency appropriation for the construction of these gunboats, I have no hesitation in stating that the need for these vessels is most imperative. Your Department is familiar with the general conditions of disorder which have been so prevalent in China in recent years. From such information as this Department is constantly receiving, there appears no indication of any improvement in these conditions in the immediate future. Twice within the present month, reports have been received of serious attacks upon American shipping on the Yangtse. In view of the inadequacy of the present patrol force, and in the face of disordered conditions which offer no prospect of early improvement, it is believed that your contemplated request for an emergency appropriation is fully warranted; and action to this end would be thoroughly appreciated by this Department.

I have [etc.] CHARLES E. HUGHES

893.811/551

The Acting Secretary of the Navy (Roosevelt) to the Secretary of State

27403–340:23 WASHINGTON, *August 28, 1923.*

SIR: Referring to a conversation of 24 August between representatives of the State Department and Navy Department on the subject of inadequacy of the Yangtze River Patrol, I have the honor to give you the following data on the vessels at present in use and on those being asked for in the new estimates.

The three gunboats now in the Lower River, the *Isabel*, *Elcano* and *Villalobos*, are of too great draft to get into the section of the river between Ichang and Chungking, a distance of about 350 miles, where a great deal of banditry has taken place. The only two gunboats of shallow draft able to get into this section of the river are the *Monocacy* and *Palos*, both of which are of insufficient power to operate in the river at all seasons of the year, the current in the rapids at times running at 14 knots whereas the speed of these vessels is 13¼ knots. Since 1914, when these two gunboats were built, a great number of light draft merchant vessels have been built at Shanghai for operating on the upper river. The increase in river commerce since that time has been great and is demanding more protection.

Although the Navy Department is sending two mine sweepers to the Yangtze, they are of use in the lower river only as must any boat be that is not especially built for the upper river work. The necessity for a boat of not over 4½ feet draft, yet of sufficient power to go up the rapids and of a short length that will permit making the turns, is the reason for asking Congress for the new specially built boats, and is also the reason that the usual naval vessel cannot be sent to perform this duty.

All of the gunboats now on the river are so old as to be maintained at great expense, two of them, the *Elcano* and *Villalobos*, having been taken from the Spanish at Manila Bay.

In asking for the new boats, the Navy Department will present all of the technical reasons for the necessity for new construction. If, however, the Secretary of State will give the political and commercial reasons for creditable representation on the Yangtze River, it will no doubt have great weight with Congress. It appears that the use of worn out, improperly equipped and inefficient vessels on the river, in addition to failing to render the actual protection required by American interests, does not reflect credit on our flag or add to our prestige when these vessels are compared with the vessels of other nations that are far better represented.

Respectfully,

THEODORE ROOSEVELT

893.811/551

The Secretary of State to the Secretary of the Navy (Denby)

WASHINGTON, *October 16, 1923.*

SIR: With reference to your letter of August 28, 1923 (File No. 27403–340:23) concerning the inadequacy of the present units constituting the Yangtse River Patrol, I have the honor to state that this Department is much gratified to learn that the Navy Department

is including in its estimates for the coming year specifications for the construction of six new river gunboats under plans especially designed for service upon Chinese rivers.

As stated in my letter of August 20, 1923, the need for these vessels is most imperative. The progressive disintegration of the authority of the Chinese Government, and the diminishing of the sense of responsibility on the part of Chinese officials with respect to the protection of the lives and property of foreign residents, have created in China a situation which gives this Department constant apprehension with regard to the safety of American citizens in that country.

Our chief commercial and missionary interests are centred in the valley of the Yangtse River which drains the whole of central China. Because of the existence of this river, with its branches, it is possible to extend a very considerable degree of naval protection to our interests in that valley, whereas in other parts of that country such protection is necessarily limited almost entirely to the coastal regions. For many years, it has been the custom for the Powers principally interested in Chinese commerce (the United States, Great Britain, Japan, and France) to maintain a naval patrol upon the Yangtse River. These vessels, constantly appearing at the various ports of central China, have served to evidence to the Chinese people the ability and purpose of the foreign governments to protect both their missionaries and their traders in the exercise of their legitimate treaty rights. As I have indicated above, the exercise of these rights is at the present time in jeopardy; and, from such information as the Department is now receiving, there appears no indication of any improvement in these conditions in the immediate future. Especially in the upper reaches of the Yangtse, between Ichang and Chungking, foreign merchant ships are constantly being fired upon by bandits and by irregular forces of Chinese provincial troops. Such conditions have resulted in a very considerable diminution of foreign prestige; and, in one province, the Department has within the last few weeks deemed it necessary to advise the American missionary bodies that they refrain from sending further members of their organizations at the present time.

The necessity, under such conditions, for the maintenance of an adequate naval patrol is obvious. The fact that the American patrol is composed of vessels both antiquated and unadapted for service in the swift and tortuous waters of the upper Yangtse River has been for some years a matter of regret to this Department, especially in view of the greater suitability of the craft assigned by the British and Japanese Governments for this purpose. In the event of an emergency, it is altogether likely that American

citizens may have to depend upon the protection afforded by vessels of other than American nationality, through the inability of our own vessels to reach them. Such a situation, as you state in your letter, "does not reflect credit on our flag or add to our prestige when these vessels are compared with the vessels of other nations that are far better represented." I may state, therefore, that it is the earnest hope of the Department of State that the new construction which your Department is planning for service on the Yangtse River will be approved and commenced at the earliest practicable moment.

I have [etc.] CHARLES E. HUGHES

893.00/5253

The Secretary of State to the Minister in China (Schurman)

No. 525 WASHINGTON, *December 31, 1923.*

SIR: The Department has received a despatch from the American Consul at Chungking, dated September 14, 1923,[66] enclosing a copy of his despatch to your Legation, of the same date, in reference to the looting of the "*I Yang Maru*" at Foochow.

In the last page of the latter despatch he states:

"Since T'ang Tzu-mu's order has been in effect, an unarmed officer has boarded American steamers at Foochow and upon assurances from the Captain and the commander of the small U.S. naval guard stationed on each steamer by Rear Admiral Phelps, that no munitions of war were on board, has quietly left the ship. It is hoped that such orderly procedure will continue to be followed in so far as American steamers are concerned.

"With a view to assuring a continuance of such procedure, on September 14, this Consulate addressed a communication, copy of which is enclosed, to General T'ang Tzu-mu, requesting his continued protection of American steamers in accordance with the treaty."

This procedure is contrary to the policy of this Government as expressed in its instruction No. 843 of July 8, 1918,[66] to the Legation wherein the Department rules that it cannot approve official acquiescence on the part of our representatives in China to the search of American merchant vessels by unarmed insurgents who have not been recognized as belligerents.

You should instruct the Consul at Chungking in future to abide by the above mentioned ruling. You may inform him, however, that as regards the particular case at Foochow, Szechuan, it is believed inadvisable to attempt to withdraw from the position he has

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[66] Not printed.

already taken. Such action might be misconstrued by the insurgents and thereby prove detrimental to American interests.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

893.811/601

The Secretary of the Navy (Denby) to the Secretary of State

27403-340: 39-L WASHINGTON, *February 5, 1924.*

SIR: I have the honor to refer to your letter of January 17, 1924 (File FE-893.811/575)[67] and to this Department's reply thereto of January 25, 1924 (File 26403-340: 39-L),[67] concerning the present status of proposed legislation for the construction of six river gunboats for use as a naval patrol on the Yangtze River, China.

In this connection there is enclosed herewith for your information a copy of a letter addressed to this Department by the Director of the Bureau of the Budget, dated January 29, 1924,[67] from which it will be observed that the legislation proposed in the attached copy of bill was duly presented to the President, who instructed the Director of the Bureau of the Budget to advise me that "it is not in conflict with his financial program, subject to the understanding that he will not approve a supplemental estimate for the fiscal year 1925 except for the purposes of three river gunboats."

Accordingly, under date of February 2, 1924, the Department addressed a letter to the Speaker of the House of Representatives, enclosing a draft of the proposed legislation, with the recommendation that it be enacted into law at an early date.[68]

Sincerely yours,

EDWIN DENBY

RELATION OF CONSULAR OFFICERS TO OTHER AMERICAN OFFICERS IN CHINA

127.3/18a

The Secretary of State to Diplomatic and Consular Officers in China

WASHINGTON, *October 30, 1922.*

GENTLEMEN: In order that there may be no confusion as to the representative capacity of consular officers in China, the Department has deemed it advisable to define, by the present instruction, the

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[67] Not printed.

[68] The construction of six river gunboats was authorized by an act of Congress approved Dec. 18, 1924 (43 Stat. 719). These gunboats were completed in 1928 (*Annual Reports of the Navy Department for the Fiscal Year, etc., 1928*, p. 277).

relation of consular officers to those of the United States Court for China and those of other branches of the United States Government in China.

The consular officer's position is both representative and administrative, and it is to him that the Chinese authorities look as the responsible American authority in the consular district; to him that Americans are to apply in any controversy with the Chinese or with the nationals of other governments. In the affairs of the international settlements, in the protection of American interests and in caring for the welfare of American citizens, it is the Consul General or the Consul who must represent the United States Government and the Minister at Peking. From this it follows:

1: With regard to representation, that

a: In all functions and ceremonies, official or otherwise, it is the Consul General or the Consul who is to be the representative of the United States Government, in and for his consular district.

b: In the observance of all American national holidays, the Consul General or Consul will naturally take the lead and, outside of Peking, when the local authorities wish to pay their respects to the United States Government on such occasions, it is the Consul General or the Consul or the Vice Consul in Charge of the consular office who will receive them.

2: With regard to relative rank, that

On all occasions, whether official or unofficial, the Consul General, Consul or Vice Consul in Charge of the consular office, as the representative of the United States Government, ranks with but before the Judge of the United States Court for China, who has no representative capacity. For the purpose of determining the precedence of other consular officers, relatively to the Judge, the latter is to be deemed as ranking with but after a Consul General.

This instruction supersedes the Special Instruction dated August 20, 1919, to the American diplomatic and consular officers in China.[69]

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

127.3/20

The Vice Consul in Charge at Chungking (Spiker) to the Secretary of State

No. 58

CHUNGKING, *February 22, 1923.*
[Received April 25.]

SIR: In reference to the Department's mimeographed instruction of October 30, 1922, File 127.3, concerning "Relations Between Con-

[69] Not printed.

sular Officers and Other Officers of the United States Government in China", I have the honor to enclose herewith copies of this Consulate's letter of December 30th, 1922, to the commanders of the U.S.S. *Palos* and *Monocacy*,[70] in which the first, and a part of the second paragraph of the Department's mimeographed instruction refererd to, was quoted for the information of the commander of the U.S.S. *Monocacy* who had made friendly personal inquiry at this Consulate as to his right to attempt to secure settlement at Wanhsien of a civil claim of the Standard Oil Company of New York against a Chinese firm. This case had been pending before the Wanhsien authorities for a number of months, and as the Standard Oil Company had not been able to obtain a definite judgment because of the corruption of the Wanhsien Magistrate who had been backed by the military authorities at Wanhsien, the matter had been finally referred to this Consulate, which thereupon requested an appeal trial before the Chungking Commissioner for Foreign Affairs.

The Commander of the *Monocacy* was of the opinion that Article 720, *b* and 876 of the Naval Regulations gave him power to perform consular functions relative to the settlement of civil cases in ports where there is no American consular officer stationed, and as this Consulate held strongly to the reverse view, Lieutenant Commander Nielson in his letter dated January 9th, 1923,[70] referred the question to Rear Admiral W. W. Phelps, Commander of the Yangtze Patrol Force for instructions.

Lieutenant Commander G. W. Simpson, commanding the U.S.S. *Palos* and senior American naval officer present, in his weekly report of January 15th, 1923, to the Commander of the Yangtze Patrol Force concurred in the opinion of Commander of the *Monocacy* in the following words:

"Mr. Spiker, American Vice Consul in Charge at Chungking, furnished the Commanding Officer with a copy of 'Relations between consular officers and other officers of the United States Government in China', the original of which was addressed to the Commanding Officer, U.S.S. *Monocacy*, in response to a letter of inquiry on this question from Commanding Officer, *Monocacy*, to the U.S. Vice Consul in Charge. The Commanding Officer, further read the reply of the Commanding Officer, *Monocacy*, and heartily concurs in it."

The paragraphs in the Naval Regulations referred to as authority by Lieutenant Commander Nielson read as follows:—

"Article 720*b*. In the absence of a diplomatic or consular officer of the United States at a foreign port, the commander in chief, as senior officer present, has authority to communicate or remonstrate with foreign civil authorities as may be necessary.

Article 876. The commanding officer of a ship shall carefully note

[70] Not printed.

and conform to the instructions laid down in Section 3, Chapter 18 of these regulations." (Consulate's note: Section 3 refers to "Intercourse with Foreigners" and contains the above article 720*b*.)

The interpretation of these regulations by the commanders of the *Palos* and *Monocacy* was not shared however by the Commander of the Yangtze Patrol Force, copy of whose self-explanatory letter of January 22, 1923 to the Commander of the *Monocacy*, is enclosed herewith.

The relations between this Consulate and the American naval officers present, have been most pleasantly harmonious, both officially and personally, and the case referred to above was referred to Rear Admiral Phelps by Lieutenant Commander Nielson with a view to obtaining a definite ruling upon what appeared to Lieutenant Commander Nielson to be a conflict in the regulations governing the respective duties of consular and naval officers. The reply of Rear Admiral Phelps appears to definitely answer the inquiry, and is accordingly transmitted to the Department for its information and comment.

I have [etc.] C. J. Spiker

[Enclosure]

The Commander of the American Yangtze Patrol Force (Phelps) to the Commanding Officer U.S.S. "Monocacy" (Nielson)

Hankow, *22 January, 1923.*

Subject: Naval Officers and Consular duties.

1. On 18 January, 1923, the Force Commander is in receipt of a report from the *Monocacy* dated 9 January, 1923, from which is extracted the following:—

"The Commanding Officer (*Monocacy*) requested information from the American Vice Consul (Chungking) regarding the above subject, after an incident which occurred in Wansien between the Standard Oil Company and a Chinese. The incident was the collection of a debt due the Standard Oil Company for which judgment had been granted in Chungking and also in Wanhsien. It seems that the Chinese, who owed the money, refused to pay it and, in this refusal, he was protected by the Chinese general and of course his appointee, the city magistrate.

The Commanding Officer volunteered his services to obtain a settlement of the indebtedness, but was requested to take no action for the reason that the Standard Oil Company's representative did not wish to draw the gunboats into any controversy, unless it were of a military character."

The *Monocacy* thinks that the action of the Standard Oil Company's representative was no doubt questionable.

The reply of the American Vice Consul Chungking simply quoted a pronouncement of the State Department dated 30 October, 1922, received by him 23 December, 1922, as follows:

"In order that there may be no confusion as to the representative capacity of consular officers in China, the State Department has deemed it advisable to define, by the present instruction, the relation of consular officers to those of the United States Court for China and those of other branches of the United States Government in China.

The Consular Officers' position is both representative and administrative, and it is to him that the Chinese authorities look as the responsible American authority in the Consular district; to him that Americans are to apply in any controversy with the Chinese or with the nationals of other governments. In the affairs of the international settlements, in the protection of American interests and in caring for the welfare of American citizens, it is the Consul General or the Consul who must represent the United States Government and the Minister at Peking."

The *Monocacy* lays the situation before the Force Commander thinking that the consular instructions do not conform to Navy instructions found in Regs. Arts. 720 (*b*) and 876; that our duties regarding the protection of lives and property are clearly defined but in matters of civil affairs the naval and consular instructions apparently do not agree; and requests instructions in the premises in order that no trouble may result between the Consular Body and the Naval Force, when the latter is carrying out its duties and when the performance of these duties may be taken, by the Consular and Diplomatic Body, as an unauthorized assumption of authority on the part of the Navy.

2. On 30 September, 1922, the Force Commander addressed a letter (600–2716) to the Robert Dollar Co. and the American West China Navigation Co. (jointly) and furnished copies to the *Palos* and *Monocacy*. The following is quoted from this letter:—

"If we can conclude that those Szechuanese who heretofore drew fortunes and livelihood from the River naturally bitterly resent the surrender of these "their rights" by treaty negotiated by an authority they have never recognized, shall we not expect them to show their resentment by primitive and savage attacks when added thereto the foreign steamers sink their junks and drown their people? Doubtless the Szechuanese mind sees only the steamers to blame. These primitive minds would not be able to reason that any junk could be to blame, although we know that in an admiralty court the contrary decision would often be rendered. And here it is appropriate to recognize the difficulty the native has of appealing to law. Treaty gives us extraterritorial rights. That means that the claim of a native against an American is taken to an American judicial officer. Where there is an American Consul he acts as such. In his absence if there is an American gunboat, that power rests in the Senior Naval Officer. In the absence of both there is no court of

appeal. This is the situation along most of the river, and it will continue until the government judges that the situation requires more consuls and more gunboats. And the river folks can not go up river to Chungking with their appeals. At least they will not do it. So it is believed just to say that the natives have much on their side of the situation."

It is quite possible, from the too broad language used by the Force Commander above, that the Commanding Officer *Monocacy* felt justified in interpreting the Regulations as vesting broad civil powers in the Naval Officer in the absence of a Consul. The Force Commander, discussing above the right of a native to make claim against an American merchant ship for damage or sinking, had in mind that, in the absence of a Consul, the Naval Officer might have the complaint of the native laid before him. The Naval Officer is not vested with the power to settle the suit at law, as might be understood from the language used by the Force Commander.

3. The following is the Mission of this Force:—

"To protect the lives, property and legitimate interests of American citizens within the geographical limits of the Patrol. Such protection should normally be afforded by representations to the appropriate Chinese officials, but Force will be used when considered necessary by the Patrol Commander (Senior Officer Present). The cultivation of good relations with the Chinese people will assist in the accomplishment of the mission and raise the prestige of the United States."

The essential parts of this mission are underscored. The parts not underscored are in the nature of admonitions as to the courses of action to be followed in accomplishing the mission.

Regulations, Chapter 18, Section 3, Art. 717–728. *Intercourse with Foreigners*, and Art. 876–879, lay down also, and set limitations upon, the courses of action to be followed by a Senior Officer Present.

Article 726 calls upon the Senior Officer Present to "protect all merchant vessels and advance the commercial interests of this country"

Thus the idea of protection dominates in the mission of the Force, in the mission laid down in the Naval Regulations to govern every Senior Officer Present, and in the State Department's mission of the Consular Officer. But the protection to be afforded by the Navy implies direct action by the display of force, that to be afforded by the Consular Officer implies indirect action by the pressure of the power and prestige of the American government on native authority.

4. I do not think there need be thought to be a conflict between the mission of the Consul and the mission of the Naval Officer.

Rather I think that their missions are harmonious. Just as the State and Navy Departments work side by side and support one another, so the Consul and the Naval Officer are to work side by side each supporting and helping the other in his work towards a common end. Article 718 of the Regulations implies this coordination while maintaining the independence of both.

5. The use of the Navy to protect the lives, property and legitimate interests of American citizens implies that there exists a lawless menace to those American rights which the local authorities are incapable of suppressing.

Article 720 (*b*) lays it down that

"In the absence of a Consular Officer at a foreign port the Senior Officer Present has authority to communicate or remonstrate with foreign civil authorities as may be necessary."

I think that an existing necessity to remonstrate with foreign authorities as contemplated in this regulation implies some lawless act impending or committed, and does not mean to include a remonstrance looking to the satisfaction of a judgment of indebtedness won by an American against a native. On a small scale, this would be in principle a display of naval force in the collection of a debt. American precedent is against this. I refer to the strong objections raised by President Roosevelt's administration against the attempt of the combined naval forces of some European powers to collect debts from Venezuela in 1902.[71]

Continuing to examine how far the Navy should protect (display force for) the legitimate interests of American citizens, we note that the State Department lays it down that it is to the Consul "that Americans are to apply in any controversy with the Chinese."

6. I think the deduction is unmistakable that a controversy between an American and a Chinese, such as the situation giving rise to this problem, is a matter to be settled, not by the Senior Naval Officer Present but by the Consul of the district. I think that this policy is not only sound and expected by the State Department to be followed, but that it also both holds up the hands of the Consul and strengthens his prestige. Also, since the aim of this Force is at present to diminish an ill-will that has grown out of economic controversies we ought to have the best success along this line if we ourselves keep from getting involved in any such economic controversy as the situation presented. Furthermore, it seems to me that we Naval Officers can best help the Chinese, if we set the example of refusing to display force to settle economic controversies (and this is not the same as displaying force to suppress lawlessness

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[71] See *Foreign Relations*, 1903, pp. 417 ff.

growing out of economic controversies). One of the things the Chinese need to learn is to be led to the civil authorities to settle justiciable matters, to be led away from the idea that the military autocrat is the arbiter of their controversies.

7. The Commanding Officer *Monocacy* does well to conference [*confer*] freely with the Consul. In so doing we will operate to strengthen Consul's hand and his prestige in his district. In so doing the naval officer will discover, in the exercise of a sound discretion, what course of action should be followed, in any economic controversy likely to be brought to his notice, that will best lend support to the standing of the Consul among the Chinese and among our own nationals, and thereby increase the Consul's power to exact that protection his mission calls upon him to afford. But the essential thing to guide us in any situation is always to refer back to our Mission, and to realize clearly that the Navy comes into action under its mission primarily when the lives, property and legitimate interests of American citizens are menaced by the failure of the native authorities to afford protection or by their wilful disregard of our rights.

8. The Force Commander desires to make it clear that his decision herein must be taken to refer only to the problem arising in the concrete situation presented by the Commanding Officer *Monocacy*. Like all problems arising under a mission, each must have its own Estimate of the situation worked out to a sound decision as to what is the best course of action to pursue for the particular situation under consideration. This point ought to be stressed, because the Force Commander does not want anything herein to operate to stifle the initiative of the gunboat captains in the execution of their mission.

W. W. PHELPS
Rear Admiral

FINAL REPORT OF THE PRESIDENT OF THE INTER-ALLIED TECHNICAL BOARD FOR THE SUPERVISION OF THE CHINESE EASTERN AND SIBERIAN RAILWAYS[72]

861.77/3045

The President of the Technical Board (Stevens) to the Secretary of State

WASHINGTON, *March 15, 1923.*

SIR: I have the honor to report upon the activities and conditions surrounding the work of the Inter-Allied Technical Board.

[72] For previous correspondence regarding Inter-Allied supervision of railways, see *Foreign Relations*, 1922, vol. I, pp. 874 ff.

The Inter-Allied Technical Board was organized at Vladivostok on March 5, 1919, under the authority of the so-called Inter-Allied Railway Agreement, which agreement was made between Japan and the United States primarily, but to which others of the Allied nations became parties. The conditions and purposes of this agreement were briefly set forth and read as follows:

[Here follows text of the plan for the supervision of the Chinese Eastern and Siberian Railways, printed in *Foreign Relations*, 1919, Russia, page 239.]

In addition to the agreement and supplementary thereto, the Japanese Minister of Foreign Affairs and the American Ambassador at Tokyo joined in a memorandum which was afterwards communicated to the other powers and which was tacitly, at least, approved by them. This memorandum read as follows:

[Here follows text of memorandum, quoted in telegram of January 9, 1919, from the Ambassador in Japan, printed in *Foreign Relations*, 1919, Russia, page 236.]

The agreement and the memorandum were the outcome of protracted and somewhat stubborn negotiations carried on between the two initial powers, and the agreement as finally adopted was weak, as was foretold by me. Still, it may have been the best that could have been obtained, but I doubt it. Several times I was urged by the United States representative, who had charge of the negotiations on behalf of the United States, to approve tentative agreements which were much weaker than the one finally adopted, but knowing well their uselessness, I refused to do so, and thereby won several important modifications. It was and is my firm belief that if a little longer time had been allowed for the negotiations, a better and stronger agreement could have been made. But I received the following cablegram from the Department, through Ambassador Morris, dated January 6, 1919:[73]

"The Department is greatly concerned because of the reports received daily of the distress in Siberia due to the present intolerable conditions of transportation. It would seem that some plan of action must be adopted at once as the position is now such that the responsibility for further delay in attempting to solve this vital problem may be with reason laid upon us, and that therefore unless we are willing to undertake the task in the face of existing differences [*difficulties*] we should promptly give way to others who will. The Department is eagerly awaiting your decision as to the plan as finally presented to you by Ambassador Morris."

This cablegram forced my hand, for I knew there were but two other courses open; first, to allow the roads to remain as they were

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[73] See telegram, Jan. 4, 1919, to the Ambassador in Japan, *ibid.*, 1918, Russia, vol. III, p. 305.

under purely Russian administration, in which case there was grave danger that the lines of communication would be closed; or, second, to allow the roads to pass under the control of a single foreign nation, which for very obvious reasons would have been a great mistake, and which would, in my opinion, have doomed the whole proposition to utter failure. There were too many jealousies and what might be called competitive interests, to permit such an experiment to be undertaken. Only some plan, bearing at least a promise of coordination on the part of the Allies, stood any chance whatever of a reasonable degree of success. And so, therefore, on January 6, 1919, I signified my willingness to accept the agreement as it then stood.

I make this explanation to answer the question I have been often asked, "Why was the Inter-Allied Railway Agreement so weak?" Weak it certainly was, as it endowed neither the Inter-Allied Railway Committee nor the Technical Board with any real power to enforce their decrees or orders.

It was not the original intention of the representatives of the two initial nations to have more than one Allied body, that one to be purely technical, but in deference to the sensitive character of the Russians, in other words to save the Russian face, it was finally decided to organize a superior body, known as the Inter-Allied Railway Committee, with the stipulation that a Russian would be its Chairman, ostensibly placing a Russian at the head of the railways under Allied supervision. It was understood, however, that the task of carrying out the practical intent of the agreement lay entirely in the hands of the Technical Board. And so far as the effectiveness of the Committee was concerned, it could easily have been dispensed with, excepting for the fact that without its existence, the whole agreement, including the Technical Board, would have fallen to the ground.

The Technical Board, throughout its life, held 133 regular board meetings, minutes of which are among its files.[74] As above stated, it was organized on March 5, 1919, at Vladivostok, at which time the President was elected and a Secretary chosen. Its personnel comprised seven members, representing Great Britain, France, Japan, China, Italy, Russia and the United States, the Russian member representing the Kolchak Government and also the Chinese Eastern Railway. Subsequently, the Government of Czecho-Slovakia was allowed representation on the Board, thus making in all eight nations so represented. It can be readily understood that a Board so constituted with eight different standards of railway administration and practices, speaking several different languages,

[74] Not printed.

and with as yet no common confidence and motives established, was a very unique proposition, and one with limitless opportunities for disagreements which might have and undoubtedly would have, destroyed its entire usefulness. I take pleasure in recording the fact that during the entire existence of the Board no such disagreement arose of sufficient importance to jeopardise its work. Differences of opinion there were, but such differences were easily harmonized so that broadly speaking, the Board uniformly worked as a unit.

English was declared the official language of the Board. The powers of the President of the Board, in regard to all matters of operation of the railways, were declared supreme as far as the Board was concerned, and these powers, so placed in his hands, were never questioned by any member of the Board. On all other matters it was agreed that a majority vote of the members should govern its decision.

The Board held nine meetings at Vladivostok, and on March 19, 1919, it moved to Harbin, where it established its offices in a building provided by the Chinese Eastern Railway, which it occupied until it was destroyed by fire on the night of January 18, 1922, after which date it moved to quarters in the Chinese Eastern Railway general office building, which quarters it occupied until the dissolution of the Board on November 1, 1922.

During the progress of the negotiations which resulted in the making of the Inter-Allied Railway Agreement, it was thoroughly understood that the financial interests of the railways would require an advance of Allied funds, and the Technical Board was called upon by the Inter-Allied Railway Committee to advise it of the amount needed of such funds. As it was impossible, owing to the disordered conditions prevailing on the railways and the urgent necessity in point of time for relief, to make an estimate, a figure of $20,000,000.00 was fixed upon, this amount being merely a guess, as the actual shortage of equipment, supplies and materials was not known, nor was the mileage of the railways which the agreement might cover, known. However, at a subsequent time, two competent, foreign engineers made an estimate from all available data and arrived at the same amount, which was probably about correct as the situation then presented itself. As their shares of the above estimated amount, Japan advanced $4,000,000.00, the United States the same amount, and China $500,000.00. Subsequently, the United States allocated $1,000,000.00 more to this fund. This money was placed in the possession of the President of the Technical Board, to be disbursed by his personal check, with exception of ¥1,300,000.00, which was properly retained by Japan to pay the salaries and expenses of its personnel employed under the agreement. In

the case of the Japanese funds, the President's check was always countersigned by the Japanese member of the Technical Board, for obvious reasons a very wise arrangement. Copies of statements showing disposition of the Japanese and Chinese funds are attached (marked Encl. 1 and 2, respectively).[75] A complete statement of the disposition of American funds, including all vouchers and giving full information in regard thereto, together with balance remaining, is submitted separately.[75]

The continual fluctuation and depreciation of the various kinds of paper roubles which were in circulation, proved a very disturbing factor in the situation. The rate of exchange varying from day to day, together with constant fall in the purchasing value of the currency, made it almost impossible to ascertain correctly what the railways were earning, and several times Allied funds had to be advanced to end and avoid strikes of the railway workmen, occasioned by the use of inferior money to meet payrolls. These advances were absolutely necessary to keep the trains moving.

It was not until after the fall of the Kolchak Government in the latter part of the year 1919, that the Technical Board was able to force the Chinese Eastern Railway to abandon the taking of any Russian money excepting the actual coin of the Russian gold rouble and Chinese currency based on silver. Efforts were made by the Technical Board and the Railway Administration to adjust the tariffs to rates which would meet the falling value of the rouble, but such efforts were only partially successful as there were so many kinds of money in circulation and the fluctuations were so many and so great, that it was impossible to keep pace with them. The Technical Board took an active part in the formulation and adjustment of tariffs as far as the Chinese Eastern and Ussuri railways are concerned.

Generally speaking, the Board worked with a fair degree of harmony with the Railway Administration of the Chinese Eastern until after the agreement which was made between the Russo-Asiatic Bank and the Chinese Government in October, 1920,[76] and which covered the administration of the Chinese Eastern Railway. From that time on, gradually growing more acute, differences of judgment between the Technical Board and the Railway Administration began to arise in the matter of tariffs, the Administration insisting upon heavy reductions in tariffs in the face of increasing deficits, which reductions the Technical Board uniformly disapproved, but the lack of real power to enforce its decisions, prevented

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[75] Not printed.

[76] *Foreign Relations*, 1920, vol. I, p. 713.

the Board from making its decisions of value and the decreases went into effect with the result that during the latter part of 1921 and all of 1922 the deficits increased month by month. The railway was forced to borrow money wherever it could by short term notes and on exorbitant terms, and also to sell advance transportation certificates in large amounts.

After the limitation of actual money to be received by the railway, as instituted by the Technical Board in the latter part of 1919, as noted previously, together with improved methods of operation and some economies in administration and operation, such methods being directly attributable to the work of the Technical Board, despite a poor business, the Chinese Eastern Railway, during 1920, began to get on a fairly firm financial ground so far as its actual operation was concerned. The road was not only earning enough real money to meet its payrolls and current expenses, but it began, in a small way it is true, to liquidate some of its past indebtedness. Such improvement, however, ceased gradually after the Russo-Asiatic Bank–Chinese Government agreement of October, 1920, got fairly working and the new management was installed under that agreement and became firmly fixed in power. From then on, it may be fairly said that the usefulness of the Technical Board steadily decreased, its orders and advice being generally ignored. Such a condition of affairs was extremely discouraging, but the Technical Board did not in the least relax its efforts to carry out to the best of its ability the mandate given it by the Inter-Allied Railway Agreement.

The remarks given above in regard to financial matters, especially tariffs, etc., apply only to the Chinese Eastern and Ussuri Railways. As far as the Siberian Railways west of Manchuria were concerned, in the matters of tariffs, economies, etc., the Technical Board did not and could not exercise any control whatever, even during the Kolchak regime. Every effort possible was made by the Kolchak Minister of Railways to make both the Inter-Allied Committee and Technical Board creatures subordinate to his department. This, too, after his apparent hearty approval of the Inter-Allied Agreement.

Failing his purpose as noted above, he either ignored the instructions of the Technical Board entirely, or, as information was subsequently received from some of his subordinates, covered his instructions given by order of the Technical Board with a secret code which entirely destroyed their purpose. As a matter of fact, practically no coordination with the Technical Board was received from the Kolchak Government during the brief tenure of the latter's existence; quite the contrary, and, of course, after the Soviets took control of these railways, the Technical Board ceased all efforts to work them.

Among the duties assigned to the President of the Technical Board was that of appointing inspectors for service along the lines of the railways, these inspectors to be taken from among the nationals represented in the Inter-Allied Railway Agreement. At first, the only ones available, so designated, were Japanese, British and American. As one of the important improvements needed in operation was the installation of a modern system of train dispatching, and being placed in charge of the operation of the railway, I decided to install a telephone system, the equipment for which, i.e. telephones, selectors, etc., enough to equip the line from Vladivostok to Petrograd, had been purchased previously, through the efforts of the former American Railway Commission to Russia, by the former Russian Government, and was then on hand, and as the telephone train dispatching system is purely an American one and necessitated American experts to install and work, I accordingly appointed the members of the Russian Railway Service Corps as inspectors on the main line from Vladivostok to Omsk. To the Japanese inspectors was assigned the north line of the Ussuri Railway from Nikolsk to Habarovsk, also the entire line of the Amur Railway and the branch line of the Chinese Eastern Railway from Harbin to Changchun. There being but a few British engineers available, and they being on the front, they were assigned as inspectors on the lines west of Omsk as far as the authority of the Kolchak Government might extend. It was confidently predicted at that time that contact would be made between the Kolchak forces and those of the Allies that were operating in the vicinity of Archangel. After the withdrawal of the Russian Railway Service Corps, in May 1920, Chinese engineers were placed on the line of the Chinese Eastern Railway from Pogranichnaya to Manchuria, the American Chief Inspector and several of his staff being retained.

At the time of the Kolchak overthrow, the American inspectors were gradually withdrawn eastward until only a few remained on the Trans-Baikal Railway, and these were withdrawn upon completion of the Czech evacuation. As the Japanese Government decided to withdraw its troops which had been ineffectively guarding the Amur Railway, the Japanese inspectors were withdrawn also, and the same action was taken when the Japanese troops withdrew from the northern section of the Ussuri Railway. The situation as outlined above, as far as the inspectors are concerned, remained *in status quo* until the dissolution of the Technical Board.

In June, 1919, the Technical Board established at Vladivostok a Purchasing Committee, to which was given the duty of purchasing whatever supplies for the railways which might be obtained outside of Russia and which was to be paid for by Allied funds. This

Committee consisted of British, French, Japanese, Chinese, Russian, and American members, the latter being made Chairman. Certain rules were laid down by the Technical Board for the regulation of the activities of the Purchasing Committee, and it functioned successfully during its life.

The Technical Board also appointed a Finance Committee, consisting of representatives on the Technical Board of Great Britain, France, Japan and China, the President of the Board being an ex-officio member. The Chairmanship of this committee was held at different times by the French and British members. The principal duties of this Committee were to consult with, and obtain as accurate statements as possible from, the proper officials of the Railway Administration as to the general financial situation, earnings, payrolls, miscellaneous expenses, etc., also, as a preliminary, to examine all suggested changes in tariffs or any other matters affecting the finances of the railway. The reports of this Committee were made before the full Board, and then became subject for discussion and final disposition.

Both of the above Committees, of course, automatically cease[d] to function when the Technical Board came to an end.

In January, 1919, the heads of the various Allied military missions, having troops in Siberia, met with the proper officials of the Chinese Eastern and Siberian Railways at Vladivostok, and after several days conference agreed upon a tariff which should govern the transport of Allied military troops, war material and supplies over the several railway lines. The transport charges under this tariff were to be billed in terms of gold dollars by the railways to the various military missions, to be paid for by the latter. A copy of this tariff is attached. (encl. 3)[77] As the Czecho-Slovaks, and in fact the military of all of the smaller nations having troops in Siberia, were represented at this conference by the then head of the French Military Mission, and as the French were supporting financially such smaller nations in the field, it was the understanding that France assumed the responsibility for the payment of their military transport in accordance with the tariff agreed upon.

As President of the Technical Board, I formally instructed the responsible heads of each railway to promptly prepare and forward their current bills for such transportation to the various heads of the Allied Military Missions, but so far as the railways under the domination of the Kolchak Government were concerned, I never even received an acknowledgment of my instructions and I am in ignorance, even now, as to whether any such bills were ever presented, much less paid. The Chinese Eastern Railway, including the Ussuri

[77] Not printed.

Railway (which the former then held under lease), made out its bills with the usual Russian delays, and I know they were handed to the Chiefs of the Military Missions, as, with the exception of the bills against the Japanese, they passed through my hands. A statement, the latest I was able to obtain, is attached showing the status of these payments approximately of the date the Technical Board dissolved. (encl. 4)[78] It will be noted that at the date of the statement only Japan, Great Britain, Italy and America had paid anything whatever. With regard to unpaid bills, the Technical Board, individually through its members, at different times, took up with their several governments the question of the liquidation of these bills, but as I was informed by the different members, no response whatever was received in reply to their inquiries.

In January 1920, upon the withdrawal of the Italian troops, the Italian Government also withdrew its representative from the Technical Board, and the Czecho-Slovakian Government withdrew its representative at the time of the final evacuation of its army in June, 1920, thus leaving six members on the Board, instead of eight as previously stated.

On April 22, 1919, all of the members of the Technical Board, with their staffs, excepting myself, left Harbin for an inspection trip over the lines west. They reached Omsk, the seat of the Kolchak Government, and later went on west, across the Urals, over the line through Ekaterinburg as far as Perm, returning to Omsk by way of Chelyabinsk, and I joined them at Omsk on May 31st, the whole Board leaving Omsk on June 3rd, reaching Harbin June 13th. While the Technical Board was at Omsk it held several regular Board meetings, and many conferences were held with members of the cabinet of the Kolchak Government and also the leading railway officials. This trip was made each way by special train in order to afford every member of the Board an opportunity to observe for themselves and to get into personal touch, as far as possible, with the conditions as they existed along the railways and with which I was fairly well acquainted from previous inspections.

Further in regard to the subject of lack of cooperation on the part of the Kolchak Government in the work of the Technical Board, I want to record the fact that in no sense of the word, did the Technical Board, through its inspectors, have any fair opportunity to work effectively on the Tomsk and Omsk Railways, owing to the arbitrary actions of the Kolchak military. The military officers did what they pleased with the railways, regardless of rules or regulations. They commandeered locomotives and cars of every description; [ran] trains where and whenever they liked themselves; oc-

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[78] Not printed.

cupied thousands of cars, and in every way demoralized transport even to the extent of seizing the telephone train dispatching wires and instruments. As a result, coupled with the actions of the railway department, our inspectors could do little work in the way of improving the service. As a matter of fact, had the Allied inspectors been allowed to really direct the transport, they could have saved several thousands of cars and hundreds of locomotives, the cars mostly loaded with military supplies paid for with Allied money, from falling into the hands of the Bolsheviki at the time of the wild eastern flight of the Kolchak Government.

After the Czecho-Slovak troops had finally forced their way eastward across Siberia in 1918, they were eventually set to guard the railway lines from Irkutsk to Omsk, this territory being assigned to the American inspectors of the Board. I then discovered that the Czecho-Slovakian army had a railway organization working along the same lines, and I was informed by the Czech representative on the Technical Board that their railway men would look after these lines without any reference to the Technical Board or myself, and that the inspectors of the Board, which I had appointed under the mandate of the Allied Agreement, which the government of Czecho-Slovakia had agreed to, would not be allowed to function between Irkutsk and Omsk. This produced a situation which in nowise could be accepted by myself and which for a time looked serious, but I finally managed to tide it over, keeping our inspectors on the line and confining the interference of the Czech inspectors, as far as possible, to the shops and engine houses. I mention this case as one showing the arbitrary actions of these people and how little regard they had for agreements.

During the period of the Kolchak regime, Ataman Semeonoff, who was supposed to be a subordinate to and posed as a supporter of Kolchak, dominated the Trans-Baikal Railway from Manchuli station to Verknieudinsk. He had an army, so-called, of some eight to ten thousand brigands, with headquarters at Chita. His forces completely demoralized the railway, seizing locomotives and cars and taking possession of shops and engine houses. Between the railway facilities that he took and used and those that the Japanese army, to which was given the Allied duty of guarding this line, had in use, it was extremely difficult to move the heavy western military traffic which was required to keep the Kolchak Government going. Not satisfied with this interference, Semeonoff's officers and men murdered, whipped and otherwise maltreated the railway operators and their families, and the whole railway force became completely terrorized, and all this without the shadow of reason, except apparently native cruelty. An appeal made to the Commander of the

Japanese forces on the ground, to put a stop to such brutalities, only met with the reply that it was a matter solely between Russians and that the Japanese could not interfere; in other words, the Japanese were there to protect the railway and not to protect the railway men. At one time Semeonoff's hostility towards the inspectors of the Technical Board became so marked that I seriously thought of withdrawing them, fearing for their lives. In fact, I gave the inspectors permission to leave or remain, and they remained and all came safely through and only came out when their presence could be of no further value.

I am putting on record some of the major difficulties with which the Technical Board had to contend in Siberia in trying to carry out the mandate given to it by the Inter-Allied railway agreement. In view of these obstructions and many others of a serious nature, it was a source of continual surprise to me that the lines were kept in operation at all.

As may be inferred from the previous statements, the relations of the Technical Board with the administration of the Chinese Eastern Railway, which was in power preceding October, 1920, were fairly satisfactory, and for some time before that date had been steadily improving. Confidence is a plant of slow growth, particularly with the Russians, and any radical change in railway methods, which could be made in the United States in a day, might take months to effect in Russia. To make such changes requires as skillful diplomatic handling as it does with purely technic. Especially in matters of operation, slow but steady improvement was being made, the most marked being in repairs to locomotives and cars, by the introduction of modern train dispatching, by a daily system of train and car reports, whereby the operating officers were placed in close touch with train movement, and especially in the heavier loading of freight trains, so that locomotives were loaded in most cases to their maximum capacity, thus greatly reducing freight train mileage.

The Technical Board was able to have many tariffs properly adjusted and maintained on such planes that when paid for with actual money, the railway had begun to see daylight in its current obligations. The Technical Board was not able to go very far in reducing the number of employees, owing largely to the fact that the so-called Russian "laws", which are regulations made by the former Czarist Russian Railway Department and which seem to be a fetish with the Russian railway officials, stood in the way. One of the so-called "laws" provided that no railway employee, above a certain class, could be discharged excepting by payment to him of a bonus, equalling one month's salary for each year of his term of service, and as many of these employees had been in service for years, and as the

railway had not funds to pay these bonuses, such employes had to be retained until a more prosperous time. Another of such "laws" ordered that 25% of the track ties must be renewed each year, this regardless of whether their condition required them to be renewed. The Technical Board, after two years argument, succeeded in getting this regulation abrogated and an individual tie inspection made, with the result of a saving in the item of tie renewals in a single year of $100,000.00. I mention this example to indicate that progress, while necessarily slow, was being made prior to October, 1920, but after that time the situation changed constantly for the worse.

A new Board of Directors, which under the terms of the Russo-Asiatic Bank–Chinese Government agreement was to be made up of five Russians and five Chinese, with a Chinese President, was organized. The Russian members were all selected by the bank and the Chinese members by the Chinese Government, and not more than one, or possibly two, of the entire membership of the Board had any actual knowledge or experience in railway matters, and, as a matter of fact, almost without exception, everyone was dependent upon his salary for his daily bread, and consequently took exceedingly good care to express no individual opinion, even if capable of doing so, that might clash with the wishes of their backers. The Board of Directors resolved itself into two factions, along racial lines, with a consequent deadlock on important questions. Meanwhile the Board of Directors retired the old management and appointed a new General Manager, a Russian engineer, never before connected with that particular railway. The Technical Board approved this appointment as a matter of routine, as in any case it could not have prevented it, even if it had cause for so doing. The new Manager's record was that of a construction engineer, but I was never able to learn that he had ever had any experience in railway administration, finance or operation. He is an aggressive man, arbitrary in his ways, and having the support of the Russo-Asiatic Bank, he soon entirely dominated the Board of Directors, which practically approved all of his acts.

As before noted, the policy of the railway in regard to tariffs, was completely changed, and a constantly progressing plan of reducing them was adopted on the plea that such a plan would increase traffic and that such reductions were to be only temporary and to hold only until a time as a well thought out and properly balanced tariff as a whole could be formulated. The Technical Board at once, and repeatedly thereafter, offered its services, its members being all experienced railway men, to assist in formulating such a tariff. Despite constant urging by the Technical Board, nothing was done by the Administration along tariff lines, excepting to keep on cutting rates until many of them were fixed below the actual cost

of the service. No attention was paid to the protests of the Technical Board in this matter, although it repeatedly called attention to the certain effects of such unnecessary reductions upon the revenues of the Company, and the deplorable condition into which the finances of the railway had gotten, when the Technical Board was dissolved, was very largely attributable to the tariff cutting program of the Administration.

Another cause for the financial straits of the Company, was the absolutely reckless and almost wholly unnecessary expenditure of the funds of the Company. Hundreds of thousands of roubles were thrown away by orders of the Manager, engaged by the Board of Directors on so-called improvements in the shape of luxuries, such as a de luxe train, new buildings, plants, etc., none of which was needed and none of which could add a kopeck to the revenue of the Company.

The Board of Directors carried on its payroll last year an average of about 140 names, and its estimated expenditures for Board purposes alone were about Mex. $1,800,000.00, which was probably all and perhaps more spent.

What in railroad parlance is called "overhead" charges, covering cost of administration and higher supervision, but including none of the salaries or expenses of the Board of Directors, ran as high as 28% of the total expenditures of the railway. The cost of similar charges on the Chinese Government Railways, where it is notorious that every possible official that can be is placed on the railway, runs from 12 to 15%. The average in the United States is not more than 3% to 4%. It is perfectly plain why foreign supervision, backed by real power, is the only hope for redemption of the Chinese Eastern Railway. As President of the Technical Board, I protested strongly and constantly against such expenditures, but no attention was paid to my protests, and the result of all this financial mismanagement was exactly what the Technical Board foretold. The Railway Company drifted further and further into debt, and no solution, in my opinion, can be effective, excepting a foreign loan, with absolute control over all of the finances of the railway, including the proceeds of such loan, and all the revenues and expenditures of the railway, in the hands of the foreign parties making the loan.

During the summer of 1922, I was asked unofficially by the representative of the Russo-Asiatic Bank and by the General Manager of the railway, if a foreign loan could be placed and if I would recommend it. To this question I replied that I could not recommend such a loan, excepting upon conditions as above noted. There the matter dropped, but I have understood that the bank has been,

and possibly still is, trying to get a foreign loan unhampered by such conditions as I have indicated. Needless to say, no bank, financial institution or government could even consider such a proposition.

The Chinese Eastern Railway suffered seriously, both in property losses by fire and by delays to traffic, especially during the dry season of 1921, from the operations of Chinese bandits, which the Chinese military, to whom had been given the allied duty of guarding the line, seemed almost wholly unable to suppress. The efficiency of the Chinese guard became less and less as time went on, and repeated and constant protests and warnings made to the Chinese commanders by the Technical Board produced nothing but excuses and promises, none of which were of any avail whatever. Finally at a meeting of the Technical Board, No. 125, held on June 29, 1922, a resolution was adopted and copies were transmitted by each member of the Board to his Government, calling attention to the serious situation and asking that better means of protection be provided, but nothing was ever heard in answer to this request so far as I am aware.

During the summer of 1922, an armed force of Chinese, reported to be in the interests of Wu Pei Fu (Chinese General fighting with Chang Tso Lin at Peking), appeared at Pogranichnaya and took possession of the line of the Chinese Eastern Railway as far west as 150 miles east of Harbin. After some days of so-called warfare, the invading forces were routed and driven away from the line. The section of the railway invaded, including, of course, through traffic to Vladivostok, was tied up for a period of about two weeks, but no great amount of damage was done to the railway.

In June, 1922, a traffic conference was held at Changchun between the representatives of the Chinese Eastern Railway and the South Manchuria Railway, to adjust traffic matters as between the two companies. This conference lasted for twelve days, closing on June 27th, and the net result was that the South Manchuria Railway obtained a strong advantage over the Chinese Eastern Railway in the matter of the routing of the latter's most important products for export. No notice was given either the shippers or the Technical Board of the proposed change in the interline tariffs until three days before they were put into effect on July 1st. The arrangement under which this was brought about gives the South Manchuria Railway power to practically kill Vladivostok as a natural outlet for Chinese Eastern products in favor of Dairen, the port of the South Manchuria Railway. The handling of exports and imports by way of Vladivostok, gives the Chinese Eastern Railway the long haul and consequently the greatest revenue. It was in every way a great

blunder, to put it mildly, on the part of the Chinese Eastern Railway officials to submit to such an arrangement.

As soon as the Technical Board was advised of the result of the conference, it lodged a vigorous protest with the Chinese Eastern Administration, requesting that the putting into effect of the new arrangement be delayed a short time until the Technical Board could consider and pass upon it, but no attention was paid to this request and the arrangement was put into effect on July 1st, and is still in effect. Recent advices which have come to me are to the effect that two-thirds of the products for export, originating in purely Chinese Eastern territory, are going out by way of the South Manchuria Railway and Dairen, and only one-third by way of Vladivostok, just about the reverse of what should be the case.

The final evacuation of the Czecho-Slovak army, by way of Vladivostok, began in the month of December, 1919. Owing to the severity of the season, to the lack of equipment on the western lines, occasioned by the loss of same on account of the Kolchak debacle, to the lack of funds to pay railway men and coal miners and the consequent lack of food, and to other causes which should not have come up, the evacuation of these troops, until they reached the Chinese Eastern Railway line, was carried on with delays and difficulties. However, as matters got settled down, and owing to the action of the Technical Board in furnishing funds to help the coal miners to keep the coal mines producing, and the furnishing of food for the starving railway operators, also the sending of a lot of heavy locomotives from the east to the Trans-Baikal, the evacuation finally proceeded in good order, and was completed at Vladivostok in May, 1920.

The movement of the Japanese troops, which were at Chita and along the line of the Trans-Baikal, to the Maritime Provinces, was carried out in the month of August, 1920, and proceeded smoothly and successfully. Semeonoff and his troops immediately preceded the Japanese troops in leaving the Trans-Baikal. They (Semeonoff's troops) moved over the Chinese Eastern to near Vladivostok, where they were a constant menace until they were gradually starved out and became dispersed in various directions.

The Ussuri Railway passed out of the control of the Chinese Eastern Railway at the time of the formation of the so-called Vladivostok Government. Previous to this time, the remarks before made as to the relations of the Technical Board with the old Chinese Eastern Administration, applied also to its relations with the Administration of the Ussuri Railway, but after the time mentioned the influence of the Technical Board with the Ussuri Railway grew steadily less. While the Board was in some degree able

to assist the railway in various matters, it is just to say that it did not have control, nor even an important voice in its management. This is especially true of the years 1921 and 1922, when that section of the country was dominated by the Japanese military forces, which were practically masters of the situation and did whatever they pleased with the railway and with its operation, although it was ostensibly managed by Russian officials appointed by the Vladivostok Government. No serious trouble resulted, but the plain facts are that the Japanese military arrogated to itself powers, which under the Inter-Allied Railway Agreement, properly belonged to the Technical Board, and which state of affairs the Technical Board could only protest in specific instances where forbearance ceased to be a virtue.

The dissolution of the Inter-Allied Technical Board, as a body, was effected on November 1, 1922, at meeting No. 133, by reason of instructions received by the various members from their respective governments, and the official minutes of that meeting, copy attached (encl. 5),[79] describes *in extenso* the formal steps taken to liquidate the Board. No formal action was taken before the final meeting of the Board was held, as to the disposition of its archives. As President of the Board, I had previously verbally advised the several members that I would take the archives to Washington, which advice at that time met with no objection from any member. Subsequent to the dissolution of the Board some question arose in regard to the matter, and I was asked to call a meeting of the Board. I replied that as the Board had gone out of existence, no formal meeting could be held, but that I would be glad to and did meet with all the members unofficially to discuss the matter. At this meeting I gave my reasons for making the disposition of the archives as I proposed, to which, after some discussion, every former member of the Board agreed, with the assurance from myself that inasmuch as every nation interested had an Embassy or a Legation at Washington, and that due inspection could be made of these archives by the representative of any such nation whenever proper request is made. Furthermore, that if any nation wanted copies of documents that it may be especially interested in, such copies would be furnished, it being the intention to furnish these copies to a reasonable extent when it is known just what ones are wanted.

With regard to the possible recovery of part of the funds advanced by the United States by reason of a set-off against the transportation of United States military on the lines west of Manchuria, I can see no other way, excepting to make such funds a charge against a Russian Government which will be recognized by

[79] Not printed.

the United States. In the case of the Chinese Eastern Railway, without a foreign loan that railway could practically pay no one, unless a miracle intervenes, and it would certainly be an impossibility to collect anything from the present Moscow Government. In my opinion, the matter of reimbursement for these expended funds must wait the future and be governed by its developments.

It may be asked why I, as President of the Technical Board, entrusted with matters of operation of the railways, did not avail myself of the guarantee as contained in the seventh paragraph of the memorandum agreed upon between the Japanese Minister of Foreign Affairs and the American Ambassador, designed to make my efforts effective. My reply to such a query is that, of my work at least seventy-five per cent was diplomatic, as against twenty-five per cent purely technic. While the paragraph in question was doubtlessly conceived in the right spirit, I was of the opinion from my knowledge of underlying conditions and currents that an appeal such as the paragraph provided for, would be ineffective and that it would probably make matters worse instead of better, and might result in the elimination of the entire Inter-Allied Agreement.

In view of the statements set forth in the preceding pages, it may be readily understood that the work with which the Technical Board was entrusted, was carried on under handicaps which made it impossible for the Board to accomplish all of the results it had hoped for, but individually and as a unit, the members of the Board did not relax their efforts in the least and never forgot the purpose for which the agreement was entered into, as set forth in the sixth paragraph of the memorandum supplementing the agreement.

The Board was able to do a great amount of good during the three years and seven months of its existence, the influence of which, it is believed, will not entirely disappear with time. From a purely sentimental or psychological standard, its status as representing the Allied powers, gave it an influence, while it enabled the Board not only to be effective along lines of improvement, but also enabled it to prevent many wrong actions, which might have occurred were it not for its presence.

There were a number of changes in the personnel of the membership of the Board, the original Russian and American representatives being the only ones to serve continually throughout the life of the Board. Uniformly, the selection of the representatives of the various nations proved wise, and I take great pleasure in saying that the degree of success, which the Board achieved, was due to no one member of the Board, but to all, and each one can fairly claim an equal share with all of the others, that credit to which the Board is entitled for carrying on its work under such difficulties

and such unique conditions. The members of the Board parted on its dissolution, not merely as officials, but as friends in the true meaning of the word, and it is believed that the friendships formed during their long association, will assist in the creation of closer ties of common interest between the nations represented, as are so badly needed.

In closing, I cannot forbear giving some words of appreciation to the very excellent work done by the various inspectors of the different nationalities. These men were in every case either technically trained, or had gained an intimate knowledge, by actual experience, of the duties entrusted to them, and the success in matters of operation, with which I was entrusted, is very largely due to their intelligent, zealous and loyal work.

I can also testify to the effective and satisfactory work of the clerical staff of the Board, each member of which was attentive to, active and accurate in his duties, and at all times exhibited an interest in the work, but little less intense than that of the members of the Board themselves.

For myself, and I believe that I voice the feeling of all of the foreign members of the Technical Board, while I do not regret the experience, I certainly would never undertake another such task under similar conditions, without a much stronger agreement than the one which governed the past Inter-Allied Technical Board.

I have [etc.] JOHN F. STEVENS

861.77/3045

The Secretary of State to the President of the Technical Board (Stevens)

WASHINGTON, *March 29, 1923.*

MY DEAR MR. STEVENS: I desire to acknowledge the receipt of your communication of March 15, 1923, reviewing and reporting finally upon the work of the Interallied Technical Board, and to acknowledge also the receipt of your personal letter of March 16 on the same subject.[80]

Your report, and the accounts which you are submitting in connection therewith, will receive the Department's detailed consideration. I wish to take this occasion to assure you of the high regard in which your work as President of the Interallied Technical Board, and as the American representative thereon, is held by the President as well as by myself and the other members of the Government.

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[80] Not printed.

It is recalled that soon after the United States entered the war you proceeded to Russia, at the request of President Wilson, and with the knowledge and approval of the Provisional Government of Russia, as the head of a commission of American railway experts, and that, after this commission had completed a study of the Russian railways and made helpful recommendations to the Russian railway authorities, you were invited to remain with the Russian Ministry of Ways of Communication in the capacity of a special adviser and with a view to carrying into actual operation the measures which the commission had agreed upon with the Russian officials. It is recalled also that the Russian Railway Service Corps, consisting of American railway men who undertook as a war service to assist in the operation and improvement of the Russian railways, was organized at your inspiration and that the admirable work subsequently accomplished by this Corps was developed under your direction.

As the logical result of these activities you were invited in 1919 by this Government, as well as the Government of Japan and the other Governments concerned, to become President of the Inter-allied Technical Board, which was charged with the general supervision and management of the railways in the portions of Siberia in which Allied forces were then operating. During the three and a half years of the existence of this Board much was accomplished, in the face of the most extraordinary difficulties, to preserve railway lines which are vital to the economic life of Siberia and to keep them in operation despite public disorder and general disorganization. I am glad to hear of your appreciation of the support which you received in this work from your colleagues on the Technical Board, representing seven other nations, and the cordial relations which existed among you throughout the time of your arduous service. I shall take pleasure in communicating on this subject with the Governments concerned. Your own leading part in this work constitutes a public service of the highest order. I feel that you have contributed much to the well-being of the people of Eastern Siberia and Manchuria and to the early recuperation of their economic life, and that you have advanced the prestige and honor of the United States in that part of the world and with all who have known of your work.

Your own expressions of appreciation of the excellent work done by your technical and clerical subordinates have been noted, and I hope that you will make known to them the value which this Government attaches to the work which they have done and its high appreciation of the spirit of their services.

I remain [etc.] CHARLES E. HUGHES

861.77/3084

The President of the Technical Board (Stevens) to the Secretary of State

[Extract]

WASHINGTON, *April 17, 1923.*

SIR: Supplementing my letter of March 26th,[81] with which I enclosed statement of expenditures, amounting to $4,115,374.08, and other papers in support thereof, which expenditures were made from the $5,000,000.00 fund advanced by the United States to the Inter-Allied Committee for supervising Chinese Eastern and Siberian Railways, I am enclosing with this letter a final balance sheet covering the total receipts and expenditures from this fund.

. . . .

Very respectfully,

JOHN F. STEVENS

[Enclosure]

FINAL BALANCE SHEET

UNITED STATES SHARE OF ALLIED FUND ADVANCED FOR SUPERVISING CHINESE EASTERN AND SIBERIAN RAILWAYS, AS OF APRIL 17, 1923

Received		Expended	
Deposited Riggs Nat'l Bank, June 28, 1919 .	$4, 000, 000. 00	As per Vouchers Nos. 1 to 928, inclusive .	$4, 177, 820. 06
Deposited Riggs Nat'l Bank, July 7, 1919 .	1, 000, 000. 00	Appropriation "Nat'l Security & Defense, Dept. of State" reimbursed, without personal credit, by War Dept. for ordnance returned, Cr. Voucher No. 36 .	488. 98
Interest received on bank deposits, receipts from sale of surplus property, etc., as per Cr. Vouchers Nos. 1 to 40, inclusive	94, 315. 38	Balance Riggs Nat'l Bank, April 17, 1923	916, 006. 34
	$5, 094, 315. 38		$5, 094, 315. 38

WASHINGTON, *April 17, 1923.*

[81] Not printed.

FOREIGN REPRESENTATIONS DISSUADING CHANG TSO-LIN FROM ASSUMING CONTROL OF THE LAND OFFICE OF THE CHINESE EASTERN RAILWAY

861.77/3149 : Telegram

The Consul at Harbin (Hanson) to the Secretary of State

HARBIN, *July 31, 1923—6 p. m.*
[Received 10 p.m.]

General Chang Huan-hsiang of Harbin stating that he was acting under instructions of General Chang Tso-lin of Mukden demanded that the general manager of the Chinese Eastern Railway hand over to General Chang Huan-hsiang land department of the railway which has control over land granted railway by Chinese Government. General manager replied that he would refer the matter to the board of directors of the railway and abide by their decision. General Chang knowing that board of directors would not consent notified general manager that he would take charge of the land department on August 1st.

American, British, French and Japanese consuls have advised General Chang and General Chu Ching-lan, administrator of the railway zone, not to take this step until consuls could communicate with their ministers in regard to this matter which is grave violation of the *status quo* in railway affairs. Second resolution regarding Chinese Eastern Railway of the Washington Conference [82] was brought to their attention. As a precautionary measure consuls at the request of railway administration and representative of the Russo-Asiatic Bank have temporarily placed their respective seals on the closets containing land records of the railway pending receipt of instructions from their ministers.

My opinion is that a protest should be lodged with the Peking Government against action of the local Chinese authorities.

Legation[s] at Peking and Mukden informed.

HANSON

861.77/3149 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *August 2, 1923—3 p.m.*

159. Referring to Harbin's telegram July 31, 6 p.m.

You may represent to the Chinese Government that so radical and apparently unnecessary an alteration of the *status quo* would not only impose upon the Chinese Government the burden of justifying

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[82] *Foreign Relations*, 1922, vol. I, p. 298.

such action by it as trustee (as recognized by Washington Conference Resolution No. 13),[83] but under present circumstances would appear most inopportune as tending to create in the minds of the treaty Powers a doubt as to China's intentions with regard to the observance of its express obligations to foreign interests.

It is also suggested that joint representations in this sense might be made to the Chinese Government by the Powers participating in the Washington Conference.

HUGHES

861.77/3150 : Telegram

The Consul at Harbin (Hanson) to the Secretary of State

HARBIN, *August 2, 1923—4 p.m.*
[Received August 2—1:15 p.m.]

On August 1 General Chang Huan-hsiang attempted to take over land department of Chinese Eastern Railway but met with opposition and protest on the part of railway officials and representative of Russo-Asiatic Bank. Chinese officials now apparently weakening in their aggressive attitude and endeavoring to find satisfactory retreat from difficulties within which they involved themselves. Legation has been notified.

HANSON

861.77/3155 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *August 12, 1923—noon.*
[Received August 12—11:23 a.m.]

284. Department's number 159, August 2, 3 p.m. On August 3 I made written representations to Foreign Office impossibility [*sic*] outlined in Department's instruction referred to above. French Minister also protested.

It appeared that prompt and vigorous action by consular body in Harbin as well as representations made in Peking resulted in checking for time being steps instituted by Chinese authorities, but, as subsequent reports from Harbin indicated continued activity on part of Chinese, further representations seemed advisable. I submitted therefore to my French, British, and Japanese colleagues a draft of a joint note to Ministry of Foreign Affairs which referred to the identic notes of October 31, 1922,[84] regarding withdrawal of

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[83] *Ibid.*
[84] See telegram no. 253, Oct. 27, 1922, to the Minister in China, *ibid.*, p. 925.

Technical Board and after outlining events connected with the attempted seizure of land, Department [*Legation?*] repeated the representation suggested in Department's telegram of 159 of August 2, 3 p.m. This joint note was sent to Foreign Office yesterday,[85] and consular officers in Mukden, on the suggestion of the consular body of Harbin, are being instructed to make friendly representation on matter to Chang Tso-lin with a view to bringing about an amicable settlement.

As prompt action was essential and as Italian, Belgian and Portuguese Ministers were out of town, it was decided that note signed by four Ministers would cover the situation.[86]

SCHURMAN

861.77/3162 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *August 21, 1923—6 p.m.*
[Received August 21—11:14 a.m.]

290. My 284, August 12, noon. Consular representatives of four powers at Mukden whom Ministers instructed to make joint representations to Marshal Chang Tso-lin with regard to the seizure of the land office of the Chinese Eastern Railway, had conference August 20 with Marshal, who admitted incorrect procedure of Harbin authorities, promised to instruct railway president and desired me to discuss land question with foreign interests concerned and gave assurances that there was no intention of confiscating railway property though full control over settlements was sought.

SCHURMAN

861.77/3193 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *September 14, 1923—10 a.m.*
[Received 10:40 p.m.]

313. Your 159, August 2, 3 p.m., and [my] 284, August 12, noon. I find situation at Harbin and other points on Chinese Eastern Railway, over which I traveled from one end to other, exceedingly seri-

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[85] Not printed.

[86] In despatch no. 1756, Aug. 23 (file no. 861.77/3199) the Minister in China advised the Secretary of State that his Italian colleague had informed the Chinese Ministry of Foreign Affairs that he joined in the representations of Aug. 11 by the American, French, British, and Japanese representatives.

ous as local Chinese authorities who now have the power seemed determined to take forcibly from the railway company and without any regard for agreements between China and the Russo-Chinese Bank all land not actually needed for strictly railway purposes and they have already effectually stopped all transactions in real estate on the part of the railway company and their tenants by the issuance of orders to notaries and other officials, which have the practical effect of invalidating all new deeds, leases and mortgages greatly to the detriment of the business interests of all classes of the community.

In a speech at Harbin September 6th which was published in full in English, Russian and Chinese papers of 7th, and which is reproduced today in Peking papers, I set forth the grounds of the protest which the four Governments had presented to the Chinese Government urgently [*sic*] the danger of international embroilment and made an earnest plea for the settlement of the dispute by conference between Chinese local authorities and the directors of the railroad company or by reference to competent disinterested tribunal in case agreement could not be reached by such conference. Petithuguenin [87] immediately cabled report of speech to Paris headquarters of bank, and after observing effects for a few days again cabled that in his opinion it would lead to peaceful adjustment.

Nothing, however, being certain in China till it is an accomplished fact, I decided to endeavor to get assurances from Chang Tso-lin who controls Chinese consular general [*sic*] at Harbin. I had long conference with him in Mukden afternoon 10th and found him not only obdurate but rude in his insistence on Chinese rights to take over railway lands and opposition to interference, as he called it, on the part of American and other governments in that [*what?*] was no concern of theirs. I set forth the terms of Washington Conference resolution, rehearsed the facts of the situation and analyzed the agreements by which Chinese Government was bound but without producing any apparent effect either in altering his views or mollifying his spirit. I then asked him what China would gain by his procedure if she antagonized the four great powers. I intimated, in spite of his previous disclaimer, that he would again be active in politics south of Great Wall and inquired how it would then further his personal ends if he had to meet the opposition of the four great powers. There followed immediately marked change in his demeanor and mental attitude and he asked me what course I would suggest for him to follow. I replied that I recognized that his face must be saved and that instead of rescinding the order he had issued

[87] Representative in the Far East of the Russo-Asiatic Bank.

creating a new land department [apparent omission] enough to suspend its [*it?*] to give time for conferences between the Harbin authorities and the railway company. He is [*was?*] friendly and conciliatory, intimated it would be possible to find an amicable solution but said he would confer with his subordinates before acting.

In the evening after a very [apparent omission] and delightful dinner, which he gave in my honor, he reverted to the subject in private, stated that the policy had not originated with him but with his subordinates (this is the general belief at Harbin), and assured me again that he would find a way of satisfactorily settling the dispute.

I submit the following reflections for your consideration:

If by any mischance the present good prospects are not realized, America at least would seem to have done her full duty in striving to protect the sanctity of international engagements. On the other hand, if the settlement that now seems so promising is effected, the material gainers will be Soviet-Russia and France. Yet Karahan [88] denounces the "interference" of the "capitalistic" and "imperialistic" powers in a matter that is "none of their business", and France, whose nationals control the stock of the Russo-Asiatic Bank, will in due time monopolize through the bank the business of selling supplies to the Chinese Eastern Railway. At this distance it seems possible also that French material interests combined with French insight into Russian psychology may induce France to take the lead among the great powers in the recognition of Soviet Russia.

SCHURMAN

861.77/3195 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *September 18, 1923—10 a.m.*
[Received September 18—5:17 a.m.]

315. Asiatic News Agency telegraphs following from Mukden published in *Peking Leader* of today:

"As a result of Doctor Schurman's visit to Mukden and Harbin, General Chang Tso-lin has issued instructions to General Chu Chin-lan, chief of the zone of the Chinese Eastern Railway, ordering the postponement of the taking over of the land department until the problem has been fully discussed by the members of the board of directors of the Chinese Eastern Railway, the foreign consuls and the Chinese authorities."

SCHURMAN

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[88] Representative of the Soviet Government.

CONTINUED SUPPORT BY THE UNITED STATES TO THE FEDERAL TELEGRAPH COMPANY IN EFFORTS TO OBTAIN EXECUTION OF ITS CONTRACT WITH THE CHINESE GOVERNMENT[89]

893.74/266 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *February 10, 1923—7 p.m.*
[Received February 10—7:21 p.m.]

47. My telegram no. 14, January 7.[90] A communication was addressed a few days ago to the Chinese Minister for Foreign Affairs by the Japanese Minister here in which the latter described the Federal Telegraph Company's contract as an infringement upon the contract of the Mitsui Company and requested that the Federal contract be canceled in order to maintain good relations between Japan and China.

The Chinese Ministry of Communications refuses to consummate with the Federal Telegraph Company the arrangements made necessary by the inclusion of the Radio Corporation of America for the two following reasons: (1) Fear that the charge will be incurred that the Ministry has made a new contract, with the resulting danger of Parliamentary attack, and (2) on account of the latest protest by Japan. It is requested by the Ministry of Communications that the American Government secure the withdrawal of the Japanese protest.

I shall send to the Minister for Foreign Affairs the note suggested in your telegraphic instruction no. 299 of December 28[91] and I respectfully recommend that at the same time the Department press the matter with the Japanese Government.

I have mailed a copy of this telegram to our Embassy in Japan.

SCHURMAN

893.74/268 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *February 14, 1923—midnight.*
[Received February 14—5:25 p.m.]

54. With reference to the Legation's telegram of February 10, no. 47. Mr. Schwerin[92] received day before yesterday from Paris cer-

[89] For previous correspondence, see *Foreign Relations*, 1922, vol. I, pp. 844 ff. For texts of agreements between the Federal Telegraph Co. and the Chinese Government, see *List of Contracts of American Nationals with the Chinese Government*, etc. (Washington, Government Printing Office, 1925), annex VIII.
[90] *Foreign Relations*, 1922, vol. I, p. 860.
[91] *Ibid.*, p. 858.
[92] R. P. Schwerin, president of the Federal Telegraph Co.

tain reliable and confidential information to the effect that in certain European circles it is alleged that the outlook is doubtful for the conclusion of the Federal-China contract because of China's reported desire to remain on friendly terms with the opposition cable companies and the fact that the French, British, and Japanese radio groups are reported to have concluded an arrangement to pool their radio interests in China which agreement meets with the full endorsement of the Eastern Extension Telegraph Company and the Great Northern Telegraph Company. That the Telefunken and Marconi Companies have been invited to join is also reported.

In my informal discussion with the officials of the Ministry of Communications I have urged immediate conclusion of the Federal agreement, using the above information and calling attention to the fact that should the Federal agreement fail to become effective an alien radio monopoly will hold China in its hands.

I am informed by Mr. Schwerin that the Japanese are unable to work the Mitsui Station and as a result they are desirous of obtaining outside help by internationalizing it. Mr. Schwerin has declined to join this organization after being approached in the matter. In an official report from the Japanese Minister to the Chinese Government it was stated that over eight million dollars had been expended upon the above-mentioned station, which explains why the Japanese were desirous of unloading and securing aid from outside. I have mailed the American Embassy at Tokyo a copy of this telegram.

SCHURMAN

893.74/269 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *February 16, 1923—noon.*
[Received February 16—9:10 a.m.]

60. My telegrams no. 47 of February 10, 7 p.m., and no. 54 of February 14, 12 p.m. I take the liberty of suggesting that you should impress upon the Chinese Chargé at Washington that the immediate carrying out of the Federal Telegraph Company's agreement is necessary in order to maintain Chinese sovereign rights to unrestricted communications and control of radio facilities and particularly to make possible the continuance of good relations between China and the United States. I have every hope that the Chinese would choose the advantages offered them by the Federal Telegraph Company's contract rather than submit to the intimidation of the Japanese and that the present state of vacillation would be over-

come if the Chinese Chargé could be induced to cable his Government a report of such strong representations from you.

It would be of the greatest value to have a reaffirmation of the position taken by the Department in its telegram no. 242 of August 29, 1921.[93]

SCHURMAN

893.74/272 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *February 28, 1923—9 p.m.*
[Received February 28—5:34 p.m.]

70. I held long conversations on February 26 with Foreign Minister and Minister of Communications and pressed in strongest terms for necessary measures to be taken immediately to execute the Federal contract. The Minister for Foreign Affairs has just informed me orally that on February 27 its intention to execute the contract was affirmed by the Chinese Cabinet, basing this decision upon governmental policy and the comparative advantages of the Japanese and American agreements. He stated in addition that, before any further progress could be made with the Federal contract, certain steps were necessary, among them being that of dealing with Japanese opposition which might not be possible to overcome in less than one or two months. The Federal Company, he suggested, should give aid in the removal of these objections to the Chinese Government. My statement was that the exchange of letters clarifying the Federal Telegraph agreement and the purchase of land near Shanghai were the immediate steps necessary, but he reiterated that it would be impossible during the specified period to accomplish anything. Referring to my note of February 13[94] in which I asked the Chinese Government to take the necessary steps to carry out the agreement of the Federal Company, I requested an early reply.

According to Mr. Schwerin, within two months the land selected near Shanghai will be flooded for the rice crop thus making work impossible this year, and he believes that the Chinese authorities know this. The investment, he considers, will be rendered hopeless if this further delay is allowed.

SCHURMAN

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[93] *Foreign Relations*, 1921, vol. I, p. 448.
[94] *Infra.*

893.74/282

The Minister in China (Schurman) to the Secretary of State

[Extract]

No. 1387 PEKING, *March 1, 1923.*
[Received April 3.]

SIR: Referring to my despatch No. 1188, of November 29, 1922,[95] and subsequent telegraphic correspondence regarding the Federal wireless contract, I have the honor to transmit herewith records of conversations and copies of other documents connected with this matter.[96]

. . . .

I have [etc.] JACOB GOULD SCHURMAN

[Enclosure]

The American Minister (Schurman) to the Chinese Acting Minister for Foreign Affairs (Huang Fu)

No. 409 PEKING, *February 13, 1923.*

YOUR EXCELLENCY: I have the honor to inform Your Excellency that my attention has been called to a further protest addressed by the Japanese Government to Your Excellency's Government against the execution of the terms of the contract between the Ministry of Communications and the Federal Telegraph Company which has been the subject of correspondence between the Legation and the Ministry of Foreign Affairs, on the ground that it infringes the terms of a supplementary letter of March 5, 1918,[97] relating to the contract between the Chinese Government and the Mitsui Company of Japan the effect of which letter would be to create a monopoly in favor of that Company for the erection of wireless telegraph stations for communication with Europe and America.

I desire, therefore, in accordance with the instructions of my Government, to point out to Your Excellency that in general the treaty obligations of Your Excellency's Government preclude it from entering into agreements tending to create monopolies and that furthermore in its treaty of 1858 with the United States[97a] the Chinese Government specifically agrees that should it at any time "grant to any nation or the merchants or citizens of any nation any right, privilege or favor connected with navigation, commerce, political or

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[95] Not printed.
[96] Note of Feb. 13 to the Chinese Acting Minister for Foreign Affairs only enclosure printed.
[97] See telegram no. 92, Feb. 18, 1921, from the Minister in China, *Foreign Relations*, 1921, vol. I, p. 416.
[97a] Malloy, *Treaties*, 1776–1909, vol. I, p. 211.

other interests which is not conferred by this treaty, such right, privilege and favor shall at once freely inure to the benefit of the United States, its public officers, merchants and citizens". In view of these provisions my Government holds that the Chinese Government is not in a position to create in favor of third parties any such rights as would exclude American citizens from the right to participate with the Chinese Government in any category of enterprises such as telegraphic communications.

For these reasons, the Government of the United States is not prepared to recognize any claim of contractual rights in favor of any party as valid or effective to exclude its nationals from any field of commercial or industrial activity in China. Furthermore, it is the opinion of my Government that the claim of the Mitsui Company to exclusive rights is not in accord with the spirit of the Washington Treaty relative to principles and policies to be followed in matters concerning China [98] nor with the general principles which inspired the deliberations of the recent conference.

My Government is deeply interested in the Federal Telegraph Company's enterprise and considers that it will give the greatest constructive benefits to the peoples of China and the United States. The Federal Telegraph Company did not enter into this contract with any idea of selfish exploitation but with the earnest and sincere intention of providing for China radio stations as great and efficient as any in the world. These stations will have a high commercial value in the earning capacity of China, and I desire to call special attention to the fact that under the terms of the contract China participates in their earnings from the outset and eventually becomes sole owner. My Government is naturally anxious that these stations should be built and intercourse opened as soon as possible. It does not consider any protests against this construction from parties claiming a monopolistic right in China covering radio activity as well-founded, and it is confident that Your Excellency's Government will not, in response to them, consent to impose upon China the burden of an oppressive and highly dangerous monopoly.

The Federal Telegraph Company has built many of the large stations of the world and in constructing the stations now contemplated will be doing nothing experimental but repeating operations which have been successfully made at other places. They will be supplying China with a completed device which will give international communication, which China so greatly desires, and will place the Government of China in an independent position in respect of its rights to have international communication without interference from any alien interest.

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[98] *Foreign Relations*, 1922, vol. I, p. 276.

The representatives of the Federal Telegraph Company now in Peking have come a long distance, expended much money and time, have confidence in the integrity of China and intend conscientiously to fulfill all their obligations to China, and I urgently request that the necessary action be taken by the Chinese Government at the earliest possible date in order that this work can proceed as contemplated and desired.

I avail myself [etc.] JACOB GOULD SCHURMAN

893.74/266

The Department of State to the Chinese Legation[99]

AIDE MEMOIRE

The Department of State has been informed that the Chinese Ministry of Communications is reluctant to take such steps as are necessary for the purpose of giving effect to the arrangements between the Chinese Government and the Federal Telegraph Company for the erection of certain wireless stations in China. It is understood that this failure of the Ministry of Communications either to enter into the new arrangements technically necessitated by the Federal Company's having associated the Radio Corporation with itself in this undertaking, or to take such other action as might be requisite to enable the Federal Telegraph Company to proceed with the work, is due to a protest which has been lodged with the Chinese Government against the existing contracts between the Ministry of Communications and the American interests concerned.

The Government of the United States believes that the issues involved in this matter concern primarily the interpretation to be given to the principle of equality of commercial and industrial opportunity in China, and it holds that this question is one of principle which can not be compromised without the impairment of a policy which it has always consistently maintained and which was clearly set forth in the letter of the Secretary of State to Minister Sze under date of July 1, 1921,[1] with reference to the traditional support which the Government of the United States has given to the principle of the open door. This principle has further been reasserted and confirmed in the Nine-Power Treaty signed at the Washington Conference on the Limitation of Armament[2] which, among other things, provides in Article III that:

"With a view to applying more effectually the principles of the Open Door or equality of opportunity in China for the trade and industry of all nations, the Contracting Powers, other than China,

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[99] The following notation appears on the file copy: "Handed to the Chinese Chargé on Mar. 9, 1923, by the Secretary".
[1] *Foreign Relations*, 1921, vol. I, p. 439.
[2] *Ibid.*, 1922, vol. I, p. 276.

agree that they will not seek, nor support their respective nationals in seeking—

. . . .

(*b*) any such monopoly or preference as would deprive the nationals of any other Power of the right of undertaking any legitimate trade or industry in China, or of participating with the Chinese Government, or with any local authority, in any category of public enterprise, or which by reason of its scope, duration or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity."

It is furthermore provided in this Article that:

" China undertakes to be guided by the principles stated in the foregoing stipulations of this Article in dealing with applications for economic rights and privileges from Governments and nationals of all foreign countries, whether parties to the present Treaty or not."

The Department of State has also been informed that the agreement for the return to China of the leased territory of Kiaochow[3] contains the following provision (Article 12):

" The Government of China declares that upon expiration of the telegraph and cable monopoly granted to the foreign concerns it will discontinue the monopoly upon its own initiative and will not further grant any monopoly for the electrical transmission of messages to any government, company or individual."

In connection with the provision quoted above from the Shantung Agreement, the Government of the United States, apart from any question as to the validity of the particular positive grants which the Chinese Government may by contract have vested in companies of other nationality, takes the view that no contractual stipulations on the part of the Chinese Government could suffice to divest American citizens, for the benefit of such other companies, of their existing treaty rights not to be "impeded in their business by monopolies or other injurious restrictions; " and the Government of the United States reserves all its rights with respect to any purported telegraph or cable monopoly.

WASHINGTON, *March 8, 1923.*

893.74/266

The Department of State to the Japanese Embassy[4]

AIDE MEMOIRE

The Department of State has been informed that the Japanese Minister at Peking has renewed his Government's protest against

[3] Not printed.

[4] The following notation appears on the file copy: "Handed to the Japanese Ambassador on Mar. 9, 1923, by the Secretary."

the contract between the Chinese Government and the Federal Telegraph Company for the erection of certain wireless stations in China. The Department has also been informed that the agreement for the return to China of the leased territory of Kiaochow contains the following provision (Article 12):

"The Government of China declares that upon expiration of the telegraph and cable monopoly granted to the foreign concerns it will discontinue the monopoly upon its own initiative and will not further grant any monopoly for the electrical transmission of messages to any government, company or individual."

In connection with the Federal Telegraph Company's contract and the provision above quoted from the Shantung Agreement, the Government of the United States, apart from any question as to the validity of the particular positive grants which the Chinese Government may by contract have vested in companies of other nationality, takes the view that no contractual stipulations on the part of the Chinese Government could suffice to divest American citizens, for the benefit of such other companies, of their existing treaty rights not to be "impeded in their business by monopolies or other injurious restrictions"; and the Government of the United States reserves all its rights with respect to any purported telegraph or cable monopoly.

WASHINGTON, *March 8, 1923.*

893.74/283 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *April 10, 1923—1 p.m.*
[Received April 10—6:46 a.m.]

100. Your 43, March 7, 3 p.m.[5] Schwerin has been concentrating his efforts to have the original contracts of the Federal Company of California put into operation but even in this has so far been completely unsuccessful. It now appears that the inter-departmental board composed of representatives of Ministers of Foreign Affairs, Navy and Communications has reported favorably and that Minister of Communications is also in favor of going on with the contract but that this is being blocked by the Prime Minister who, acting . . . under Japanese . . . influence, has refused to allow Minister of Communications to present matter to Cabinet for decision at the last two meetings and is in a position to continue to do so. On March 15th and 22nd I addressed notes to the Foreign Office[5] . . . demanding written replies to my former communications and inquiring whether the Chinese Government intended to proceed with

[5] Not printed.

the contract. To these I have had no reply and in the absence of a Minister for Foreign Affairs I had an interview with the Prime Minister on April 2nd. He was evasive, showed strong disinclination to discuss the matter at all, and no progress was made.

If Wellington Koo assumes his duties in the next few days I shall at once take up the matter with him. He is of course familiar with it and in view of the attitude taken by the Chinese delegation at Washington relative to the question of wireless in China it would seem to be very difficult for him to do other than support the execution of the Federal contract and to resist the Japanese monopoly. It would greatly strengthen my position if you would telegraph me a strong message to deliver to Koo as from yourself, referring to last year's transactions in Washington and pointing out that failure by China to execute the Federal contract and yielding to the Mitsui monopoly would effectually close the door to equal opportunity in respect of wireless communication in China, a position which the Chinese delegation in Washington so vehemently opposed. A copy of this message has been mailed to Tokyo.

SCHURMAN

893.74/288 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *April 22, 1923—12 noon.*
[Received April 22—4:42 a.m.]

117. Situation described in my 100, April 10, 1 p.m., still obtains. I learn on reliable authority that Japanese Legation in the last few days has made urgent representations to Prime Minister, to Foreign Office and to Minister of the Navy that Federal contract should not be considered by Cabinet for the present, on the ground that negotiations on the subject are being conducted with our Government by Hanihara.[6] This statement appears to be influencing the Chinese Government. Please instruct.

SCHURMAN

893.74/288 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *April 24, 1923—5 p.m.*

72. Your telegrams 100, April 10, 1 p.m., 117 April 22, 12 noon. You may advise Foreign Office and other interested authorities in your discretion that there are no negotiations between this Government and that of Japan in progress with regard to the Federal

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[6] Japanese Ambassador at Washington.

wireless contract. I have taken up the matter with the Japanese Ambassador only in the sense of remonstrating against interference with the carrying out of a valid American contract with regard to which this Government has consistently maintained that Japanese interests have no *locus standi*. The Chinese Government should understand that while I have endeavored to facilitate its fulfilment of its contractual obligations to the Federal Company by inducing the Japanese Government to discontinue its opposition, this Government nevertheless regards the company's contract as having established rights to which it is the positive obligation of the Chinese Government to give effect, regardless of whether or not the Japanese opposition is withdrawn.

You will further advise the Minister for Foreign Affairs that this Government is keenly disappointed by the failure of the Chinese Government to permit the carrying out of this contract despite its recent reaffirmation by the Cabinet as reported in your despatch No. 1409.[7] This delay is not only hurtful to the American interests concerned, as it jeopardizes the prospects of an enterprise for which the Department understands a capital of thirteen million dollars is immobilized, but it threatens to undermine the position which this Government, in full accord with the Chinese Government, has taken in making this contract an issue involving the principle of China's freedom from international control in matters of electrical communications, the policy of direct communication between the United States and China, and the principle of the open door.

Dr. Koo will recall that these issues were the subject of correspondence in May, 1921, in which this Government took occasion to state its position in terms which were later adopted as the basis of Article III of the Conference Treaty concerning Principles and Policies in China.[8] He will also recall that during the Conference the Chinese Government sought and received the assistance of the American Delegation in opposition to proposals for a unification of Chinese wireless, and in that connection gave renewed assurances of its desire to proceed with the Federal contract and uphold the policy of equality of opportunity as against the monopolistic and discriminatory claims set up by other foreign interests. (See particularly your telegrams No. 5, January 6, 1 p.m., and No. 44, February 10, 4 p. m., and Department's No. 4, January 10, 8 p.m.[9])

In view of the strong support which for more than two years this Government has given to the rights conferred by China upon the Federal Company in the faith that such support was understood

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[7] Not printed; see telegram no. 70, Feb. 28, from the Minister in China, p. 785.
[8] *Foreign Relations*, 1922, vol. I, p. 276.
[9] Telegrams are of 1922; *ibid.*, pp. 844, 846, and 845, respectively.

by the Chinese Government as upholding its political and economic interests no less than the interests of the American company, I find it difficult to comprehend the withdrawal of the Chinese Government's coöperation and its apparent willingness to permit continued delays which threaten the success of a project whose validity has just been confirmed anew and whose advantage to both the United States and China is beyond question. I feel warranted in hoping that the Chinese Government may now see its way to do its part in coöperating for the realization of plans in which the interests of both countries are identified.

. . . .

HUGHES

893.74/310

The British Ambassador (Geddes) to the Secretary of State

No. 416 WASHINGTON, *May 28, 1923.*

SIR: I have the honour to inform you that His Majesty's Government have recently had under consideration the recommendations for dealing with the question of wireless and cable communications in China which were signed by the experts attached to the American, British, French and Japanese delegations to the Washington Conference on February 4th, 1922.[10]

His Britannic Majesty's Government are of opinion that these recommendations provide the best solution that can be devised for a very complicated problem and in these circumstances they feel it to be of real importance that the suggestions put forward by the experts should be generally approved and put into execution.

Some uncertainty exists, however, as to the position of the United States Government in connection with the matter, and in order that there may be no misunderstanding, I have the honour to enquire, by direction of His Majesty's Principal Secretary of State for Foreign Affairs, whether the United States Government have yet taken up a definite attitude with regard to the question of approving the observations of the experts.

I should be most grateful to receive, at an early date, an expression of the views of the United States Government on this question for communication to His Majesty's Government.

I have [etc.]

(For the Ambassador)
H. G. CHILTON

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[10] *Ibid.*, p. 840.

893.74/312 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 7, 1923—2 p.m.*
[Received 3:17 p.m.]

202. Reference is made to the Department's telegram of April 24, no. 72, the substance of which was immediately conveyed to the Premier and Ministers of Foreign Affairs and Communications of China.

With the most effective assistance of Mr. Bell and Mr. Peck,[11] reenforced by Mr. Schwerin, I have made every effort to bring matters to a settlement. At last the Minister of Communications at an interview on May 25 read to me a resolution which had been agreed upon by representatives of the Ministries of Foreign Affairs, Communications, and Navy, which made provision for a way of taking care of the Mitsui agreement and giving authorization for carrying out Federal Telegraph contract immediately, and which the Minister of Communications expected would be adopted next day by the Cabinet. I learned from other sources that this resolution had been approved likewise by the Ministers of Foreign Affairs and Navy.

Subsequently the Foreign Office informed me that no formal discussion was held and no action taken at the Cabinet meeting regarding the Federal Telegraph agreement. I have learned confidentially that Acting Minister for Foreign Affairs Shen urged that if the resolution were followed the Japanese would never agree and would cause great difficulties to the Chinese Government. Accordingly, the decision was that, until settlement had been reached with the Japanese, execution of the Federal contract should be postponed.

Since September 29, 1921, my notes remain unanswered and the Chinese Government has sent me no written communication regarding this matter. Postponing for an indefinite time the execution of the Federal contract, this last act of bad faith culminates a long story of procrastination and evasion in which the efforts of the American Government on behalf of China have been disregarded . . . What it amounts to is that, under intimidation or inducements of interested Japanese parties, the present Peking Government has abandoned the policy of equal opportunity.

On June 6, the Acting Minister for Foreign Affairs again gave my questions evasive replies. I made a demand to be provided at the earliest possible date with a categorical statement of the intentions

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[11] Edward Bell, counselor, and Willys R. Peck, Chinese secretary, of the Legation at Peking.

of the Chinese Government regarding the Federal agreement but I have no hopes of compliance.

Permit me to ask that you bring again to the Chinese Minister's attention the American Government's interest in the Federal Telegraph agreement and give expression to your indignation and amazement at this renunciation of our rights which the matter involves. In my opinion there is involved a menace to historic principles which have been maintained by our Government as well as a disastrous loss to American prestige.

Time and again I have been informed that the Chinese authorities are continuously assured by the Japanese Legation that since the wireless matter will be settled by the Japanese Ambassador direct with the Department it may be allowed to rest in Peking.

SCHURMAN

893.74/313 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 7, 1923—6 p.m.*
[Received June 7—6:55 p.m.]

204. My 202 of June 6 [7], 2 p. m. On February 28 the Federal Telegraph Radio Corporation option expired, the matter being left open with no renewal at that time. The option was renewed, however, in May until July 15, 1923, and Mr. Schwerin was promised continued support by the President of the Radio Corporation, General Harbord, who added that he was precluded from entering upon any combination with British or Japanese interests. It is stated by Schwerin that the Japanese Legation here has been urging the Peking Government to delay the Federal wireless contract until after July 15, basing its representations on the ground that the Radio Corporation will then abandon the agreement and cooperate with the Mitsui Company.

Upon cabling to the United States to learn whether there was any truth in this suggestion, Mr. Schwerin informs me that he received a reply that it has been indicated by General Harbord that the present agreement will not be extended by him beyond July 15 and that he may be compelled to enter into arrangements with the Mitsui Company if the Peking Government has not agreed by that time to the Federal Telegraph Company contract.

. . . I beg that you will at once find out whether this report is true. If this report is correct it will be of no use for us to take any more steps on behalf of the Federal wireless contract as the Peking Government will delay matters until the expiration of the

period of the option, leaving the Radio Corporation and the Mitsui Company free to make such arrangements as they see fit and thus relieve the Peking Government of its present embarrassment, as the Japanese Legation advises.

SCHURMAN

893.74/313 : Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *June 9, 1923—8 p.m.*

103. For the information of the Minister and to be discussed confidentially with Mr. Schwerin.

It is a matter of great regret that on account of unavoidable delays incidental to giving consideration to the Federal contract, the Department has not undertaken to inform you currently of the position of affairs, with regard to questions influencing the matter, in such a way that such misconception as seems to be represented by the Legation's telegram No. 204 of June 7 would have been obviated.

Because of persistent delays by the Chinese Government I have been considering for some time the possibility of alternative procedure in case the Chinese Government's passive attitude should, under circumstances which constitute an absolute bar to progress in the matter, be continued. Apparently the definite refusal of the Japanese Government to discontinue its support of the Mitsui claim to a wireless monopoly was a significant coincidence with the British Government's very persistent effort to secure a statement of the American Government's position regarding the recommendations drawn up by the American, British, French and Japanese radio experts on February 4, 1922, with regard to wireless activities in China and which those experts submitted for approval to their respective Governments.[12] You are being informed in a separate telegram of the text of these recommendations. They have, so far as this Government knows, received only the British Government's formal approval. The formation of what may be denominated a radio consortium for China is the apparent object to which their general purport looks. The British, French and Japanese wireless interests would comprise this consortium, with the maintenance by the American interests of a separate entity, the purpose of which would be direct Chinese-American communications, but taking cognizance, for the purpose of necessary traffic and other working arrangements, of the other organizations.

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[12] *Foreign Relations*, 1922, vol. I, p. 840.

Although my strong preference would be, if only for the tactical advantage it would give in arranging for such working agreements as would later be necessary with the other national interests, to have the arrangements under the Federal agreement independently executed, the possibility has been receiving my consideration of bringing about substantially the same result through an arrangement among the American, British, French and Japanese radio interests employing as a foundation the experts' recommendations which look to reserving the Chinese-American field for our interests to be developed through the concession granted the Federal company. The difference is tactical rather than essential between the two methods.

I have also considered, if concerted action among foreign interests with respect to radio in China is still opposed by the Chinese Government, the possibility of stimulating China to action on the Federal agreement as an independent project by presenting the prospect of cooperation with a British-French-Japanese radio consortium as an alternative which must be considered by us in case Chinese cooperation under the Federal agreement is persistently withheld.

The Department has discussed these suggestions tentatively with General Harbord in order to learn whether the Radio Corporation would be ready to do its part, if necessity should arise, with regard to the proposed alternative method. The corporation is still considering the matter and on June 13 its representatives are to consult with the Department further.

There is a third possibility, viz, that the American Government should show its willingness, in response to the British Embassy's insistent solicitations, to have the American radio interests join with the other three national radio interests on the basis of the recommendations of the experts, the arrangement to be conditional upon assurances that no preferential or monopolistic rights should be asserted in regard thereto, and that all opposition should be withdrawn to the carrying out of the Federal contract.

The Department will be pleased to receive, by June 13th if possible, a statement of your and Mr. Schwerin's views regarding the proposed alternatives to the effort which is being made at present to secure the fulfillment, without reference to the interests of other nationalities, by the Chinese Government of the Federal Telegraph agreement as an independent project.

It is my hope that Mr. Schwerin, whose position is fully appreciated in the matter, will find it possible to approve my dealing with it according to one of the three alternative methods I have here outlined, in the event it should appear impossible to overcome the Chinese Government's inertia.

HUGHES

893.74/318 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *June 12, 1923—3 p.m.*
[Received 6:15 p.m.] [13]

216. With reference to the Department's telegram no. 103 of June 9, Mr. Schwerin replies to the following effect:

After reading with deep anxiety and concern your telegram no. 103, I wish to say that so far as I have authority I place the affairs of my company entirely in your hands but respectfully lay before you the following comments:

Of the long and difficult negotiations which brought to a successful termination in the United States the radio enterprise in China, the Department is aware, and from cables received from China before sailing I had every reason to believe that immediately upon my arrival construction work would commence. It seems that this has been rendered impossible, however, through changes of administration and Japanese influences. I would point out that there have been four changes in the Government administration during the time that I have been in Peking and it was not possible to take up our enterprise before the most recent change which took place about February 1. It was on February 6 that the first meeting occurred with the Ministry of Communications, looking to the purchase of land and proceeding with the work, and there has been continuous effort since that time by our American interests to secure the Chinese Government's approval to proceed with the work. Japanese influence dominated the Prime Minister of this Cabinet, who was pro-Japanese. What progress was made was shown by the Chinese President's twice sending to the Cabinet written communications to go on with the Federal agreement; three boards appointed by the Cabinet reported that the Federal contract was very advantageous to China and work should at once begin, and the Premier was forced finally to order the Minister of Communications as follows: "The Ministries concerned are to settle and to execute at once the Federal Telegraph Company's contract on the basis of this petition."

The above-mentioned petition was that which the Union of the Chinese Chambers of Commerce submitted demanding that recognition should not be granted the Japanese 30-year monopoly and that the work on the Federal contract should proceed at once to China's great advantage, and opposing any internationalization of radio in China. On May 23 it was agreed that the Cabinet meeting on May 26 would take favorable action, but the Cabinet refused to act, owing to representations made to the Chinese Foreign Office by the Japanese Legation to the effect that the Chinese Government would receive word within a few days that the United States and Japan had amicably settled everything between them in this matter. Then followed the political crisis of which the resignation of the Cabinet on June 6 resulted and no Cabinet now exists. Therefore,

[13] Telegram received in two sections.

although I arrived here in November, 1922, my time in which to work (and with a Cabinet not at all familiar with the Federal contract) has been but three months. I had the earnest cooperation of the Legation in all this and I think that had this Cabinet remained, it would, with the support of the Union of the Chinese Chambers of Commerce, have given its approval that the Federal construction be gone on with. It will not be possible to make any progress pending the formation of a new Cabinet, and should a Cabinet be organized in which there are any of our old friends or officials who are familiar with the Washington nine-power treaty, I have reason to believe that favorable action can be secured. But, on the contrary, should the American Government take the position (as suggested in the Department's proposal no. 3) that it would be willing to join with other foreign nationalities in an internationalization of radio in China, it is possible that the Chinese (who are opposed to monopoly and domination by Japanese) might not only be turned against the Federal Telegraph project, but also take such an attitude of opposition to any other combination of radio interests, and thus cause them all to lose by reason of the hostile public opinion fostered by the Associated Chambers of Commerce of China and the guilds.

Your proposal no. 1 is, in my opinion, the one on which we have been working all along. When in Washington during February, 1922, I advised Mr. Brown, of the British Ministry of Posts, that the Federal Company would be willing to enter into satisfactory commercial arrangements, providing the other powers were to join with Japan in their wireless project, and he appeared to be satisfied, and requested only that I should avoid the establishment of such low rates as would destroy their cable project, to which I assented. Of the high financial difficulties encountered by the Federal Company until these were consummated, the Department is well aware. It will not be possible for the Federal Company to go forward alone if these arrangements are now dissipated, and I must recognize the fact that, after a long two years of effort, I must relinquish with regret my part in a project which my original feeling told me was incalculably valuable to the United States and which my further investigations and my sojourn in Peking show to be of a value far in excess of my first estimates.

Providing the Americans interested in this matter continue to work in harmony on the Department's proposal no. 1, it is my belief that these interests will be safeguarded, and I trust that all concerned in the well-being of this American enterprise in China will see this situation as it exists, and will find it possible to continue the relations now existing, which press forward to the eventual success before us.

My own comments are as follows:

1. I fully share the Department's and Mr. Schwerin's view that it would in every respect be most advantageous if it were possible to go on with the independent execution of the contract held by the Federal Company. I do not consider that the opportunity of so doing has been completely dissipated. It is possible that the next Cabinet may be more immune to influence by Japanese. On one occasion even the lately retired Premier acknowledged to me that the Japanese contract was not good for China and that the Federal contract was.

This same view has recently been expressed in the press and elsewhere by Chinese Chambers of Commerce. Accordingly, my own feeling is that more than a gambling chance presents itself to Mr. Schwerin to attain success if his partners do not call time on him, time in China being decidedly not money. I must, however, acknowledge that I am not able to give him much assistance by holding up, as a menace, to the Chinese view, a consortium of international radio, because I have already brought that danger several times to the attention of the Chinese officials. I will nevertheless present this argument to them again, although without reference to the possibility of American participation in such a consortium.

2. In my opinion, the third possibility, referred to in the Department's telegram, is open to very grave objections. I fear that dissension between American interests would result and afford the European and Japanese Governments an opportunity, through their business interests, to diminish the influence of American interests. I fear that the California Federal Company, for example, would find it impossible to obtain the capital requisite for the carrying out of its contract, without cooperation with the Radio Corporation or with some other American concern. And yet the Federal contract is in fact the greatest American asset available in the radio situation in this country.

3. Despite the safeguards with which Japan surrounded it, the third proposal, taken in conjunction with the experts' recommendations and annexed heads of arrangements,[14] would almost surely, in practice, result in contravening the fundamental American policy of freedom and equality of economic opportunity in this country. Paragraph 5 of the experts' recommendations appears to acknowledge that the Chinese National Wireless Company and the China Electric Company are in fact possessed of preferential rights which we have absolutely denied; and the existence of a cable monopoly is recognized by them in subparagraph 6. I fear that if we give up or qualify the principle of freedom and equality of competition which is the surest guaranty for the development of American economic interests in China, we shall become entangled in the intrigues of the Japanese and Europeans.

I should advise that, if within a reasonable lapse of time after the formation of a new Cabinet, it appears impossible to obtain the carrying out of the Federal contract as an independent project, it would be well to adopt the Department's first proposal which reserves radio communications between China and the United States for development as a Chinese-American enterprise and excludes European and Japanese entanglements while providing for the slightest

[14] *Foreign Relations,* 1922, vol. I, p. 840.

possible deflection from the principle of equality of opportunity. In addition, I would very earnestly urge that to obtain united support for the existing Federal contract is essential, the contract being an asset too valuable to allow it to lapse or breed division among our various national interests.

SCHURMAN

893.74/326a : Telegram

The Acting Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *June 19, 1923—6 p.m.*

115. Reference is made to the Legation's no. 216 of June 12.

1. You are requested to express the Department's appreciation to Schwerin of his attitude of helpfulness and willingness to cooperate in the effort to realize his plans substantially even though the adoption of a procedure different from what he had in contemplation may be compelled by political conditions in China.

Mr. Schwerin's and your own approval of the alternative procedure designated as proposal no. 1 gives the Department much gratification. The Department, however, is somewhat puzzled by the objections which (in paragraph 2 of section 2 of your telegram) you make to the third possibility which the Department suggested. The Department trusts that this does not indicate that it has failed to make it clear that what the Department denominated proposals no. 1 and no. 3 are substantially identical; having in view that the American radio interests, although retaining at the same time a separate identity in order that they may independently deal with direct communications between the United States and China on the basis of the Federal Telegraph agreements, are, for the purpose of necessary working arrangements, to take cognizance of the proposed British-French-Japanese radio combination. The only difference between proposals nos. 1 and 3 is that no. 3 has in view that the American Government will communicate to the British and other interested governments its willingness under certain circumstances to give approval to the American wireless interests making the arrangements which the recommendations made by the experts had in view, previous to the pertinent negotiations which will be undoubtedly undertaken by the Radio Corporation with the other national wireless interests in July at the London Conference. This represents nothing but a difference in procedure, and no objections to proposal no. 3 in principle are involved which proposal no. 1 does not equally involve. The Department's intention, in either case, is to insist upon a consideration of the experts' recommendations which

would entail a renunciation of any claims to monopoly or preference, without regarding the theoretical question of the validity of any such claims. The Department hopes that Mr. Schwerin understands fully what each of these proposals involves and, in case it should be necessary for the Department to act upon some alternative to the present plan, that his approval would be given to the adoption by the Department of one or the other of these proposals as might appear to be more expedient at the time.

2. On June 13 your no. 216 was discussed with Radio Corporation representative and there was furnished him for the corporation's use a paraphrase of the entire message (with the exception of the passage in section 1 in which reference was made by Mr. Schwerin to the possibility of his foregoing participation in the project). On account of Mr. Young's illness the Radio Corporation has not been able to consider fully the suggestions made at that time, but has given authority to the Department to lay the matter before the Chinese Minister as the Department's telegram no. 103 [, June 9,] had in view, hoping to prevail upon the Chinese Government to take early action on the Federal contract; and, without committing itself to the extension of time beyond July 15, the Radio Corporation has given assurance that it will, of course, carefully consider this matter before actually letting the contract lapse and that in the meanwhile, with a view to bringing about favorable action on the contract before July 15, it hopes for a continuance of pressure upon the Chinese Government.

3. For its part, the Radio Corporation has given consent to the suggestion of the Department that the British Embassy should be furnished with copies of the proposed modifications in the Federal contract in response to the Embassy's inquiry as to whether the amendments proposed would be incompatible with the terms of the experts' recommendations. It is the Department's belief that under the circumstances this would be helpful but the Department would like to receive Mr. Schwerin's approval and would appreciate an early reply in this respect.

4. The Secretary was recently advised by the Japanese Ambassador that the Japanese Government suggested, without prejudice to the consideration of the principles involved, negotiations among the national radio interests which are concerned, contemplating arrangements that would be mutually satisfactory but gave no indication as to the nature of the contemplated arrangements. The inference of the Department is that the Japanese effort will be directed towards bringing about an arrangement embracing like participation of four nationalities in radio enterprise in China and the pooling of their respective holdings. The Secretary said that, pending further infor-

mation as to the nature of the arrangements proposed, he could not consider the matter.

The Department now proposes, unless the situation should be modified, to undertake negotiations with the Chinese Minister regarding the question of the execution, without delay, by his Government of the Federal contract independently. If satisfactory results do not follow reasonably soon it will doubtless be necessary to proceed along the lines of either proposal no. 1 or proposal no. 3.

PHILLIPS

893.74/328

The British Ambassador (Geddes) to the Secretary of State

No. 506 WASHINGTON, *June 20, 1923.*

SIR: I have the honour to refer to my note No. 416 of May 28th last, in which, under instructions from His Majesty's Government, I enquired whether the United States Government had yet taken up a definite attitude with regard to the question of approving the recommendations put forward on February 4th, 1922, by the experts attached to the American, British, French and Japanese delegations to the Washington Conference in connection with wireless and cable communications in China.

His Majesty's Government are particularly desirous of being placed in possession of the views of the United States Government on this point at the earliest possible moment, and I should accordingly be grateful if I might be favoured with a reply as soon as possible.

I have [etc.]

(For the Ambassador)
H. G. CHILTON

893.74/330 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 25, 1923—1 p.m.*
[Received June 25—11:14 a.m.]

237. Substance of your telegram 115, June 19, 6 p.m., communicated to Schwerin at Shanghai who replies as follows:

"1st. It would appear that the Radio Corporation has persuaded the Department to withdraw from previous policy that American wireless interests should not participate in any radio consortium for China and now is prepared to allow that wireless interest to enter an international agreement on the basis of expert recommendations.

2d. A meeting of international wireless interests takes place in London in July. Radio Corporation officers sail from New York June 27th to attend.

3d. Department will consent to preliminary undertakings before meeting—in other words, to program.

4th. Radio Corporation will be placed in a very desirable trading position to make best terms to suit its financial interests at the meeting as follows: (*a*) can enter foreign combination and retain Federal interest in service China to America; (*b*) can enter foreign combination and drop Federal interest; (*c*) can retain Federal interest only. I am inclined to believe that they will trade under B, especially if the foreign interests will agree to an American chairman of the Board of Governors.

[5th?] If the British demand any modification of Federal contract on the ground that present contract incompatible expert[s'] recommendations, such modification might require consent of Chinese Government and might eventually render contract negative through delay and resulting adverse financial conditions. If Radio Corporation goes on with the Federal or retires, the fact that the British are familiar with special arrangements will not affect their interests, whereas, if they retire and the Federal Company endeavors to go on with any other interest, this knowledge may be a very serious tactical error and might be used to our disadvantage. I realize, however, that the Department is fully alive to American interests, and therefore concur in giving the information to the British Embassy, but hope it will be considered a confidential document.

6th. It would appear that the Department had been persuaded that China was ready and agreeable for the Powers to take over China's high-power radio interests on joint account.

7th. I approve of the Department's acting on paragraphs 1 and 3. Let us hope that resulting conditions may be far better than we can estimate at this time."

SCHURMAN

893.74/331: Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *June 25, 1923—8 p.m.*
[Received June 26—8:30 a.m.]

239. Your 115, June 19, 6 p.m. I hope you will bring strong pressure to bear on the Chinese Minister with a view to his urging his Government to carry out the Federal contract.

SCHURMAN

893.74/339

The Assistant Secretary of State (Harrison) to the Secretary of the British Embassy (Craigie)

WASHINGTON, *June 28, 1923.*

MY DEAR CRAIGIE: Let me acknowledge your personal letter of June 22nd,[15] asking whether I would be in a position to give you,

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[15] Not printed.

unofficially and confidentially, the details in regard to the amendments to the Federal Wireless contract, which that Company is seeking to have made by the Chinese Government. I am very sorry to be compelled to reply that I cannot at this time communicate the details of these amendments; but I am happy to be able to assure you that they are not such as would substantially affect the contract or be incompatible with any arrangements, on the basis of the recommendations of the radio experts, dated February 4, 1922, which might eventually be arrived at.

Very sincerely yours,

LELAND HARRISON

893.74/333b : **Telegram**

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *June 28, 1923—6 p.m.*

128. The Department is separately telegraphing you a message to Schwerin from Young of Radio Corporation,[16] which embodies the substance of a suggestion previously communicated to the Department by a letter from Corporation and discussed June 21 with Division of Far Eastern Affairs by the Corporation's general attorney, William Brown.

The following are (omitting unessential clauses) the terms in which this suggestion was presented in the Corporation's letter of June 18:

"With reference to whether in its negotiations with the British, French and Japanese, the Radio Corporation will avail itself of its option under the contract with the Federal Company of California to declare the Federal contract in China operative regardless of non-approval of the Chinese Government and thus avoid what the Department would term its entrance into the negotiations empty-handed, we do not feel we need to exercise this option in order to make an advantageous arrangement with our associates. The greatest of pressure has been brought on the Radio Corporation of America to induce us to enter the Consortium, and we have no doubt whatever that we can enter it on almost any reasonable terms, of our own making, without regard to the Federal contract.

If we are to declare the Federal contract operative without the Chinese consent to the modification, we can only do it on three conditions:

(*a*) That the State Department will construe the Chinese contract with the Federal Company of California in the same sense as the proposed supplemental articles to agreement of September 19th, 1921, between the Federal Telegraph Company and the Republic of China and that the State Department will notify the Chinese Government of such construction;

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[16] Not printed.

(*b*) The declaration of the Federal contract as operative without the Chinese signature would mean, of course, that the Radio Corporation, without its interests being guarded as they would be were the modification of the contract signed, would be expected to finance the project, and, of course, it would require them to be secured in some other way. The only way that occurs to us would be for the State Department to signify its willingness that the Radio Corporation of America take over the Federal Company of California under terms which would be equitable to both parties, the State Department first perhaps advising with the Attorney General of the United States, if it thought best, as to the legality of this course. In event of inability of the Radio Corporation of America and the Federal Company of California to agree, which is not anticipated, we would be willing to leave the valuation and kindred matters to the arbitration of some disinterested party, of perhaps the reputation of the Honorable Elihu Root;

(*c*) That the State Department would give its assent to the Radio Corporation–Chinese interest making traffic agreements with the Japanese, French and British for radio communications in China. It is to be understood, of course, that the Radio Corporation would under such traffic arrangements guard the American interests and the principle of equal opportunity to the best of its ability."

In the course of the same letter the Corporation stated that it "has no objection to our Minister in Peking being informed that the Radio Corporation has had no negotiations with the Japanese Government, or its representatives, as to Radio development in China since the Limitation of Armament Conference, a year and a half ago."

In the conversation with the Division of Far Eastern Affairs on June 21 Brown was informed that the Department could offer no judgment whatsoever as to the Corporation's proposed purchase of the Federal interests unless and until Schwerin should have indicated his willingness to entertain the proposal. It was recalled to him that with the object of achieving direct independent communications with China and contesting the existing claims to monopoly by other nationalities the Department had given the fullest support to the Federal; and that through such support the Federal had acquired vested interests which the Department was obligated to support and protect. The Radio Corporation had come into the situation after this result had been achieved, and such standing as it had in the matter was based upon a contingent interest in the Federal's rights. Under these circumstances, the Corporation would understand that the Department could not approve any plan which would derogate from the policy of independent Chinese-American communications, or which would ignore the vested rights of the Federal in this matter. As for the principle of direct communications, the

furthest the Department could see its way to go would be to authorize an arrangement of the American with the foreign wireless interests on the basis of the experts' recommendations. As for the interest of the Federal, the Department could consider no proposal which would crowd that Company out.

Your telegram No. 237, June 25, 1 p.m. Schwerin's first comment indicates an apparent misunderstanding. This Government is not prepared to have American wireless interests participate in Radio Consortium for China, but proposes that they should operate independently for the purposes of transpacific communication on the basis of the Federal contracts as specified by the experts' recommendations. From this it follows that Department could not approve Radio Corporation's entering foreign combination and dropping Federal, as contemplated by alternative (*b*) of his fourth comment. In deference to his feeling that a knowledge by the British of the terms of the proposed amendments to Federal contracts might be used to the disadvantage of the Company, the Department is withholding detailed information on this subject, merely informing British Embassy that the proposed amendments would not substantially affect the contracts or be incompatible with any eventual arrangement on the basis of the experts' recommendations. His third comment is not understood but if as supposed it relates to the possibility of assuring the British and other interested Governments of willingness to have arrangements made on the basis of the experts' recommendations, he should understand that the Department would not contemplate doing so in any case unless convinced of the impossibility of the Federal's obtaining fulfillment of its contracts as an independent project.

Your telegram No. 239 June 25, 8 p.m. Chief of the Division of Far Eastern Affairs on June 22 discussed fully with the Chinese Minister the necessity for immediate action on the Federal contracts, and the Minister promised to take the question up officially with the Foreign Office and privately with Dr. Koo in the hope of enlisting his personal influence with the Acting Minister. The Department's views were embodied in a personal letter of June 23 from the Chief of Division to the Chinese Minister,[17] who has since advised him that he has telegraphed its substance together with his own very strong supporting recommendations to Koo.

Please discuss the above fully with Schwerin and advise the Department of your own as well as of his views.

HUGHES

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[17] Not printed.

893.74/340 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *July 3, 1923—3 p.m.*
[Received July 3—9:35 a.m.]

248. Your 127, June 28, 5 p.m.,[18] and 128, June 28, 6 p.m. Following from Schwerin:

"I will acquiesce in the suggestions set forth in the telegram from Young[18] and with the confidence I have in him acquiesce to any action he may be required to take as will place him in a position to say in London that the Radio Corporation is going forward with the Federal enterprise in China always with the understanding that the Department will approve the action taken."

Schwerin adds with reference to the Department's telegram 128, June 28, 6 p.m., that he now understands fully and highly appreciates the Department's policy and desires to express his thanks for the protective expressions regarding the Federal-China enterprise.

SCHURMAN

893.74/341 : Telegram

The Minister in China (Schurman) to the Secretary of State

PEKING, *July 5, 1923—5 p.m.*
[Received July 5—12:55 p.m.]

249. My 248, July 3, 3 p.m. I understand that telegram to following effect was sent yesterday to Sze by the Chinese Foreign Office:

"Today Cabinet confidentially settled that the China and American wireless contract be maintained. Mitsui and Company have given date for the completion of their station by the end of July. The Chinese Government are taking over the station according to the supplementary contract. China-American wireless contract will then be able to proceed. It is only a question of time. The Chinese Government have no intention to delay the matter. Please convey this information to the American Government."

. . . .

For the Minister:
BELL

893.74/351

The British Chargé (Chilton) to the Secretary of State

No. 583 WASHINGTON, *July 12, 1923.*

SIR: With reference to the informal discussions between Mr. Leland Harrison and Mr. Craigie of His Majesty's Embassy on May 15th

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[18] Not printed.

and to Mr. Harrison's letter to Mr. Craigie of June 28th last relative to the amendments in their contract which the Federal Wireless Company are seeking from the Chinese Government, I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to acquaint you with the following information:

His Majesty's Government understand from His Majesty's Representative at Peking that the following provision occurs in Article 17 of the Federal Company's supplementary agreement dated September 9, 1921.[19]

"All Radio messages from China and for United States shall be handled by Federal Chinese Radio Administration for twenty years from date of completion of last station provided for under agreement".

His Majesty's Government have instructed me to enquire whether the above information is correct and, if so, to point out that this clause would appear to be inconsistent not only with the assurances given verbally by Mr. Harrison to Mr. Craigie and reaffirmed in Mr. Harrison's letter of June 28th, but also with the statement contained in section 2 of the memorandum drawn up by the experts in Washington on February 4th, 1922, to the effect that "the existing Federal concession contains no monopoly or exclusive privileges."

I have the honour to ask that you will be so good as to communicate to me at your earliest convenience the views of the United States Government on the above points for transmission to His Majesty's Government.

I have [etc.] H. G. Chilton

893.74/353 : Telegram

The Minister in China (Schurman) to the Secretary of State

Peking, *July 14, 1923—7 a.m.*
[Received 8:45 a.m.]

259. On February 2 Schwerin submitted to the Minister of Communications agreement 3,[20] enclosed with the Department's despatch no. 222, September 7, 1922,[21] with the preamble and article 2 omitted and substituting therefor the following introduction:

"With reference to the agreement dated 8th January, 1921, and the supplementary articles thereto dated 19th September, 1921, be-

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[19] For correct citation and text, see the Department's reply of July 19, p. 810.
[20] For text of Schwerin's letter of Feb. 2, containing agreement 3, see *List of Contracts of American Nationals with the Chinese Government*, annex VIII, p. 12.
[21] *Foreign Relations*, 1922, vol. I, p. 856.

tween the Government of the Republic of China acting through the Ministry of Communications and the Federal Telegraph Company, an American corporation, as the company is now ready to proceed with the construction of the stations provided for under the joint undertaking, and as there are certain provisions of the said agreement which are not sufficiently determined and clear, and which [it] is now necessary to have definitely determined and understood, the following provisions shall be included in and form a part of the agreement and supplementary articles, to wit: "

The remaining changes provided for in agreement 3 were retained in their entirety.

This document has been the subject of intense discussion during the last few days and on July 13th the Minister of Communications signed and sealed it officially in unqualified approval of its terms and handed it to Schwerin.

I have caused an official certificate of the genuineness of the signature and seal and due powers of Y. L. Woo, Minister of Communications, to be affixed to the document under the seal of the Legation.

In the absence of Minister Schurman I as counsellor of the Legation express the opinion that this document secures the Federal enterprise in China in the full enjoyment of its vested rights in and under the contracts of January 8th and September 19th, 1921 and agreement 3.

Schwerin requests that the contents of this telegram be telegraphed immediately to Elwood, Secretary of the Radio Corporation, Singer Building, New York City, and Federal Company, San Francisco. Contents are not to be made public until August 7th. London informed.

For the Minister:
BELL

893.74/351

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *July 19, 1923.*

SIR: Replying to your note (No. 583) of July 12, I hasten to advise you that, apart from certain inaccuracies in citation and quotation, the provision of the Federal Telegraph Company's contract, concerning which you inquire, is substantially correct. Article XIV of the supplementary Articles to Agreement of January 8, 1921, between the Federal Company and the Chinese Government, dated September 19, 1921, reads as follows:

"The Government agrees that all moneys and income accruing to it from the operation of said stations or from the operation of the China Federal Radio Administration shall be immediately upon the

receipt thereof deposited in the Asia Banking Corporation, or such other bank or banking institution as may be from time to time designated by the Federal Telegraph Company, and that all radio messages from China and for the United States of America are to be handled exclusively by the Federal Telegraph Company for a time twenty (20) years from the date of the completion of the last station erected and provided for under the agreement of the 8th day of January, 1921. It is further agreed that for and throughout said twenty (20) year period, the land upon which said stations are constructed, and all buildings and improvements thereon, shall be kept and maintained free and clear of all liens, charges, and incumbrances of every kind and character whatsoever excepting only the lien of the bonds hereby secured, and the obligations of the Government to the Federal Telegraph Company."

For your information there are enclosed herewith prints of the texts of the Federal Telegraph Company's original Agreement of January 8, 1921, and of the Supplementary Articles of September 19, 1921.[22]

In reference to your comment that the clause relating to the handling of Chinese-American traffic would appear to be inconsistent with the assurances given by Mr. Harrison orally, and in his letter of June 28, to Mr. Craigie, I would point out that Mr. Craigie's oral inquiries, and his letter of June 22,[23] alike referred not to the terms of the existing contracts of the Federal Telegraph Company, but to such amendments to those basic contracts (of January 8, and September 19, 1921) as were at the moment under discussion between that company and the Chinese Government; whereas the provision cited in your note is contained (as you have been correctly advised by the British Legation at Peking) in the second of those basic agreements, concluded in September, 1921.

Let me take occasion to add a confirmation of Mr. Harrison's reply to the effect that the amendments proposed by the Federal Telegraph Company to the Chinese Government are not such as substantially to affect the contract or be incompatible with any arrangements, on the basis of the recommendations of the radio experts, dated February 4, 1922, which may eventually be arrived at.

As regards your comment that the clause in question, in the Federal contract of September 19, 1921, would appear to be inconsistent with the statement contained in Section 2 of the memorandum drawn up by the experts in Washington on February 4, 1922, to the effect that "the existing Federal concession contains no monopoly or exclusive privileges," I would in the first place point out that in the quotation furnished by the British Legation, the name of the Federal Chinese Radio Administration was substituted for that of the Federal Telegraph Company. The error in the quotation has perhaps

[22] Enclosures not printed.

[23] Not printed.

contributed to a misconception which appears to have resulted from considering the clause in question apart from its context. Upon examination of the enclosed copies of the contract of January 8, 1921, and the Supplementary Articles of September 19, 1921, it will be apparent to the British Government that the service in connection with the stations contemplated to be erected under the contract is to be carried on by the China Federal Radio Administration, and not by the Federal Telegraph Company, which is not, as such, to operate in China. It will thus be clear that the meaning of the clause in question is that all radio messages transmitted to the United States by the China Federal Radio Administration, from the stations constructed for that Administration by the Federal Telegraph Company, are to be received and handled in the latter country exclusively by the Federal Telegraph Company for the period specified. It is in fact merely an arrangement by which the stations in China, in which the Federal Company is interested jointly with the Chinese Government, are, as regards their traffic to the United States, to work in circuit with the stations operated in the United States by that Company. It is obvious that such an arrangement does not operate to exclude the possibility of operation of other circuits that may be established. This Government does not therefore conceive that a traffic arrangement of this character constitutes a monopoly or exclusive privilege, in contradiction to the assurance given by the American expert and quoted in your note of July 12, nor that it would constitute a monopoly in China, or, it may be remarked, in the United States.

The British Government is perhaps aware that, from the beginning of the Federal Company's negotiations with the Chinese Government, this Government has given appropriate diplomatic support upon the express condition that the project should involve no monopolistic element or abridgment of equality of opportunity. The British Government may be assured that this will continue to be the policy of the Government of the United States.

Accept [etc.] CHARLES E. HUGHES

893.74/358 : Telegram

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

[Paraphrase]

LONDON, *July 19, 1923—1 p.m.*
[Received 5:22 p.m.]

304. Following from Owen D. Young and General Harbord:

"Through the United States Embassy here and the United States Legation in China we have received a message from Schwerin stat-

ing that the modification of the Federal wireless contract has been signed by the Minister of Communications. This result is certainly a confirmation of the judgment of the Department and is a substantial victory for the policies regarding China which the Department has supported so long and so effectively. The outcome is most satisfactory to the Radio Corporation of America.

In some preliminary negotiations here with a view to arrangements under the second paragraph of the minutes of the meeting of experts held February 4, 1922, we have been met with a statement of the grant some years ago to the Great Northern Cable Company by the Chinese Government of the monopoly of external communications. This amounts to a challenge of our rights to go ahead with wireless communications until that monopoly expires in 1929 and is a [bar?] against further negotiations. We would very much like to receive a statement as to the attitude the Department will take regarding our proposal [*sic*] under the Federal wireless contract prior to the date when the above-mentioned grant expires. We have, in the meantime, a request for testing the exchange of messages between the Mitsui wireless station at Peking and our Long Island and San Francisco stations about July 25. A demand for traffic will follow if these tests prove successful and therefore we would appreciate it if the Department would advise us through the Embassy in Paris if it wishes us to make the tests."

WHEELER

893.74/365a : Telegram

The Secretary of State to the Ambassador in France (Herrick)

[Paraphrase]

WASHINGTON, *July 21, 1923—1 p.m.*

293. Telegram from Embassy at London, 304, July 19, 1 p.m. Please inform Owen D. Young and General Harbord of the Radio Corporation that in correspondence with the Government of Denmark regarding the Federal wireless contract, this Department has consistently maintained that under the terms of article 15 of our treaty of 1844 with China,[24] and like provisions in later treaties, the Government of China has effectively renounced any right to create either for itself or for any foreign interests such a position as would bar citizens of this country from the possibility of having a share in such enterprises as electrical communications. It has been the position of this Department that the Government of China had, therefore, no power to grant to Danish interests a monopoly such as is claimed on behalf of the Great Northern Company. Without questioning the validity of the particular positive grants vested in the Great Northern Company by its contract with the Chinese Government, the American Government insists that no stipulation in a

[24] Miller, *Treaties*, vol. 4, p. 559.

contract made by the Chinese Government could divest American interests, for that company's benefit, of their existing right given by treaty not to have their business impeded by monopolies or other harmful restrictions.

You may add that the Danish company was aided by the representatives of the treaty powers at Peking in obtaining its original rights in China in 1871 and that when in 1881 it sought the grant of a monopoly for 20 years, our Minister made a protest and was given an assurance by the Chinese Government that it was not intended that the rights granted to the Great Northern Company should work to exclude an American company.[25]

With the understanding that the international wireless convention at London leaves the Radio Corporation with the option of declining traffic with the Mitsui Company's station at Peking, the Department makes the suggestion that you might give your consent to the making of the tests upon the explicit understanding that thereby you would not be placed under obligation to exchange traffic with the Mitsui station unless and until the Department gives its approval thereto.

HUGHES

893.74/365

The British Chargé (Chilton) to the Secretary of State

No. 612 WASHINGTON, *July 25, 1923.*

SIR: I have the honour to refer to the note which you were so good as to address to me on July 19th in regard to the Federal Telegraph Company's contract relative to radio traffic in China and to Mr. Leland Harrison's letter of July 6th last [26] in which he explained the attitude of the United States Government towards the experts' recommendations put forward at the Washington Conference in February 1922.

Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform you that inasmuch as no definite attitude has yet been taken up by the United States Government towards the recommendations of the Washington experts, His Majesty's Minister at Peking has been instructed to take action to defend the Marconi Company's interests in so far as they are affected by the Federal Telegraph Company's agreement. His Majesty's Minister has also been instructed to explain the circumstances to his United States Colleague and to point out that, until His Majesty's Government know that the United States Government

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[25] See *Foreign Relations*, 1881, pp. 275–318, *passim;* and *ibid.*, 1882, pp. 115–117.
[26] Not found in Department files.

have accepted all the recommendations of the Washington experts, His Majesty's Government must maintain their opposition to the Federal Company's contract.

I have [etc.] H. G. CHILTON

893.74/310

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *July 26, 1923.*

SIR: I have had under careful consideration the note (No. 416) of May 28 last, in which you advise me that the British Government is of the opinion that the recommendations of the experts attached to the American, British, French, and Japanese Delegations to the Washington Conference, with reference to the question of wireless and cable communications in China, as embodied in their joint minute of February 4, 1922, provide the best solution that can be devised, and feels that the suggestions put forward by the experts should be generally approved and put into execution.

As a result of my study of these recommendations, I am disposed to agree with the view of the British Government that the general approval and adoption of these recommendations might well serve as a basis of an arrangement among the several interests of the various nationalities concerned, with a view to making possible the development of the external communications of China which is in the general interests, and avoiding unnecessary friction among the several governments and their respective nationals.

It will, of course, be understood that I refer only to the recommendations of the four experts, as signed jointly by them, and not to the appended "Heads of Arrangement respecting Wireless in China," [27] which are relevant only to the possibility of further special arrangement among the British, French and Japanese radio interests, and as to which, therefore, no expression of opinion on the part of the American Government is required.

With respect to the recommendations themselves, I venture out of an abundance of caution to note that the reference (in Section 6) to the existing contracts of the cable companies is not, of course, to be construed as implying on the part of this Government any recognition of the monopolistic or exclusive rights hitherto asserted by the cable companies under the terms of those contracts. And in that connection I feel it is appropriate for me to confirm the assurance of the American expert (in Section 2) that the existing concession of the Federal Telegraph Company contains no monopoly or exclu-

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[27] See *Foreign Relations*, 1922, vol. I, p. 842.

sive privileges, and to add the assurance that such diplomatic support as this Government may have occasion to give this enterprise will in the future continue to be, as it has been in the past, conditioned upon its involving no monopolistic element or abridgment of equality of opportunity.

In regard to the several references (in Section 1 and Section 2) to the eventual purchase of radio stations by the Chinese Government, I should perhaps state that it is my understanding that, in the event of its purchasing any foreign-constructed radio station or equipment, the Chinese Government would, of course, be free to make any use or disposition of it not incompatible with the principle of equality of opportunity.

I would also note that the maximum differential between cable and radio rates (referred to in Section 6) is stated as optional.

With this understanding, I should be prepared to advise the American firms in interest that I perceive no objection to their coming to an arrangement with the British, French, and Japanese radio interests on the basis of the experts' recommendations of February 4, 1922, on the condition, of course, that the French and Japanese Governments, as well as the British Government, likewise give their approval.

Accept [etc.] CHARLES E. HUGHES

893.74/374a

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *July 27, 1923.*

SIR: I addressed to you yesterday afternoon a note in which, replying to inquiries previously made by your Embassy in behalf of the British Government, I advised you that upon certain understandings, and of course upon the condition that the French and Japanese Governments, as well as the British Government, likewise give their approval, I should be prepared to advise the American firms in interest that I perceive no objection to their coming to an arrangement with the British, French and Japanese radio interests on the basis of the experts' recommendations of February 4, 1922.

Later in the course of the same afternoon, I received your note (No. 612), bearing the date of July 25, in which you advised me that until the British Government knows that the American Government has accepted all the recommendations of the Washington experts, the British Government must maintain its opposition to the Federal Company's contract.

This crossing of the two communications on the subject leaves a doubt as to the intentions of the British Government, which I trust

I may rely upon your good offices to resolve as speedily as the views of your Government can be ascertained.

Should the British Government elect to continue its opposition to the Federal Company's contract, in order "to defend the Marconi Company's interests in so far as they are affected by the Federal Telegraph Company's agreement", I trust that, in view of the fact that the Marconi Company's interests have hitherto been defined by that company as involving a monopoly in all phases of radio enterprise in China, the British Government will apprise me whether it is its intention to support that claim, or whether it is prepared to give such an assurance as this Government has given in the case of the Federal Company's project, that such diplomatic support as it may have occasion to give will be conditioned upon the enterprise involving no monopolistic element or abridgment of equality of opportunity.

Accept [etc.] CHARLES E. HUGHES

893.74/375

The British Chargé (Chilton) to the Secretary of State

No. 678 WASHINGTON, *August 13, 1923.*

SIR: I did not fail to communicate to my Government the views contained in the notes which you were so good as to address to me on July 19th, July 26th and July 27th, in regard to radio traffic in China, and more particularly in connection with the Federal Telegraph Company's concession.

I now have the honour to inform you, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, that His Majesty's Government understand from the explanations contained in your note of July 19th that there is nothing in the Federal Company's contract to prevent stations in China, other than those covered by contract, from communicating with stations in the United States, including stations of the Federal Company. Otherwise, inasmuch as Article 14 of the Company's contract provides that all radio messages from China for the United States are to be handled by the Federal Company there would in fact appear to be a practical monopoly.

His Majesty's Government note the assurances contained in your note of July 26th, in which you communicated to me your general approval of the wireless experts' recommendations of February 4th, 1922, and, having regard to the statement contained in the last paragraph of that note that you are prepared to advise American firms interested to come to an arrangement with British, French and Japanese interests on the basis of the experts' recommendations, His

Majesty's Government have instructed me to inform you that their grounds for opposing the Federal contract are removed, and that His Majesty's Minister at Peking will be instructed accordingly.

I have [etc.]

(For His Majesty's Chargé d'Affaires)
HERBERT W. BROOKS
[*First Secretary of Embassy*]

893.74/388

The President of the Radio Corporation of America (Harbord) to the Secretary of State

NEW YORK, *August 16, 1923.*
[Received August 17.]

MY DEAR MR. SECRETARY: Confirming my promise, made by long distance telephone in conversation with Mr. MacMurray, I submit the following account of the interview had by Mr. Owen D. Young and myself with representatives of the Marconi's Wireless Telegraph Company, Ltd., and the Compagnie Générale de Télégraphie sans Fil, in London, on July 19th, on the subject of radio communication in China.

We had in our possession at this time the information that Mr. Schwerin had succeeded in securing the signature of the Chinese Government to the modification of the Federal contract, but with an injunction from the American Minister in Peking that this was to be considered confidential until August 1st.

We opened the conversation by a statement, in substance, that the Federal contract would probably either be signed in the near future, or that under the option which we have with the Federal Company of California, we would probably declare it operative and be prepared to proceed in making traffic agreements with our associates along the general lines of the second paragraph of the Minute of the Experts, dated February 4, 1922.

The representative of the British Marconi Company at once challenged the probability of Mr. Schwerin being able to obtain the signature of the Chinese Government, stating that he had very definite information, through his Foreign Office, that the contract would not be signed.

Mr. Young stated that we had certain confidential information, which led us to believe that the contract would be signed before August 1st, but which we could not divulge except under an absolute seal of confidence.

The British Marconi representative replied that he was practically in daily communication with representatives of his Foreign Office,

and could not undertake to withhold from them any information bearing on the negotiations, which he might receive.

Mr. Young and I then stated that that necessarily ended any desirability for prolonging the conference further at that time.

There followed some general conversation in which the British representative, in discussing the Federal contract, called attention to the absolute monopoly, on external communications for China, of the Great Northern Cable Company, which does not expire until 1929. He pointed out that this ante-dated the Limitation of Armament Conference by many years; also that it ante-dated the Mitsui contract for a station at Peking, and expressed his belief that our Government would probably not undertake to say that communication should be opened under the Federal contract—supposing it were to be signed—until 1929, when the Great Northern monopoly would expire. He added that, of course, any different action would meet with the very quick protest of the various Governments interests, including that of Denmark.

He stated that the Peking Station would like to make tests with our stations about July 25th, and was told that we would ask our State Department if there was any objection to our making tests. You will recall that immediately after this conversation we addressed a cablegram to you, through the American Embassy in London, asking the Department's attitude with reference to the Great Northern monopoly, and also requesting its permission to make tests.

I believe this letter will bring the Department up to date with reference to what transpired in London.

Upon being informed of the willingness of the Department that we should make the tests with the Peking Station, I informed the British Marconi Company of that fact in a letter which was quoted to the State Department in a cablegram sent to [*from?*] the American Embassy in Paris.[28]

Respectfully yours,

J. B. Harbord

893.74/379e

The Secretary of State to the President of the Radio Corporation of America (Harbord)

Washington, *August 31, 1923.*

Sir:

. . . .

In view, however, of the special circumstances connected with the Mitsui station at Peking, the Department renews the suggestion previously conveyed to you, that you should exercise your option to

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[28] Not printed.

decline traffic arrangements with that station until such time as the diplomatic questions involved may have been so adjusted as to warrant the Department of State in advising you that such arrangements may be put into effect without detriment to American interests.

I am [etc.]

For the Secretary of State:
LELAND HARRISON
Assistant Secretary

893.74/379d

The Secretary of State to the Federal Telegraph Company

WASHINGTON, *August 31, 1923.*

GENTLEMEN: The Department encloses herewith for your confidential information a copy of the recommendations of the communications experts attached to the American, British, French and Japanese delegations to the Conference on the Limitation of Armament, under date of February 4, 1922, together with a copy of the Proposed Heads of Arrangements respecting Wireless in China.[29]

. . . .

The Department takes this occasion to suggest that your Company take under advisement the possibility of coming to an agreement with the British, French and Japanese radio interests on the basis of the experts' recommendations of February 4, 1922, subject, of course, to the condition that the French and Japanese Governments should join the American and British Governments in giving their approval to the recommendations.

The information contained herein is being communicated also to the Radio Corporation of America.

I am [etc.]

For the Secretary of State:
LELAND HARRISON
Assistant Secretary

893.74/381a

The Secretary of State to the Vice President of the International Western Electric Company (Condict)

WASHINGTON, *August 31, 1923.*

SIR:

. . . .

In connection with the experts' recommendations, you will observe that paragraph 5 suggests that it might be desirable that the

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[29] *Foreign Relations*, 1922, vol. I, pp. 840 and 842.

China National Wireless Company be broadened so as to make possible participation of other interests that can contribute patent rights, technical skill or financial resources with a view to the development in China of factories capable of manufacturing a wide variety of radio apparatus, and that the experts are of the opinion that the Governments whose nationals are interested in the China Electric Company and the China National Wireless Company should urge the two companies voluntarily to come to an understanding that will prevent conflicts arising out of their respective manufacturing concessions. The Department invites your particular attention to this paragraph, and suggests that your Company take under advisement the possibility of an arrangement on the basis of these recommendations.

I am [etc.]

For the Secretary of State:
LELAND HARRISON
Assistant Secretary

893.74/387

The Secretary of State to the President of the Federal Telegraph Company of Delaware (Schwerin)

WASHINGTON, *November 5, 1923.*

SIR: The Department acknowledges the receipt of your letter of October 27, 1923,[30] stating that the Federal Telegraph Company of California has assigned to the Federal Telegraph Company of Delaware all the rights and titles in the former's contract with the Chinese Government for the erection of certain wireless stations and requesting that the American Minister at Peking be instructed to give to the Federal Telegraph Company of Delaware all appropriate diplomatic support in connection with the fulfillment of its contract with the Chinese Government.

A copy of your letter has been sent to the American Minister at Peking for his information and with instructions to render to you or your representative all appropriate diplomatic support in connection with the fulfillment of the contract above mentioned between the Federal Telegraph Company of Delaware and the Chinese Government.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS
Under Secretary

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[30] Not printed.

893.74/390

The British Chargé (Chilton) to the Secretary of State

No. 951 WASHINGTON, *November 8, 1923.*

SIR: I have the honour to refer to the note which you were so good as to address to me on July 27th last and to previous correspondence on the subject of wireless communication in China and to inform you that His Majesty's Government are now in receipt of a reply from the Japanese Government to their enquiry regarding Japanese acceptance of the recommendations put forward by the experts during the Washington Conference on February 4th, 1922.

It appears that, while the Japanese Government have no objection to the co-operation scheme referred to in paragraph 1 of the memorandum drawn up by the experts, they cannot agree to the opinion of the American expert contained in paragraph 2 which, in their view, conflicts with the principle of the co-operation scheme mentioned above. The Japanese Government further regard the suggestion contained in paragraph 6 of the memorandum respecting the continued working of the cables after 1930 as conditional on the immediate abandonment by the Great Northern and Eastern Companies of their wireless monopoly rights. The Japanese Government are doubtful whether the companies' monopoly does in fact include wireless telegraph but, if the Chinese Government and the two companies agree that this is so, the Japanese Government have no objection to the Four Powers making the suggested recommendation to the Government of China. Lastly, the Japanese Government have no objection to the matter referred to in the memorandum or to the statement of principles contained therein and are anxious to expedite the co-operation scheme proposed by the Washington experts.

In communicating to you the above information I am instructed to enquire whether the United States Government will be disposed to meet the views of the Japanese Government in regard to the latter's objections to the contents of paragraph 2 of the Washington memorandum.

As regards the Japanese objections to paragraph 6 of the said memorandum, His Majesty's Government desire me to point out that the Cable Companies do not ask for any monopoly of preferential rights after 1930 and are willing to abandon their exclusive rights immediately provided that the other recommendations put forward by the experts are carried out. In these circumstances, His Majesty's Government are of the opinion that paragraph 6 should not offer any difficulty and that it only remains for the United

States and Japanese Governments to come to an agreement about paragraph 2 to make the Washington memorandum effective.

I should be most grateful if you would in due course furnish me with an expression of the views of the United States Government in regard to the contents of this note.

I have [etc.] H. G. CHILTON

893.74/390

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, *November 24, 1923.*

SIR: I have the honor to acknowledge the receipt of the note (No. 951) under date of November 8 in which you were so good as to advise me of the tenor of the Japanese Government's reply to the inquiry of your Government as to Japan's acceptance of the recommendations, on the subject of wireless communications in China, put forward by the American, British, French and Japanese experts at the time of the Washington Conference, on February 4, 1922.

From your note I gather that the Japanese Government is disposed to accept and expedite the plan of cooperation recommended by the experts of the four Governments in their memorandum of February 4, 1922, subject to two conditions, relating to paragraphs 2 and 6, respectively, of that memorandum.

With respect to the latter of these conditions, I note with pleasure the statement made in your note in behalf of your Government to the effect that the Great Northern and Eastern Extension Cable Companies do not ask for any monopoly or preferential rights after the year 1930, and are willing to abandon their exclusive rights immediately, provided that the other recommendations put forward by the experts are carried out; so that it would appear that paragraph 6 of the memorandum should not offer any difficulty.

The Japanese Government's acceptance of the experts' recommendations would therefore seem to be conditioned upon the reconsideration by this Government of the position taken by its representative on the committee of wireless experts and incorporated as paragraph 2 in the recommendations of that committee. If I am correct in that understanding of the purport of the Japanese communication to the British Government, I must regretfully indicate the impossibility of this Government's renouncing the position that it has hitherto taken in this matter, namely, that while not unwilling that its nationals should cooperate by means of appropriate traffic agreements and other business arrangements with any international combination which might be established for the development of radio telegraphic communications between China and other countries, it is

not prepared to become a party to a combination for that purpose, desiring in particular to retain independence of action with respect to communications between the United States and China. The suppression of paragraph 2 of the experts' recommendations, which appears to be implied in the statement of the Japanese Government's views, would involve a reversal of the fundamental policy of my Government in this matter, and an abandonment by it of such advantages as it might hope to derive from the adoption of the experts' recommendations of February 4, 1922. Insistence upon the deletion of paragraph 2 would therefore make impossible the acceptance of those recommendations, which, as you will recall, were drawn up by the technical experts of the four interested countries with a view to providing a practicable means of accommodating the views of the several governments. The experts' recommendations, as understood by this Government, are fair to the several commercial interests of the four Powers, and adapted to bring about a practicable working arrangement among them under the complicated circumstances of the case; they constitute, moreover, the only fair and practicable plan thus far suggested for that purpose. This Government would be greatly disappointed if it were compelled to forego the hope of finding in those recommendations a basis upon which to effect an accommodation of the views of the several interested Governments with respect to the means of electrical communication with China.

Accept [etc.] CHARLES E. HUGHES

893.74/413a : Telegram

The Secretary of State to the Minister in China (Schurman)

[Paraphrase]

WASHINGTON, *December 27, 1923—3 p.m.*

257. The Division of Far Eastern Affairs has been advised by the Chinese Minister that the Chinese Minister for Foreign Affairs has informed him that the Japanese Minister in China is engaging in more intensive activities in opposition to the contract of the Federal Telegraph Company using newspaper propaganda and personal representations to officers in the Cabinet and to leaders in politics, and that he has arranged to have a private interview with the Chinese President regarding the contract. The demand of the Japanese Minister that the Chinese Government cancel the Federal wireless contract is supported by propaganda advocating that China either buy up the contracts with both the Mitsui and Federal Telegraph Companies or else consent to have the Peking station of the Mitsui Company placed under the joint operation of "the three Powers". It is

not clear what the quoted phrase in Koo's message means. The Japanese Minister threatens that unless satisfaction is received Japan will exact compensation from China for violating the contract with the Mitsui Company. Koo intimates in his telegram that this intensified activity when the Minister of the United States is away from Peking makes more difficult the position of those who are supporting the Federal wireless contract, and that his hands would be strengthened if he could quote some statement in evidence of the continued interest of the American Government in the undertaking of the Federal Telegraph Company. In commenting on the question Sze suggested that it might help if you should send a note to the Minister for Foreign Affairs expressing the satisfaction of the American Government upon learning that the necessary steps with a view to the buying of land for the installation at Shanghai and to the signing of the bonds for the undertaking have now been taken, and if you should add that the American Government is particularly pleased with these developments since they seem to bring within reach of actual fulfillment this project for direct, independent communication between China and the United States, an enterprise which has become intimately and definitely identified with the realization of the open-door principle in China.

Perhaps it will be advisable to consult Koo before sending him a note of the tenor suggested above.

HUGHES

893.74/414 : Telegram

The Minister in China (Schurman) to the Secretary of State

[Paraphrase]

PEKING, *December 31, 1923—5 p.m.*
[Received January 1, 1924—10:40 a.m.]

433. Department's no. 257, December 27, 3 p.m. In an interview regarding wireless today with the Minister for Foreign Affairs he told me that my Japanese colleague is making the strongest appeals for the maintenance of the monopoly clause in the contract of the Mitsui Company both to the Wai Chiao Pu and elsewhere. The main plea of the Japanese Minister is that the prestige of Japan in the matter must be guarded. Anticipating that the Japanese would bring forward a plan for joint control of wireless by Japanese, Chinese, and American interests, Koo asked what would be the attitude toward this of the American Government. I told him that if only the Mitsui station was involved in the proposal I believed that it would be considered by the Government of the United States and

referred to the interested American companies. I added that it seemed to be a business matter rather than a diplomatic one.

I assured Dr. Koo that the American Government was still interested in the contract of the Federal Telegraph Company, and I said that I wished to relieve him of any embarrassment which Japanese pressure might cause him. In this connection I asked for suggestions but he had none to offer. However, I shall send him a note along the lines suggested in the Department's telegram under reference.

After the appearance recently of newspaper articles supporting the Mitsui monopoly as opposed to the Federal contract, emanating from or inspired by the Japanese Legation, I had Peck prepare an exhaustive memorandum refuting the Japanese contentions. On December 22 I had copies of this memorandum sent to Koo and to the Vice Minister of Communications. Today Koo said that it gave him valuable ammunition to use in argument.

Schwerin may be interested to know that now Lennox Simpson's paper[31] is taking the lead in attacking the contract of the Federal Telegraph Company.

For the Minister:
BELL

REJECTION BY JAPAN OF THE PROPOSAL BY CHINA TO ABROGATE THE AGREEMENTS OF MAY 25, 1915[32]

793.94/1429

The Secretary of State to the Chargé in Japan (Wilson)

No. 174 WASHINGTON, *March 27, 1923.*

SIR: Referring to your telegram No. 22 of March 14,[33] regarding the proposal of the Chinese Government to abrogate the Treaties and Exchanges of Notes of May 25, 1915, between that country and Japan, there are enclosed herewith for your information copies of the note of March 10, addressed by the Chinese Ministry for Foreign Affairs to the Japanese Government and of the Japanese Government's reply thereto of March 14. These copies were left with the Department by the Chinese Chargé d'Affaires and by the Counselor of the Japanese Embassy, respectively.

When calling upon the Secretary of State on March 15 the Japanese Ambassador said that his Government would be very much

[31] *The Far Eastern Times*, published at Peking.
[32] For texts of treaties and notes exchanged between China and Japan on May 25, 1915, see *Foreign Relations*, 1915, pp. 171 ff.
[33] Not printed.

pleased to have the Secretary's observations upon the matters set forth in the above mentioned notes. The Secretary replied that he did not care to make any comment or add anything to what he had said upon this subject at the Washington Conference.[34]

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

[Enclosure 1]

Chinese Note Dated March 10, 1923, Addressed by the Chinese Ministry for Foreign Affairs to the Japanese Minister in China and by the Chinese Minister in Japan to the Japanese Minister for Foreign Affairs [34a]

At this time when the tendency to promote peace is universal and when the nations of the world are zealously upholding the principles of justice, it is appropriate to consolidate and strengthen yet more the hitherto existing friendly relations between China and Japan so as to maintain the peace of the world by safeguarding the peace of the Far East. The greatest obstacle which stands in the way of cordial friendly relations between China and Japan lies in the existence of the treaties concluded and notes exchanged between China and Japan on May 25, 1915. It will be recalled that after signing these agreements the Chinese Government issued a formal statement declaring that although the Chinese Government was constrained to comply with the terms of the ultimatum China disclaimed any responsibility for consequent violations of the treaty rights of the other powers. When later the Peace Conference met in Paris the Chinese Delegation submitted a memorandum setting forth the reasons why these treaties and notes should be abrogated. The chairman of the Peace Conference in his reply fully acknowledged the grave importance of these questions. To the Washington Conference the Chinese Delegates again submitted that these treaties and notes should be abrogated, supporting their proposal with the following reasons:

(1) That no *quid pro quo* was offered for the concessions demanded;
(2) That the agreements are in violation of the treaties between China and the other powers;
(3) That the agreements are inconsistent with the principles relating to China which have been adopted by the Washington Conference; and

[34] *Conference on the Limitation of Armament*, Washington, November 12, 1921–February 6, 1922, p. 334.
[34a] Filed separately under file no. 793.94/1433.

(4) That the agreements have engendered constant misunderstanding between China and Japan.

The Japanese Delegates recognizing the weight of the Chinese proposition made the announcement at the time that Japan renounced the option with regard to loans for the construction of railways in South Manchuria and Eastern Inner Mongolia and to loans to be secured on taxes in that region; that Japan renounced also her preferential rights concerning the engagement of advisers or instructors on political, financial, military or police matters in South Manchuria; and that Japan withdrew the reservations made under the treaty of 1915 concerning group V of the original proposals of the Japanese Government. The Chinese Delegates, after taking note of the claims which Japan had given up and the reservations which Japan had withdrawn, expressed their regrets, and reiterated the position taken by China that these treaties and notes should be abrogated *in toto*, declaring at the same time that the Chinese Government reserved the right to seek a solution on all future appropriate occasions concerning those portions of the treaties and notes of 1915 which did not appear to have been expressly relinquished by the Japanese Government. Due notice was taken by the Delegates of the Powers represented at the Conference of the reservation made by the Chinese Delegation, which was formally announced to the Conference by its chairman, and which was spread upon the Minutes of the Conference as part of its permanent record.[34b] Thus these treaties and notes have from the very beginning been consistently opposed by the public opinion of this country. Guided by this united sentiment of the people of the whole country the Chinese Government has both at the Peace Conference in Paris and also at the Washington Conference brought up these questions, and demanded the abrogation of these agreements. More recently the Chinese Parliament at its session held in January, 1923, passed a Resolution declaring the Sino-Japanese treaties and notes of May 25, 1915, null and void; and the Senate in a formal dispatch called upon the Government to take due notice and to act accordingly. There is therefore unmistakable evidence that public opinion in this country has been consistently united on this point. In view of the fact that the lease of Port Arthur and Dalny is about to expire, the Chinese Government considers the present an appropriate time to improve Sino-Japanese relationship by reiterating a formal declaration to the Japanese Government that with reference to the treaties concluded and notes exchanged on May 25, 1915, the whole body of these agreements should be considered abrogated, it being understood that those por-

[34b] *Conference on the Limitation of Armament*, pp. 324–338.

tions of said treaties and notes which concern questions since settled and claims since given up or reservations since withdrawn by Japan have already been and remain abrogated. The Japanese Government is hereby requested to appoint a day for discussion with the Chinese Government of questions incidental to the retrocession of Port Arthur and Dalny as well as any problem consequent upon the abrogation of the aforesaid treaties and notes of 1915. The Chinese Government firmly believes that the Japanese Government and the Japanese people fully recognizing the importance of Sino-Japanese friendship will comply with the united wish of the Chinese people and remove entirely those obstructions and impediments which have impaired the cordial relations of the two countries during recent years so that genuine cordiality between the two peoples may be developed and the peace of the Far East made secure, which is not only in the interests of the two countries but also for the welfare of the world.

[Enclosure 2—Translation]

Reply of the Japanese Minister for Foreign Affairs Handed March 14, 1923, to the Chinese Chargé in Japan and Transmitted to the Chinese Minister for Foreign Affairs by the Japanese Minister in China [35]

I have the honor to acknowledge the receipt of your note of the 10th instant, in which, under instructions from Peking, you were good enough to communicate to me the decision of your Government respecting the abrogation of the Sino-Japanese treaties and the notes of May 25, 1915. After quoting the statement of your Government, published immediately on the conclusion of said treaties, the statement of the Chinese Delegation at the Paris Peace Conference and the contentions advanced by the Chinese Delegation at the Washington Conference, your note concludes that said treaties and notes should now be cancelled in total except those stipulations and reservations contained therein, which have already been adjusted or which the Japanese Government have already renounced or withdrawn.

The Japanese Government are unable to conceal from themselves the sense of surprise and regret at the communication under acknowledgment. The treaties concluded and notes exchanged in 1915 were formally signed by Japanese and Chinese representatives, who were properly invested with full powers by their respective Governments, the treaties having been, moreover, duly ratified by the respective heads of state. The views of the Japanese Government

[35] Filed separately under file no. 793.94/1432.

on cancelling these agreements were declared by their delegates at the Washington Conference.

The attempt on the part of your Government to abrogate of its own accord treaties and notes which are perfectly valid, will not only fail to contribute to the advancement of friendship between our two countries, but should be regarded as contrary to the accepted principles of international intercourse. This Government, accordingly, cannot in any way lend themselves to the line of action now contemplated by your Government. The Japanese Government have always had near their heart the promotion of cordial relations between our two nations, and they trust you will agree that their solicitude in that direction has been abundantly proved in their dealings with the Chinese Government by repeated acts of good will. Furthermore, the Japanese Government have recently concluded new arrangements with China on certain matters stipulated in said treaties and notes, and have also declared their decision to waive rights secured to them under various other clauses in the instruments in question, and to withdraw certain reservations made in them. In this situation they feel compelled to declare that they find absolutely nothing in the treaties and notes which is susceptible of further modification. It, therefore, seems to the Japanese Government that there is no occasion for entertaining in any way the proposals of your Government respecting the discussion of questions incidental to the restoration of Port Arthur and Dairen, or consequent upon the abrogation of said treaties.

793.94/1455 : Telegram

The Secretary of State to the Minister in China (Schurman)

WASHINGTON, *April 5, 1923—3 p.m.*

57. Your 97, April 4, 10 a.m.[36] I have had no interview with Chinese Chargé d'Affaires on the subject of retrocession of Leased Territory or any matters relevant thereto.

You may in such manner as you see fit make a statement to that effect and refer to my statement of the position of this Government on the question as spread on the records of the Conference February 4, 1922 (*Conference Report*, p. 334).

HUGHES

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[36] Extract: "Local Chinese papers have been publishing articles purporting to give synopsis of interview between the Secretary of State and Chinese Chargé d'Affaires in Washington on the subject of retrocession of Dalny and Port Arthur."

COLOMBIA

EMPLOYMENT OF AMERICAN FINANCIAL ADVISERS BY THE GOVERNMENT OF COLOMBIA

821.51A/19

The Colombian Minister (Olaya) to the Secretary of State

No. 544 WASHINGTON, *December 19, 1922.*

SIR: The Government of Colombia has instructed this Legation to take the necessary steps for contracting for a period of not less than six months extendible should the Government so desire, [for] a group of technical financiers who would go to Colombia to give to the Government their ideas, opinions and advice in affairs of credit, especially in everything pertaining to banking organization, monetary questions and to all matters relating to foreign loans. One of the most urgent interests of the Government of Colombia and for which it desires the assistance of one of the financial experts above referred to, is the organization of the Bank of Issue, recently ordered by Act of Congress. My Government also wishes to secure the services of an expert accountant. In addition to the concrete points stated, the objectives of the Mission could extend to the organization of statistics and the study of the necessary changes in the national finance system.

My Government has given me instructions to thank Your Excellency for the good will and the cordial cooperation extended by the Department of State to me as Minister of Colombia in this matter when I had the occasion to talk it over informally with the Department. I have also been instructed to inform Y[our] E[xcellency] that my Government would greatly appreciate if the Department of State would suggest some names of qualified experts so that my Government may contract their services and appoint them for the period above referred to.

Accept [etc.] ENRIQUE OLAYA

821.51A/19

The Secretary of State to the Minister in Colombia (Piles)

No. 578 WASHINGTON, *February 13, 1923.*

SIR: The Government of Colombia, first informally and then in a note dated December 19, 1922, requested the assistance of the

Department of State in engaging properly qualified experts to advise on financial topics. There is transmitted herewith for your information a copy of the note of the Colombian Minister addressed to this Department on December 19, 1922,[1] together with a copy of the Department's reply of December 20.[2]

In response to the request of the Colombian Government the Department recommended Professor E. W. Kemmerer of Princeton University to head the proposed mission. The Department believes that Professor Kemmerer is particularly well qualified for this important post, both on account of his thorough economic and financial training and also in view of his broad practical experience in connection with the carrying out of financial reforms. Professor Kemmerer is forty-seven years old, was educated at Wesleyan and Cornell Universities, was adviser on currency to the Philippine Government from 1903–1906 at the time of the establishment of the gold standard in the Philippines; has been a professor at Cornell and Princeton Universities, and has served as expert on currency and banking to the Governments of Mexico and Guatemala. He has recently returned from a tour in Argentina, Uruguay, Chile and Brazil, which was made for the purpose of studying financial conditions in those countries. He is the author of several authoritative works on money and banking questions.

Professor Kemmerer will be assisted by the following experts: Mr. Thomas R. Lill, an accountant, of the firm of Searle, Nicholson and Lill, New York City; Mr. H. M. Jefferson, formerly Auditor of the New York Federal Reserve Bank, an expert on banking; and Professor F. R. Fairchild of Yale University, an expert on taxation. Professor F. B. Luquiens of Yale University will act as secretary of the mission. These gentlemen expect to sail from New York on February 14, en route to Bogotá, with the exception of Mr. Lill, who will follow the others within a week or two. It is expected that the mission will remain in Colombia for a period of about six months.

The Department considers that this mission enjoys an unusual opportunity for usefulness, and hopes that it may be able to render important services to the Colombian Government. You should bear in mind, however, that the mission is an expert mission engaged by the Colombian Government, and that it is in no sense connected with the Government of the United States. The Department was glad to recommend Professor Kemmerer to the Colombian Government as a prominent financial expert of high standing, and also was glad to assist in the selection of his staff, but you will appreciate that

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[1] *Supra.*
[2] Not printed.

the Government of the United States can assume no responsibility with respect to the specific activities and recommendations of the mission.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

BOUNDARY DISPUTE WITH PANAMA

(See pages 328 ff.)

BOUNDARY DISPUTE WITH PERU

(See pages 351 ff.)

134431—vol. I—38——60

COSTA RICA

PROTOCOL OF AGREEMENT BETWEEN THE UNITED STATES AND COSTA RICA RELATING TO AN INTEROCEANIC CANAL, AND THE FAILURE OF COSTA RICA TO RATIFY

711.1828/a

The Secretary of State to President Harding

WASHINGTON, *January 20, 1923.*

MY DEAR MR. PRESIDENT: I have the honor to transmit herewith the English draft of the proposed protocol between the United States and Costa Rica, by which the two Governments engage to enter into negotiations concerning the construction of an interoceanic canal when the President of the United States is authorized by law to acquire control of the rights which Costa Rica possesses in the San Juan River or in Salinas Bay and such portion of the territory of Costa Rica as may be desirable and necessary on which to construct and protect the canal. I am transmitting, likewise, the full power for your signature.[1]

While the protocol, by reason of its nature, does not, in my judgment, require the consent of the Senate to its ratification, you will note that the provisions of the protocol stipulate that it is to be ratified with the advice and consent of the Senate and of the Costa Rican Congress. I have consented to the inclusion of this provision because of the belief of the Government of Costa Rica, expressed to me by the Costa Rican Minister, that the protocol requires the consent of the Costa Rican Congress to its ratification, and also because of the statement made by that Government that the negotiation of this protocol would cause far greater satisfaction in Costa Rica should the consent of the United States Senate be obtained to its ratification.

Faithfully yours,

CHARLES E. HUGHES

[Enclosure]

Draft Protocol of an Agreement between the United States and Costa Rica in regard to Future Negotiations for the Construction of an Interoceanic Canal by Way of Lake Nicaragua[2]

It is agreed between the two Governments that when the President of the United States is authorized by law to acquire control of the

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[1] Not printed.

[2] The protocol was signed by Charles E. Hughes, for the United States, and J. Rafael Oreamuno, for Costa Rica, on Feb. 1, 1923; and was transmitted to the Senate on Feb. 3, 1923.

rights which Costa Rica possesses in the San Juan River, or in Salinas Bay, and such portion of the territory now belonging to Costa Rica as may be desirable and necessary on which to construct and protect a canal of depth and capacity sufficient for the passage of vessels of the greatest tonnage and draft now in use, from a point near San Juan del Norte on the Caribbean Sea via Lake Nicaragua to Brito on the Pacific Ocean, they mutually engage to enter into negotiations with each other to settle the plan and the agreements, in detail, found necessary to accomplish the construction and to provide for the ownership and control of the proposed canal.

This Agreement shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by the President of Costa Rica, in accordance with the Constitution and laws of that Republic, and the ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the undersigned have signed this protocol and have hereunto affixed their seals.

Done in duplicate at Washington, this . . . . day of January, 1923.

711.1828/5: Telegram

The Minister in Costa Rica (Davis) to the Secretary of State

San José, *March 27, 1923—8 p.m.*
[Received March 28—4:40 p.m.]

19. My 12, March 2, 4 p.m.[3] I have been informed that ratification of Canal protocol is doubtful. . . .

Davis

711.1828/5: Telegram

The Secretary of State to the Minister in Costa Rica (Davis)

[Paraphrase]

Washington, *March 31, 1923—5 p.m.*

10. Legation's no. 19. This Government would be pleased to have canal protocol ratified but you should not make any representations to secure action to that end.

Hughes

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[3] Not printed.

711.1828/10 : Telegram

The Minister in Costa Rica (Davis) to the Secretary of State

San José, *April 14, 1923—6 p.m.*
[Received April 16—3 p.m.]

23. My number 22, April 10, 4 p.m.[4] President Acosta yesterday withdrew canal protocol from Congress.

Davis

[4] Not printed.

CUBA

FAILURE OF PRESIDENT ZAYAS TO APPLY VIGOROUSLY THE PROGRAM OF REFORM[1]

837.51/924

Memorandum by Mr. A. N. Young of the Office of the Economic Adviser, Department of State

[WASHINGTON,] *January 13, 1923.*

CUBAN LOAN

This afternoon at about 2:30 p.m. Mr. Dwight W. Morrow of J. P. Morgan & Company telephoned to the Secretary in regard to the proposed flotation of the Cuban Loan. Mr. Morrow informed the Secretary that they hoped to put out the loan on Monday and inquired whether the Secretary had any objection to inserting in the prospectus a paragraph read to the Secretary, the text to be substantially as the statement on the attached sheet. (As the Secretary understood it over the telephone.) The final sentence of the attached is to be separate and in smaller type. Mr. Morrow advised that he had consulted General Crowder regarding this matter, and that the latter perceived no objection.

The Secretary asked me to compare the attached text with the text of the treaty, which I did, and informed him that the wording of the treaty had apparently been closely followed. The Secretary stated that he considered that there is no objection to the wording proposed by the bankers and also stated that he had informed Mr. Morrow that he (Morrow) could understand that the draft of this paragraph would be unobjectionable in the absence of further word from the Department.

A[RTHUR] N[ICHOLS] Y[OUNG]

[Enclosure]

By Act of Congress dated March 2, 1901, certain provisions were formulated which have been incorporated by an amendment in the Cuban Constitution; also been embodied in a treaty, May 22, 1903, between the United States and Cuba. Under these provisions, com-

[1] For previous correspondence concerning the program of reform, see *Foreign Relations*, 1922, vol. I, pp. 1004 ff.

monly referred to as the Platt Amendment, the Republic of Cuba agrees not to contract any public debt, including reasonable provision not provided for by the .... revenues. In addition to this financial safeguard the Republic also agrees not to enter into any foreign treaty or compact which may impair independence, and furthermore grants the United States the right to intervene to preserve Cuba, maintain government, protection of life and property. Issued with the acquiescence of the United States Government under the provisions of the treaty dated May 22, 1903.

837.51/931

The Representative on Special Mission in Cuba (Crowder) to the Secretary of State

[Extract]

C–S–258

HABANA, *February 3, 1923.*
[Received February 9.]

DEAR MR. SECRETARY: On the occasion of my visit to Washington in early October 1922,[2] we conferred at some length upon the terms and conditions upon which the Department ought to sanction the application of the Cuban Government for an exterior loan. You will recall that I expressed some apprehension as to the effect upon the selling price of the bond[s], and generally upon the Cuban credit, if the then pending amnesty bill which I read to you, was enacted into law, or if President Zayas should reorganize his Cabinet upon political lines in the interest of his own reëlection, and to the detriment of the moralization campaign inaugurated as a result of the several memoranda that I have submitted to the Cuban Government, particularly Memoranda Nos. 8 [3] and 10.[4] It was your opinion that it would not be wise to attempt to condition the loan upon any commitment by President Zayas that he would not approve the amnesty bill or that he would not make a political re-organization of his Cabinet. You stated, however, that you would take the matter up in a verbal conference with the Cuban Minister at Washington. I have ascertained from Secretary of State Céspedes that the conference took place between Mr. Padro, the Cuban Chargé d'Affaires, and Mr. Phillips, and was reported by the former; and that in his cable report to the Cuban Secretary of State, Mr. Padro attributes to Mr. Secretary Phillips the following statement:

"That this Government (United States) when granting said authorization for the foreign loan, wished to express its great worry [*sic*]

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[2] See *Foreign Relations*, 1922, vol. I, pp. 1043 ff.
[3] Not printed; see General Crowder's despatch of Apr. 21, 1922, *ibid.*, p. 1024.
[4] Not printed; see General Crowder's despatch of May 4, 1922, *ibid.*, p. 1025.

regarding two matters; that is: First, the Amnesty recently voted by the Cuban Senate; and, secondly the possibility of changes being attempted in the present Cabinet, and from the phrases and tone used by the Sub-Secretary, I deduct that this Government (United States) would be greatly displeased and alarmed by the realization of any of these two propositions."

Further on in the telegram, a full copy of which is hereto attached marked "A",[5] Mr. Padro makes it plain that the Department considers these two measures, or propositions "at odds with the success of the policy of reform in Cuba, the success of which is essential, according to the judgment of this Government (United States)."

. . . .

Very respectfully,

E. H. Crowder

[Enclosure 1]

Mr. Elliot C. Bacon, Representing Messrs. J. P. Morgan and Company, to General Crowder[6]

Habana, *January 22, 1923.*

My Dear General Crowder: As the representative of the group of bankers and banks which offered for sale to the investing public in the United States the new issue of $50,000,000. External Loan Thirty-year Sinking Fund 5½% Gold Bonds of the Republic of Cuba, I feel it incumbent upon me to lay before you, for your consideration, certain facts that have come to my attention. In order that these facts may more clearly be understood, I shall rehearse briefly the steps leading up to the time when this group decided to present its tender.

You will recall that during the three visits to Cuba made by my partner, Mr. Dwight W. Morrow, between the fall of 1921 and the fall of 1922, the financial, economic and governmental conditions of Cuba were critical. Notwithstanding this condition of affairs, my firm, together with a group of associated bankers, on January 23, 1922, advanced to the Republic of Cuba the sum of $5,000,000. believing that we might expect substantial improvement and ultimate recovery through a courageous handling of the situation and the execution of President Zayas' plans for strict economy and reform. Among the improvements we had in mind were the revision of the taxes, the more efficient collection of revenues, the elimination of lottery maladministration, the balancing of the national Budget, and,

[5] Not printed; enclosures to this despatch, omitted when it was sent, were transmitted by General Crowder on Apr. 8.
[6] Transmitted to President Zayas by General Crowder.

perhaps most important of all, a cabinet composed of strong men having the confidence of the public and capable of executing the reform program of President Zayas. This loan was, therefore, made, and the proceeds provided funds for the service of the exterior loans and other pressing needs, and gave a breathing space to the administration so that when conditions should become improved the Republic might sell more advantageously a larger and permanent loan in the American market. Throughout the past twelve months the administration has made marked and substantial progress in achieving the hoped for and promised improvements and the great gain in efficient administration, together with improved economic conditions, made possible the issue of the $50,000,000 loan.

The principal reasons that induced the group of bankers and banks to enter a bid for this new $50,000,000. loan were their belief that the improvement in the financial situation, which has taken place during the administration of President Zayas, might be permanent and their confidence that the services of a strong able cabinet could be depended upon. Throughout the negotiations conducted during the past year and one-half, this group has recognized its obligation definitely to determine, as far as possible, that the loan, if made, would really serve the best interests of the Cuban people and that its proceeds should, without possibility of a failure, be devoted to the needs of the hospitals and to the payment of wages, pensions, salaries and other obligations to the school teachers, soldiers, veterans and other public employes. Moreover it was also recognized that, as far as possible, the just and audited claims against the government for supplies and construction would be satisfied and that important and necessary improvements to roads, sanitary systems and other public works could be made. In the opinion of the group under no other conditions would the loan have been justified.

As you know, my partner, Mr. Morrow, discussed this situation, in all its aspects, with the Secretary of State of the United States, who gave his approval of the loan to Cuba with the understanding that a Cuban cabinet, holding the confidence of the public both in Cuba and abroad, would be retained in office. This was clearly and definitely understood by the group and largely influenced it in making a bid of 96.77, this price placing the credit of Cuba on a higher plane than ever before attained. With this in mind, therefore, it is a matter of very great concern to me that from the daily press in Havana I learn there is the threat of a crisis in the Cuban cabinet and that it is possible, in the near future, changes in the personnel of the cabinet may be expected. Such changes would be viewed with disquiet by those who have participated in the purchase of the bonds

of this loan with the result that the credit of Cuba abroad might seriously be affected. I refer in particular to any changes that might be made that would affect the management of the financial affairs of the Republic and the liquidation of the contracts for Public Works. I do not wish to imply that such changes necessarily will affect the revenues of the Republic, but I feel very strongly that the confidence in the administration would be impaired and Cuba's credit injured.

As you well know the Group of bankers has an important duty to the investors in the United States to whom it is offering these bonds. Anything that tends to weaken the guaranties is of vital concern to purchasers of these bonds. Furthermore our bid for the loan was upon our definite understanding that the acquiescence of the United States Government in the bond issue was in effect conditional upon the assurance of the Cuban Government that there would be stability in the announced policy and the existing personnel of the departments dealing with the finances and public works. We do not like to contemplate the ill effect upon the foreign credit of Cuba, nor in particular the future status of the present bond issue, legally or politically, if important changes in the government are presently to occur.

I take the liberty of submitting the foregoing to you as the official and personal representative of the President of the United States in Cuba and trust that you will be able very promptly to give me your advice in the premises.

I am [etc.] ELLIOT C. BACON

[Enclosure 2]

President Zayas to General Crowder

HABANA, *February 1, 1923.*

ESTEEMED GENERAL: I. The correspondence passed between you, as Special Envoy, and my Government, as well as numerous conferences which we have held, have left me in no doubt as to the very great importance that the Government of the United States grants to the program of moralization, described in various Memoranda which you have submitted to my consideration at the suggestion of your Government, and particularly, Nos. 8 and 10, dated respectively on the 5th and 15th of May, 1922. It can be deduced from said data that the Government of the United States, on approving, in accordance with Article 2 of the Permanent Treaty, the $50,000,000 loan, and the preferred bidders, Messrs. J. P. Morgan and Company, on presenting their very advantageous proposition, took as a principal base the realization of said program of moralization, con-

sidering it a very important factor for appreciating the public credit of this nation.

II. I also understand that the remarks transmitted to me by the Cuban Legation in Washington, relative to the points of view of the State Department of the United States, on granting the authorization for a loan, advising that the Government of the United States,

"wished to express its great displeasure [*disquietude?*] regarding two matters; that is, first, the amnesty recently voted by the Cuban Senate, and, second, the possibility of changes being attempted in the present Cabinet,"

signify that the Government of the United States, because of its effects on the credit, would see with grave concern the voting of a general amnesty, such as was proposed at the Senate and was pending in the Cuban Congress; as well as any change in the Cuban Cabinet, which might alter the program of moralization, being an obstacle to its complete realization.

III. In connection with the preceding paragraphs Nos. I and II, I wish to advise you that in the reorganization of the Cabinet I have endeavored to select men whom I thought possessed the necessary qualities for efficiently applying the said program of reforms in their respective Departments. I have no intention of changing the present Cabinet, as has been announced by the press, but on the contrary, I propose to keep its members indefinitely in their offices, as convenient for the total realization of the moralizing program. This, of course, does not imply any renouncement of my constitutional faculty of replacing the members of the Cabinet, but you can rest assured that, in the unexpected event of the need of making changes, there will be no appointment in the Cabinet that might weaken the execution of said moralization program; and in view of the fact, to which you have called my attention, that the action of your Government, in sanctioning the loan, was based principally on the effective realization of the said moralization program (in its opinion important factor for establishing the public credit of Cuba) I will have no inconvenience, in case of any appointment in the Cabinet, in dissipating any doubt as to its effect upon the realization of said program.

IV. As regards the contracts of the Department of Public Works, which have been object of correspondence and conferences between us, I wish to state that I have seen projects of Decrees presented by the Secretary of Public Works, regarding the annulment and rescission of those contracts as an act of the Administration, without impairing the jurisdiction of the Commission of Debts, recently created, for deciding what equitably corresponds to the contractors, for the work done, in accordance with the Law creating said Commission.

I have devoted careful examination and study to those projects, and will make the modifications I deem convenient in them, to express precisely their purpose, preventing any other interpretations.

. . . .

VI. I wish to explain a detail of my letter of the 22nd of January,[7] referring to one of Mr. Bacon. It might be understood that I meant to say that Mr. Morrow determined to make the $5,000,000 loan only on finding the guarantee sufficient; and that is not so, inasmuch as, when I state that, besides, he could not doubt our good faith and good intentions, which Mr. Bacon acknowledges have been put into realization during the past 12 months, I refer to the plans of administration which I explained to Mr. Morrow, and to his friendly and intelligent suggestions, inspired in his affection to the Cuban interests. I keep an excellent memory of sympathy towards Mr. Morrow.

Yours very truly,

ALFREDO ZAYAS

837.51/931

The Acting Secretary of State to the Ambassador in Cuba (Crowder)[8]

WASHINGTON, *February 23, 1923.*

MY DEAR GENERAL CROWDER: I have to acknowledge the receipt of your letter (C–S–258) of February 3, regarding the political situation in Cuba, more especially as regards cabinet changes and the annulling and rescinding of public works contracts made during the last administration.

I am most gratified to receive the assurance contained in President Zayas' letter to you of February 1, (enclosure F of your letter) that he has no intention of changing the present cabinet, but on the contrary, proposes to keep its members indefinitely in office, as convenient for the total realization of the moralizing program. It is also most gratifying to learn from your telegram (No. 9) of February 17, 12 noon,[7] that the President has signed the first of the decrees nullifying the old public works contracts, and that he will sign others as rapidly as they can be prepared by the present Secretary of Public Works.

Very sincerely,

WILLIAM PHILLIPS

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[7] Not printed.
[8] General Crowder was appointed Ambassador on Feb. 10, the Legation having been elevated to Embassy by Act of Congress.

837.513/58: Telegram

The Ambassador in Cuba (Crowder) to the Secretary of State

HABANA, *July 11, 1923—5 p.m.*
[Received 9:35 p.m.]

47. On April 28 newspapers reported that the Senate had passed the previous day a bill reorganizing the National Lottery on the basis of 2000 *colecturias* instead of the 961 now existing and authorizing the sale of tickets at whatever price they would command. I took immediate active steps to obtain copy of the bill without success and yesterday asked the aid of the President in obtaining a copy. To-day's press announces that at a session held last night the house passed this bill at 2 a.m. by the extraordinary vote of 95 to 5. . . . Greatest secrecy characterized passage of the bill by both Houses. Hope to obtain copy tonight and if I find it inimical to the lottery reform will urgently request President to veto bill. Suggest that Department inform Cuban Government through Cuban Chargé d'Affaires at Washington that it expects the reform of the lottery to be maintained.

CROWDER

837.513/58: Telegram

The Secretary of State to the Ambassador in Cuba (Crowder)

WASHINGTON, *July 13, 1923—6 p.m.*

57. Your 47, July 11, 5 p.m.

The Under Secretary of State handed the following Aide-Memoire to the Cuban Chargé this afternoon who promised to telegraph it to his Government this evening:

"The Department of State recently received a report to the effect that the Cuban House of Representatives on the evening of July 10, passed a bill previously passed by the Senate reorganizing the national lottery on the basis of 2000 *colecturias* instead of the 961 now existing, and furthermore authorizing the sale of the tickets at whatever price they would command. The Department's information indicated that great secrecy was observed regarding this bill, the terms of which are reported to be as stated above, although the Department has not yet received a copy thereof. The Department hopes that the information which it has received is incorrect, and that no such measure, which would inevitably result in the breakdown of the moralization program, is under contemplation by the Cuban Government.

In this connection the Department begs to refer to a letter written on April 30, 1921, to General Crowder by President Zayas,[10] some

[10] Not printed.

three weeks before the latter assumed the high office he now occupies, in which he stated that the national lottery 'should be the object of modification, as regards the sale of the tickets, so as to avoid having their legal price altered, and having this transaction be the means of undue profit to persons mediating between the Government and the venders.' On April 28, 1921,[11] President Zayas assured General Crowder that he would, within a period of five months, make sweeping reforms in the national lottery, particularly in the *colecturia* system.

This Government has been gratified at the assurances several times received from President Zayas that he will completely carry out the moralization program outlined by Ambassador Crowder. The United States Government is confident, therefore, that President Zayas will not support a bill such as the one reported above which, if enacted into law, would undo the work already accomplished in the lottery reform and would render impossible the effective carrying out of the moralization program, of which the lottery reform is one of the principal features, in the interest of the fundamental conditions of Cuban stability and prosperity."

HUGHES

837.513/60 : Telegram

The Ambassador in Cuba (Crowder) to the Secretary of State

HABANA, *July 24, 1923—11 a.m.*
[Received 3 p.m.]

51. Reference to my number 47, July 11, 5 p.m., and enclosure to my despatch number 205, July 15th.[12] President Zayas' message vetoing the Lottery Bill read last night in the Lower House which at same session passed the bill over his veto by vote of 93 to 6. In his veto message the President criticized the bill for certain ambiguities which he said ought to be cleared up and for unnecessary repeal of decrees and regulations already repealed; but primarily because the purpose to which the new lottery revenues were to be applied did not include preferential attention to the floating debt. He left unnoticed in his message the provisions of the bill which abolish the maximum price of tickets and open the way to speculators further to exploit the public by forcing up the price of tickets to the maximum which the demand for them will permit.

The Lower House passed resolution giving its reasons for overriding the Presidential veto among them the following: That since there has [*have*] been rumors of official suggestions on the part of the United States Government, by failing to override the veto Congress would relinquish its prerogative; that no provision of the

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[11] See General Crowder's telegram no. 66 of the same date, *Foreign Relations*, 1921, vol. I, p. 692.
[12] Not printed.

Permanent Treaty is violated; that no Congress can legislate serenely under continued pressure of unjust criticism; that the bill had been taken as a pretext for insinuations against Cuba's sovereignty by seconding a policy of interference contrary to the principles of self-government; and that this policy will take on dangerous proportions unless all unite to carry to the Government and Congress of the United States the firm impression that Cubans would feel deeply wounded in their sentiments if said interference should be attempted, because Cuba performs all its international [obligations under the] treaty.

The best opinion is that the Senate will likewise pass the bill over the President's veto.

Enrique Mazas, Member of Congress, charges in an editorial in effect that Zayas had an understanding with Congress that his veto would be rejected by the necessary two-thirds vote in each House.

Captain Rock [13] will be able to explain [in] detail the great power this bill vests in the President, to Congress and nominations and elections next year.

CROWDER

837.513/61 : Telegram

The Ambassador in Cuba (Crowder) to the Secretary of State

HABANA, *July 25, 1923—9 a.m.*
[Received 10:50 a.m.]

52. Reference to my rush 51, July 24, 11 a.m. Cuban Senate passed Lottery Bill over President's veto by the necessary two-thirds vote, 16 to 0, including resolution making objectionable reference to United States interference.

CROWDER

123C8812/15a : Telegram

The Secretary of State to the Ambassador in Cuba (Crowder)

WASHINGTON, *July 28, 1923—2 p.m.*

63. Your No. 58 of July 26, 1 p.m.,[14] and your telephone conversation with Captain Rock. Also your despatch No. 218, of July 24.[14]

The Department desires that you should come to Washington for a conference as soon as you deem it advisable.[15]

HUGHES

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[13] Logan N. Rock, U. S. Army, detailed from the Judge Advocate General's Office as assistant to General Crowder.

[14] Not printed.

[15] The Ambassador left Habana Aug. 2 and remained in the United States until Dec. 14.

837.51/968

The Chargé in Cuba (Howell) to the Secretary of State

No. 260 HABANA, *August 18, 1923.*
[Received August 23.]

SIR: I have the honor to inform the Department that in accordance with the Loan Law of October last,[16] providing that the surplus in the Treasury at the end of the fiscal year be devoted to reducing the National Debt, the President has signed a decree authorizing the Secretary of the Treasury to pay to the United States the sum of approximately seven million dollars in payment of the balance of the ten million dollar loan of 1917.[17]

I understand that payment will be effected through the National City Bank of New York and J. P. Morgan and Company.

I have [etc.] W[ILLIAMSON] S. HOWELL

711.1211/74½

Memorandum by the Secretary of State of a Conversation with the Cuban Chargé (Padro), August 21, 1923

[Extract]

. . . .

As Dr. [Padro y] Almeida was going he said that statements had appeared in the press, apparently coming from the White House, with respect to the attitude of this Government towards Cuba;[18] that these statements were somewhat disquieting and he would like to be able to reassure his Government. The Secretary asked to what statements Dr. Almeida referred. He said they were statements that even seemed to contemplate intervention in Cuba. The Secretary said that he did not know of any statements which went to that extreme; that as he had frequently said this Government desired to promote the stability of Cuba and desired to see its Government secure and its people prosperous. The Secretary felt, however, that as Dr. Almeida had brought the matter up he should not refrain from expressing the great disappointment which he felt at the recent action taken by the Cuban Congress, and that the statements contained in the resolution connected with the passage of the Lottery Bill with respect to the United States Government were of an offen-

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[16] Loan law of 1922 not printed; see note of Oct. 18, 1922, from the Cuban Chargé, *Foreign Relations*, 1922, vol. I, p. 1044.

[17] For the loan law of Aug. 1, 1917, and the $10,000,000 loan granted from a total credit of $15,000,000 extended by the United States, see *ibid.*, 1918, pp. 294–339.

[18] A statement issued by the White House on Aug. 17 appeared in the press of Aug. 18.

sive sort. The Secretary said that, as Dr. Almeida well knew, the efforts of this Government had been directed to help Cuba, not to injure her; that Ambassador Crowder had sought to be of assistance and that it was supposed that his aid had been welcomed. The Secretary recalled that when the last negotiations were on that it had been made quite clear to President Zayas and he fully understood that the moralization program, and the eradication of graft and corruption were efforts to give a sound financial basis, and that this moral security was most important in connection with the making of the loan. The Secretary said that it was highly disappointing that the objectionable lottery measure should have passed, especially with such comments, when the nature of the measure was such as to point plainly to another era of corruption. The Secretary said that if Cuba insisted upon taking a downward path, the United States would not fail to give her caution and advice in her own interest, and if she still persisted, she could not in any way hold the United States responsible for the inevitable disaster that would follow. The Cuban people had great resources and every opportunity, but the Government could not be maintained on a stable basis if it was rife with corruption and he sincerely hoped that President Zayas would use every means in his power to root out all the evil influences which menaced the Government, and that this was the essential condition to the satisfactory establishment of Cuban stability. The Secretary said that it was hardly necessary for him to refer to the friendship of this Government for Cuba, but that it was not friendly action to see, without appropriate advice, a course taken which could only lead to the most serious results.

837.51/970

The Acting Secretary of State to the Cuban Chargé (Padro)

WASHINGTON, *August 31, 1923.*

SIR: The Department has received a letter from the Secretary of the Treasury requesting it to advise you that the Federal Reserve Bank of New York received from the Cuban Government, through the National City Bank of New York, the sum of $3,500,000 on August 21, 1923; the sum of $3,500,000 on August 22, 1923, and the sum of $38,118.03 on August 23, 1923, making a total payment of $7,038,-118.03; and that such payments represent the principal amount of $6,988,000 remaining due on the two demand obligations of the Cuban Government dated respectively March 27, 1918, and November 4,

1918, for $5,000,000 each, and the interest accrued and unpaid of $50,118.03, up to August 21–22, 1923.

The Secretary of the Treasury adds that the Treasurer of the United States has made the proper notation on the two demand obligations above mentioned with respect to the payment of $3,500,000 made on August 21, 1923, and has marked said obligations "paid" as of August 22, 1923.

The two demand obligations above mentioned marked "paid" and a statement relative to these payments are enclosed,[20] and the Department is requested by the Secretary of the Treasury to advise you that the Treasury is prepared, at your convenience, to surrender to you all of the definitive bonds of the Cuban Government, issue of 1917, Series A, aggregating in the principal amount of $6,988,000, now held by the Treasury as collateral security for the two demand obligations above mentioned.

I am also requested by the Secretary of the Treasury to ask you to extend to your Government the Treasury's appreciation for the promptness with which your Government has liquidated its indebtedness due to the United States.

Accept [etc.] WILLIAM PHILLIPS

837.513/70 : Telegram

The Secretary of State to the Chargé in Cuba (Howell)

WASHINGTON, *September 11, 1923—5 p.m.*

91. Your September 4, 9 a.m.[20]

You may state to Diaz Albertini [21] informally and as your own personal view that the Government of the United States has viewed with apprehension the obstacles which the moralization program has encountered during the last six months, and that the resolution accompanying the passage of the Lottery Bill over the President's veto was of course most offensive. Referring to your previous conversation with him, you may say that he spoke of a possible repeal of the new lottery law, a measure which is undoubtedly within the competency of the Cuban Congress. You may say that it is unnecessary to remind him of the interest which the United States has felt in the program for the reform of the Cuban Government, or to tell him that the repeal of the new lottery law would be gratifying to the United States, facts already sufficiently attested in the correspondence between the two Governments and notified to the peo-

[20] Not printed.

[21] Cuban lawyer, who had discussed the political situation with the Chargé on behalf of the Liberal leaders in the Cuban Congress.

ple of both countries through the public press. The United States has advised Cuba in this and other matters because of its desire to see in Cuba a stable and efficient government, able to fulfill all of its obligations under the treaty. If the Cuban Congress rejects its advice, and if their course results in a situation where a stable and efficient government does not exist, they must accept the responsibility for this situation.

HUGHES

711.37/73½

Memorandum by the Secretary of State of a Conversation with the Appointed Cuban Ambassador (Torriente), November 15, 1923

[Extract]

Dr. Padro, the Chargé d'Affaires of Cuba, called with Dr. Torriente, who is to be the Ambassador. He has not yet been accredited.

. . . .

Dr. Torriente, referring to Cuba, said that it was his desire to come to the United States in a spirit of friendship; that they appreciated what the United States had done for Cuba and he hoped to be able to deal in all matters with the Secretary on the footing of frankness and cordiality.

The Secretary reciprocated these sentiments and extended a hearty welcome to Dr. Torriente, expressing his gratification at the opportunities for consideration of all questions in the spirit in which Dr. Torriente had spoken.

The Secretary then said that the situation of the United States vis-à-vis Cuba was a very simple one; that it was hardly necessary to speak of our friendship for the Cuban people and of our desire that they should enjoy the utmost prosperity and have a firm and stable government. The Secretary said that there was no thought among our people of intervention; that no responsible statesman desired intervention in Cuba; that that was the last thing that he thought of and that it would not occur unless Cuba herself made it necessary. The Secretary pointed out that the essential condition of stability and prosperity in Cuba was the elimination of graft, corruption and extravagance. The Secretary said that this Government had been much disquieted at the conditions in Cuba; he referred to the fact that the loan of $50,000,000 had been put through on the distinct understanding that there should be a moralization program,—President Zayas himself had asserted this in unequivocal terms. The United States had no desire to get anything for themselves; they wished to see the Cuban Government on the soundest

possible basis. The cancer which was eating into the prosperity and hopes of Cuba was corruption and extravagance, and he hoped that the administration would set itself resolutely to cure this. The Secretary said that the recent lottery law had given us a great deal of concern because it promised a new era of corruption. The Secretary said that it was not the part of friendship to wait until they got to the bottom of the hill and then tell them that they were there and action was inevitably required, but to advise them before they got too far down. He was glad to note the improvement that had been made in the financial situation but this would not last long unless they heeded counsel with respect to the essential conditions of honesty and economical government. The Secretary referred to General Crowder and warmly praised his work.

Dr. Torriente took no issue with what the Secretary had said, again expressing his friendship for the United States and his desire to be able to deal with the Secretary in the most friendly way. Dr. Torriente expressed the hope that these matters could be dealt with with as little publicity as possible; that publicity was likely to offend the sensibilities of the people and make it more difficult to deal with situations. He said that he had known General Crowder and had worked with him and greatly appreciated the value of his suggestions, but Dr. Torriente said that the Latin-American sentiment had to be taken into consideration and sometimes General Crowder was a little excitable and did not make sufficient allowance for the Latin American temperament.

The interview ended with pleasant exchange of expressions of esteem and felicitations.

701.3711/315

Extracts from the Remarks of the Cuban Ambassador (Torriente) on the Occasion of His Reception by President Coolidge, December 13, 1923

[Translation]

Mr. President:

. . . .

In entering upon the duties of my office by addressing Your Excellency in the name of the President of Cuba and, therefore, of my Nation, I cannot but recall the days, which are already somewhat distant, during which the Cubans struggled bravely to obtain their independence and the great American people, whose President was then the eminent statesman William McKinley, accepted with enthusiasm the declarations of the memorable Joint Resolution of April 20, 1898, in which the Congress recognized and affirmed, then and for all time, the principles for which the heroic soldiers of

Maximo Gomez, Antonio Maceo and Calixto Garcia were giving up their lives.

. . . .

But I would not be loyal if, in speaking to Your Excellency in the name of the President of Cuba, I did not recognize that, at times, as Your Excellency well knows, in the daily relations between the Governments of Washington and Havana, differences in judgment have arisen, which in the long run might have produced sentiments distinct from those which should prevail between two peoples so closely united by their geographical situation, by history, in which there are pages common to both of them, and by great material interests of all sorts, had it not been that the statesmen of the two countries have on all occasions endeavored to prevent, or to do away with, difficulties of every kind, yielding at times somewhat in their opinions and even in what they considered to be their rights in accordance with their interpretation of the convention which permanently regulates our mutual relations.

. . . .

Fortunately, Mr. President, up to the present time, in the course of our independent existence, Your Excellency's predecessors, as also Your Excellency, have never forgotten the role which the United States assumed with respect to Cuba, since the famous Joint Resolution of 1898 was voted, and thus it has been that your cooperation, whenever we have needed it, has ever been loyal and sincere. Nor have the Presidents of the United States failed to recognize the fact that in order that Cuba might continue to maintain its position as a sovereign and independent people in the consort of the free nations of the world, nothing should be done to injure its international personality; as otherwise the cooperation which Cuba can lend in the furtherance of the great ends which all America is called upon to realize, would greatly suffer, for not in vain has God placed Cuba at a point in the world at which the great routes of communication cross each other and is, for this reason, destined, at a future not far distant, to serve as a bond of union between diverse races and civilizations, as is evidenced by the fact that Havana should have been chosen unanimously by the nations of this continent as the seat of the Sixth Pan American Conference.

Your eminent Secretary of State, Mr. President, speaking a few days ago, before the American Academy of Political and Social Sciences at Philadelphia, declared his conformity with the declarations made by the American Institute of International Law at its first session held in Washington in 1916, which is as though Your Excellency himself had so affirmed, among which are the following: that "every nation has the right to exist, and to protect and to con-

serve its existence"; that "every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States"; and that "every nation is in law and before law the equal of every other nation belonging to the society of nations". These declarations of the famous Institute, in voting which the highest juridical authority of Cuba took part, are the ruling principles in the international policy of the Government of President Zayas, and to second him in its development he has sent me here, confident that Your Excellency will lend Cuba, as up to now has been done, the friendly advice and aid of which Your Excellency's Secretary of State spoke in the address to which I have alluded above, thus making my mission extremely easy.

701.3711/315

President Coolidge's Reply to the Remarks of the Cuban Ambassador (Torriente) on the Occasion of His Reception, December 13, 1923

It affords me unusual pleasure to receive the letter accrediting you as Ambassador of the Republic of Cuba near the Government of the United States. Of the distinguished men who have represented your Government at Washington, you are the first to be given the high rank of Ambassador. This designation is a happy commentary upon the rapid growth and friendly character of the relations existing between our countries.

I value highly the appreciation which you so cordially express of the assistance rendered by the United States to Cuba during the latter's struggle for independence. It is the desire of our people to see that independence safeguarded and Cuban prosperity assured.

It is true, as you state, that differences of opinion have arisen regarding the position which the United States occupies with respect to Cuba. But I am sure that as regards the fundamental aspects of this position, our statesmen are in accord.

In your remarks, you have referred to the time when you served with forces of this country for the realization of a common ideal. It is gratifying indeed that you are to cooperate with us now in the furtherance of our common desire for better understanding and mutual aid. You can count upon the ready support of this Government in your efforts to that end.

I have not failed to note the hope expressed by you, on behalf of His Excellency President Zayas, that the friendly advice which has been given to him from time to time by this Government be continued. I take this opportunity to assure you that this Government,

as ever, entertains the highest solicitude for the welfare of Cuba. It will gladly continue to be of service by means of the friendly counsel and advice which has invariably been given with a view to assisting the Cuban people to maintain an independent existence and to discharge their international obligations.

In accepting the letters of recall of your predecessor, the statesman who now conducts the foreign affairs of Cuba, I wish to express the appreciation entertained by this Government for his conspicuous abilities and friendly collaboration.

I beg you to assure His Excellency the President of Cuba of my best wishes for his personal welfare and for the prosperity of the Cuban Nation. To you, Mr. Ambassador, permit me to extend a cordial welcome and the expression of my earnest hope that your sojourn in Washington will be most pleasurable.

REVISION OF THE CUBAN RAILWAY-MERGER AND PORTS-CLOSING BILL UPON REPRESENTATIONS BY THE UNITED STATES

637.0023/11a

The Secretary of State to the Ambassador in Cuba (Crowder)

No. 92 WASHINGTON, *July 21, 1923.*

SIR: The Department has today been handed by Mr. Cummings of the firm of Sullivan and Cromwell of New York, attorneys for the Cuba Cane and Manatí Sugar Companies, a copy of a bill modifying Article 15 of the ports law of Cuba, which he states he understands was drawn up by Colonel Tarafa and which, it is reported, will be introduced secretly into the Cuban Congress on the last day of its session (July 31st) and rushed through.

According to the proposed law, a copy of which is enclosed herewith,[22] the Cuban ports are to be classified as ports of general interest of the first and second class and ports of local (provincial and municipal) interest. A list of some twenty-five ports is given at which importation and exportation shall be authorized and no authority shall be given hereafter for the opening of any port for foreign commerce except in the cases and under the conditions established by the law. The law further provides that commerce may be authorized at sub-ports or wharves that are not connected with lines of the consolidated railroads, but in such cases sugar mills which enjoy the privilege of private ports shall pay for that privilege fifteen cents on each one hundred pounds of sugar exported.

With regard to the mention of the "consolidated railroads" above, Mr. Cummings handed the Department a copy of another bill for the

[22] Not printed.

consolidation of the Cuban railways, a copy of which is enclosed herewith.[23]

Mr. Cummings asserts that the first bill, if passed, will raise the basic production cost of sugar in Cuba some forty-nine cents a bag, and he considers it a scheme . . . to increase the basic price of production of the cheaper producing mills on the coast in order that the interior mills working under higher production cost will be able to pay a higher tariff rate on the railroad. He states that it will not be economically possible for the railroads to extend their systems to the small sub-ports, served by only one sugar mill at each, and that therefore the effect of the law would be to impose a tax of fifteen cents per one hundred pounds on the sugar produced at those mills—amounting, he estimates, in the case of the Manatí Company, to some two hundred and fifty thousand dollars a year—thus augmenting the basic production price of sugar and increasing the cost thereof to the consumer.

Mr. Cummings stated that the Cuba Railroad is in sympathy with the project, although not actively supporting it, but that he was informed yesterday by the Chairman of the Board of Directors of the United Railways of Havana that that Company has nothing whatsoever to do with the scheme and is opposed to it, as it is opposed also to the bill providing for the consolidation of the Cuban railways.

The Department desires that you should make a complete investigation regarding this matter and report to the Department, by cablegram if necessary to prevent any action prejudicial to American interests.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

637.0023/15

The Ambassador in Cuba (Crowder) to the Secretary of State

No. 220 HABANA, *July 27, 1923.*
[Received July 31.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 92 of July 21, 1923, in which my attention was called to representations which had been made at the Department of State by Mr. Cummings of the firm of Sullivan and Cromwell of New York, attorneys for the Cuba Cane and Manati Sugar Companies, concerning Bills which it is believed Colonel José M. Tarafa, the President of the Northern Railways of Cuba, will shortly cause to be introduced into the Cuban Congress. The Department enclosed

[23] Not printed.

copies of projects of law as furnished by Mr. Cummings, and instructed me to make a complete investigation and report to the Department, by cablegram if necessary, to prevent any action prejudicial to American interests.

Having been informed by a number of interested persons that Colonel Tarafa had been refusing consistently to supply copies of his proposed laws to interested parties, I placed myself in communication with him immediately upon the receipt of the Department's instruction, and obtained from him what he termed final drafts of the projects of law. I enclose herewith a copy in Spanish, and a suggested translation in English, of the projects; (enclosures Nos. 1 and 2 respectively).[24] In view of the fact that the final drafts which were furnished to me by Colonel Tarafa differ considerably from those which the Department forwarded to me, I have handed copies of these final drafts to the local attorney of the Cuba Cane Sugar Corporation and the Manati Sugar Company, and have suggested that statements be furnished me as to the extent to which the passage of these laws would affect those Companies financially. I have also taken similar action with a view to obtaining the views of the Punta Alegre Sugar Company, an American concern which alleges that it will suffer heavy financial injuries if the Tarafa Bills are enacted.

The Tarafa proposals are causing a most profound stir in financial, railway, and industrial circles. This may be attributed in part to the general apprehension that the measures will be rushed through the legislature without affording time for various interested persons to formulate their views, organize opposition, or to take any measures to protect their interests; and is also attributable in part to the refusal of Colonel Tarafa to state the provisions of the projects in other than general terms. The Association of Mill Owners and Planters hastily convened a meeting a few days ago, and appointed a committee to interview Colonel Tarafa. I am enclosing herewith copy of a communication addressed to me by the Chairman of that Committee (enclosure No. 3)[24] under date of July 25th last, setting forth various arguments against the proposed legislation and data upon which those arguments are based. The Department will note that this Committee is extremely antagonistic toward the Tarafa project. In the case of certain specific sugar companies this antagonism seems to be based on the fear that the enactment of the project would actually result in confiscation of large amounts of property. In order to indicate to the Department the extent of this alarm, I am enclosing herewith copies of communications I have received from the Francisco Sugar Company (enclosure No. 4),[24] the Cunagua Sugar Company (enclosure No. 5),[24] the Manati Sugar Company

[24] Not printed.

(enclosure No. 6),[25] the Cuba Cane Sugar Corporation (enclosure No. 7),[25] and the Punta Alegre Sugar Company (enclosure No. 8),[25] all of which are entirely controlled, if not owned outright, by American interests.

Apart from the question of propriety of Colonel Tarafa withholding from interested parties information as to the details of his proposals, I am taking steps to obtain information as to the exact extent to which American interests would be injured by the enactment of the project.

Mr. Aurelio Portuondo, Chairman of the Committee appointed by the Association of Mill Owners and Planters informed me today that on Monday next the Association would make a written demand upon the Presidents of both Houses of Congress, for open hearings on the Bills. President Lakin of the Cuba Railroad Company, who favors the Bill, is in the City, but has not yet called at the Embassy.

I have [etc.] E. H. CROWDER

637.0023/23a : Telegram

The Acting Secretary of State to the Chargé in Cuba (Howell)[26]

WASHINGTON, *August 10, 1923—12 noon.*

67. Following note to the Cuban Government should be promptly prepared for presentation but you will not (repeat not) deliver the note pending receipt of further instructions from the Department by telephone:

"I have the honor to refer to the Ambassador's letter to His Excellency, the President of Cuba, dated July 31, 1923,[27] in which the Ambassador called attention to the necessity for allowing ample time in which to study the pending railway merger and port closing bill, commonly designated as the Tarafa Bill. My Government has now instructed me to supplement the considerations set forth in the Ambassador's letter by laying before the Cuban Government the results of its preliminary study of what it understands to be the principal features of the proposed bill. This study is necessarily incomplete because of the limited time which has been available for consideration of the matter.

"In the light of this study, my Government has instructed me to point out certain provisions of the proposed legislation which appear objectionable and in some cases even confiscatory in the execution which they may, and doubtless will, receive.

"(1) The provisions regarding the closing of all ports, sub-ports or loading points, with the exception of those designated by the bill as national ports, and prohibiting in the future the designation of

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[25] Not printed.

[26] In July the Ambassador had been summoned to Washington for a conference with the Department; see Department's telegram no. 63, July 28, p. 846.

[27] Not found in Department files.

any ports as national except those to which the consolidated railways may extend their lines, is considered confiscatory of large property interests of owners of sugar mills, who, with the consent and cooperation of the Cuban Government, have constructed wharves and lines of railroad to authorized private ports for the purpose of exporting their product. Provisions of the proposed bill for permitting the use of private railways to private ports, notwithstanding the provisions which close such ports, in no wise prevent confiscation of the interests referred to, but even assist such confiscatory methods by prohibitively penalizing the mill owners in the use of their own property obtained at large expense.

"(2) The provisions of the proposed bill may constitute such a virtual monopoly of railroad transportation as to give to the consolidated railroad companies, which by the terms of the bill must include new lines constructed in the future in districts where the consolidated lines operate, so complete a control of the transportation facilities of the island that no other public service railroad can compete therewith. Such a monopoly would be detrimental to all persons depending upon railway transportation for the exportation of their manufactured or natural products. Particularly objectionable are those provisions of the bill, the language of which would seem to prohibit, even with the payment of the penalty provided for, the mill owners owning a private railroad to a national port, from using such private railroad when the consolidated railways operate a line from such mill to the national port in question.

"It should be understood that these observations do not refer to the general principle of consolidation of Cuban railroads but solely to the establishment of an absolute monopoly of transportation preventing present or future competition of railroads not members of the consolidation.

"(3) The provisions of the bill do not provide for an actual merger, but constitute a holding company with stock control of the member companies for the purpose of their operation. There appears to be nothing in the project which prevents over capitalization of such holding company with attendant evils, notably a probable failure to pay the dividend of 6 per cent which would prevent the accrual of the taxes provided for in the bill.

"(4) While the project provides that the consolidated railways shall make an immediate reduction of 20 per cent in the existing tariff for the transportation of sugar over certain distances, yet it specifically admits of individual agreement between the railways and the shippers as to charges for transportation in the future, with the proviso, however, that such charges shall not exceed those now existing. There being neither provisions for the publication of these private agreements, nor for their report to the National Railroad Commission, the Government will probably be unable to determine whether rebates are being given, or whether certain shippers actually are being preferred to others.

"I am, therefore, instructed to state that my Government confidently hopes that the proposed legislation, which would so vitally affect economic conditions in Cuba, and which is so momentous to American companies having investments of millions of dollars in

that country, will not be enacted without affording an ample opportunity for the presentation of objections by all interested parties and for a full consideration of its probable effects."

You may state orally and very informally in presenting the note that this Government has not presented its views on this matter previously because of the situation which has existed during the last week in Washington.[28] HARRISON

637.0023/24 : Telegram

The Chargé in Cuba (Howell) to the Acting Secretary of State

HABANA, *August 11, 1923—10 a.m.*
[Received 12:06 p.m.]

72. Your 67, August 10, noon, and Mr. Wright's [29] conversation by telephone.

The note regarding Tarafa bill was handed to the Secretary of State last night. HOWELL

637.0023/46 : Telegram

The Secretary of State to the Chargé in Cuba (Howell)

[Paraphrase]

WASHINGTON, *August 23, 1923—3 p.m.*

78. Colonel Tarafa has conferred with the Department, but the Department has not invited the representatives of other railway systems to make statements.

The Department understands that there will be conference between Tarafa and sugar interests to discuss the proposal to eliminate from the bill the provisions closing existing private ports but to retain the provisions prohibiting imports through private ports, and to add a provision prohibiting in the future the establishment of private ports. HUGHES

637.0023/67

The Chargé in Cuba (Howell) to the Secretary of State

No. 296 HABANA, *August 30, 1923.*
[Received September 4.]

SIR: I have the honor to refer to my despatch No. 273 of August 22 [30] and previous correspondence relative to the Tarafa project.

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[28] President Harding died Aug. 3; the funeral took place Aug. 10. Only routine matters were handled during the intervening week.

[29] J. Butler Wright, Third Assistant Secretary of State.

[30] Not printed.

Press reports received here are to the effect that a compromise has been reached in New York between Tarafa and the American sugar interests, relieving the United States Government of much further concern in the matter by the elimination of the confiscatory clauses in the bill.

Opposition in Cuba to the project is becoming more formidable. Even though the confiscatory clauses may be removed, the project is severely criticized as being monopolistic and otherwise objectionable. The manner of its passage in the lower House is condemned. The attempt to adjust the matter in New York and Washington instead of here is very much resented by the Cuban people. The Veterans' movement has crystallized public opinion against the bill. As a result of this project, the Chambers of Commerce and Industrial Associations of the Province of Santa Clara have resolved in the future to take part in Government affairs by joining political parties in order to protect their economic interests.

The Government will find it very awkward to make the Tarafa project a law, in any form at the present time.

I transmit herewith enclosed another letter from the Association of Sugar Mill Owners and Planters to the President of the Senate, making a forceful argument against the bill, relative especially to the manner in which the railroads would be consolidated. (Enclosure 1.)[31]

Doctor Pablo Desvernine, ex-Secretary of State, and one of the most distinguished and respected lawyers of Cuba, has written a very able letter against the bill, and it was published in *El Mundo* on August 29. He declares the bill monopolistic as to the railroads and their sub-ports, unconstitutional in parts, and not for the best interests of Cuba. A brief summary is attached. (Enclosure 2.)[31]

Doctor Cancio, Secretary of Treasury in the Cabinet of General Menocal, has also published in *El Mundo* a strong article against the bill, maintaining principally that a law in such monopolistic terms is not necessary to bring about an amalgamation of railways, as the latter can be accomplished under existing laws.

I also attach a letter from the Chamber of Commerce of Cuba to the President of the Senate in which that organization energetically opposes the bill, principally because of its monopolistic tendency. (Enclosure 3.)[31]

I have [etc.] WILLIAM[SON] B. HOWELL

[31] Not printed.

637.0023/73 : Telegram

The Chargé in Cuba (Howell) to the Secretary of State

HABANA, *September 13, 1923—5 p.m.*
[Received 8:31 p.m.]

96. Colonel Tarafa today delivered consolidation bill as accepted by leaders in Congress. Bill apparently carries out articles of agreement with sugar companies, monopolistic features seemingly removed as well as providing for non-par value shares of holding company. Tarafa states President Zayas consented to Senate consideration of the bill probably beginning Tuesday 18th, and indicated he would sign law if passed although he objects to importation features insisted upon by the sugar companies.

HOWELL

637.0023/93a : Telegram

The Secretary of State to the Chargé in Cuba (Howell)

WASHINGTON, *September 29, 1923—6 p.m.*

96. Mr. Lawrence A. Crosby, of the firm of Sullivan and Cromwell, is arriving at Habana Wednesday morning aboard the steamship *Toloa*, and desires to present the views of certain American interests to President Zayas Wednesday afternoon.

From the text of the Tarafa Bill passed by both Houses of the Cuban Congress, given to the Department by Messrs. Sullivan and Cromwell, it appears that the rights of American interests are very seriously affected by the provisions of the Bill, and the Department, therefore, desires that those interested should be afforded a hearing by President Zayas prior to his taking any definite action on the Bill. You will, therefore, request an interview with President Zayas for Wednesday afternoon for Mr. Crosby to present to the President's consideration information regarding the manner in which American interests are prejudiced. The Department desires that you should accompany Mr. Crosby and state that the Department would be glad if the President would carefully consider the points brought out by Mr. Crosby.

HUGHES

637.0023/102 : Telegram

The Chargé in Cuba (Howell) to the Secretary of State

HABANA, *October 9, 1923—noon.*
[Received 4:44 p.m.]

125. My 117, October 4, 2 p.m., and 124, October 8, 4 p.m.[32] The President signed the Tarafa Bill this morning. He is expected to

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[32] Neither printed.

write a letter in answer to Mr. Crosby's protest. The letter will give his interpretation upon certain passages of the Bill which are not clear. Mr. Crosby states such a letter would make the interests he represents more satisfied with the law. HOWELL

ESTABLISHMENT OF FEDERAL RESERVE BANK AGENCIES IN CUBA

811.51637/– : Telegram

The Secretary of State to the Ambassador in Cuba (Crowder)

WASHINGTON, *April 17, 1923—4 p.m.*

33. Department informed by Federal Reserve Board that Federal Reserve Bank of Boston has expressed a desire to open an agency in Habana, and if agency is established First National Bank of Boston will open a branch office in Habana. In view of present crisis Department desires expression of your opinion on matter before informing Federal Reserve Board that there is no objection to establishment of proposed agency by Bank. HUGHES

811.51637/1 : Telegram

The Ambassador in Cuba (Crowder) to the Secretary of State

HABANA, *April 17, 1923—11 p.m.*
[Received April 18—2:10 a.m.]

17. Reference to your number 33, April 17, 4 p.m. Department will of course have in mind its number 159 of September 29, 1921, 6 p.m.,[33] transmitting designation by New York Federal Reserve Bank of the National City Bank as its Cuban agent under section 14, Federal Reserve Act. I understand however that this agency has not actively engaged in the transaction of business prescribed in that section. Believe conditions favorable to the success of an agency which will engage actively in the transaction of such business and that opportune announcement that one will be established will be helpful in the present crisis. CROWDER

811.51637/2 : Telegram

The Ambassador in Cuba (Crowder) to the Secretary of State

HABANA [*undated*].
[Received May 5, 1923—10:15 p.m.]

24. Referring to my number 17, April 17, 11 p.m. Press despatches report prospective meeting of Federal Reserve Board May

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[33] Not printed.

7 to consider application Federal Reserve Bank Boston to establish agency in Cuba. Suggest advantage be taken of presence Governor Harding in Washington on that date and of opportunity to discuss with full board the banking situation in Cuba and latest draft of Torriente de Celis project for bank of issue et cetera in Cuba, forwarded with my despatch number 90 of April 28.[34]

On April 30, 1923, Royal Bank of Canada whose deposits in Havana alone were already reported to be $15,000,000 and for whole island of Cuba $40,000,000 took over entire banking business of private banker Pedro Gomez Mena whose total deposits are approximately $13,000,000 in addition to seven branches of Mercantile Bank of Cuba in Santa Clara province formerly under Gomez Mena control.

It is definitely known that negotiations in progress between private banker Jacinto Pedroso and Canadian Bank of Commerce for acquisition of former by latter actual terms of sale now being under examination by head office in Canada.

Most arresting [*interesting?*] information in connection with the expansion of Canadian banking interests secured this morning from trustworthy source, namely, that private banker Gelats has been approached by Royal Bank of Canada and is actually considering offer of purchase by latter.

The absorption of such important private banking interests so closely identified with commercial life of Cuba by Canadian banking interests, following upon the collapse and disappearance from activity of banks which went into suspension of payments, should be regarded with consternation by reason of growing disparity between Canadian banking interests here and their relatively unimportant economic interest in Cuba when compared with our preponderate commercial interests.

No doubt appears to be entertained in financial circles here that private bankers are being driven from business partly on account of the near monopoly exercised over commercial bank credits and foreign exchanges by the large Canadian and American banks. I am inclined to think that the establishment here of an active agency of the United States Federal Reserve Bank at this time would materially encourage the two private bankers mentioned above and possibly others to resist absorption by Canadian banks.

One of the principal burdens upon American and Cuban-American business interests here is the high rate of interest charged by banks. I am informed that discount rates below 8 percent are practically unknown while 12 percent is common; that the National City now charges 10 percent discount on short-time commercial paper of type

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[34] Not printed.

for which all United States Reserve Banks now charge four and one-half percent. It is universal opinion among business men here that these interest rates are exorbitant. The extent to which an active agency of Federal Reserve Bank could remedy this situation seems a matter of technical banking judgment but it seems to be unquestioned in commercial circles that such an agency would induce competition and thus benefit business. I discredit the assumption that local bankers would not avail themselves of re-discount privileges afforded by such agency.

Whether such an agency would succeed in materially weakening the near monopoly of foreign exchanges would probably depend in some degree upon extent to which agency is able to acquire good will of important sugar shippers and others. . . .

[Paraphrase.] In my opinion the establishment here of active agency of Federal Reserve Bank would meet with favor among business men and would add to the potential influence of the United States here where at present our banking influence is apparently on the wane.

I recommend that the situation as I have described it be discussed fully with the Federal Reserve Board immediately. The Department may well be apprehensive of material and permanent loss to American banking prestige in Cuba unless action of some character be promptly taken. [End paraphrase.]

CROWDER

837.516/155: Telegram

The Secretary of State to the Ambassador in Cuba (Crowder)

WASHINGTON, *May 8, 1923.*

39. Your 23, May 5, 10 a.m.[85]

Copy of project of banking law given to Governor Harding yesterday and was discussed by him and Federal Reserve Board yesterday afternoon. Federal Reserve Board gave following opinion regarding law:

" There is no authority under the Federal Reserve Act for the investment of funds of the Federal Reserve Banks in the capital stock of foreign banking corporations. The proposed plan for the establishment of a central bank in Cuba would therefore require an amendment to the Federal Reserve Act. The Federal Reserve Board would not be disposed to ask of Congress an amendment for this purpose.

" It is therefore not necessary for the Board to comment on other features for the participation of the Federal Reserve Board in the proposed banking plan".

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[85] Not printed; see first paragraph of the Ambassador's telegram no. 24, *supra.*

Governor Harding concurred in the above and stated that he will also send you his personal views regarding the law.

The Board discussed at great length question of establishing an agency of Federal Reserve Bank in Cuba, but has not yet reached a decision in the matter. A decision may be reached today, and indications are that it will decide in favor of establishing such an agency.

It was the feeling of the members of the Board that if such an agency is established, and with the refusal of the Board to participate in the Reserve Bank of Cuba, no further action would be taken on the project of banking law above referred to.

HUGHES

811.51637/7a : Telegram

The Secretary of State to the Ambassador in Cuba (Crowder)

WASHINGTON, *June 29, 1923—5 p.m.*

54. Department's 41, May 14, 6 p.m.[36]

Department informed by Federal Reserve Board that it has granted to Federal Reserve Banks of Atlanta and Boston each an agency in Cuba, and that these agencies are to co-operate in performing their functions as agents of the Federal Reserve Banks.

HUGHES

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[36] Not printed.

CZECHOSLOVAKIA

EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND CZECHOSLOVAKIA MUTUALLY ACCORDING MOST-FAVORED-NATION TREATMENT IN CUSTOMS MATTERS

711.60 f 2/1a : Telegram

The Secretary of State to the Minister in Czechoslovakia (Einstein)

WASHINGTON, *July 19, 1923—5 p.m.*

27. Department is now prepared to negotiate with the Czechoslovak Government a general treaty of amity, commerce and consular rights.

Please inquire at the Foreign Office as to whether the immediate negotiation of such a treaty would be agreeable to the Czechoslovak Government and inform the Department promptly of the result. If the Czechoslovak Government agrees, the text of the proposed treaty and full covering instructions will be sent to you within a few days.

HUGHES

711.60 f 2/2 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, *July 21, 1923—1 p.m.*
[Received July 23—4:10 p.m.]

34. Your 27. Minister for Foreign Affairs assures me that Czechoslovak Government will be very glad to negotiate a general treaty.

EINSTEIN

711.60 f 2/2a

The Secretary of State to the Minister in Czechoslovakia (Einstein)

No. 131 WASHINGTON, *August 3, 1923.*

SIR: There is enclosed herewith a copy of a treaty of friendship, commerce, and consular rights[1] for submission to the Government of Czechoslovakia through your Legation. . .

. . . .

CHARLES E. HUGHES

[1] Not printed. The draft for a treaty with Czechoslovakia is the same, *mutatis mutandis*, as that for a treaty with Austria, printed on p. 400, except that it omits article XXIV of the draft for Austria and makes appropriate changes in the numbering of the two succeeding articles.

711.60 f 2/4 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, *August 30, 1923—7 p.m.*
[Received 10:40 p.m.]

39. Your instruction No. 131. Pending further advice I hesitate to transmit draft of treaty for the following reasons: No provision is made therein to cover import license system utilized here to restrict imports (see British treaty[2] transmitted in my despatch 493,[3] article 2, paragraphs 4 and 5). The most-favored-nation clause is not held to apply to articles which require import licenses and the commercial treaties negotiated here have included lists of "contingents" specifying amounts for which importation will be granted. Great Britain in recent treaty, though protected by most-favored-nation provision, has been obliged to append a detailed contingent list. Department's attention is also invited to the antidumping clause of British treaty. Article 3 [*1*] the new treaty with France[4] provides among other reductions for 45 per cent duty on motor cars. As this enters into force September 1st and will be granted only to countries with conventions, the Czechoslovak Government suggests urgency of making immediate temporary arrangements by exchange of notes to avoid penalizing our imports. I submit as possible basis for consideration the following tentative draft of note which meets with the approval of the Minister of Commerce and the Acting Minister for Foreign Affairs:

"Pending the conclusion of the treaty of amity and commerce which it is the desire of my government to negotiate with the Government of Czechoslovakia, I trust that it may be agreeable to Your Excellency for all commercial relations between our two countries to be on the basis of the most-favored-nation provisions. Until satisfactory arrangements can be made for the importation of American merchandise, it is understood that this will be subjected to a fair assessment both as regards valuation and amount of imports, particularly in the case of motor cars."

Please advise at earliest convenience Department's wishes. I can have consul to prepare list of import requirements. Actual negotiation of the treaty will not be possible for some time owing to extended absence of Doctor Benedicites [*Beneš*] and of specialist on commercial treaties.

EINSTEIN

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[2] Great Britain, Cmd. 2254, Treaty Series 35 (1924): *Treaty of Commerce between the United Kingdom and the Czechoslovak Republic and Accompanying Declaration*, signed at London July 14, 1923.
[3] Not printed.
[4] Commercial convention between France and Czechoslovakia, signed at Paris, Aug. 17, 1923; League of Nations Treaty Series, vol. 44, p. 21.

711.60f 2/4 : Telegram

The Secretary of State to the Minister in Czechoslovakia (Einstein)

WASHINGTON, *September 6, 1923—6 p.m.*

35. Your 39, August 30, 7 p.m.

Department is gratified at apparent willingness Czechoslovak Government to arrange to accord most-favored-nation treatment to American products.

You are authorized to address Minister for Foreign Affairs a communication reading as follows:

"As indicated to your Excellency in my note dated (use date of communication sent pursuant to Department's 27, July 19, 5 p.m.) my Government is desirous of negotiating with your Excellency's Government a treaty of amity, commerce and consular rights.

I am directed by my Government to express to your Excellency the hope that pending the conclusion of the proposed treaty it may be agreeable to your Excellency's Government as it is to the Government of the United States to maintain the commercial relations between the United States and the Czechoslovak Republic on a basis of unconditional most-favored-nation treatment whereby the products of the United States will be admitted to importation into the territories of the Czechoslovak Republic on terms not less favorable with respect to quantities, valuation, licensing and import and export duties than the products of any other country.

I should appreciate a communication from your Excellency giving assurances that most-favored-nation treatment in this sense will be accorded American products pending the conclusion of a general treaty."

Department considers it undesirable to mention particular articles in the note.

Further instructions will soon be sent regarding transmission of draft treaty.

HUGHES

711.60f 2/5

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 505 PRAGUE, *September 6, 1923.*
[Received September 20.]

SIR: With further reference to my telegraphic despatch No. 39 of August 30th, I have the honor to state that the ordinary provisions regarding the most favored nation clause will not be sufficient for the protection of our commerce in Czechoslovakia.

The view of the Czechoslovak authorities is that the most favored nation clause refers only to the amount of import duty to be collected but has no bearing on the actual goods which are subject to import

licenses. This view, I have been informed, was accepted by the Genoa Conference. The import license system which was originally adopted with a view to preventing German dumping and to assist in controlling the currency exchange is considered as a temporary expedient of indefinite duration. The present Minister of Commerce when he assumed office two years ago announced himself in favor of abolishing it, but it still goes on and no one can say when it will be terminated.

The result of this system is that the nations which have lately negotiated commercial conventions with Czechoslovakia have been obliged to draw up extensive lists of contingents providing both for specific duties on definite articles and the amount of such articles which can be imported. Thus the French Treaty which has gone into effect on September 1st., stipulates for a contingent of 400 motorcars with a 45% duty, established on an invoice declaration, instead of the arbitrary and grossly exaggerated valuation previously imposed. England, Italy, Germany, Austria, Spain and Switzerland which have concluded treaties with Czechoslovakia on the basis of the most favored nation will benefit by this reduction in the duty although the contingent of motors, the importation of which is authorized, varies in each case. Under the English treaty, for instance, the number allowed is 150. The British Minister told me that as England had practically no tariff, his Government had been invited to prepare a list of contingents.

The same day as I received the draft of the treaty contained in your instruction No. 131 of August 3rd, Dr. Girse, the Acting Minister for Foreign Affairs called my attention to the fact that in view of the new French treaty our commerce would be at a disadvantage unless some arrangement could be entered into, which he suggested should be by an exchange of notes. I therefore called on Mr. Novak, the Minister of Commerce, and showed him the draft of such a note which was forwarded for your approval in my telegraphic despatch No. 39. The specialist at the Ministry of Commerce, Dr. Peroutka, who was called in by the Minister, remarked to me that the only likely source of difficulty lay over the number of motor cars. In the draft of the note which I wrote I had placed this number at 400, the same as in the French Treaty. Dr. Peroutka assented to this but when it was shown to the Minister he remarked that it would only be a hornet's nest to them without corresponding benefit to us, and that the present quota of our motor cars is 180 and has not been exhausted. Should it become so he was quite disposed to grant more, but to put this into an agreement would only expose him to attack.

The same afternoon I called on Dr. Girse where Dr. Peroutka informed him that the draft of my note met with their assent and as

soon as they would receive it from the Legation the most favored nation treatment would be accorded us. The note was sent to the Department for approval the same evening. I now await the receipt of your instructions. Meanwhile I have advised Mr. Consul Winans to suggest to the motor car agents to withhold importations until the most favored nation treatment is assured, which I trust will be in the course of the next few days. The Consul is also preparing an extensive list of our contingent requirements for later consideration.

The actual negotiations of the Treaty cannot proceed until the return of Dr. Beneš, who is now in Geneva and of Dr. Dvořaček, the specialist at the Foreign Office in charge of commercial conventions. He is now in Rome where a treaty is being concluded. From there he is expected to go to Brussels to settle the controversy with Belgium so he is unlikely to return before some time.

I have [etc.] LEWIS EINSTEIN

711.60f 2/6 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, *September 26, 1923—4 p.m.*
[Received 8:18 p.m.]

41. Your 35.[5] Specialist on commercial treaties just returned from abroad informs me verbally that Legation's note is satisfactory except with respect to term "quantities" applying to restricted imports. He says that this is only of theoretical importance to the United States as there is every wish to treat America in the friendliest way but if "quantities" were to be included the same could then automatically be claimed by Germany and would destroy entire basis of previous Czechoslovak commercial conventions. He proposes in Foreign Office reply either to omit "quantities" altogether or else to say matter is left for special arrangements. Also it will be necessary because of Czechoslovak legislation to fix the provisional agreement covered by exchange notes for a definite period of time say till 1925 in the event of treaty not being concluded and state when it goes into force as well as time limit for denunciation. This reply which would have to be published along with Legation's note will possess force of law. Lastly a provision similar to article 4 British treaty regarding special arrangements Austria and Hungary will also be required. No objection is made to similar reservation regarding Cuba.

Consul at Legation's suggestion is advising importers to leave certain American goods in customs pending early conclusion of pro-

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[5] Dated Sept. 6, p. 868.

visional agreement. I consider immediate acceptance of this provisional most-favored-nation reciprocity highly desirable owing to legitimate complaints from importers of American goods that competition is impossible with other countries enjoying lower treaty rates. Please instruct as soon as possible.

EINSTEIN

711.60f 2/6 : Telegram

The Secretary of State to the Minister in Czechoslovakia (Einstein)

WASHINGTON, *October 11, 1923—3 p.m.*

38. Your 41, September 26, 4 p.m.

The United States is prepared to meet the desire of the Czechoslovak Government to omit the word "quantities" from the proposed exchange of notes and to mention in the notes the date on which the provisional agreement shall come into force, a definite period for its duration in the event of the treaty not being concluded, a time limit for denunciation thereof, and an exception of special arrangements of Czechoslovakia with Austria and with Hungary. Accordingly you are authorized to replace the whole part of the draft for an exchange of notes proposed in the Department's 35 of September 6, coming after the word "whereby" with the following:

"the products of each country will be admitted to importation into the territories of the other on terms not less favorable with respect to valuation, import duties and other similar charges than the products of any other country; that similarly in the matter of exportation, treatment not less favorable will be accorded with respect to valuation, export duties and other similar charges; and also that in the matter of licensing each Government so far as it maintains the system of licensing will assure to the commerce of the other treatment as favorable as may be accorded to the commerce of any other country.

My Government would understand that the most favored nation treatment which is hereby agreed upon shall become operative on the day on which this exchange of notes is consummated and shall continue until the first day of January 1925, but that nevertheless either the United States or the Czechoslovak Republic may discontinue such treatment to the commerce of the other country provided it shall thirty days before such discontinuance give to the other notice of such intention.

The United States will not invoke the provisions of this agreement to obtain the advantages of any special arrangements which have been or may be concluded between the Czechoslovak Republic and Austria or Hungary in pursuance of the economic clauses of the

treaties of peace with Austria and with Hungary, and it understands that the Government of the Czechoslovak Republic will not invoke the provisions of this agreement to obtain the advantages which are or may be accorded by the United States to the commerce of Cuba or which are or may be reserved to the commerce of the United States with any of its dependencies and the Panama Canal Zone under existing or future laws.

I should appreciate a communication from Your Excellency giving assurances that most favored nation treatment in the sense of this communication will be accorded by the Government of the Czechoslovak Republic to commerce with the United States pending the conclusion of a general treaty between the two countries, or until the first day of January 1925."

Under such a provision in regard to the matter of licensing as is proposed in the foregoing draft each Government would assure to the commerce of the other treatment in a general way as favorable as it may accord to the commerce of any other country. The United States recognizes that such treatment would not necessarily involve an undertaking by Czechoslovakia to license the importation and exportation of each commodity in the commerce between the United States and Czechoslovakia in the same quantities as in the commerce of Czechoslovakia with other countries. The situation with respect to American commerce might be such that equality of treatment would be satisfied with the licensing of smaller quantities of certain commodities and would demand the licensing of greater quantities of others.

As such a situation admits of the possibility of difference of opinion between the two Governments as to whether at any time the principle of treatment on a basis as favorable in general as that accorded the commerce of any other country is maintained, it is desirable that each country be at liberty to cancel the arrangement now proposed on short notice in the event that such differences of opinion arise. You should make the foregoing explanation orally to the Czechoslovak authorities in connection with the proviso for notice of termination at the expiration of thirty days. For your information. Freedom of action to cancel the provisional arrangement at short notice is particularly necessary for the United States because of the provisions of Section 317 of the Tariff Act of 1922 [6] directing that the President after investigation and recommendation by the Tariff Commission shall impose additional duties on importations from countries which discriminate in fact against the commerce of the United States.

HUGHES

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[6] 42 Stat. 858.

711.60f 2/9 : Telegram

The Chargé in Czechoslovakia (White) to the Secretary of State

PRAGUE, *October 24, 1923—8 p.m.*
[Received 9:18 p.m.]

45. Your 38, October 11, 3 p.m. Signatures of notes Saturday or Monday next. Inasmuch as provisions cannot by law become effective here until after formal approval by Council of Ministers and publication Department's text will be changed so as to make most-favored-nation treatment operative November 5, 1923, instead of "on the day on which the exchange of notes is consummated".

WHITE

Treaty Series No. 673–A

The Chargé in Czechoslovakia (White) to the Czechoslovak Minister for Foreign Affairs (Beneš)

No. 444 PRAGUE, *October 29, 1923.*

SIR: As indicated in my note dated July 21st, 1923, No. 388,[7] my Government is desirous of negotiating with the Government of the Czechoslovak Republic a treaty of amity, commerce and Consular rights.

I am directed by my Government to express to you the hope that pending the conclusion of the proposed treaty it may be agreeable to the Czechoslovak Government, as it is to the Government of the United States, to maintain the commercial relations between the United States and the Czechoslovak Republic on a basis of unconditional most favored nation treatment whereby the products of each country will be admitted to importation into the territories of the other on terms not less favorable with respect to valuation, import duties and other similar charges, than the products of any other country, that similarly in the matter of exportation, treatment not less favorable will be accorded with respect to valuation, export duties and other similar charges and also that in the matter of licensing, each government so far as it maintains the system of licensing will assure to the commerce of the other treatment as favorable as may be accorded to the commerce of any other country. My Government would understand that the most favored nation treatment which is hereby agreed upon shall become operative on the 5th day of November, 1923, and shall continue until the first day of January, 1925, but that, nevertheless, either the United States of [*or*] the Czechoslovak Republic may discontinue such treatment to the commerce of the

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[7] See telegram no. 27, July 19, to the Minister in Czechoslovakia, p. 866.

other country provided it shall, thirty days before such discontinuance, give to the other notice of such intention. The United States will not invoke the provisions of this agreement to obtain the advantages of any special arrangements which have been or may be concluded between the Czechoslovak Republic and Austria or Hungary in pursuance of the economic clauses of the treaties of peace with Austria and with Hungary, and it understands that the Government of the Czechoslovak Republic will not invoke the provisions of this agreement to obtain the advantages which are or may be accorded by the United States to the commerce of Cuba or which are or may be reserved to the commerce of the United States with any of its dependencies and the Panama Canal Zone under existing or future laws. I should appreciate a communication from you giving assurances that most favored nation treatment in the sense of this communication will be accorded by the Government of the Czechoslovak Republic to commerce with the United States pending the conclusion of a general treaty between the two countries or until the first day of January, 1925.

Accept [etc.] J. C. WHITE

Treaty Series No. 673–A

The Czechoslovak Minister for Foreign Affairs (Beneš) to the Chargé in Czechoslovakia (White)

[Translation]

No. 182.207/iv/4–23 PRAGUE, *October 29th, 1923.*

MR. CHARGÉ D'AFFAIRES: I have the honour to acknowledge the receipt of your note dated October 29th, 1923 and I am authorized to declare, that it is agreeable to the Government of the Czechoslovak Republic as it is agreeable to the Government of the United States pending the conclusion of the proposed general Treaty to maintain the commercial relations between the United States and the Czechoslovak Republic on a basis of unconditional most favored nation treatment, whereby the products of each country will be admitted to importation into the territories of the other on terms not less favorable with respect to valuation, import duties and other similar charges, than the products of any other country, that similarly in the matter of exportation, treatment not less favorable will be accorded with respect to valuation, export duties and other similar charges and also that in the matter of licensing, each Government so far as it maintains the system of licensing, will assure to the commerce of the other treatment as favorable as may be accorded to the commerce of any other country.

The most favored nation treatment which is hereby agreed upon shall become operative on the day of November 5th, 1923, and shall continue until January 1st, 1925, nevertheless, either the United States or the Czechoslovak Republic may discontinue such treatment to the commerce of the other country provided it shall thirty days before such discontinuance give to the other notice of its intention.

The United States will not invoke the provisions of this agreement to obtain the advantages of any special arrangements which have been or shall be concluded between the Czechoslovak Republic and Austria or Hungary in pursuance of the economic clauses of the Treaties of Peace with Austria and with Hungary, and it is understood that the Government of the Czechoslovak Republic will not invoke the provisions of this agreement to obtain the advantages which are or may be accorded by the United States to the commerce of Cuba or which are or may be reserved to the commerce of the United States with any to [*of*] its dependencies and the Panama Canal Zone under existing or future laws.

Accept [etc.] Dr. Eduard Beneš

711.60f 2/10 : Telegram

The Chargé in Czechoslovakia (White) to the Secretary of State

Prague, *October 30, 1923—4 p.m.*
[Received 5 : 35 p.m.]

47. Your 38, October 11, 3 p.m. Exchange of notes effected yesterday as indicated my telegram number 45, Oct. 24, 8 p.m. In regard to quantities of restricted imports the Czech Government verbally assures most favorable figures in the present British or French treaties or others to be subsequently negotiated. I am very favorably impressed by this assurance. Full report by mail. May I now present full treaty draft?

White

711.60f 2/12 : Telegram

The Chargé in Czechoslovakia (White) to the Secretary of State

Prague, *November 16, 1923—noon.*
[Received 8 : 15 p.m.]

49. Your telegram number 39.[8] While agreement not yet ratified by Parliament other formalities completed and it has been legally effective since November 5th.

White

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[8] Not printed.

APPOINTMENT OF A CZECHOSLOVAK COMMISSION TO NEGOTIATE A GENERAL REFUNDING OF THE INDEBTEDNESS OF CZECHOSLOVAKIA TO THE UNITED STATES[9]

800.51 W 89 Czechoslovakia/22

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 353

PRAGUE, *February 7, 1923.*
[Received March 1.]

SIR: In conversation with Dr. Beneš today he stated that he was personally in favor of a prompt funding of the Czechoslovak debt to the United States but only hesitated out of a feeling of loyalty to the other nations with whom this country was associated and who were unable to discharge their obligations. I drew his attention to the fact that this had not restrained England and also that whereas the French debt had been incurred mainly for war supplies, that of Czechoslovakia had been contracted after the armistice and principally for foodstuffs. Moreover there was another reason which at least in my opinion made it in the interest of this nation to arrange for the funding of its debt. Where, for instance, Swedish bonds without any specific guarantee sold in New York on a 5¾% basis, those of Czechoslovakia which were admirably secured had dropped 12% from their price of issue and were now selling on a 10% basis. Nothing would do so much to strengthen the credit of this country in the United States as the payment of its debt and I believed that the saving in interest on future issues would more than balance the outlay involved. I had taken the same line of reasoning with Dr. Rašin, the Minister of Finance, who promised me he would arrange for the payment (see Legation's despatch No. 295 of December 7, 1922[10]). His attempted assassination has unfortunately prevented his ability to put this through. Dr. Beneš has, however, assured me of his early consideration of the matter.

I have [etc.]

LEWIS EINSTEIN

800.51 W 89 Czechoslovakia/19 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, *February 19, 1923—5 p.m.*
[Received 3:45 p.m.]

4. Personal letter from Dr. Beneš received today regarding the debt, etc., informs me that "in order to fix the terms of payment definitely the Czecho-Slovak Government intends to send a commis-

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[9] For the settlement reached by the Commission, see *Combined Annual Reports of the World War Foreign Debt Commission*, 1922–1926, p. 193.

[10] Not printed.

sion to the United States to negotiate the matter. The delay so far was caused only by the absolute lack of the premises needed in that case." He states, "nothing lies farther from Czechoslovakia than the intention to evade any of her monetary obligations."

Writing.

EINSTEIN

800.51 W 89 Czechoslovakia/19 : Telegram

The Secretary of State to the Minister in Czechoslovakia (Einstein)

WASHINGTON, *March 13, 1923—3 p.m.*

10. Department's Number 9, March 7, 1923, 3 p.m.[11]

World War Foreign Debt Commission is only empowered to deal with definite signed obligations of foreign Governments (see Section 2 of the Law of February 9, 1922, transmitted with the Department's instruction of February 28, 1922[11]) and not to undertake negotiations with a view to reaching an agreement as to actual amounts owed. The Department understands that the indebtedness of the Czechoslovak Government to the United States includes certain outstanding and unsettled accounts.

At your earliest opportunity, you may suggest to the Minister of Foreign Affairs that, in view of the foregoing, it would be very helpful to both Governments concerned, if it were found possible for his Government to empower its Debt Mission to negotiate a settlement of these accounts and give binding obligations to this Government upon its arrival in this country, in order that the entire indebtedness of the Czechoslovak Government may be included in the subsequent negotiations with the World War Foreign Debt Commission.

Report by cable decision of the Czechoslovak Government in this matter.

You may again orally inform the Minister of Foreign Affairs that the foregoing is, of course, not applicable to the Czechoslovak indebtedness to the Shipping Board.

HUGHES

800.51 W 89 Czechoslovakia/30 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, *March 21, 1923—7 p.m.*
[Received 9 p.m.]

15. Department's 7 and 9.[12] Note just received from Minister for Foreign Affairs encloses *aide-mémoire* containing following points.

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[11] Not printed.
[12] Neither printed.

By Cabinet decision a special commission is to be constituted for following purposes:

(1) To establish total debt to United States and amounts due for flour Siberian army and military supplies.
(2) To alter the accounts kept by Ministries of Finance, Food and National Defense and coordinate them with those of the American Government.
(3) By Cabinet decision the Commission will have the widest powers should occasion arise to take up negotiations for a general settlement of our debt to the United States.
(4) This depends on the following conditions. The Czechoslovak Government notifies its intention to settle this question to the advantage of Allied Governments, especially France and Italy, toward whom it has similar obligations. It desires to know their point of view about Czechoslovak obligations to them, should a settlement be made with all.
(5) In case of a general settlement of debts to the United States, Czechoslovak Government asks assurance of United States that in spite of present settlement it will participate in any advantages which might later be granted to other Allied states in connection with inter-Allied debts.
(6) The Czechoslovak Commission composed of four members will have at its head the new Czechoslovak Minister to Washington, Mr. Chvalkovsky, and will be able to leave Prague toward the end of April.

Forwarding text by tomorrow's pouch.

[Paraphrase.] I had previously been told by Dr. Beneš that France and Italy had not raised any objection, but subsequently he stated that although he had asked both neither had yet made reply. I do not believe that more can be obtained at present from the Czechoslovak Government. I respectfully suggest for the Department's consideration the possible advisability of calling the attention of France and Italy to the fact that Czechoslovakia's debt differs from theirs in that it was almost entirely contracted after the armistice. [End paraphrase.]

EINSTEIN

800.51 W 89 Czechoslovakia/43 : Telegram

The Chargé in Czechoslovakia (Pearson) to the Secretary of State

PRAGUE, *April 30, 1923—4 p.m.*
[Received 8:15 p.m.]

23. Legation's number 21, April 13, 3 p.m.[14] Debt Commission sailing May 5 on *Berengaria* from Cherbourg.[15] Minister for For-

[14] Not printed.
[15] The Commission was composed of Dr. Chvalkovsky, appointed Czechoslovak Minister to the United States; Dr. Lipansky, Counselor of the Ministry of Finance; Captain Křenek, of the Ministry of National Defense; and Francis Pisecky, Director of the Corn Office.

eign Affairs informed me this morning Commission is authorized to conduct negotiations for repayment but must refer any agreement reached back to Czech Government for final approval.

PEARSON

800.51 W 89 Czechoslovakia/51

The Chargé in Czechoslovakia (Pearson) to the Secretary of State

No. 436 PRAGUE, *May 2, 1923.*
[Received May 18.]

SIR: Referring to my telegram No. 23 of April 30, 4 p.m. that the Minister for Foreign Affairs had informed me that the Debt Commission had been empowered to negotiate concerning the repayment of the Czechoslovak indebtedness to the United States, I have the honor to transmit herewith copies of Dr. Beneš' note to that effect, as well as of the Pleins Pouvoirs [16] authorizing the Commission to settle the amount of these debts. It will be observed that the Pleins Pouvoirs do not empower the Commission to discuss the terms of repayment. Dr. Beneš personally informed me that this Commission was intended to obviate any confusion which might arise from including, in a document granting "full powers", conditions limiting those powers.

Dr. Beneš states in his accompanying note that the Czech Commission is authorized to negotiate the conditions of repayment but that the result of these negotiations must be subject to the approval of this government. This approval, as set forth in Dr. Beneš' *Aide Memoire* transmitted with the Legation's despatch No. 400 of March 22nd,[17] depends in part on the consent of the French and Italian Governments. To my inquiry whether this consent had been given Dr. Beneš stated that the Italian Government had not yet replied and that the French had requested time for further deliberation.

I expressed to the Minister the gratification of the United States Government at the decision reached, adding that I sincerely hoped nothing might interfere with the conclusion of an arrangement which would be satisfactory and advantageous to both countries. He expressed similar sentiments and declared that it was probable that Mr. Jan Masaryk (see Legation's despatch No. 424 of April 17th [16]) might be added to the Commission when negotiations for repayment began.

. . . .

I have [etc.] FREDERICK F. A. PEARSON

[16] Not printed.
[17] Not printed; see the Legation's telegram of Mar. 21.

[Enclosure—Translation [18]]

The Czechoslovak Minister for Foreign Affairs (Beneš) to the American Chargé (Pearson)

PRAGUE, *April 30, 1923.*

MR. CHARGÉ D'AFFAIRES: I have the honor to send you herewith copy of the full powers which has been furnished the Czechoslovak Financial Commission now on its way to the United States. In sending it to you I have the honor to inform you at the same time that, outside the competence which is defined by the full powers, the Commission is authorized to negotiate, subject to the reserved approval of the Czechoslovak Government, the conditions for a general settlement of our debts to the United States, and with the reservation that all the advantages which may be eventually granted in later negotiations with the other Allied States in the matter of the inter-Allied debts may be likewise accorded, notwithstanding the present arrangement, to the Czechoslovak Government.

In requesting you, Mr. Chargé d'Affaires, to bring the foregoing to the knowledge of your Government, I have [etc.]

DR. EDUARD BENEŠ

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[18] Supplied by the editor.

DENMARK

ARRANGEMENT BETWEEN THE UNITED STATES AND DENMARK FOR RECIPROCAL EXEMPTION FROM INCOME TAX ON SHIPPING

811.512358 Shipping/1

The Danish Minister (Brun) to the Secretary of State [1]

No. 156

The three Scandinavian countries, Sweden, Norway and Denmark, some time ago appointed commissions, one in each country, for the purpose of revising existing treaties with foreign countries, and of making suggestions with regard to new treaties. A close cooperation has taken place between the three commissions and a Joint Committee was appointed by them, including members from all three commissions. Among the questions which have been discussed at meetings both in Stockholm, Christiania and Copenhagen, is the question of taxation of Scandinavian shipowners by foreign countries.

This question has been the subject of very careful investigation and of earnest consideration and as a result the said Joint Committee drew up a Memorandum dealing with the principles involved, of which the Undersigned Danish Minister to the United States on behalf of his Government begs to forward a translation into English under this cover.

In submitting the said document the Undersigned ventures to ask that the United States Government will give due consideration to the arguments therein contained with a view to relieving a situation which would otherwise threaten the shipping interests of all countries concerned.

C. Brun

Washington, *June 16, 1920.*

[Enclosure—Translation]

Memorandum by the Joint Committee of the Three Scandinavian Treaty Commissions

During later years we have seen a great tendency in various countries of taxing all trades and industries carried on in the country, no

[1] The Secretary of State received identic notes dated June 16 and June 17, 1920, from the Swedish and Norwegian Ministers, respectively; for further correspondence, see vol. II under Norway, p. 635, and Sweden, p. 875.

matter whether they are exercised by persons who are subjects of the country or not, and irrespective of their being resident in the country or not. It may be anticipated that this propensity, owing to the heavy financial burdens under which the nations are labouring will show a further development during coming years, as the states will endeavour to utilize all means of finding incomes and values which may come into the reach of an Income Tax Act.

In the same way must also be explained the attempts which have been made during the war at introducing without any warning a new taxation of foreign shipping, attempts which have caused considerable uneasiness and anxiety among shipowners, not only for fear of being charged with incalculable and heavy taxes which would increase the already burdensome taxation at home, but also by reason of the grave consequences to the international shipping, which the general introduction of such a fiscal policy of necessity will entail.

It ought to be in the interest of all nations that the shipping trade, the free expansion and development of which is of the greatest importance to the international trade and commerce, is not unnecessarily hampered or annoyed. This taxation resorted to by the States of their own or foreign shipping, must therefore bring them such gains as are large enough to make up for the drawbacks of such a system.

Taxation of foreign shipping must be on the assumption that the person liable to pay the tax carries on a trade within the country which is suitable for taxation, and the question is then, to what extent this may be said to be the case.

The profits of shipping result from the exercise of a carrying trade which broadly speaking may be said to consist of the following single parts: Engagement of cargo and passengers, loading and discharge and the transport itself.

Of these operations only that part of the engagement of cargo and passengers which takes place in the country in question, the loading and discharge in ports of the country as well as that part of the transport which is done within the territorial limits of the country may with some reason be said to be a trade exercised in the country in question.

With reference to the engagement of cargo and passengers then this is a work generally carried out by persons residing in the country where this trade takes place, and when the income of these persons from this trade is taxed, this as far as we can see should be sufficient.

As regards the trade which consists in the discharge or loading of goods, this of course is the business of a stevedore, and the firms who carry on this business are taxed on the income derived therefrom in

the country in question, and so far the assessment of this part of the trade must be at an end.

What remains is only that part of the transport which takes place in waters within the territorial limits of the country in question, while the rest of the trade, viz. the transport of the high seas and the business of the Owners themselves, which is carried on where they are domiciled and where the dispositions are made, takes place outside the limits of the country in question, and therefore alone for this reason cannot with any justification and equity be assessed.

As will also clearly appear from the regulation issued by the different countries aiming at an assessment of foreign shipping, a great uncertainty prevails on the part of the Authorities as to the proper course to be pursued. It goes without saying that in the case of shipping it is altogether out of the question to show how large a portion of the profits of the sailing between two countries refers to each particular country, and it will also be impossible to show what portion of the profits relates to the sailing in the waters within the territorial limits of the country. As a further illustration of this point we will suppose that on a single voyage cargo is loaded in two, three or even more countries, and that the cargo is discharged in just as many different countries. If under these circumstances a general assessment of foreign shipping should be carried out strictly, this would lead to the fact of the Owner being compelled every year to make a return to the Revenue Authorities in all the countries where his vessels had been to during the year. He would for all his vessels have to answer a multitude of questions contained in modern assessment papers printed in a language which was not his own and which he is not supposed to understand fully without the assistance of a linguist, a lawyer or an expert accountant. According to the rules of taxation in his own country he would probably be entitled to claim those taxes he is to pay abroad deducted from the taxable amount of his income, but this of course will be impossible, when he is unable in time to ascertain the exact amount of such taxes.

The mere loading or discharge yields no profits to the Owner. The remuneration is attached to the performance of the whole transport, it being impossible to dissolve the same into the different component parts so that a fixed part of the freight should be earned when the goods have come on board, another part at the termination of the transport, and the last portion at the discharge and the delivery of the goods. Of course the law may contain arbitrary provisions for the computation of the income, but their operation will easily be unjust and the introduction of this system will sooner or later lead to the Owners protecting themselves with suitable clauses in the freight contracts through which it will be the shippers of the

goods and not the Owners who will have to pay the tax. Under these circumstances it will not be the shipping trade which is taxed, but the export or the import [trade] of the country provided the tax is also levied at the discharge of the goods. Moreover such a collection of tax will in most cases act particularly unjust, not only because the voyage—even under normal conditions—may bring the Owner loss instead of gain, but also because detention and damage during the voyage or the loss of the vessel may altogether upset any estimate as to the result of the voyage.

It is the timecharter [*time charterer*] who bears the loss of the voyage or receives the profit of the same, and it is he who recharters the vessel and to whom the freight for the voyage is due. The same applies in reality to every time the loading of goods takes place for the charters [*charterer's*] account, this is more frequently the case where a vessel is fixed for a lumpsum and thereupon is placed by the charterer along the quay for loading a general cargo which is booked with the charterer or his agents.

The merchant who gets goods from abroad and sells them at home pays taxes in his native country on the full income of his business. It would be impossible to separate that part of the income earned abroad from the portion earned at home. Nor is such a division or separation possible as far as the Owners are concerned. If it is contended that that part of the voyage which is performed in foreign waters is a profitable trade carried on aboard [*abroad?*], and that therefore a corresponding part of the freight must be looked upon as earned abroad and liable to assessment there, we must bear in mind that the income which might thus be due to the foreign State would be small in comparison with the drawbacks and the difficulties which would be caused, if the Owner and the Revenue Authorities thus for every voyage made within the territorial limits of the country were to keep accounts or control the amount of income which computed according to the duration and distance is attachable to this part of the voyage compared with the whole voyage.

It is true that some Governments also before the war in accordance with their Laws have to a certain extent introduced rating of foreign Shipping Companies who carry on regular lines. Of course such taxation of regular steamship lines will not entail so many drawbacks and difficulties as an all round taxation of foreign shipping, but even in the case of liners wellfounded objections may be brought forward against an assessment which rests on the illusion that it is possible to make rules for a division of the taxable income for the different countries the vessel is calling at on the way. If it is intended to tax the income said to be derived from trade and business in foreign countries, how are we then to draw the line? Is it the place where

the freight contracts are made that settles the question, or does it depend upon where the goods are shipped or perhaps where they are discharged? Or shall the liability to pay taxes be dependent on whether the freight is paid in the foreign country to which the vessels of the line are trading? It is also difficult to give a definition of Ruteskibsfart (regular service) so exact and clear that it cannot give rise to doubt and disputes.

We think it will be obvious from the above that the rating of foreign shipping is a problem which contains just as great difficulties to the Authorities as inconvenience to the receivers. The economical gain that may be derived from the taxation of foreign shipping will prove delusive on closer investigation, while the burdens, the drawbacks and the difficulties caused thereby may be rather perceptible.

Such an assessment is sure to create disaffection and bitterness, and will undoubtedly lead to retaliatory measures wherever it is possible. Even if the taxation is kept within such bounds that it cannot reasonably be objected to, we must be prepared that rating in one country will cause a corresponding rating in the other. What is gained at home will therefore easily be lost abroad. Whether the experiment will be in favor of the one country or the other will depend upon the size and movements of the mercantile marine, but broadly speaking we may take it that loss and gain in the long run will balance each other, leaving only a lot of trouble both for the taxpayers and the Revenue Authorities, to say nothing of the heavy costs of the assessment and collection of the tax.

For these reasons it would be very desirable if the question of taxing foreign shipping could form the subject of further investigation before passing final legislation in the different countries with reference hereto. The best plan would be if attempts were made at arriving at an international arrangement, by which the States mutually bound themselves not to place any obstacles in the way of foreign shipping by taxing the profits of the same, no matter whether the tax refers to Municipalities or to States.

We believe the question of such an international arrangement would more especially adopt itself for discussion at an international conference, and if such a conference were to be proposed by one of the leading sea-faring nations we would consider it to the advantage of all parties interested in the shipping trade.

811.512358 Shipping/6

The Danish Minister (Brun) to the Secretary of State

No. 370 WASHINGTON, *October 27, 1921.*

SIR: On June 17th 1920 I had the honor to deliver to Mr. Secretary of State Bainbridge Colby a note dated June 16th 1920 on the

question of taxation of foreign shipping. A Memorandum was appended to the note, setting forth a number of very serious arguments against such taxation and the injurious effects thereof, and it was suggested that the question should be dealt with by an International Conference, to be proposed by one of the leading seafaring nations.

By a reply-note of October 5th 1920 [2] the Department of State informed me that the matter was receiving the careful consideration of the United States Government.

On May 31st 1921 Senator Jones of Washington introduced a bill (S. 1942) for the reciprocal exemption from taxation of foreign shipping and a Section 211 (8) to the same effect was inserted in the new Revenue Bill introduced by Mr. Fordney in the House of Representatives on August 15th 1921 (H. R. 8245).

You will no doubt remember that this last named Section 211 (8) was voted down in the Senate on October 1st on the proposition of Mr. Lenroot from Wisconsin.

The Danish Government and Danish shipping interests are looking forward with the greatest concern to the effects of universal taxation of foreign shipping, effects which without doubt would be felt also by the United States, and, in these circumstances, I venture to ask if you could not see your way to acquaint the appropriate Committees of the two Houses of the United States Congress with the contents of my present note and of the documents which I had the honor to deliver to Mr. Colby on June 17th 1920.

I have [etc.] C. Brun

811.512358 Shipping/6

The Secretary of State to the Danish Minister (Brun)

Washington, *December 21, 1921.*

Sir: I have the honor to refer to your note of October 27, 1921, inviting attention to the striking out of Paragraph 8, Section 213 of the Revenue Bill for 1921, and to the adverse effect which such action might have on commerce between the United States and Denmark, and to inform you that the paragraph in question was reinserted in the bill as enacted November 23, 1921, and now reads as follows:

"Section 213—(*b*) The following items . . . shall be exempt from taxation under this title.

(8) The income of a nonresident alien or foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country

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[2] Not printed.

which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States."

Accept [etc.]

For the Secretary of State:
HENRY P. FLETCHER

811.512359 Shipping/8

The Danish Minister (Brun) to the Secretary of State

No. 157 WASHINGTON, *May 22, 1922.*

SIR: With reference to your letter of December 21, 1921 regarding Section 213 *b* No. 8 of the Revenue Act of November 23, 1921, I am directed to inform you that the Danish Government will be ready to declare in a note to the Government of the United States that the income of a nonresident alien or foreign corporation which consists of earnings derived from the operation of ships documented under the laws of the United States will on condition of reciprocity not be subject to taxation in Denmark.

I am further instructed to express to you the hope, that the United States Government may find it possible to extend the tax exemption in the case of Danish shipowners to include also the years 1917–1920, in which case the Danish Government will be prepared to draft the above named note to the American Government accordingly.

I have the honor to add that I am authorized to make the same statement on behalf of the Government of Iceland and I beg that my present communication may be considered as an expression also of the intention and desire of the Government of Iceland.

I venture to hope that this proposition may be found satisfactory and that you will be able to consent to the exchange of notes referred to above at your earliest convenience.

I have [etc.] C. BRUN

811.512359 Shipping/8

The Secretary of State to the Danish Minister (Brun)

WASHINGTON, *August 9, 1922.*

SIR: I have the honor to refer further to your note of May 22, 1922, in which you refer to Section 213(*b*)(8) of the Revenue Act of 1921, providing for the exemption from taxation of the income of a non-resident alien or foreign corporation which consists of earnings derived from the operation of ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States, and state that your Government is prepared to

declare to the Government of the United States that the income of a non-resident alien or foreign corporation which consists of earnings derived from the operation of ships documented under the laws of the United States will, on the condition of reciprocity, not be subject to taxation in Denmark or Iceland. You express the hope that it may be possible for this Government to extend the income tax exemption in question, on the basis of reciprocity, to the years 1917 to 1920, inclusive.

I have the honor to state that in order to establish between the United States and Denmark and the United States and Iceland the reciprocal income tax exemption provided for in Section 213(*b*)(8) of the Revenue Act of 1921, it will be necessary for the Danish Government to declare that the income from sources in Denmark and Iceland of a citizen of the United States or of an American corporation which consists exclusively of earnings derived from the operation of ships documented under the laws of the United States is not subject to income taxation in Denmark or in Iceland. Upon the receipt of a note to this effect from the Danish Government this Government will declare, in a note to the Danish Government, that Denmark and Iceland satisfy the equivalent exemption provision of Section 213(*b*)(8) of the Revenue Act of 1921.

I may state that in the statutes now in force no provision is made for the exemption from taxation by this Government of the income derived from the operation of foreign ships prior to January 1, 1921, and that the appropriate authorities advise the Department that they cannot see their way clear to recommend to Congress a modification of these statutes so as to provide for the exemption of Danish and Icelandic shipowners from the payment of income taxes for the years 1917 to 1920 inclusive.

Accept [etc.] CHARLES E. HUGHES

811.512359 Shipping/14

The Danish Minister (Brun) to the Secretary of State

No. 236 WASHINGTON, *August 18, 1922.*

SIR: By my letter of August 12th (No. 230)[3] regarding an exchange of notes between the Government of Denmark and the Government of the United States for the reciprocal exemption of shipowners from income tax, I stated it to be the understanding of the Danish Government that this exemption when established would be as from January 1st 1921, notwithstanding the fact that the actual exchange of notes can not be arranged for until some time hence

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[3] Not printed.

because the conditions stated in your note to me of August 9th must first be brought to the knowledge of the Danish Government.

I would be greatly obliged to you if you would be so good as to confirm to me the correctness of the above named understanding.

I have [etc.] C. Brun

811.512359 Shipping/16

The Danish Minister (Brun) to the Secretary of State

No. 284 Washington, *October 24, 1922.*

Sir: With further reference to your reply-note of August 9th 1922 relative to the reciprocal exemption of shipowners from income tax as from January 1st 1921, in accordance with Section 213 *b* 8 of the Revenue Act of 1921, and pursuant to instructions now received from the Danish Minister of Foreign Affairs, I have the honor to declare on behalf of the Danish Government that the income from sources in Denmark and Iceland of a citizen of the United States or of an American corporation, which consists exclusively of earnings derived from the operation of ships documented under the laws of the United States, is not subject to income taxation in Denmark or in Iceland.

In these circumstances I venture to hope that you will state in a note to me, for the information of the Danish Government, that Denmark and Iceland satisfy the equivalent exemption provision of Section 213 *b* 8 of the Revenue Act of 1921 and that Danish and Icelandic shipowners will be exempted from income tax in the United States as provided in the said Section as from January 1st 1921, in accordance with the letter (No. 236) which I had the honor to address to you on August 18th 1922.

I have [etc.] C. Brun

811.512359 Shipping/15

The Secretary of State to the Danish Minister (Brun)

Washington, *October 25, 1922.*

Sir: I have the honor to refer to your note of August 18, 1922, in which, with reference to the proposed exchange of notes between the United States and Denmark for the reciprocal exemption of ship owners from income taxation, you request the Department to confirm the understanding of the Danish Government that this exemption, when established, would be as from January 1, 1921, notwithstanding the fact that the actual exchange of notes can not be arranged until some later date.

I have the honor to state that upon receipt of a note from the Danish Government declaring that the income from sources in Denmark and Iceland of a citizen of the United States or of an American corporation, which consists exclusively of earnings derived from the operation of ships documented under the laws of the United States, has since January 1, 1921, not been subject to income taxation in Denmark, or in Iceland, the Treasury Department will issue a statement that Denmark and Iceland satisfy the equivalent exemption provision of Section 213(*b*) (8) of the Revenue Act of 1921. In case income taxes have been collected by this Government from non-resident aliens or foreign corporations on income which consists exclusively of earnings derived since January 1, 1921, from the operation of ships documented under the laws of Denmark or Iceland, such taxes will be refunded to claimants.

Accept [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

811.512359 Shipping/17

The Danish Minister (Brun) to the Secretary of State

No. 290 WASHINGTON, *October 28, 1922.*

SIR: I have the honor to acknowledge the receipt of your reply-letter of October 25th with reference to the proposed exchange of notes between Denmark and the United States for the reciprocal exemption of shipowners from income taxation, which has evidently crossed my note to you of October 24th on the same subject.

In answer thereto I beg to state that the income from sources in Denmark and Iceland of a citizen of the United States or of an American corporation, which consists exclusively of earnings derived from the operation of ships documented under the laws of the United States, is not and has not since January 1st 1921 or previously been subject to income taxation in Denmark, or in Iceland, and that my letter to you of October 24th should be so understood.

I have [etc.] C. BRUN

811.512359 Shipping/18

The Secretary of State to the Danish Minister (Brun)

WASHINGTON, *December 5, 1922.*

SIR: I have the honor to refer to your note of October 28, 1922, in further reference to the proposed exchange of notes between the United States and Denmark for the reciprocal exemption of ship

owners from income taxation, for which provision is made in Section 213(*b*)(8) of the Revenue Act of 1921, and to inform you of the receipt of a communication from the Treasury Department regarding the matter, from which the following paragraph is quoted for your information:

"I have the honor to advise that inasmuch as the income from sources in Denmark and Iceland of a citizen of the United States or of a corporation organized therein which consists exclusively of earnings derived from the operation of ships documented under the laws of the United States is not and has not been subject to income tax since January 1, 1921 or previously, it is held that Denmark and Iceland satisfy the equivalent exemption provision of Section 213(*b*)(8) of the Revenue Act of 1921. In case any Federal income taxes have been collected from nonresident aliens or foreign corporations on income which consists exclusively of earnings derived on or since January 1, 1921, from the operation of ships documented under the laws of Denmark or Iceland, such taxes will be the proper subject of a claim for refund."

Accept [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

811.512359 Shipping/20

The Danish Minister (Brun) to the Secretary of State

No. 331 WASHINGTON, *December 6, 1922.*

SIR: I have the honor to acknowledge the receipt of your reply-note (undated) received December 5th in which, with reference to my letter of October 28th 1922, you state

"that inasmuch as the income from sources in Denmark and Iceland of a citizen of the United States or of a corporation organized therein which consists exclusively of earnings derived from the operation of ships documented under the laws of the United States is not and has not been subject to income tax since January 1, 1921 or previously, it is held that Denmark and Iceland satisfy the equivalent exemption provision of Section 213 (*b*)(8) of the Revenue Act of 1921".

and that

"in case any Federal income taxes have been collected from nonresident aliens or foreign corporations on income which consists exclusively of earnings derived on or since January 1, 1921, from the operation of ships documented under the laws of Denmark or Iceland, such taxes will be the proper subject of a claim for refund".

I have at once advised the Danish Government accordingly and beg to express my very great appreciation of your courteous assistance to arrive at the desired solution of this part of the taxation question.

I have [etc.] C. BRUN

DOMINICAN REPUBLIC

DELAY IN HOLDING ELECTIONS IN FULFILLMENT OF THE PLAN OF EVACUATION, AND THE EXTENSION OF THE LIFE OF THE PROVISIONAL GOVERNMENT[1]

839.00/2672a : Telegram

The Acting Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *February 14, 1923—6 p.m.*

6. The Department desires to be kept promptly and fully informed regarding political conditions in Santo Domingo. Department has not yet been informed of promulgation of electoral law, or if it has not yet been promulgated, as to the reasons for its delay. Please report in detail regarding this and all other political matters.

PHILLIPS

839.00/2673 : Telegram

The Minister in the Dominican Republic (Russell) to the Acting Secretary of State

SANTO DOMINGO, *February 15, 1923—11 a.m.*
[Received 8:38 p.m.]

6. Your 6, February 14, 6 p.m. Electoral law completed and undergoing final reading before presentation to the President for promulgation which will be in the next few days.[2] Law of provinces completed and law of communes in course of preparation. In regard to delay see my despatch number 830 [3] which left here in the pouch February 12th. Political feeling very intense between Vasquez party and supporters of Peynado.

There is a persistent rumor that at the last moment Velasquez party will unite with Vasquez to defeat Peynado. Jacinto de Castro has shaken [*forsaken?*] Vasquez party and resigned his candidacy for the Vice Presidency.

RUSSELL

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[1] For previous correspondence concerning plan for the withdrawal of the American forces, see *Foreign Relations*, 1922, vol. II, pp. 5 ff.
[2] The electoral law was promulgated on Mar. 8, 1923.
[3] Not printed.

839.00/2693 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *April 5, 1923—11 a.m.*
[Received April 6—4:50 a. m.]

42. I held yesterday a meeting of the Commission of Dominican Representatives.

I find that there has been an entirely unnecessary delay of approximately three months in the promulgation of the election [law] by the Provisional President with a consequent retarding of the program of evacuation a corresponding period. The law was completed before my departure from Santo Domingo last October, requiring at that time only minor changes. The delay in its promulgation was due to the lack of initiative of the members of the Commission who only transmitted the final version to the President the 5th of March.

With the desire of expediting the electoral process so far as possible and of cutting short the period of electioneering, which if unduly prolonged may be productive of disorders, I agreed with the members of the Commission upon the following program which is as short in extent as the election law permits.

1. The electoral boards will be constituted before April 21st.
2. As soon thereon [*thereafter?*] as the arrangements for registration have been completed, the Central Electoral Board will announce the commencement of the registration period. This period is of 90 days.
3. Upon the 45th day of the registration period, if registering has been progressing in a satisfactory manner, the President will convoke the general elections which take place 90 days after the decree of convocation is issued.

Working under this program I estimate that the general elections will be held at the earliest about October 1st next. It is evident that if the electoral law had been promulgated as I anticipated, at the latest two months after my departure last autumn, the general elections would have been held in May or June.

Since no effort has been made to obtain any part of the physical material required for registration or the elections such as ballots, registration certificates, etc., I have advised the Provisional Government to make immediate arrangements to obtain the material and steps have now been taken in this sense.

WELLES

839.00/2695: Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *April 10, 1923—4 p.m.*
[Received April 11—6:15 a.m.]

46. The Central Electoral Board, created in accordance with article 5 of the electoral law, was today constituted and its members will take the oath of office tomorrow. It is composed of the following members: President ex-officio, Justice Woss y Gil of the Supreme Court; Justice Despradel of the Court of Appeals of Santiago; Dr. Vicioso of the University of Santo Domingo.

The following are the political representatives on the Board: Dr. Arredondo [Miura] of the National Party; Dr. García Mella of the Liberal Party; and Dr. Soler of the Progressive Party.

The nonpolitical members of the Central Electoral Board are men of high standing and public opinion appears to be completely satisfied that they will carry out the duties of their office with complete impartiality. The political members selected are likewise entirely satisfactory.

WELLES

839.00/2709

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

No. 52 SANTO DOMINGO, *April 30, 1923.*
[Received May 16.]

SIR: I have the honor to inform you that there appears to exist a concerted effort on the part of certain members of the Partido Nacional and of the Partido Progresista to induce the public to believe that Señor Peynado, the Presidential candidate of the National Coalition party, is favored for the Presidency by the Government of the United States and that his candidacy is supported financially by the American sugar companies in this Republic.

The object of the two parties first mentioned is undoubtedly to appeal to the prejudice of a considerable element among the Dominicans which is opposed to any individual or any measure which might be considered as favorably regarded by the American Government. Until recently, the members of all of the political parties made no attempt to gain the support of this "irreconcilable" element because of its opposition to the Plan of Evacuation. Political rivalry has, however, now become more intense, and each party is endeavoring to secure strength by every means within its power.

. . . .

I consider that this propaganda is principally dangerous because of the fact that it will probably cause the election campaign to develop along pro-American and anti-American lines. Should this be the case, the influence which the American Government may have with the coming Constitutional Government will be seriously diminished, no matter which of the candidates may be elected. I have spoken with the Presidential candidates of both the Partido Nacional and the Partido Progresista regarding this matter, and I have been advised by both that they have made every effort to combat the propaganda of this nature which is being carried on by some of their adherents.

In support of their declarations in this sense, I was advised yesterday by the American Manager of one of the sugar companies in the Province of San Pedro de Macoris, that General Vasquez, the candidate of the Partido Nacional, in several speeches which he made in Macoris and in Seybo in the course of the last week, took particular pains to announce publicly that he had entire confidence in my strict impartiality as regards the candidates in the coming elections and that he was convinced that the Government of the United States had no preference as between the three political parties of this Republic. Señor Velasquez advised me that in several speeches which he was due to make within the next few days in Santiago, La Vega and Moca, he would take occasion to make declarations of the same tenor.

I have [etc.] SUMNER WELLES

839.00/2706: Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *May 12, 1923—12 noon.*
[Received 10:22 p.m.]

56. Among the conditions placed upon the exercise of the Provisional Government by the members of the Commission under article 2 of the Plan of Evacuation [4] is the provision that the term of office of the Provisional Government elected by them in September 1922 should expire August 16, 1923. It has of course been evident for some months past that the Provisional Government would be forced to function for a considerable period after that date. Recently rumors have been current that one of the political parties represented in the Commission would refuse to agree to the continuance of the Provisional President in office after the date originally set. While the rumors had no foundation in fact so far as the leaders of any one

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[4] *Foreign Relations*, 1922, vol. II, p. 33.

of the political parties were concerned and emanated only from a few politicians in the Liberal Party who had been unable to induce the President to deviate from his policy of strict impartiality, I have felt it highly desirable that some official announcement be made by the Commission that no change would be made in the Provisional Government after the expiration of the period originally set. The Commission yesterday therefore unanimously voted to prolong the term of office of the Provisional Government until December 31, 1923. Public announcement to this effect will be made as soon as the President's formal agreement is obtained to continue in office for the time fixed. In the event that the execution of the Plan of Evacuation is not completed before January 1, 1924, the Commission agrees to continue the present Provisional Government in power for such further period after that date as may be necessary.

WELLES

839.00/2712 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *May 17, 1923—12 noon.*
[Received May 18—2:10 a.m.]

57. I am planning to leave Santo Domingo for the United States via Porto Rico on May 21. The Central Electoral Board will complete tomorrow the appointment of the remaining permanent electoral boards so that on May 19 all the provincial and municipal electoral boards will be installed and functioning. The Provisional Government has in readiness all the material regarding the registration and voting. It will thus be possible for the registration period to commence on the date set by the electoral code and in strict accordance with its provisions. Since the elections will be held on the 105th day after the commencement of the registration period and since the political activity of the electoral period will not commence until the 45th day before the date of the elections, I do not consider that my presence is required here until the early days of August.

The political parties have now all complied with the requirements of the electoral law by the inscription yesterday by the Central Electoral Board of the national coalition as a national political party. The political situation is remarkably quiet and I anticipate no trouble during the first 60 days of the registration period.

I shall report to the Department immediately after my return to the United States.

WELLES

839.00/2709

The Secretary of State to the Commissioner in the Dominican Republic (Welles)

WASHINGTON, *May 24, 1923.*

SIR: The Department has received your despatch No. 52 of April 30, last, and views with satisfaction your endeavor to make clear in the Dominican Republic the neutral position of the American Government and of yourself in the presidential contest.

I am [etc.]

For the Secretary of State:
WILLIAM PHILLIPS

839.00/2723 : Telegram

The Minister in the Dominican Republic (Russell)[5] *to the Secretary of State*

SANTO DOMINGO, *June 23, 1923—9 a.m.*
[Received June 25—3:40 p.m.]

27. Registration commenced 20th and is continuing daily. Reports from interior indicate progress. Registration in the capital first two days 600.

RUSSELL

839.00/2726a : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

[Paraphrase]

WASHINGTON, *August 3, 1923—1 p.m.*

29. The Acting Military Governor of Santo Domingo has informed the Navy Department by telegraph that the smuggling of arms has reached such large proportions as to make the Dominican situation very grave; that the antagonism against the United States endangers the future interests of the Occupation; that the safety of the brigade and the preparation of plans for any contingency require that the brigade obtain information from day to day but lack of funds is seriously curtailing activities in this direction; and a request is made that $2,000 for the purpose of intelligence be placed at the disposal of the quartermaster of the brigade.

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[5] Commissioner Welles returned to the United States in May and remained until late in October.

The Navy Department proposes to send the commander of the Special Service Squadron in the *Rochester* to investigate the situation. The Department desires you to state immediately by telegraph your opinion whether the visit of an American warship at this time would affect the political situation unfavorably, and also to express your views on the Acting Military Governor's telegram.

HUGHES

839.00/2730 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

[Paraphrase]

SANTO DOMINGO, *August 12, 1923—noon.*
[Received August 13—6:02 a. m.]

40. Your No. 29, August 3, 1 p. m. In an earlier despatch [6] I have already outlined the situation regarding the importation of arms. Intelligence agents are actively engaged at present in efforts to investigate all information available as to the existence of arms and have ascertained that quantities of firearms and some ammunition have been in fact smuggled into the Republic. Several revolutionary agents from one of the South American republics are in the country and it may be that they are endeavoring to use this place as a base for a revolutionary movement against their own country. Intelligence agents in the southwest dug up last week a large sack of hidden ammunition.

I do not think the situation would be unfavorably affected if the *Rochester* should come as a naval transport, as these transports are constantly arriving. I have received assurances that the decree calling for the elections will be issued not later than the 20th.

RUSSELL

839.00/2732 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *August 16, 1923—1 p.m.*
[Received August 17—2:30 p.m.]

41. Presidential decree issued today calling for elections on November 14.

RUSSELL

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[6] Not printed.

839.00/2734 : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *September 10, 1923—noon.*

36. Referring to your despatches and others from the Military Governor on recent smuggling of arms, please report by telegraph whether indications of smuggling continue. You are authorized, in your discretion, to ask Provisional Government what measures have been taken in this regard.

HUGHES

839.00/2736 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *September 11, 1923—noon.*
[Received September 14—10:20 a.m.]

48. Your 36, September 10, noon. Indications are that there is a cessation in the smuggling of arms. Most of the arms were furnished during the months of May, June and July. Frequent conferences with the Provisional Government on this matter and Military Governor submitted all information obtained from brigade intelligence agents. Dominican national police have captured about 600 revolvers and rifles.

RUSSELL

839.00/2743c : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *September 27, 1923—5 p.m.*

37. Department informed Dominican Commission, as well as Provisional Government, have agreed to suspend from office for ten days prior to elections all alcaldes pedañeos in the country, as many of these rural officials are reported to be partisan, and to transfer their powers to the local Policia Nacional.

In order to remove all possible grounds for complaint on basis of partisanship the Department believes this period should be prolonged to 45 days commencing October 1. Please present this view to the Provisional Government and endeavor to have change effected.

HUGHES

839.00/2741 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *September 28, 1923—noon.*
[Received September 29—10:25 a.m.]

50. Your 37, September 27, 5 p.m. No agreement has been made by the Commission and the Provisional Government in regard to suspension of alcaldes pedañeos. At a meeting of the Commission some time ago at which the Minister of the Interior was present the latter stated that the Government had in mind the suspension of alcaldes in certain communes except those on the frontier but nothing was ever done in the matter and this morning when I presented the Department's view in this matter the Government requested me to state that it thought it most unwise and dangerous for the preservation of order at present to suspend from office these rural officials.

RUSSELL

839.00/2740 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *September 28, 1923—5 p.m.*
[Received September 29—10:25 a.m.]

51. . . . It seems almost impossible now to deliver registration certificates in sufficient number before the elections to have an expression of the will of the people and the Commission is to meet next week to consider the abolishment of the provision in the electoral law as to registration certificates. See my despatch number 893 of September 18.[7]

RUSSELL

839.00/2741 : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *October 5, 1923—5 p.m.*

39. Your 50, September 28, noon, and Department's 37, September 27, 5 p.m.

Department desires, by cable, full information as to the reasons of the Provisional Government for believing that suspension of alcaldes pedañeos for a period before the holding of the elections would make the preservation of order precarious.

[7] Not printed.

The Department is aware that the great majority of these officials was appointed during the life of the Military Government without regard to their political affiliations. Since the Dominican employees of the Military Government, upon whose recommendations the alcaldes pedañeos were appointed, were aligned with the interests of General Vasquez or Senor Velasquez, the Department believes that the majority of the alcaldes pedañeos are consequently actively working in the interests of these two candidates. The Department considers it of the highest importance, therefore, in order that every just ground for discontent on the part of a portion of the voters may be avoided in the future, that the Provisional Government adopt, without delay, the solution of this problem already indicated by the Department and suspend the alcaldes pedañeos from their duties for a period of at least 30 days prior to the holding of the elections.

This desire of the Department is made with the understanding that the Policia Nacional Dominicana is fully competent to preserve order in the rural districts during the period in which the alcaldes pedañeos are suspended from their functions. The Department consequently desires you to consult the Provisional President, the Minister of the Interior, the Military Governor, and Colonel Cutts, upon this point, and report promptly the opinion expressed by them.

HUGHES

839.00/2740 : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *October 5, 1923—7 p.m.*

41. Your 51, September 28, 5 p. m. and your despatch 893 of September 18.[8]

The Department views with the gravest concern any intention on the part of the Commission or the Provisional Government to amend further the electoral law. The law was considered fully and with the utmost deliberation and was adopted with the full consent of all the political parties represented in the coming elections. The Department is consequently unable to acquiesce in the introduction of any further amendments or modifications at this late date. If the apparent desire of the Commission to suppress the provision in the election law requiring all voters to present registration certificates be carried out, it would be impossible for a fair election to be held, and the coming election would be on a par with the elections held in the Dominican Republic in the past, which have, in large part, been

[8] Latter not printed.

responsible for the disturbed conditions existing in the Republic for so many years. The Provisional Government and the electoral boards have had ample opportunity to take all the steps required in Chapter 5 of the Election Law concerning the distribution of cedulas to the registered voters. Should the directors of the political parties and the voters affiliated with one or the other of the parties not have availed themselves of the provisions of the Law from Article 64 to Article 79, inclusive, the responsibility lies upon them. The Department, therefore, believes, in view of these circumstances, that it is far more in the true interest of the Dominican Republic to hold the coming elections in strict conformity with the Election Law as finally adopted last May, even though a considerable percentage of Dominican citizens should be prevented from voting because of their own negligence, than that the election law should be now further amended in a manner so unwise as to make it impossible for the coming elections to give any fair indication of the desires of the Dominican people.

Advise Commission and Provisional President immediately of Department's views as above expressed.

HUGHES

839.00/2743b : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *October 6, 1923—5 p.m.*

42. Please advise Department by cable, after consultation with the President and Secretary of the Interior, on the following points:

1. Have the central, provincial and municipal electoral boards been functioning in a satisfactory manner?
2. Has the Central Electoral Board adopted regulations, supplementary to the provisions of the Electoral Law, amply sufficient to govern the procedure of the other electoral boards?
3. Have inspectors been appointed by the Central Electoral Board to maintain constant supervision over the activities of the lower boards?
4. Has the Government placed at the disposition of the Central Electoral Board all the material required by the Law for distribution to the electoral boards and the voting booths?
5. Has the Government been advised of any unlawful coercion exercised by the members of the Policia Nacional Dominicana, by the alcaldes pedañeos, or local police officials, and if so, have remedial measures been adopted?

HUGHES

839.00/2744 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *October 8, 1923—5 p.m.*
[Received 12:15 p.m.]

53. Considerable feeling which culminated last week in a public meeting of protest against decision of Central Electoral Board in throwing out entire ticket of Vasquez Alliance nominated in the Province of La Vega. Electoral law prescribes that the acts of party conventions in nominating candidates must be notified in duplicate but in the nominations in question instead of duplicate certified copy was annexed to the original. This throws out one entire province claimed for Vasquez.

RUSSELL

839.00/2747 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *October 10, 1923—noon.*
[Received October 11—8:35 p.m.]

54. Your telegram number 42, October 6, 5 p.m. In regard to electoral boards Government has answered as follows:

1. Yes. The municipal boards have been really inefficient in the small towns for lack of capable personnel and they have been unable to carry out the mechanism of the electoral law which is very complicated and difficult for them.
2. The Central Electoral Board has been working in a manner worthy of praise endeavoring to render more efficient the work of the inferior boards and issuing rules to control the procedure. However, the result has not been satisfactory as the Central Board demands compliance with the letter of the law which makes the work of the inferior boards more difficult as the law is new and has absolutely revolutionized all electoral processes hitherto existing in the Dominican Republic. In some cases the Central Board has sent some of its own members to inspect the work of the boards and in other cases has confided this inspection to the intermediate boards.
3. The electoral law gives no authority to the Central Board to name inspectors. For this reason when it has been found necessary to inspect, the Central Board has sent its representative.
4. Absolutely yes. When the members of the boards were named the Government already had on hand all material necessary. Just as soon as the boards were named the material was distributed to them directly by the Government. At present all the material for the voting places is on hand but no distribution has been commenced because the personnel of the voting places has not yet been named.

The Department of the Interior has a plan for this distribution in four days as was done when registration began.

5. The Government has had notice of illegal coercion on the part of the Dominican National Police, alcaldes pedañeos and municipal police but in no case of the slightest importance. Against the Dominican National Police there was a circular letter of a lieutenant coercing a group of voters of the Coalition Party but on investigation it was found that the lieutenant was merely carrying out the law. The only charges against alcaldes pedañeos came from the Province of La Vega and were addressed by Dr. Garcia Mella candidate for the senatorship from the Province. Investigation developed the fact that the alcaldes pedañeos were only requesting their political representatives to cooperate. There was not a single case of violence. In order to avoid similar complaints the Department of the Interior addressed a circular letter to the governors of the provinces on this subject and thereafter the pedañeos abstained from all such work. There may be exaggeration in the matter. It is to be observed that the pedañeo is merely a rustic without salary whose duty is to pursue criminals and there is no law that prohibits him from belonging to a political party. From no part had there been disorderly charges against municipal police. The political newspapers have sometimes talked about members of the municipal police being in sympathy with one political party or other but there has never been anything to base charges on.

RUSSELL

839.00/2749 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *October 10, 1923—1 p.m.*
[Received October 13—1:30 p.m.]

55. With reference to your telegram 39, October 5, 5 p.m., in regard to suspicions [*suspension*] alcaldes pedañeos. Conference with Provisional President contained in a letter from the Minister of the Interior to the President and approved by the latter which is as follows: I consider it absolutely unwise to suppress or suspend the alcaldes pedañeos. For some time past the political leaders have complained of imaginary excesses committed by pedañeos. After careful consideration, however, by this party it developed that the only crimes committed by these men was that they were persuading their political friends to register. This was done by alcaldes [in?] all the different parties. There was not one case where it was proved that these acts were committed with force nor that the alcaldes prevented registration of any citizen of politics different from them. The Department of Interior and police in accordance with your in-

structions addressed a circular letter to the governors of the provinces in regard to the participation of officials in election matters and in order that there should be no criticism the alcaldes were forbidden to participate. Since then there has been no justifiable cause of complaint against the alcaldes. The suppression or suspension before the elections would surely result in much trouble. The alcalde is the only official that is feared by the country people and with the disappearance of his authority infractions of the law would multiply especially as the Government has not sufficient police to take the place of these rural officials. Three or four months ago the question of alcaldes was discussed at the American Legation and I proposed the issue of Executive order suspending alcaldes for 10 days prior to elections and this was approved by several of the Commissioners. At present I am absolutely convinced that this should not be done not only for the reason of the Commissioners above mentioned but because the purpose that the alcaldes take no part in the voting would be absolutely frustrated as they would still exert their influence with the country people and bring them to polls which is exactly what it is desirous to avoid. The opinion of Colonel Cutts is as follows:

"The available forces of the Dominican National Police are positively not sufficient to even attempt to police the sections now allotted to the alcaldes except on definite calls for assistance. They are hardly sufficient in numbers at present to perform the extra work called for by the elections. It is not considered that the relieving of the alcaldes would make any difference in political effect unless they are physically removed to [*from?*] their districts."

The opinion of the Military Government is as follows:

"The alcaldes pedañeos will probably carry out their mission as a legally constituted body to make arrests under certain conditions and act as a factor in maintaining peace and order. This body of men were appointed honestly without regard to their political affiliation during the regime of the Military Government which selected them because of reliability. Since the advent of the Provisional Government I am led to believe that they have been carefully selected from those whom the appointing power considers reliable. Should the alcaldes desire to do any electioneering or to practice any undue influence in their sections it is my opinion that a suspension from office cannot prevent it. The suspension from office of this body of men will deprive the country of their services at a time when the Provisional Government will most need them to contribute to the success of the elections in a legal way. There is no replacement body to use during the period of their suspension. I cannot but feel that suspension of the alcaldes from office during this period will weaken the Provisional Government's power to preserve order."

RUSSELL

839.00/2744 : Telegram

The Acting Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *October 10, 1923—5 p.m.*

45. From Welles.

The Department considers the question raised by decision of Central Electoral Board referred to in your 52 [*53*] of October 8, 5 p. m. of the utmost importance. The action taken by the Board furnishes the most gratifying evidence of its independence and moral courage and its determination to see that the Electoral Law is strictly enforced. On the other hand, after careful consideration of the precedents created in the carrying out of similar legislation, notably the Cuban Electoral Law, I am definitely of the belief that the provision of Article 84, violated by the Party Assembly of La Vega, should be regarded purely as directive. If the party ticket was properly adopted by the delegates of the Provincial Assembly, and there is no evidence of fraud in the original "acta" of the Assembly, the decision of the Central Electoral Board in refusing to accept the ticket of the Alliance for the Province of La Vega merely on the ground that a duplicate copy in proper form was not transmitted would result in a grave injustice to a large percentage of the electors never contemplated when the law was adopted. The solution of the problem appears simple. The Central Electoral Board should notify the Provincial Assembly of the Alliance in La Vega that its failure to comply with the provisions of Article 84 of the Election Law constitutes a violation of the Law and must be immediately corrected by the drawing up of a duplicate copy of the original "acta" signed by all the delegates, and that the party ticket for that Province will be confirmed by the Central Electoral Board and transmitted by it, as provided in the Law, only after such action is taken.

In view of my belief that this Government should refrain from any open intervention in the functioning of the Dominican electoral machinery and that the prestige of the Central Electoral Board should be maintained at all costs it is my opinion that the President is the only person competent to adjust this very grave question. I suggest that you have, at once, an interview with the President and read to him the views above expressed and the solution proposed: and request him, if, as I trust, he concurs, to have immediately a strictly confidential conversation with the three permanent members of the Central Electoral Board in order that he may make the above suggestions as of his own initiative. It is of such extreme importance that the Law in these first elections be construed in a liberal, and not in a restrictive sense, so that the desires of the electorate may be expressed

with the utmost lawful freedom, that I am confident that the permanent members of the Central Electoral Board will accept the solution proposed, which does not constitute a reversal of the Board's decision, and which is likewise still possible in view of the fact that I understand the ticket was filed within the time specified by the Law.

Please report by cable at the earliest opportunity.

PHILLIPS

839.00/2748 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *October 10, 1923—5 p.m.*
[Received 5:32 p.m.]

56. Vasquez and Velasquez have advised me the following protest with the request that I forward it to you.

"In view of the unjust decision, of which you are aware, rendered by the Central Electoral Board there is eliminated from the right of suffrage in the Province of La Vega a very large number of voters pertaining to the National Progressive Alliance and also in view of the fact that the law provides no means by which the decision of the Electoral Board can be rectified, we energetically protest against said decision as by it in the Province of La Vega where the Alliance counts on a great lot of the votes, victory is assured to a party that will not even have to go to the polls. The Provincial Electoral Board of La Vega, to which was presented by the Provincial Assembly of the Alliance the list of candidates for public offices, legally approved said list as it did in the case of the list of the Coalition but the latter who could not be affected by acceptance of the list of the Alliance [disputed?] the decision of the Provincial Board and carried the case to the Central Electoral Board, [which] because of a mere formal error threw the list out. We can say with assurance that the nominations were made in compliance with all the provisions of article 24 of the law with the sole exception that the president and secretary of the Assembly annexed to the original [a] certified copy signed by all the delegates instead of a duplicate as requested the last paragraph of the above-mentioned article and it was approved by the Provincial Board of La Vega, the only board that could lawfully do this. It is so evident that there was not the slightest attempt on the part of the Provincial Assembly of the Alliance to violate the law and the directors of the National Progressive Alliance not only cannot understand the decision of the Central Electoral Board but are suspicious of the partiality shown in the decision. The electoral law which is the best [omission] all the laws for the Dominican people cannot mean that before elections take place a large number of voters are excluded from voting as is the case [in] La Vega because of a mere formal error. [The purpose of?] the law cannot be to exclude from suffrage Dominicans who wish to have a government of their free choice and who have the

same right to vote as other Dominicans with no more restrictions than those prescribed by law".

RUSSELL

839.00/2754a : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *October 17, 1923—6 p.m.*

49. From Welles.

In view of the discontent which appears to exist among the members of both political parties because of certain decisions of the Central Electoral Board, please summon immediately a meeting of the members of the Commission and hand them the following communication which I have addressed to them, stating that therein is expressed the view of the Government of the United States.

"From reports received by the Department of State and from personal communications received by me from members of the Commission, it is apparent that dissatisfaction has been caused both parties contending in the approaching National elections by certain decisions of the Central Electoral Board. The situation thereby created raises considerations of the gravest importance. It will be your recollection that the present Election Law received the most careful study before its adoption by all the members of the Commission and that all of the members of the Commission were unanimous in believing that the constitution, in accordance with the provisions of the present Election Law, of a non-partisan Central Electoral Board, under whose sole jurisdiction all the electoral machinery would function, was to prove of the most positive benefit to the Dominican people. It was in consistence with this belief, following the precedents which had been advantageously created in other countries, that it was determined that the decisions of the Central Electoral Board would not be subject to the review of any other tribunal. You will likewise recall that the election of the permanent members of the Central Electoral Board met with the unanimous approval of the members of your Commission because of their high standing and because of their reputation for probity and impartiality.

Now that in the discharge of its duties, the Central Electoral Board has rendered decisions disadvantageous to the interests of one or the other of the political parties, it is alleged to be the desire of certain elements in both parties that these decisions of the Central Electoral Board be subject to review by some other tribunal in the Republic, or be even submitted to the scrutiny of the Government of the United States. It will, of course, be evident to the members of the Commission that if the first of these two alternatives were adopted, the very purpose for which the Central Electoral Board was created would be rendered null and void, since it was precisely because of the opinion of the Commission of Representatives that the jurisdiction of no other tribunal in the Republic would furnish equal

guarantees of entire impartiality that the Central Electoral Board was constituted. If the second alternative were adopted, the Plan of Evacuation itself would be violated since Article 1 of that Plan states that the Plan of Evacuation has been agreed upon in order that the Dominican people may hold general elections without the intervention of the authorities of the United States.

The following consideration appears to be of equal importance. The present Election Law, which places the holding of the elections under the exclusive jurisdiction of the Central Electoral Board, is in the nature of an experiment. It is an experiment entered into because of the belief of the representatives of the Dominican people that this law will afford, now and in the future, the most ample assurance that full opportunity will be given thereby to every Dominican voter to register his choice of candidates at the polls, since the entire structure of the Law rests upon the exclusive jurisdiction of an impartial non-political Central Electoral Board. If the decisions of the Central Electoral Board in the first elections should be set aside or impaired in any manner, this experiment must necessarily fail.

Should one or both of the political parties believe that they have positive proof that one or more of the members of the Central Electoral Board are improperly discharging their duties, their recourse lies in the provisions of Article 13 of the Electoral Law.

I am confident that the views above expressed will meet with the full agreement of the members of your Commission. The control of the coming elections is vested solely in Dominican authorities. The results of the election can be satisfactory only if both political parties patriotically support these authorities established by the Election Law and abide by their decisions. Sumner Welles."

HUGHES

839.00/2756 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *October 20, 1923—12 noon.*
[Received October 21—9:45 a.m.]

63. Your telegram number 45, October 10, 5 p.m. President states that he is willing to do anything to solve the present difficulty created by the decision of Central Electoral Board in the case of the rejection of Vasquez Alliance in La Vega Province but that his attitude has always been one of absolute neutrality in everything appertaining to elections and he does not believe that it will conduce to any good if the Provisional Government [were] made the target for the bitter attack that is sure to come from the Coalition Party if he should take the initiative and suggest the solution proposed. He says that if the Department authorizes him he will confer with the Central Board and propose the solution as coming from the American Government which is so desirous that the elections take place with the utmost

freedom for all the Dominican people. Since the impeachment charges were preferred against the two nonpolitical members, the Central Board has not been functioning. University has been unable to find an impartial professor.

RUSSELL

839.00/2755 : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *October 22, 1923—3 p.m.*

51. Your 62, October 19, 12 noon,[9] and 63, October 20, 12 noon. In view of the fact that Department's instructions were not received by you until after impeachment proceedings were commenced against two of the non-political members of the Central Electoral Board, the Department considers that it is now too late for the suggested conference between the President and the members of the Central Electoral Board to be of any avail. It is, of course, impossible for the two members of the Central Electoral Board against whom charges have been preferred to concur in any official action which the Central Electoral Board may take until these charges have been officially passed upon. The Department views the cessation in the activities of the Central Electoral Board with the gravest concern. While it is realized that the manifold duties of the Minister of the Interior make his acceptance of the position of substitute for Dr. Vicioso upon the Central Electoral Board difficult, it desires you to urge upon him the imperative necessity of his acceptance of these additional duties, in view of the fact that the University of Santo Domingo finds it impossible to elect any other substitute from among the members of the Faculty satisfactory to both parties. The Electoral Law was framed in such a manner as to make it possible for the Electoral Boards to continue functioning in the event that charges were preferred against any of their members by the prior designation of substitutes and it is of the utmost importance that the electoral machinery should not break down at this crucial period. The Department desires you to exert your utmost influence to effect a speedy resumption of its duties by the Central Electoral Board.

You are instructed to express the Department's appreciation of the President's offer and to advise him of the Department's belief, as expressed above, that it is now too late for his intervention in this particular incident to be of service. You should likewise make it

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[9] Not printed.

plain that the Government of the United States does not feel warranted in making any formal suggestions as to a solution of this difficulty in view of the stipulations contained in Article 1 of the Plan of Evacuation.

HUGHES

839.00/2760 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *November 9, 1923—9 a.m.*
[Received November 10—5:10 a.m.]

62. My number 60, November 5, 11 a.m.[10] I have had for the last three days almost continuous conferences with the Commission as well as private conferences with the two Presidential candidates. I have placed before the latter the following considerations:

1. If the two political parties continue the policy of obstruction which each has consistently followed, no elections can be held.
2. If no elections are held, the Dominican signers of the Plan of Evacuation violate one of the chief obligations assumed by them in that instrument and in that contingency the Government of the United States must reserve entire liberty to determine its course of action.
3. By reason of developments not foreseen previous to the date upon which the electoral law was promulgated, both parties have been able to secure technical advantages contrary to the spirit of that law and to the spirit of the plan of evacuation.

These advantages for the Coalition Party are as follows: By reason of a restrictive interpretation of a faultily worded article of the electoral law the Central Electoral Board has rejected the Alianza ticket in the Province of La Vega and will, in all probability on the same ground, reject the Alianza tickets in the Provinces of Barahona, Monte Christi and Puerto Plata, thus preventing the members of the Alianza Party in these four Provinces from voting in the coming elections because of mere technical errors in the drafting of the party ticket. Fraudulent intent in these cases has not even been charged.

The advantages of the Alianza Party are as follows: By reason of the fact that the provincial and municipal electoral boards were constituted before present Alianza Party was formed as the result of a conjunction of the National and Progressive Parties and since these electoral boards were composed of three members divided equally among such three political parties in existence at that time, the Alianza Party has now a majority vote on all of these important boards. Furthermore, since the conjunction of the National and Progressive Parties occurred subsequent to the formation of the Provisional Government, the Alianza Party has twice the representation among the Secretaries of State of the Provisional Government accorded the Coalition Party. Likewise, by reason of the fact that

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[10] Not printed.

Señor Velasquez was almost invariably consulted by the Military Government in regard to the appointment of sindicos, fiscales and judges of the courts of first instance, the great majority of these public officials all of whom play an important role in the decision of electoral contests, are at present partisan supporters of the Alianza Party.

4. It is a physical impossibility for the elections to be held on November 14, by reason of the complete break-down of the electoral machinery and the nonfunctioning of the Central Electoral Board which has made impossible the decision of pre-election contests and the printing of ballots. Since the decisions reached by the Electoral Board regarding party tickets, etc., had application solely to the present electoral period, such decisions would have no force in the event that new election decree were issued and a new electoral period be established as must now inevitably be the case.

I have therefore suggested to the leaders of the two political parties that each relinquish the technical advantages which may have been acquired, as a patriotic duty, and that before November 14, the date now fixed for the national elections, the President be authorized by the Commission to issue a decree postponing the date of the elections for a period of 46 days and amending the electoral law in the following manner: (*a*) Permitting both political parties an extension of time to rectify any technical mistakes which have occurred in the drafting of their provincial tickets; (*b*) reconstituting the electoral boards in such a manner as to give both parties equal representation thereon throughout the Republic; (*c*) granting the Central Electoral Board the right to determine appeals brought by municipal boards from decisions of the provincial boards thus enabling the Central Electoral Board to make its jurisdiction absolute. And that the President be authorized at the same time to give both parties equal representation among the sindicos, fiscales and judges of the first instance.

I made it clear that the intent of my suggestion was to give both sides equal treatment and to enable both parties to go to the polls with equal guarantees; that this suggestion was offered only because the elections could not now be held on the date set, and because I deemed it advisable before a new electoral period was entered into to avail ourselves of the experience acquired and reform the evident abuses which lack of pre-vision in the drafting of the electoral law had made possible.

I am highly gratified to be able to state that the political leaders of the two parties have finally today reached a definite agreement in accordance with the suggestion above outlined and are now in process of drafting the decrees required by [*for*] transmission to the Provisional President. A complete break-down of the execution of the Plan of Evacuation has thereby been avoided. A much improved

feeling already prevails between the leaders of both parties and I apprehend no further difficulties in the future.

I desire to call your attention to the fact that a change in the appointments of judges of first instance, sindicos and fiscales so as to give both parties equal representation implies a modification of article 2 of the Plan of Evacuation which provides that "the judges and other officials of the judiciary shall not be removed except for due cause." Since the proposed change is in itself desirable, in view of the extraordinary circumstances existing, and is further the only way in which both parties can be made to feel that they will obtain equal treatment during the electoral period, I assume that you will have no objection to my consent to the proposed modifications under the limitations above specified.

WELLES

839.00/2760 : Telegram

The Secretary of State to the Commissioner in the Dominican Republic (Welles)

WASHINGTON, *November 12, 1923—4 p.m.*

6. Your 62, November 9, 9 a.m., last paragraph.

Department has no objection to the modification of Article 2 of the Plan of Evacuation in the manner suggested by you. The Department takes this opportunity to express its gratification for the agreement which you have been able to bring about.

HUGHES

839.00/2761 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *November 16, 1923—11 a.m.*
[Received November 17—2:16 a.m.]

63. A decree was promulgated by the Provisional President on November 12 postponing the elections due to be held November 14 and stating that the date for holding them would be proclaimed in the immediate future.

Conferences between the Presidential candidates, their advisers and myself are progressing satisfactorily and I trust that final details of the agreement referred to in my cipher telegram of November 9, 9 a.m., will be shortly determined once this is accomplished. A further decree will be immediately issued by the Provisional President announcing that the elections will be held 45 days from the date of the decree's issuance.

WELLES

839.00/2765 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

[Extract]

SANTO DOMINGO, *November 27, 1923—4 p.m.*
[Received November 29—4:12 a.m.]

65. My number 63, November 16, 11 a.m. My conferences with the two Presidential candidates and their advisers have resulted in a final agreement on the following points: (1) The method of re-constituting the Central Electoral Board and the provincial, municipal and precinct boards in such a manner as to afford ample guarantees to both parties; (2) the manner of arranging an even distribution of the following positions between the two parties of the governors, fiscales, members of the ayuntamientos, chiefs of municipal police and alcaldes pedañeos, all of these officials having either a direct participation in the electoral procedure or else a decisive influence, by reason of their position, during the electoral period (no neutral incumbents are affected); (3) agreement that a member of the Coalition Party will be appointed either to the Secretaryship of Justice and Public Instruction or the Secretaryship of Sanitation; (4) a definite agreement upon the detailed amendments to be made in the electoral law.

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WELLES

839.00/2767 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *December 12, 1923—4 p.m.*
[Received December 13—2:34 p.m.]

66. The present term of the Provisional [Government] which was extended on August 16 last by the Commission of Representatives as reported in my cipher telegram of May 12, noon, expires on December 31. Upon my arrival last month I was advised by the representatives of the Coalition Party that they will not consent to the continuance in their present positions of the Provisional President and the Secretary of the Interior. It has required considerable persuasion on my part to induce the representatives of the Coalition Party to agree to the continuance of the Provisional President, which I consider practically essential if the Plan of Evacuation is to be carried out. Owing to a dissension of opinion which has arisen between Señor Peynado and the leading members of his party concerning Señor Troncoso, the present Minister of the Interior, it has been impossible for him to

bring about an agreement on the part of the Coalition Party to continue him in office. I am confident that Señor Troncoso has not been guilty of any official acts which would justify his being considered as inclined to favor the interests of Alliance Party but he has unfortunately made certain statements derogatory to leading members of the Coalition Party which have made them consider him partial.

In order to avoid the occurrence of any incident of this character in the future, I have obtained the consent of both parties as well as that of all the members of the Commission, once the present Minister of the Interior is replaced by an individual satisfactory to both parties, to extend the term of the Provisional Government from January 1, 1924, to August 16 of the same year, with the understanding that both parties will commit themselves at the same time to extend the term of the Government again should the Plan of Evacuation not be completely executed on August 16th so that the present Provisional Government, once it is recognized [*reorganized?*], will continue in power until it is replaced by the future Constitutional Government. This agreement which will not be publicly announced here will make it impossible for the minority party in the future to prevent the execution of the Plan of Evacuation by refusing to extend the life of the Provisional Government or the term of office of any of its members.

The election of the substitute for the present Minister of the Interior is to take place today. I shall report by cable as soon as a designation is made.

WELLES

839.00/2777 : Telegram

The Commissioner in the Dominican Republic (*Welles*) *to the Secretary of State*

SANTO DOMINGO, *December 22, 1923—4 p.m.*
[Received December 23—7:20 p.m.]

69. The Commission yesterday determined upon the list of candidates to be presented in accordance with the regulations to the President in order that he may select therefrom the substitute [for the] present Secretary of Justice and Public Instruction and the substitute of [*for*] the present Secretary of [Sanitation] and Charities. As soon as that selection is made the reorganization of the Executive departments of the Provisional Government will be [completed]. As the Department has been informed in my telegram of December 12, 4 p.m., the Provisional Government so reorganized will continue to function until the Plan of Evacuation is completely carried out unless by a majority vote the Commission determines to remove one of the members thereof.

The Commission has now adopted the final project of amendment to the election law and has formally accepted the lists of persons constituting the new provincial and municipal electoral boards as well [as] the [lists?] of new appointees to governorships, ayu-[ntamientos], etc., as proposed in the agreement entered into between the two parties. There remain to be agreed upon but a few minor questions which I do not anticipate will provoke dissension. It has been my constant effort to expedite the promulgation of the decrees necessary to insure the execution of the agreement entered into between the two parties but unforeseen circumstances such as the refusal of the Coalition Party to agree to the continuation of Señor Troncoso as Secretary of the Interior have caused material delays. The first of the necessary decrees have now been transmitted to the President and the remainder will be transmitted before December 26th. It is therefore my hope the date of the elections will be announced before January 1st and that the elections will consequently be held not later than February 26th.

WELLES

839.00/2778 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *December 27, 1923—11 a.m.*
[Received December 28—2:10 a.m.]

70. My No. 69, December 21 [*22*], 4 p.m. In accordance with the provisions of the agreement reached between the two parties, the President has today appointed Señor Furcy Castellanos of the Coalition Party Secretary of Justice and Public Instruction to replace Señor Armando Rodrigues of the Alliance Party. The appointment of Señor Furcy Castellanos, who is the most prominent lawyer of Santiago, has been very well received.

At the same time the President has replaced the former Secretary of Sanitation and Charities, Señor Sanabia, whose administration has proved singularly unsuccessful, with Señor Juan C. Alfonseca, a prominent civil engineer of the capital who was educated in the United States and has the reputation of being a capable executive. Both Señor Alfonseca and his predecessor are members of the Alliance Party.

With these two appointments the reorganization of the Provisional Government is completed.

WELLES

839.00/2781 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *January 4, 1924—3 p.m.*
[Received January 5—9:35 a.m.]

1. My No. 69, December 21 [*22*], 4 p.m. The President has promulgated today the decree conveyed to him by the Commission containing all the amendments to the electoral law agreed upon during the conferences which I have held since my return. He has likewise made all the appointments required by the reorganization of the provincial and municipal governments. The Commission has, therefore, sent to the President an additional decree, which he will promulgate tomorrow, announcing that the new electoral period will commence on January 15 and that the national elections will be definitely held upon March 15:

The new Central Electoral Board, whose constitution is announced in the decree containing the amended electoral law, is composed as follows: President, Licenciado Agusto Jupiter, Justice of the Supreme Court; the two other nonpolitical members being Licenciado Alcibiades Robinet, President of the Court of Appeals of La Vega; and Licenciado Eudaldo Troncoso de la Concha, Justice of the Court of Appeals of San Domingo and brother of the former Secretary of the Interior. The present Central Electoral Board is composed of as capable and impartial judges as the Republic affords, and I am hopeful as to its successful execution of the electoral law. The law as now amended affords the Central Electoral Board greater powers than those which it held in the past and the members of the Commission have made a public declaration to the effect that the members of the Central Electoral Board were selected by the unanimous vote of all the members of the Commission and that they had entire confidence in their impartiality and that they would make no protest regarding any decision which the Central Electoral Board as now constituted might hand down.

The electoral period as now decreed is as short as it can safely be made. It has been my hope to be able to reduce its duration, but in view of the fact that the Electoral Board have been necessarily reconstituted and that in the former electoral period only a very slight percentage of qualified [voters?] were to receive their registration certificates, I have felt it essential that the extension now decreed be of 60 days in order to avoid the possibility of any further postponement of the date of the elections.

WELLES

ARRANGEMENT FOR THE PURCHASE OF THE PROPERTIES OF THE SANTO DOMINGO WATER, LIGHT AND POWER COMPANY BY DOMINICAN MUNICIPALITIES[11]

839.6463/89 : Telegram

The Minister in the Dominion Republic (Russell) to the Secretary of State

SANTO DOMINGO, *January 26, 1923—noon.*
[Received January 27—9:50 a.m.]

2. Interview with the Minister of the Interior this morning and he stated to me confidentially that during his term of office nothing will be done to dispossess Light and Power Company of its properties and requests me to say that he thinks Mr. Hunt[12] should come here at once fully empowered to negotiate sale of plant or sign new contract for service of water and light.

RUSSELL

839.6463/89 : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *March 8, 1923—3 p.m.*

7. Your No. 2, January 26, noon.

. . . .

Department understands that under Law of Waters National Government has full authority to purchase plant which Company is apparently in position to transfer free and clear of all liens except those set up by actions of cities, Santiago, Puerto Plata. These liens Dominican Government could presumably arrange for absorbing in any final disposition of matter it might make with cities.

While Company is not desirous of continuing further negotiations with Dominican authorities and takes position matter should now assume importance of international claim, Department considers that another effort should be made for amicable settlement and is of opinion that Dominican Administration just entering into power in country could signalize such entrance in no way better calculated to do justice and win confidence of foreign governments and investors than by making such settlement.

There seems to be no dispute over fact that Company has invested over $900,000 in its properties . . .

Having in mind agreement Company made two years ago with cities for purchase of plant by latter for $400,000 and after carefully

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[11] For previous correspondence, see *Foreign Relations*, 1922, vol. II, pp. 90 ff.
[12] A. F. Hunt, Jr., the company's attorney.

considering all circumstances in case, Department is of opinion that it would be entirely appropriate and just for Dominican Government to submit an offer of amount last mentioned in face value its bonds plus interest at 6 percent for two years for all the properties of the Company including hydro-electric site which was not included in agreement referred to. If offer accepted Dominican Government would then be acquiring property worth much more than amount paid, would bring about friendly settlement this long standing case and would evidence its good will and sense of justice.

Should such an offer be made, Department would use its influence with Company to induce it to accept and furthermore would endeavor to influence Company to render advice and assistance if requested to place plant in operating order.

Bring foregoing promptly and emphatically to the attention of appropriate authorities adding that pending outcome of negotiations Dominican Government should take steps to suspend further action in embargo proceedings against property which Department understands have progressed so far that date for sale of property has been set. On the point of what the Dominican Government can and will do to suspend such proceedings, you will request prompt advices stating that your Government attaches great importance to this point.

HUGHES

839.6463/110 : Telegram

The Commissioner in the Dominican Republic (Welles) to the Secretary of State

SANTO DOMINGO, *April 12, 1923—11 a.m.*
[Received April 13—4:50 p.m.]

47. For Francis White.[13] Referring to the Department's number 7, March 8, 7 [*3*] p.m., to the Legation. I have carefully studied the history of this case [garbled group] and conferred with the representative of the company and have reached the following conclusions:

In its telegram above referred to the Department instructed the American Minister to recommend insistently to the Provisional Government that the latter purchase the plants and rights of the company as the only possible settlement. In sending this instruction the Department apparently ignored the fact that the Provisional Government, by the terms of the Plan of Evacuation agreed upon by the Government of the United States and the Commission of Dominican Representatives, has no power to take the proposed action. In the second place the material increase in the public debt required to enable

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[13] Acting chief of the Division of Latin American Affairs; appointed chief of the division on Apr. 14.

the National Government to purchase public utilities which benefit only a small section of the Republic would [establish ?] a dangerous precedent in this country. In the third place the Department's insistence that the National Government increase the national indebtedness at a time the Dominican Government is facing a material increase in its expenditures by reason of the expenses which will be incurred in the carrying out of the new electoral law and the other extraordinary expenditures which must be incurred during the coming year to carry out the Plan of Evacuation for the purchase of properties which it has the means of operating, has not unnaturally given rise to adverse criticism at a moment when it is essential that the most friendly cooperation exist between the Dominican people and the authorities of the United States. In the fourth place it is important that the Department bear in mind the fact that the succession of events leading up to the decision of the company to dispose of its properties originated with a ruling of the Military Government that the company was not exempted from taxation although its original concession granted under a Dominican Government and in accordance with laws passed by a Dominican Congress provided that the company would be exempt from all taxation during the life of its concession.

I have discussed the matter with the President and with the Secretary of the Interior and have urged upon them the advisability of the use by the Provisional Government of all its influence to reach a settlement which will avoid the possibility of a diplomatic claim being presented in the future by the company and I find on the part of both the most earnest wish to do everything within their power to bring about a satisfactory settlement. They both are however unalterably opposed to the purchase of the property by the Government both on the ground that the Provisional Government lacks power to take any such action and also on the grounds that the purchase by the Government of these public utilities would be condemned by the great majority of Dominican citizens.

Granted the interest and helpful attitude of the Provisional Government I believe that a tentative agreement can be reached between the company's representative and the Secretary of the Interior providing in brief for the purchase by the two municipalities of the plant, etc., for a fair compensation payment to be made by an issue of municipal bonds, the National Government guaranteeing said bonds by taking over the collection of that portion of the municipal revenues necessary to provide for the annual interest and sinking-fund charges of these obligations and offering satisfactory subsidiary guarantee.

Should the Provisional Government and the company reach a satisfactory settlement the former can undoubtedly oblige the munici-

palities to accept it. Finally, since the obligations incurred by the Provisional Government in the suggested agreement can only be undertaken *ad referendum* to the National Congress and the future Constitutional President, the unanimous assent of the original members of the Commission should be obtained since one of the members thereof will be the coming President and the next Congress will be controlled by the political members of the Commission.

I trust the Department will give careful attention to these considerations with the hope that it may approve my suggestion as to a possible settlement and that the Legation may be instructed accordingly. The Minister is entirely in accord with the suggestion offered. Time for suggested negotiations has been obtained by the appeal taken by the company's attorney from decision of court in embargo proceedings.

I am confident that should the Department continue insisting on its earlier proposal the authority and prestige of the Provisional Government would be seriously impaired and public would again become generally hostile to the American authorities, with the result that the carrying out of the entire program of evacuation would become far more difficult.

WELLES

839.6463/110 : Telegram

The Secretary of State to the Minister in the Dominican Republic (Russell)

WASHINGTON, *April 16, 1923—6 p.m.*

14. Reference Welles' 47, April 12, 11 a.m.

Department would be very glad if Provisional Government and representatives San[to] Domingo Water, Light and Power Company can make a mutually satisfactory agreement *ad referendum* for the purchase of the Company's properties by the municipalities of Santiago and Puerto Plata.

HUGHES

839.6463/114 : Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *June 23, 1923—10 a.m.*
[Received June 25—3:40 p.m.]

28. Contract for settlement of the case of the Santo Domingo Water, Light and Power Company has been approved by both mu-

nicipalities. Please notify company. Contract will be forwarded by next mail.[14] RUSSELL

839.6463/123

The Minister in the Dominican Republic (Russell) to the Secretary of State

No. 875 SANTO DOMINGO, *July 12, 1923.*
[Received August 1.]

SIR: Referring to my No. 868 of June 24,[15] in regard to the settlement of the case of the Santo Domingo Water, Light and Power Company, I have the honor to state that the Provisional Government has approached me relative to the consent of the American Government for the issue of the 5% bonds to be delivered to the Company in accordance with the report of the expert, and I respectfully request instructions in the matter.

I have [etc.] WILLIAM W. RUSSELL

839.6463/130: Telegram

The Minister in the Dominican Republic (Russell) to the Secretary of State

SANTO DOMINGO, *August 29, 1923—5 p.m.*
[Received August 31—1:53 a.m.]

46. Referring to my despatch No. 875, July 12. Expert for valuing property of Santo Domingo Water, Light and Power Company will be here within next 10 days. Upon the completion of report of the expert and the termination of the repairs and improvements, bonds must be ready for delivery to mortgage creditor. If this issue of bonds is to be part of the remainder of the ten million authorized by Department in 1922,[16] what formalities are required with the Provisional Government as negotiating issue with the bankers? Important that this matter be taken up at once. RUSSELL

839.6463/123

The Secretary of State to the Minister in the Dominican Republic (Russell)

No. 520 WASHINGTON, *August 31, 1923.*

SIR: The Department has received your despatch No. 875 of July 12 relative to the consent of the American Government to the issue of

[14] Despatch no. 868, June 24, not printed.
[15] Not printed; see telegram no. 28, *supra*.
[16] See *Foreign Relations*, 1922, vol. II, pp. 78 ff.

bonds by the Dominican Republic under the provisions of the agreement with the Santo Domingo Water, Light and Power Company, and in reply informs you that since the negotiations leading up to the signature of the agreement were carried on with the Department's consent and the cooperation of its representatives, and as the Department is in accord with the purposes of the same, when the amount of the required payment of bonds by the Dominican Government shall have been determined in the manner prescribed in the agreement, the Department will take such action as may be necessary toward granting its consent to any required increase in the Dominican public debt under the provisions of treaties in force.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

BOUNDARY DISPUTE WITH HAITI

(See page 356 ff.)

ECUADOR

EMPLOYMENT OF A FINANCIAL ADVISER BY THE GOVERNMENT OF ECUADOR

822.51/365 : Telegram

The Secretary of State to the Minister in Ecuador (Bading)

[Paraphrase]

WASHINGTON, *October 24, 1922—5 p.m.*

22. The Department has been unofficially informed that the President of Ecuador has been authorized by the Congress to employ a financial adviser, but that, owing to the failure of the loan law in Congress, he doubts the necessity of doing so. Report briefly by cable the exact situation.

HUGHES

822.51/367 : Telegram

The Minister in Ecuador (Bading) to the Secretary of State

[Paraphrase]

QUITO, *November 6, 1922—3 p.m.*
[Received November 7—3:50 p.m.]

31. Department's 22, October 24, 5 p.m. President Tamayo states that unless he obtains a loan he does not expect to appoint a Financial Commission; if, however, the loan is made he will choose an expert from the country in which it is obtained. The authority granted last year for a loan of 100,000,000 sucres, he added, is still discretionary. I endeavored to point out to him the advantages in making an immediate appointment as creating confidence, but he replied that a loan would not be assured by such an appointment and that without this assurance the Financial Commission would impose a burden of expense which the country could not stand. The bankers could be furnished with sufficient data as to income, he added, without the services of an expert. He assured me emphatically that in the event that a loan were obtained, he would appoint a Commission immediately, if necessary, as a part of the loan contract. I am sending a full report by mail.[1]

BADING

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[1] Not printed.

822.51A/a : Telegram

The Secretary of State to the Chargé in Haiti (Dunn)

WASHINGTON, *June 9, 1923—6 p.m.*

65. For General Russell.

The Ecuadorean Minister informed the Under Secretary today that he has been in communication with Mr. John S. Hord [2] with a view to obtaining his services as Financial Adviser to Ecuador, and that he received a telegram from the President of Ecuador authorizing him to accept Mr. Hord's terms of a contract for four years at an annual salary of $15,000 on condition that this Department approved.

The Under Secretary replied that Mr. Hord is at present engaged in important reconstruction work in Haiti and that his transfer at the present time might be a severe blow to the whole reconstruction movement, and that the Department would, therefore, be reluctant to have him leave Haiti before the completion of that work. It was explained to the Minister that the Department had received no word either from you or Mr. Hord with regard to the matter, and that in the circumstances the Department would wish to consult with you before giving him a definite reply.

The Department fully appreciates the serious delay and loss which will be occasioned to the Haitian Government should Mr. Hord leave before the internal revenue and customs revision is completed. However, the Department cannot prevent Mr. Hord leaving should he desire to do so and it seems possible that his negotiations with the Ecuadorean Minister may have reached a stage where the Department would be placed in an embarrassing position should it formally object to his going. The Department desires an expression of your views by cable regarding the matter. Should Mr. Hord leave, you will make it clear to the Haitian Government that this Department had no part in the negotiations, and was only advised of them after they were virtually completed.

HUGHES

822.51A/4 : Telegram

The High Commissioner in Haiti (Russell) to the Secretary of State

PORT AU PRINCE, *June 26, 1923—1 p.m.*
[Received June 27—2:29 a.m.]

85. My number 78, June 13, 9 a.m.[3] In reply to a question by me Mr. Hord has just informed me that he intends leaving Haiti on July 12th. He then asked if he should go with me to inform Presi-

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[2] The Financial Adviser to Haiti; see *Foreign Relations*, 1922, vol. II, pp. 461 ff.

[3] Not printed.

dent Borno. I informed him that I would first communicate his intention to the Department and await instructions.

RUSSELL

822.51A/4: Telegram

The Secretary of State to the Chargé in Haiti (Dunn)

WASHINGTON, *June 28, 1923—5 p.m.*

70. For General Russell.

Your 85, June 26, 1 p.m.

When Hord presents his resignation you may say to President Borno if inquiry is made, that Department has no objection to its acceptance.

HUGHES

REFUSAL BY THE GOVERNMENT OF ECUADOR TO SUBMIT A DISPUTE WITH THE GUAYAQUIL AND QUITO RAILWAY TO ARBITRATION AS PROVIDED IN THE COMPANY'S CONTRACT[4]

422.11 G 93/1255: Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *January 6, 1923—6 p.m.*

1. Your despatch No. 12, July 11, 1922.[5] Department is informed by the Guayaquil and Quito Railway Company that Government of Ecuador has started legal proceedings against the Company before a local Ecuadoran Judge to recover 600,000 sucres claimed to have been deposited with Archer Harman[6] in 1909.

If this is the situation please inform the Ecuadoran Government that such action would appear to be contrary to provisions of the contract which call for settlement of all differences between the Company and the Government by arbitration and that the Department understands that the Company is willing to submit this matter to arbitration.

HUGHES

422.11 G 93/1258: Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *January 24, 1923—4 p.m.*
[Received January 25—9:35 a.m.]

1. Department's 1, January 6, 6 p.m. Government replies that contracts celebrated [*consummated?*] by a government with aliens

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[4] For previous correspondence concerning the railway, see *Foreign Relations*, 1921, vol. I, pp. 881 ff.

[5] *Post*, p. 931.

[6] President of the Guayaquil and Quito Railway Co.

should not give rise to diplomatic correspondence except in case of denial of justice or notorious injustice and further that the railway may argue before the judge its belief that the court has no jurisdiction, adding that the deposit of 600,000 sucres had no relation to contract for the construction of the railway.

Since the decision as to whether the sum in question was a deposit or payment seems to rest on the interpretation of section 2 of article 2 of the legislative decree ratifying the transaction contract of 1908, and as section 6 of the same article confirms article 27 of the contract of June 14th, 1897,[7] [which provides that?] the Presidents of Ecuador and the United States or their appointees are to be the arbitrators of all controversies between the two contracting parties, and since regard of arbitration called for in the contract would likewise appear to be an act of injustice already committed, the Government's claim relative to diplomatic intervention seems to me ineffective and I request permission to lay the case more fully before the President and strongly urge upon him the advisability of arbitration.

BADING

422.11 G 93/1258 : Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *February 1, 1923—5 p.m.*

3. Your No. 1, January 24, 4 p.m.

Arbitral provision paragraph 27, Contract of June 14, 1897, between Government of Ecuador and railway company, confirmed by Section 6, Article 2 of decree of 1908, applies to "controversies and disputes which arise between the two parties to this contract." Thus, by agreement of the parties, arbitration is substituted for trial by ordinary courts of all controversies and disputes between them. This agreement evidently applies to questions of jurisdiction as well as to questions of substantive right. Therefore, a denial of the right to resort to arbitration in the present case is a denial of justice, and the Department considers that you are justified in presenting the request of the railway company, formally to the Ecuadoran Government, and authorizes you to take it up with the President of Ecuador, as you suggest. Telegraph result.

HUGHES

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[7] Contracts of 1897 and 1908 not printed; for 1907–8 arbitration under art. 27 of the contract of 1897, see *Foreign Relations*, 1907, pt. 1, pp. 385 ff., and 1908, pp. 273 ff.

422.11 G 93/1261 : Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *February 17, 1923—11 a.m.*
[Received February 18—12:50 a.m.]

4. Department's 3, February 1, 5 p.m. Minister for Foreign Affairs replies that denial of justice can exist only after judicial decision, therefore denies right of railway company to present request for arbitration formally through diplomatic channel especially when Ecuadorean constitution makes waiver of diplomatic intervention implicit part of every contract. In personal interview with the President I laid before him such points of international law as seemed pertinent to refute the position of the Foreign Minister particularly pointing out that in case the decision of the court were against the railway the latter could legally refuse to accept the decision on the ground that it would not be bound by the decision of judges to whom it had not consented to refer its cause nor could it by voluntary agreement deprive its own country of any right to protect it which it might otherwise possess. The President replied however that he could not at present discuss the justice of arbitration since by article 81 of the Constitution he was expressly forbidden to hinder the course of judicial procedure and he could therefore do nothing until the court rendered its decision. This last statement appears to me the most valid argument so far presented by the Government and I cannot see what further steps can be taken until judicial decision is rendered.

BADING

422.11 G 93/1261 : Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *March 14, 1923—4 p. m.*

6. Your No. 4, of February 17.

You will please present this matter again to the attention of the President of Ecuador and state that, while this Government recognizes the general rule that controversies between American citizens and foreign governments should be settled in the courts, where they have jurisdiction, the Government of Ecuador, of its own free will, agreed in its contract with the Guayaquil and Quito Railway Company, that controversies between it and the Company should be settled by arbitration. By this agreement arbitral settlement was substituted for ordinary judicial settlement. Therefore, it is hoped that the Ecuadorean Government will see fit to withdraw the suit which it has brought against the Railway Company.

HUGHES

422.11 G 93/1265 : Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *March 23, 1923—4 p.m.*
[Received March 24—12:25 a.m.]

5. Department's 6, March 14, 4 p.m. The President replies that he is unable to take action because lawyer against the railway was appointed and instructed by Congress not by Executive.

BADING

422.11 G 93/1273

The Minister in Ecuador (Bading) to the Secretary of State

No. 117 QUITO, *May 1, 1923.*
[Received May 31.]

SIR: Referring to my despatch No. 90, of February 26, 1923,[8] relative to the suit brought by Dr. José J. Estupiñán on behalf of the Government of Ecuador against the Guayaquil and Quito Railway Company for the recovery of 600,000 sucres alleged to have been deposited by the Government with the Railway in December, 1909, I have the honor to transmit herewith copy and translation of the decision of the Third Court of Letters of the Province of Pichincha, handed down on April 9th last,[8] in which it is stated that the present case does not come within those designated in the railway contracts as subject to arbitration, and that therefore the court has full jurisdiction.

I likewise transmit copy and translation of the appeal of the Railway Company from this decision.[8] The question of jurisdiction now goes to the Superior Court, after which it may be appealed to the Supreme Court. It seems probable that the case will be prolonged until the next meeting of Congress, in August, at which time it is hoped that Congress can be persuaded to withdraw the suit.

I have [etc.] G. A. BADING

422.11 G 93/1265 : Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *July 9, 1923—5 p.m.*

9. Your 5, March 23.

Inform President that action of the Government of Ecuador in maintaining in force suit against Railway Company brought in clear violation of the broad provision for arbitration of difficulties con-

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[8] Not printed.

tained in Article 27 of the contract of June 14, 1897, confirmed by the Act of Congress of Ecuador of November 1, 1908, and evidently relating to all controversies concerning the subject matter of the contract, namely, the building of the railroad, compels this Government to state that it cannot admit that the action taken by the Government of Ecuador sets a precedent for the future, and must reserve all rights in case of adverse decision.

HUGHES

422.11 G 93/1276

The Minister in Ecuador (Bading) to the Secretary of State

No. 136

QUITO, *July 13, 1923.*
[Received August 7.]

SIR: With reference to the Department's telegraphic instruction No. 9, of July 9, 5 P.M., relative to the suit brought against the Guayaquil and Quito Railway Company by Dr. José J. Estupiñán, in the name of the Government of Ecuador, for the recovery of 600,000 sucres alleged to have been deposited with said Company by the Government in December, 1909, I have the honor to state that I immediately transmitted to the President of Ecuador the views and reservations set forth by the Department, and enclose copy of my letter to him, dated July 11th,[9] for the Department's information.

I have now received a reply from the President, dated July 12, 1923, copy and translation of which I transmit herewith,[9] in which the latter states that it is his loyal and honest opinion that the suit in question is in no way a violation of the contracts, as it is a matter foreign to the provisions thereof.

It is evident from the President's reply that the Government holds that the deposit or payment in question had no antecedents, but was merely a temporary deposit pending the ratification or non-ratification of the contract between General Alfaro[10] and Archer Harman. The contract not having been ratified, the agreement contained therein was without effect, and the 600,000 sucres should have been returned.

The Railway, on the other hand, holds that the 600,000 sucres was a repayment of a sum given to the Government in accordance with said contract, and that in view of its non-ratification the Government was bound to return said money to the Company.

If a starting point is taken in December, 1909, it is difficult to contest the opinion of the Government that the matter had nothing to do with the construction of the railway. But the origin of the whole

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[9] Not printed.
[10] President of Ecuador.

matter was a sum of 600,000 sucres loaned to the Railway Company by General Alfaro for the completion of the line into Quito, prior to the Legislative Decree of November 1, 1908, and if this origin is considered it seems to me impossible to separate the case from the subject matter of the contracts.

I have [etc.] G. A. BADING

422.11 G 93/1291

The Minister in Ecuador (Bading) to the Secretary of State

No. 210 QUITO, *November 15, 1923.*
[Received December 6.]

SIR: Referring to my despatch No. 208, of October 27, 1923,[11] in which I stated that the Superior Court had declared itself to be without jurisdiction in the suit brought by the Government against the Guayaquil and Quito Railway Company for the recovery of 600,000 sucres, I now have the honor to transmit copy and translation of the decision in question, which is dated October 20, 1923.[11] It will be seen that the Court states that this question is clearly related to the contracts of the Railway Company with the Government, and that therefore the only competent judge is the one named in those contracts, to wit, the Arbitral Court. It further states that the Legislative Decree authorizing the suit does not definitely state that it is to be brought before the Common Court, and that in any case the decision of one party to the contract would not exclude the jurisdiction of the judge designated in the contract.

The question is, however, referred to the Supreme Court for final decision, and it remains to be seen whether that Court will uphold the Superior Court or the lower Court.

I have [etc.] G. A. BADING

OBJECTIONS BY THE UNITED STATES TO THE HYPOTHECATION OF ECUADORAN REVENUES ALREADY PLEDGED TO THE SERVICE OF THE GUAYAQUIL AND QUITO RAILWAY BONDS[12]

422.11 G 93/1239

The Minister in Ecuador (Bading) to the Secretary of State

No. 12 QUITO, *July 11, 1922.*
[Received August 2.]

SIR: Referring to the Department's telegraphic instruction No. 17, June 26, 4 P.M.,[11] requesting me to forward a written report on the

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[11] Not printed.

[12] For previous correspondence concerning the railway, see *Foreign Relations*, 1921, vol. I, pp. 881 ff.

present status of the Guayaquil and Quito Railway case, I have the honor to transmit herewith copy of a letter dated July 3, 1922,[13] with enclosures, from Mr. Archer Harman, President of the Railway Company, which gives the desired information in detail.

From this letter it appears that:

1. Of the outstanding debt of Ecuador the Prior Lien Bonds are the only ones on which the interest and sinking fund are up to date, while on the other issues there remains unpaid interest amounting to $5,799,520.48, and sinking fund amounting to $1,842,845.94, a total of $7,642,366.42.

2. The negotiations of the Railway Company with the Government for the purpose of waiving the unpaid sinking fund and refunding the unpaid interest resulted in failure since:

(*a*) No method could be found of raising the sum necessary for the annual service;
(*b*) The Government could discover no source of income to take the place of that lost through the suggested turning over of the salt monopoly to the management of the bondholders; and
(*c*) Even if the necessary funds could be obtained, the conversion of the sucres into dollars would so raise the rate of exchange as to necessitate the finding of still larger sums.

3. Mr. Harman is now endeavoring to arouse public opinion in favor of a financial adviser for the purpose of bringing the Government out of its financial chaos. While the President is personally favorably inclined, he does not believe that such an appointment would meet with favor at the present time. Mr. Harman has, however, won over several influential Ecuadoreans to the plan, and they have started a movement for the purpose of bringing about the passage of a law to this effect at the next session of Congress in August.

4. The Railway Company is further endeavoring to influence exchange and increase its own income by creating a market for Ecuadorean food stuffs in Panama. The Manager of the Railway is about to go to Panama to exhibit sample food-stuffs and to obtain information as to the kinds and quantities which may be disposed of, and it is believed that in the first year $1,000,000. worth of food-stuffs should be exported. I would add that in the meantime questionnaires are being sent to the farmers of the interior for the purpose of obtaining statistics as to the amount of land available and the kinds and quantities of food-stuffs that may be raised.

I have [etc.] G. A. Bading

[13] Not printed.

822.51 Et 3/5 : Telegram

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

LONDON, *October 23, 1923—noon.*
[Received 5:00 p.m.]

Counselor of the Department [*Corporation of*] Foreign Bondholders confirms to me that Ecuador Congress has approved two loan agreements with Ethelburga Syndicate, one a Government loan of $15,500,000 at 7½ percent and a conversion loan of $2,750,000 at 5 percent, both guaranteed by first mortgage on customs.

SKINNER

822.51 Et 3/6 : Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *October 24, 1923—noon.*
[Received October 25—3:30 p.m.]

14. My 13, October 22, 4 p.m.[14] Closer study of loan amendments [*agreements*] shows two clauses giving Government all rights vested in present bonds, which are to remain on deposit uncanceled as an additional guarantee. This apparently seems to be plan of the Government to foreclose as bondholder and get railway for nothing, Government merely furnishing new additional guarantees based on acquisition of the railway.

Stabler[15] has telegraphed his principals to ask Department to advise Ecuadorean Minister that the Department will not approve loan. In view of above clauses and the fact that no provision whatsoever is made for payment Mercantile Bank debt according to the President's previous promise, I recommend this be done.

BADING

822.51 Et 3/6 : Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *October 26, 1923—4 p.m.*

15. Your telegrams 12, 13, 14.[16]

Please address following letter to the President:

"Under instructions from my Government I desire to point out to Your Excellency that the loan contract, as I understand, does not in its present form contain any provision for the payment of the debt of the Agricultural Association to the Mercantile Bank. The Government of the United States, however, has carefully noted the assurances contained in your letter of February 5, 1922, to Minister Hart-

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[14] Not printed.

[15] Jordan Herbert Stabler, representative of the Mercantile Bank of the Americas.

[16] Telegrams nos. 12 and 13 not printed.

man that 'If the Government secures a foreign loan it will immediately pay half of the credit of the abovementioned bank.'[18] My Government is therefore confident that, although the loan contract contains no provision on this subject, the Government of Ecuador will immediately meet half of the indebtedness in question in the event of procuring a foreign loan, and I have therefore been instructed to bring this matter to Your Excellency's attention and to request that I be advised of the measures that your Government proposes to take in conformity with the assurances heretofore given."

Report President's reply by cable.

HUGHES

822.51 Et 3/8: Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *October 29, 1923—noon.*
[Received October 30—2:15 p.m.]

15. Department's 15, October 26, 4 p.m. Letter delivered to President on the afternoon of 27th and I received the following reply on the same day:

"I acknowledge the receipt of your esteemed letter of this date, the contents of which I have duly noted."

The President left for Guayaquil this morning.

BADING

822.51 Et 3/8: Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *November 5, 1923—3 p.m.*

16. Your 15, October 29, noon.

Immediately upon the President's return to Quito you will ask for an interview with him. Referring to your letter of October 27, and his reply of the same day you will state that you have been instructed by your Government to ask for a definite answer regarding the measures that the Ecuadorean Government proposes to take in conformity with the assurances given in the President's letter of February 5, 1922, to Minister Hartman. Report the result by cable.

HUGHES

822.51 Et 3/6: Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *November 6, 1923—3 p.m.*

17. Your 14, October 24, noon.

Department informed that loan contract gives new bonds priority and exclusive claim custom house receipts as well as revenues from

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[18] Not printed.

all sources. If correct this would appear to be a violation of Article 17 of the contract of September 30, 1908, incorporated in the arbitral award of November 24, 1908,[19] which states that the sums required for the annual service of the railroad bonds and for the expenses of the service "shall constitute a first and preferred obligation on the total receipts of the custom house" and that after December 31, 1908 "there shall exist no obligation whatever against the customs revenues that may have preference over or *pari-passu* with that assigned in favor of the bondholders" and that in future the Government "will not establish any obligation whatever against said revenues to the prejudice of the bondholders' rights".

Department also informed that Government apparently intends to obtain control of railway bonds and then to foreclose as bondholder and seize the railway. It is stated that the bankers under the new contract are not obliged to convert specific amount of railway bonds and that a small per cent could have preferred claim of the revenues from all sources and furthermore that the contract provides for the liquidation of the internal debt at par and accrued interest and of the external debt at 50 per cent its value.

Please report by cable whether above is correct and if so cable text of articles in question. Full copy of contract should be sent immediately by mail.

Should the above information be correct and should you deem immediate action imperative to protect the American rights involved you may informally call to President Tamayo's attention the provisions of Article 17 of the contract of September 30, 1908, which would be violated should the custom house receipts be pledged for any other loan and inform him that this Government must insist upon the rights of the American holders of the bonds of the Guayaquil and Quito Railway Company being fully protected and that it cannot consent that the owner of the railway, an American corporation, the stock of which is principally [but] not entirely held by Americans, should be deprived of its property without proper consideration.

Upon receipt of your report further instructions will be sent you.

HUGHES

822.51 Et 3/12 : Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *November 9, 1923—12 noon.*
[Received 11:55 p.m.]

16. Department's 17, November 6, 3 p. m. Department's information essentially correct. Full text mailed October 30th. Infor-

[19] See *Foreign Relations*, 1908, pp. 273 ff.

mation here indicates final contract may not be signed. Strong opposition. President still in Guayaquil. Will keep Department informed.

BADING

822.51 Et 3/14: Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *November 30, 1923—4 p.m.*
[Received December 1—8:50 p.m.]

18. Department's 15, October 26, 4 p.m. The President stated that the present loan was merely to consolidate foreign debt and pay off domestic debt in order to better economic conditions of the country. The Government would not receive a cent in cash and it was impossible to increase the amount because of lack of funds for the service. In case another loan were obtained later, the debt would be taken care of. Perhaps even a loan would be made for that specific purpose guaranteed by 3 sucres tax but first the amount of the debt must be determined between the association and the bank by agreed-upon arbitration or lawsuit. He added that the debt once the amount is settled is recognized by the Government and will be paid.

BADING

822.51 Et 3/15: Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *December 1, 1923—noon.*
[Received 10:50 p.m.]

19. Your 17, November 6, 3 p.m. In view of the general opinion that the loan will be a failure and that the final contract will not be signed, I have not thought it desirable to bring the matter to the President's attention unless again instructed to do so by the Department.

BADING

822.51 Et 3/15: Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *December 6, 1923—5 p.m.*

18. Your 19, December 1, noon.

If you have good reason to believe that final loan contract will not be signed, you need not make representations contained in Depart-

ment's 17, November 6, 3 p.m., to President, but if later it seems probable that final loan contract will be signed, you will immediately bring this matter informally to the President's attention.

HUGHES

422.11 G 93/1292b : Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *December 7, 1923—6 p.m.*

19. Department's 17, November 6, 3 p. m., and 18, December 6, 5 p. m. Messrs. Hartman [*Harman*] and Farr [20] have just informed Department of activities of Ethelburga Syndicate in London with view to concluding arrangements for bringing out loan. In view of this and the fact that the loan contract has received congressional approval and needs no other formalities before being signed they fear that it may be signed before intention of Government in this matter could become known. You are instructed to discuss matter immediately with the President and unless he gives you categorical assurances that loan contract will not be signed you will then make the representations contained in the Department's 17, November 6, 3 p.m.

HUGHES

822.51 Et 3/18 : Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *December 13, 1923—4 p.m.*
[Received December 14—1:13 p.m.]

20. Department's 19, December 7, 6 p.m. While opinion is still strong that the loan will not be floated and Dillon [21] has stated that he would not sign the final contract I had reliable information that the Government was proceeding with negotiations to sign final contract in London. I therefore sent the President *note verbale* in the sense of Department's 17, November 6, 3 p.m. In his reply he evades direct answer by stating that he cannot deal with public matters unless presented through Minister of the Interior. He adds however that the Ecuadorean Government will always respect and comply with its contracts.

BADING

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[20] Archer Harman, president, and T. H. Powers Farr, vice president, of the Guayaquil and Quito Railway Co.
[21] Luis Adriano Dillon, representative of the Ethelburga Syndicate, Ltd.

822.51 Et 3/20a: Telegram

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

WASHINGTON, *December 17, 1923—5 p.m.*

383. Please address a *note verbale* to the Foreign Office in the following terms:

"The Government of the United States has been advised that the Government of Ecuador is proceeding with negotiations to sign in London a loan contract with the Ethelburga Syndicate, Limited, 75 Bishopsgate, London, and that the customs receipts of Ecuador will be pledged as security for this loan. The Government of the United States accordingly desires to draw the attention of His Britannic Majesty's Government to the fact that the contract of September 30, 1908, incorporated in an award of November 24, 1908 as a result of arbitration between the Guayaquil and Quito Railway Company, an American corporation, and the Ecuadorean Government, states that the sums required for the annual service of the railroad bonds and for the expenses of the service 'shall constitute a first and preferred obligation on the total receipts of the custom house' and that after December 31, 1908, 'there shall exist no obligation whatever against the customs revenues that may have preference over or *pari-passu* with that assigned in favor of the bondholders' and that in future the Government 'will not establish any obligation whatever against said revenues to the prejudice of the bondholders' rights'. In view of the possibility that steps may shortly be taken towards the conclusion of the contract in question the Government of the United States desires to notify His Britannic Majesty's Government that the Guayaquil and Quito Railway Company disputes the right of the Ecuadorean authorities to pledge the customs receipts of Ecuador in violation of the Company's rights."

HUGHES

822.51 Et 3/18: Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *December 17, 1923—6 p.m.*

21. Your 20, December 13, 4 p.m.

In reply to the President's communication you will address a note to him stating that the contents of his communication having been transmitted to the Department you are directed by your Government to inform him that it has noted with satisfaction his assurances that the Ecuadorean Government will always respect and comply with its contracts.

Should you learn definitely that the loan contract is to be signed you will immediately request an interview with the President, or should he be absent from Quito, with the Minister for Foreign Affairs, and inform him that this Government will not view with favor the floating of such a loan in the United States.

HUGHES

822.51 Et 3/26

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

No. 35 LONDON, *January 24, 1924.*
[Received February 5.]

SIR: In reply to your telegram No. 383 of December 17, 5 p.m., 1923, concerning the attitude of the Guayaquil & Quito Railway Co. toward the proposed loan from the Ethelburga Syndicate to the Government of Ecuador, I have the honor to forward herewith copies of Foreign Office Note No. A 355/3/54, dated January 22, 1924.

I have [etc.] FRANK B. KELLOGG

[Enclosure]

The British Secretary of State for Foreign Affairs (McDonald) to the American Ambassador (Kellogg)

No. A. 355/3/54 [LONDON,] *January 22, 1924.*

YOUR EXCELLENCY: I have the honour to acknowledge the receipt of Mr. Post Wheeler's note No. 1160 of the 18th ultimo, in which he was good enough to inform me of the attitude of the Guayaquil and Quito Railway Company towards the contract between the Government of Ecuador and the Ethelburga Syndicate.

2. It appears that when the agreement of 1908 was made the bondholders of the railway were represented by the Council of Foreign Bondholders, acting in conjunction with the Committee of First Mortgage Bondholders. The Council of Foreign Bondholders now state that the Ethelburga Syndicate is acting in an entirely friendly manner and fully recognizes the rights of the bondholders under the arrangement of 1908.

3. By clause 25 of the new loan contract a portion of the proposed new issue is appropriated to the purpose of converting and withdrawing outstanding bonds of the External Debt of Ecuador. If this is carried out, the existing hypothecation in favour of the present bonds will of course be at an end, and I am informed that any such conversion will only be carried out with the sanction of a public meeting of the bondholders.

I have [etc.]

(For the Secretary of State)
R. SPERLING

822.51 Et 3/30 : Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, *February 25, 1924—noon.*
[Received February 26—9:20 a.m.]

3. Department's telegram 21, December 17, 6 p.m. Reliably informed that President authorized Ecuadorean Minister at London to sign loan contract. Department's instruction 2nd paragraph of above-mentioned cable carried out.

President-elect [22] strongly opposed to contract. Detailed report mailed.[23]

BADING

EFFORTS TO LIQUIDATE THE DEBTS OF THE CACAO GROWERS ASSOCIATION [24]

822.61334/95a

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *July 30, 1923.*

SIR: Mr. Jordan Herbert Stabler is proceeding to Ecuador in the interest of the Mercantile Bank of the Americas in connection with the matter pending between the bank and the Asociación de Agriculture [*Agricultores*] del Ecuador. You are requested to render Mr. Stabler all appropriate assistance in the transaction of his business.

I am [etc.]

For the Secretary of State:
LELAND HARRISON

822.61334/93 : Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, *September 11, 1923—5 p.m.*

12. Department informed that a bill was introduced in Ecuadorean Senate August 30, proposing reduction of the present three sucre export tax on cocoa [*cacao*] to one sucre. You will inform the Ecuadorean Government that the Department relies upon President Tamayo's assurance contained in his letter of February 5, 1922, to former Minister Hartman, a copy of which was transmitted with Legation's despatch 787, February 9, 1922,[25] in which President

[22] Gonzalo S. Córdova, who succeeded President Tamayo on Aug. 31, 1924.
[23] Despatch not printed. The proposed loan between the Government of Ecuador and the Ethelburga Syndicate, Ltd., was not concluded.
[24] Continued from *Foreign Relations*, 1921, vol. I, pp. 896–902.
[25] *Ibid.*, p. 902.

Tamayo states he will make effort to see that the indebtedness of the Asociacion de Agricultores del Ecuador to the Mercantile Bank of the Americas will be totally paid under the law of 1921 which extended the period of the three sucre tax on cocoa to December 31, 1925, and that if in 1925, this indebtedness of the Associacion de Agricultores del Ecuador to the Mercantile Bank of the Americas has not been paid, said tax will be extended until this debt has been cancelled.

HUGHES

822.00/526

The Minister in Ecuador (Bading) to the Secretary of State

[Extract]

Quarterly Report
No. 23

QUITO, *September 30, 1923.*
[Received November 5.]

SIR:

. . . .

As a result of his negotiations with the President and the wholehearted way in which the President used his influence in the Bank's behalf, Mr. Stabler finally presented him a memorandum accepting in the name of the bank a reduction of the tax to two sucres. Having obtained this reduction from the bank, it was then possible to obtain an increase of one sucre from the Chamber of Deputies, and the bill as amended in that House places the tax at two sucres.

The Chamber of Deputies, however, went much further than merely increasing the tax to two sucres. It maintained the provision that it be continued until the complete extinction of the debt, and then charged the Executive with its collection. It further authorized the Executive to come to an agreement with the Mercantile Bank by means of a transaction or arbitration, and to pay the accounts with 85% of the tax collected, the other 15% to go for the defense of cacao. He was likewise authorised to sell all the real and personal property of the Association of Agriculturists, and to use the proceeds, as well as any money which the Association might have on hand, in the payment of its debts. The Association is therefore completely liquidated, and the administration of the debt is assumed by the Government.

A more satisfactory solution of the difficulty I find it hard to imagine. It seemed impossible to come to any agreement with the Association itself, as that body had practically repudiated the entire debt. The Government, however, will be more disposed to look at the question from the angle of general international relations, should therefore be much easier to deal with, and should at least inspire more confidence than the Association that it will live up to the terms of the agreement.

The passage of the bill in this form caused a deluge of telegrams from the friends of the Association, and there was considerable talk of its reconsideration in the Chamber of Deputies. This did not take place, however, and the bill has now gone to the Senate for approval of the amendments. I am informed by Mr. Stabler that the President has called in all his senatorial friends and urged upon them the necessity of approving the bill in its amended form. It seems likely that this will be done, as in the contrary event the entire bill would be nullified and there are certain articles thereof granting concessions to the cacao growers which are very much desired. The failure of passage would likewise leave the *status quo ante*, or the maintenance of the Three Sucre Tax in its entirety, while the reduction to two sucres, as provided for by the bill, is at least some consolation to the cacao growers.[26]

Mr. Stabler's handling of this difficult question is worthy of the highest praise. . . .

I have [etc.] G. A. BADING

822.61334/119

The Minister in Ecuador (Bading) to the Secretary of State

No. 236 QUITO, *December 1, 1923.*
[Received December 28.]

SIR: Referring to the Department's telegraphic instruction No. 15, October 26, 4 P.M.,[27] instructing me to address a note to the President of Ecuador calling his attention to the assurances which he gave to former Minister Hartman in 1922 to the effect that if a foreign loan were obtained half of the debt of the Association of Agriculturists to the Mercantile Bank of the Americas would be paid, I have the honor to confirm my telegram No. 18, November 30, 4 P. M.,[28] in which I reported the interview which I had with the President on the subject.

I began the conversation by calling the President's attention to the assurances given and stating the confidence which my Government had that although the loan contract made no provision for such payment the Government of Ecuador would see that the assurances were complied with. He replied that it was his belief that the case in hand was not one which should call for diplomatic intervention on the part of the United States Government, as it was purely a question between the Association of Agriculturists and the Mercantile Bank. The loan from said bank had been contracted by the Associa-

[26] The bill was not passed in 1923.
[27] *Ante*, p. 933.
[28] *Ante*, p. 936.

tion without the approval of the Government having been obtained, although its statutes stated clearly that such approval was necessary. He, for the honor of the country, had caused the debt to be recognized by the Government, after refusal to do so by Congress, by the insertion in the bill which created taxes to pay the debts of the Association of a phrase stating that the proceeds of the tax were to be used in the payment of the *vale* holders, the local banks, "and other creditors". While the debt was recognized by the Government, there was as yet no possibility of making any provision for it, as its exact amount was not known. While he admitted that the balance shown by the Association was probably erroneous because of its extreme smallness, he was not sure that the account presented by the Bank was correct either, and stated that this question would have to be settled privately between the Bank and the Association, either by direct agreement, arbitration, or lawsuit.

I asked the President whether it were not true that the Association was established by Congress and could in the same way be dissolved by that body, leaving the Bank with no one to sue should it desire to bring legal action. He replied that this was not the case, that the Association was a private body, and that Congress had merely authorized it to collect taxes for the payment of its debts. Congress could take away from it the administration of these taxes but could not dissolve the Association. He had hoped that this action would be taken by the last Congress, but the opposition in the Senate was too strong and the bill failed. The taxes, however, still remained in force, and when a settlement was once agreed upon as to the amount of the debt, the Bank would be paid. He thought even that once this matter were settled, he might very probably be able to obtain a loan for this particular purpose, guaranteed by the Three Sucre Tax, in which case the Bank would be paid immediately. Nothing could be done, however, until the amount of the debt was determined, and while he would continue to use his influence to bring about such determination, that was really a purely private matter between the Bank and the Association.

In reply to my inquiry whether it would be possible for the Government, should the loan be obtained, to pay any part of the Association's debt, he stated that the present loan was intended merely to consolidate Ecuador's foreign debt and to pay off the local banks, and that there would not be a cent remaining to the Government for use in other purposes. The gold which would come to the country for the payment of the local banks he intended to have placed in a reserve bank and pay off the domestic debts with notes based on this gold supply. The country would thus be economically benefited by the influx of a large sum of money. Production would be stimulated

and a favorable effect would be felt on the rate of exchange. In case the Government had been able to obtain a larger loan, it would have very gladly taken care of the Association's debt, but the size of the loan was determined by the Government's ability to meet the service and could not be increased.

In conclusion, in order to remove any question of doubt with regard to the attitude of the Government towards this debt, I asked the President whether the Government of Ecuador recognized any obligation towards the debt other than a moral one. He replied that the Government had directly acknowledged the debt by creating taxes for its payment, and that it was therefore more than a moral obligation to the Government. The determination of the amount of the debt, on the other hand, was not a matter for the Government to decide, but must be settled privately between the Bank and the Association.

In this connection I would add that Mr. Stabler has not yet returned from Guayaquil, and that I have had no news from him for some time as to the status of his negotiations in that city.

I have [etc.]

G. A. Bading

ESTONIA

EXTRADITION TREATY BETWEEN THE UNITED STATES AND ESTONIA

Treaty Series No. 703

Treaty between the United States of America and Estonia, Signed at Tallinn, November 8, 1923[1]

The United States of America and Esthonia 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:
Mr. Frederick W. B. Coleman, Envoy Extraordinary and Minister Plenipotentiary

and The Government of the Republic of Esthonia:
Mr. Frederick Akel, 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 Esthonia 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 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 or [*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.

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:

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[1] Ratification advised by the Senate, Jan. 7, 1924; ratified by the President, Nov. 11, 1924; ratified by Estonia, Oct. 13, 1924; ratifications exchanged at Washington, Nov. 15, 1924; proclaimed by the President, Nov. 15, 1924.

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1. Murder, comprehending the crimes designated by the terms parricide, assassination, manslaughter, poisoning or infanticide.
2. The attempt to commit murder.
3. Rape, abortion, carnal knowledge of children under the age of twelve 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 statute;
   (*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, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein.
10. The act of breaking into and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance and other companies, or other buildings not dwellings with intent to commit a felony therein.
11. Robbery, defined to be the act of feloniously and forcibly taking from the person of another goods or money by violence or by putting him in fear.
12. Forgery or the utterance of forged papers.
13. The forgery or falsification of the official acts of the Government or public authority, 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 or criminal malversation committed by public officers or depositaries.
16. Embezzlement by any person or persons hired, salaried or employed to the detriment of their employers or principals.
17. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from their families or any other person or persons, or for any other unlawful end.

18. Larceny, defined to be the theft of effects, personal property, or money.
19. 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.
20. Perjury or subornation of perjury.
21. 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.
22. Crimes and offenses against the laws of both countries for the suppression of slavery and slave trading.
23. Wilful desertion or wilful non-support of minor or dependent children.
24. Extradition shall be granted for the crimes and offenses as specified above, only subject to the condition that the crime or offense committed is punishable under the laws of both of the High Contracting Parties at least by imprisonment with or without hard labour.
25. Extradition shall also take place for participation in any of the crimes before mentioned as an accessory before or after the fact; provided such participation be punishable by imprisonment by the laws of both the High Contracting Parties.

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. 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 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 other than that for which he was surrendered.

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 both of the Contracting Parties 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 parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered to that State whose demand is first received.

ARTICLE VIII

Under the stipulations of this Treaty, neither of the High Contracting Parties shall be bound to deliver up its own citizens.

ARTICLE IX

The expense of arrest, detention, examination and transportation of the accused shall be paid by the Government which has preferred the demand for extradition.

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 its seat of Government, or where extradition is sought from territory included in the preceding paragraphs, other than the United States or Esthonia, requisitions may be made by superior consular

officers. It shall be competent for such diplomatic or superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two Governments shall respectively have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify it to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

In case of urgency, the application for arrest and detention may be addressed directly to the competent magistrate in conformity to the statutes in force.

The person provisionally arrested shall be released, unless within two months from the date of arrest or commitment in Esthonia or United States respectively 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 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, and of the depositions upon which such warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

Article XII

In every case of a request made by either of the High Contracting Parties for the arrest, detention or extradition of fugitive criminals, the appropriate legal officers of the country where the proceedings of extradition are held, 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 whatever for compensation for any of the services so rendered shall be made against the Government demanding the extradition; provided, however, that any officer or officers of the surrendering Government so giving assistance who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for 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 XIII

The present Treaty 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 XIV

The present Treaty shall remain in force for a period of ten 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 Tallinn this eighth day of November, nineteen hundred and twenty-three.

[seal] F. W. B. Coleman
[seal] Fr. Akel

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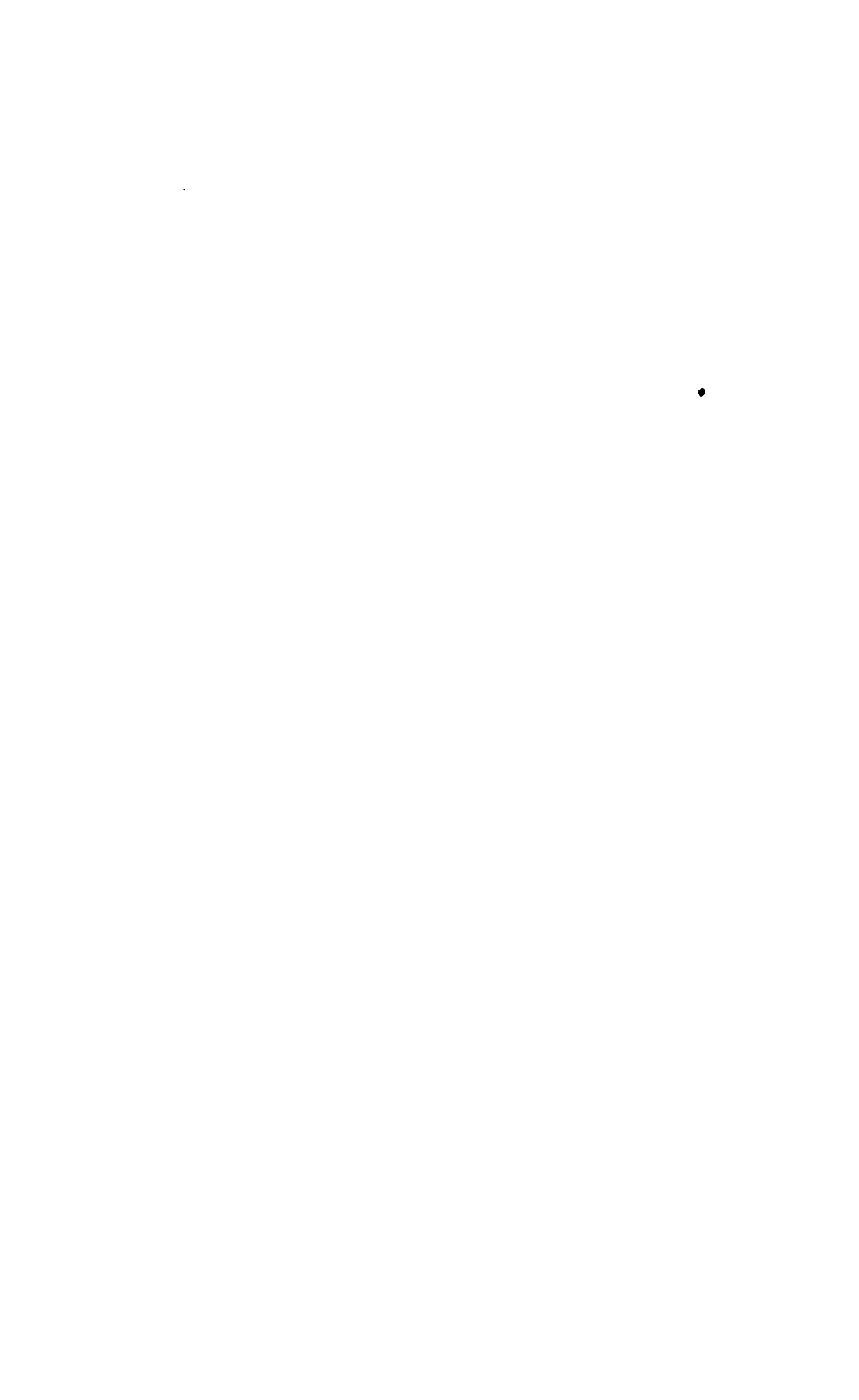

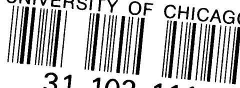

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