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May 5 (1369)	<i>From the Ambassador in Chile</i> Transmittal of Chilean regulations relating to law subsidizing shipping through the Panama Canal; suggestion that the U. S. Government might prefer a regulation which did not so clearly justify inference that subvention is a repayment of Canal tolls.	116

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Dec. 5 (907)	<i>To the Ambassador in Chile</i> Transmittal of letter from the Secretary of Commerce, July 7, and data showing that reimbursement of canal dues is a fairly common practice among nations.	118

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CONTINUED CIVIL WAR IN CHINA; OVERTHROW OF THE PEKING GOVERNMENT; AND REORGANIZATION OF THE NATIONALIST GOVERNMENT

1928 Feb. 20 (1403)	<i>From the Chargé in China</i> Summary of events and conditions in China during January: Diminution of the Kuomintang and increasing importance of Kwangsi militarists.	119
Mar. 1 (1410)	<i>From the Chargé in China</i> Report on certain political and military movements and tendencies: Growing influence of Feng Yu-hsiang in Nanking regime; developments in South away from Nanking; regrouping of component parts of old Ankuochün in the North.	123 ✓
Mar. 21 (1443)	<i>From the Chargé in China</i> Summary of events and conditions during February: Military operations; Communists; Kuomintang conference; political events at Peking, Nanking, etc.; developments in Szechwan.	125
Apr. 13 (229)	<i>From the Minister in China (tel.)</i> From Shanghai: Chiang Kai-shek's mandate published April 8 and 9 and statement relative to protection of foreign lives and property (texts printed).	130 ✓
Apr. 17 (1468)	<i>From the Minister in China</i> Summary of events and conditions during March: Military operations; political events; boycott declared at Amoy against Japanese shipping.	132
Apr. 20 (50)	<i>From the Ambassador in Japan (tel.)</i> Foreign Office statement (text printed) announcing intention to dispatch troops to the Shantung districts for the protection of Japanese residents and stating that the troops will be withdrawn as soon as the protection is no longer necessary. (Footnote: Information that the statement is identical with an unsigned memorandum handed to the Secretary of State by the Japanese Ambassador.)	136
May 5	<i>From the Consul General at Shanghai (tel.)</i> From Tsinan, May 4: Report on clash between Japanese and Nationalist troops; consulate's efforts to stop fighting; receipt by the United States, British, and French consulates of a request from Chinese organizations for good offices to terminate fighting; information that U. S. lives and property are safe.	137

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1928 May 7 (148)	<i>To the Minister in China (tel.)</i> For Price, Tsinan: Department's commendation of action taken during Sino-Japanese clash, and relief in learning of safety of Americans. Instructions to inform Department of developments as promptly as possible.	138
Undated [Rec'd May 9]	<i>From the Japanese Embassy</i> Explanation of Japan's decision to dispatch additional troops to Shantung to ensure protection of Japanese residents and communication over the Shantung Railway; decision also to send troops to Tientsin and additional cruisers and destroyers to the Yangtze and to South China, in case of eventualities, with promise of their withdrawal as occasion permits.	138
May 9 (153)	<i>To the Minister in China (tel.)</i> Instructions to inform consul at Tsinan that, if and when good offices are asked by both sides, he is authorized to mediate to terminate fighting. (Instructions to repeat to Tokyo.)	139
May 10 (330)	<i>From the Minister in China (tel.)</i> Chang Tso-lin's circular telegram to the Chinese people (text printed) appealing for peace and indicating that the main object of the Peking regime in engaging in hostilities was the extermination of bolshevism.	140
May 10	<i>Memorandum by the Assistant Secretary of State</i> Conversation with the Chinese Minister during which the Minister proposed that the United States call a conference of powers to take place in the fall for the purpose of negotiating with the Chinese on the several questions at issue.	141
May 15 (1503)	<i>From the Minister in China</i> Summary of events and conditions during April: Military operations; dispatch of Japanese troops to Shantung; political events.	143
May 18 (368)	<i>From the Minister in China (tel.)</i> From Tsinan, May 14: Report that Chiang Kai-shek personally assured American and British consuls he was prepared to negotiate with the Japanese commander in chief at any neutral consulate; fighting resumed after Chiang's departure from city; refusal of Chinese troops to accede to Japanese demand to surrender arms as only terms for peace.	146
May 22 (1511)	<i>From the Minister in China</i> Confidential letter from Peking Ministry of Foreign Affairs requesting mediation in endeavor to persuade Southern authorities to respond to Chang Tso-lin's appeal for peace; Minister's reply (text printed) stating that he could not espouse the proposals offered by one of the parties involved without the appearance of partisanship. Information that British, Netherlands, and Japanese colleagues were also approached.	146
June 15 (1545)	<i>From the Minister in China</i> Report on events and conditions during May: Military operations; Sino-Japanese clash at Tsinan; Japanese statement of May 18; protection of U. S. lives and property; developments at Hankow and Canton.	148

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CONTINUED CIVIL WAR IN CHINA; OVERTHROW OF THE PEKING GOVERNMENT;
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1928 July 13 (914)	<i>To the Minister in China</i> Department's approval of reply to the Foreign Office request for mediation.	153
July 16 (1572)	<i>From the Minister in China</i> Summary of events and conditions in China during June: Military operations; transfer of capital of the country to Nanking and renaming of Peking; developments in Peking.	153
Undated [Rec'd July 21]	<i>From the Japanese Embassy</i> Statement that the whole responsibility for the Tsinan incident of May 3 rests with the Chinese; basis upon which Japan will proceed toward solution of the incident; assurance that troops will be withdrawn as soon as their presence is no longer necessary.	158
Aug. 6 (1602)	<i>From the Minister in China</i> Summary of events and conditions during July: Military operations; political events; disbandment of troops; conditions in Manchuria and in Shantung.	159
Sept. 14 (1673)	<i>From the Chargé in China</i> Summary of events and conditions during August: Political events; Kuomintang conference; Mongol uprising.	163
Oct. 9 (1708)	<i>From the Minister in China</i> Summary of events and conditions during September: Political events; conditions in China under Nationalist Government.	167
Nov. 12 (1750)	<i>From the Minister in China</i> Summary of events and conditions during October: Promulgation of the organic law of the Nationalist Government and inauguration of new government; Sino-Japanese relations; conditions in Chefoo.	170
Dec. 12 (1804)	<i>From the Minister in China</i> Summary of events and conditions during November: Sino-foreign relations; Sino-Japanese treaty relations.	174
1929 Jan. 11 (1867)	<i>From the Minister in China</i> Summary of events and conditions during December: Sino-foreign relations; conditions in Manchuria.	176

RECOGNITION BY THE UNITED STATES OF THE NATIONALIST GOVERNMENT IN
CHINA

1928 Apr. 13 (266)	<i>From the Minister in China (tel.)</i> Proposed reply (text printed) to request of attorney for the Nationalist authorities for a certificate stating when the United States Government ceased to recognize either the so-called Peking Government or the Nationalist Government at Nanking.	179
Apr. 14 (120)	<i>To the Minister in China (tel.)</i> Approval of first two sentences of the Minister's proposed reply to request of attorney for the Nationalist authorities, and instructions to substitute Department's text for the last two sentences.	179

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RECOGNITION BY THE UNITED STATES OF THE NATIONALIST GOVERNMENT IN CHINA—Continued

Date and number	Subject	Page
1928 May 24	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation with the Spanish Ambassador during which the Assistant Secretary stated that the United States had not recognized the Nationalist Government and would not recognize C. C. Wu as having any official status; that no relation existed between Mr. MacMurray's notes to Northern and Southern factions and Japan's action; and that alleged reports in the Japanese press regarding statements made by the Secretary of State concerning Japan's policy in China, were based upon misinformation.</p>	180
June 15 (188)	<p><i>To the Minister in China (tel.)</i></p> <p>Information that Alfred Sze, the Chinese Minister, had that afternoon called without appointment and stated that he was replying in the affirmative to a cable from the Nationalist Government inquiring his willingness to continue as China's representative in Washington.</p>	181
June 15 (189)	<p><i>To the Minister in China (tel.)</i></p> <p>Request for views regarding: (1) probability of establishment of a responsible government by Nationalists, (2) necessary steps toward recognition, at least on a <i>de facto</i> basis, (3) whether U. S. Government is prepared to indicate willingness to proceed with negotiations as soon as Nationalist Government is able to appoint authorized representatives. Probable consultation with other governments concerning recognition.</p>	181
June 16	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation with the Japanese Chargé during which the Assistant Secretary stated that the United States had reached no decision regarding recognition of the Nationalist Government, that recognition was unnecessary for negotiation of certain phases of treaty situation, and that the United States had made no decision in regard to moving of Legation from Peking; and explained the status of Alfred Sze.</p>	182
June 18	<p><i>Memorandum by the Secretary of State</i></p> <p>Conversation with the British Chargé during which the Secretary explained the status of Alfred Sze and discussed the possibility of <i>de facto</i> recognition of Nationalist Government upon assurance of its stability.</p>	183
June 20 (487)	<p><i>From the Minister in China (tel.)</i></p> <p>Views regarding recognition of the Nationalist Government: (1) Establishment by the Nationalists of a responsible government is problematical; (2) <i>de facto</i> status already exists between the United States and Nationalist Government; (3) it would be possible and advisable to reach an agreement with dominant party regarding customs duties. Recommendation that authorization be given him to enter into discussions with Nanking regime with a view to relinquishment by the United States of treaty restrictions affecting Chinese customs tariffs, and to reply as previously to any pressure by Nanking regime for further revision of treaties. Belief that further plans based on supposition that unity and peace in China are actualities is premature.</p>	184

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RECOGNITION BY THE UNITED STATES OF THE NATIONALIST GOVERNMENT IN CHINA—Continued

Date and number	Subject	Page
1928 June 23	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation between representatives of the Nationalist Government of China and officials of the State Department regarding method of organization of the Nationalist Government, and queries by C. C. Wu as to when the U. S. Government would be prepared to begin treaty revision negotiations and when it intended transferring its Legation from Peking to Nanking.</p>	185
June 27	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation with the French Ambassador during which the Secretary stated that recognition of the Nationalist Government by the United States depended upon stabilization of conditions in China, but that the United States was in a position to commence tariff negotiations at an appropriate time, which would amount to a <i>de facto</i> recognition.</p>	188
June 27 (499)	<p><i>From the Minister in China (tel.)</i></p> <p>Inquiry from attorney for the Nationalist authorities (text printed) whether the U. S. Government is prepared to recognize the Nationalist Government as having capacity to sue in the United States Court for China as a <i>de facto</i> government for the purpose of filing a suit in said court. Minister's reply (text printed) that United States is in <i>de facto</i> relationship with the Nationalist regime, but with reference to specific inquiry the question is one for judicial determination.</p>	189
June 28 (208)	<p><i>To the Minister in China (tel.)</i></p> <p>Approval of proposed reply to inquiry of attorney for the Nationalist authorities.</p>	190
July 6 (516)	<p><i>From the Minister in China (tel.)</i></p> <p>Request for information concerning conversations at Washington initiated by French and other interested Governments concerning recognition of Nanking regime.</p>	190
July 9 (215)	<p><i>To the Minister in China (tel.)</i></p> <p>Substance of conversations with the British, French, and Japanese representatives.</p>	190
Aug. 2 (592)	<p><i>From the Minister in China (tel.)</i></p> <p>Request for instructions whether Nationalist regime should be dealt with as a fully recognized government.</p>	192
Aug. 10 (265)	<p><i>To the Minister in China (tel.)</i></p> <p>View that signing of the treaty of July 25 with the Nationalist regime constitutes technically a recognition of that government. Instructions, however, to avoid answering inquiries regarding recognition, as the Secretary is considering the manner in which public affirmation of recognition shall be made.</p>	192
Aug. 10	<p><i>To President Coolidge</i></p> <p>Request for authority to publicly acknowledge, either in China or the United States, that the signing of the treaty of July 25 by the United States is a recognition of the Nationalist Government.</p>	193
Aug. 11	<p><i>From President Coolidge (tel.)</i></p> <p>Authority to acknowledge that signing of the treaty is a recognition of the Nationalist Government.</p>	193

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RECOGNITION BY THE UNITED STATES OF THE NATIONALIST GOVERNMENT IN CHINA—Continued

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1928 Aug. 13	<i>Memorandum by the Secretary of State</i> Conversation in which the French Chargé conveyed his Foreign Minister's suggestion that the question of <i>de jure</i> recognition of the Nationalist Government be considered at the Washington Conference and request that he be notified before the United States took separate action; Secretary's reply that the United States considered it had already recognized the Chinese Government, but that no formal notice has been given that this was considered a <i>de jure</i> recognition, and that the Chargé would be notified before any such action was taken.	194
Aug. 14	<i>Memorandum by the Assistant Secretary of State</i> Conversation between the Chinese Minister and the Secretary of State with reference to treaty revision, the Minister's status, and recognition of the Nationalist Government. Conversation between the Chinese Minister and the Assistant Secretary during which it was suggested that the Nationalist Government make known whether they desire some formal act of recognition.	195
Sept. 1 and 4	<i>Memorandum by the Assistant Secretary of State</i> Interview with C. C. Wu concerning China's adherence to the multilateral treaty; the Nationalist Government's view that there was no need for a formal act of recognition; Wu's authorization to discuss treaties; Sze's status.	196
Sept. 4 (684)	<i>From the Chargé in China (tel.)</i> Request for instructions in regard to continuing to avoid answering inquiries concerning United States recognition of the Nationalist Government.	198
Sept. 11 (310)	<i>To the Minister in China (tel.)</i> Instructions that, in reply to inquiries, attention should be invited to the fact that the Governments of the United States and China, through their duly accredited representatives, signed a formal treaty on July 25; and that the Legation has been authorized to conduct its relations with the Nationalist Government of China on a basis of full recognition.	198✓

CHINESE PROPOSAL FOR RAISING THE LEGATIONS IN CHINA AND CHINESE LEGATIONS TO THE STATUS OF EMBASSIES

1928 Oct. 12	<i>From the Chief of the Division of Far Eastern Affairs</i> Observations and suggestions concerning the proposal which the Chinese Government is making that the Chinese Legation in Washington and in several other capitals be raised to an Embassy.	199
Oct. 12 (346)	<i>To the Minister in China (tel.)</i> Information of Chinese proposal to raise Legations to Embassies; and request for views on the subject.	200
Oct. 15 (771)	<i>From the Minister in China (tel.)</i> View that, considering the situation in China and the possibility of a transitory regime, the question is whether the United States desires to make such a gesture to demonstrate its sympathy and confidence regarding ideals toward which the Chinese are striving.	200

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CHINESE PROPOSAL FOR RAISING THE LEGATIONS IN CHINA AND CHINESE
LEGATIONS TO THE STATUS OF EMBASSIES—Continued

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1928 Oct. 24	<p><i>Memorandum by the Secretary of State</i></p> <p>Conversation with the British Ambassador in which the Secretary discussed informally the subject of raising the Legations in China to Embassies, stating that the Department had not yet come to any conclusion and would be glad to have the British Government's views.</p>	201
Oct. 25	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation between the Secretary of State and the Japanese Ambassador in which the Secretary discussed the raising of the Legations in China to Embassies and expressed his desire to know the Japanese Government's attitude.</p>	202
Oct. 25	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation between the French Ambassador and the Secretary of State in which the Secretary covered the same ground he had been over with the Japanese Ambassador that morning.</p>	204
Oct. 25	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation between the German Ambassador and the Secretary of State in which the Secretary covered the same ground as with the Japanese Ambassador.</p>	205
Oct. 27 (362)	<p><i>To the Minister in China (tel.)</i></p> <p>Information that the Chinese proposal is being discussed with diplomatic representatives of powers to which the same proposals were addressed by the Chinese.</p>	205
Oct. 30	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation with the Chinese Minister concerning the Secretary of State's action in discussing with other Governments the question of raising Chinese Legations to Embassies.</p>	205
Nov. 2	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation with the German Ambassador concerning his Government's reply to the effect that it was in a peculiar position in that it had not been approached by China on the subject; that his Government desired to follow the policy outlined by the United States, but would reconsider the matter should the United States decide to raise their Legation to an Embassy.</p>	207
Nov. 2	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation between the Secretary of State and the Japanese Ambassador who conveyed his Government's reply that it agreed in principle with idea of raising the Legations but that there were outstanding questions which prevented consideration at the present time.</p> <p>Later conversation of Japanese Ambassador with the Assistant Secretary regarding the subject of extraterritoriality, the status of C. C. Wu, Alfred Sze, and Frank Lee; China's indebtedness; and the Nationalist Government's protest against the loan made to the Oriental Development Co.</p>	207

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CHINESE PROPOSAL FOR RAISING THE LEGATIONS IN CHINA AND CHINESE LEGATIONS TO THE STATUS OF EMBASSIES—Continued

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1928 Nov. 13	<i>Memorandum by the Assistant Secretary of State</i> Conversation with the counselor of the Japanese Embassy during which the counselor stated that he had seen in the press that United States had decided to raise the Legation at Peking to the rank of an Embassy; and the Assistant Secretary replied that the United States had not done so, but had the matter under sympathetic consideration.	210
Nov. 15	<i>Memorandum by the Assistant Secretary of State</i> Conversation between the Secretary of State and the Chinese Minister during which the Secretary and the Assistant Secretary explained that reports of United States decision to raise its Legation at Peking to the status of an Embassy were erroneous; that the matter was still under sympathetic consideration by this Government.	211
Nov. 22	<i>Memorandum by the Assistant Secretary of State</i> Conversation between the Secretary of State and the British Ambassador who conveyed his Government's reply that it felt that the question of raising the Legations was not acute, that the question of tariff autonomy was of greater importance.	212
Dec. 10 (1061)	<i>To the Minister in China</i> Transmission of copy of memorandum of conversation of November 15 with the Chinese Minister. Information that the opinion of the representatives of the powers approached seemed to be that the present time is not opportune for taking this action; and that no decision had been reached by the United States regarding the proposal.	213

MEASURES TAKEN BY THE UNITED STATES AND OTHER POWERS FOR THE PROTECTION OF LIVES AND PROPERTY IN CHINA

1928 Feb. 6 (73)	<i>From the Minister in China (tel.)</i> Information that Paxton, the vice consul at Nanking, temporarily at Chinkiang, has been informed that protection of life is to be afforded by diplomatic means everywhere, although with urgent advice to evacuate from exposed positions, and that protection of property is to be afforded by diplomatic means everywhere but by force only as incidental to the protection of life.	213
Feb. 9 (41)	<i>To the Minister in China (tel.)</i> Instructions that any decision in regard to use of force must depend upon determination of U. S. military authorities and upon numerous other considerations; that protection of U. S. citizens should be afforded by diplomatic means whenever required or requested and whenever general interests require diplomatic representations.	214
Mar. 3	<i>To Miss Margaret Hiller, National Board, Young Women's Christian Associations</i> Statement of Department's position with respect to possible waiver by U. S. citizens in other countries of their right to U. S. diplomatic intervention and other protection.	214

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MEASURES TAKEN BY THE UNITED STATES AND OTHER POWERS FOR THE PROTECTION OF LIVES AND PROPERTY IN CHINA—Continued

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Mar. 13	<i>From the Consul General at Tientsin to the Chargé in China</i> Recommendations for the protection of Americans at Peitaiho Beach, in view of the anticipated resumption of hostilities.	216
Mar. 19 (174)	<i>From the Chargé in China (tel.)</i> Concurrence in statement of consul general at Tientsin as to probabilities of the situation and his recommendation for protection of Americans at Peitaiho.	218
Mar. 19 (96)	<i>To the Chargé in China (tel.)</i> Information that U. S. business interests are disturbed over possible advantageous situation of competitors due to re-opening of British and Japanese consulates at Changsha and Chungking; and they feel that conditions can be ameliorated only when U. S. consulates at those places are reopened.	218
Apr. 13 (228)	<i>From the Minister in China (tel.)</i> View, concurred in by the consul general at Hankow and the consul at Chungking, that it is premature to reopen the Chungking and Changsha consulates. Information of conditions in those regions.	218
May 3 (144)	<i>To the Minister in China (tel.)</i> Request for information concerning U. S. consul and other Americans at Tsinan.	219
May 5 (311)	<i>From the Minister in China (tel.)</i> Reports that Tsinan is quiet and consul and other Americans unmolested. Minister's unsuccessful efforts to secure information.	220
May 7 (318)	<i>From the Minister in China (tel.)</i> Report from Tsingtau that mail has been received from the consul at Tsinan and that it was believed no Americans were injured or U. S. property looted.	220
May 8 (325)	<i>From the Minister in China (tel.)</i> Telegram, May 7, to the Foreign Minister at Nanking (text printed) expressing anxiety concerning safety of Americans at Tsinan and reliance upon him to see to it that these Americans and their property are fully protected. Reply, May 8 (text printed) stating that the U. S. consulate is being guarded and all Americans are safe, also to feel no anxiety.	220
May 12	<i>From the Minister in China to the Consul General at Tientsin</i> View that it would not be appropriate to request U. S. forces at Tientsin to extend protection to the Pao Cheng Cotton Mill if, as it is understood, its protection would have no relation to the protection of lives.	221
May 15 (158)	<i>To the Minister in China (tel.)</i> Instructions to report whether plan, reported in press despatches from Shanghai, has been adopted for the establishment of a 20-li zone; also to report whether this is likely to bring on a conflict between Chinese armies and the forces at Tientsin, and whether it is necessary to keep Chinese forces out of the native city.	221

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MEASURES TAKEN BY THE UNITED STATES AND OTHER POWERS FOR THE PROTECTION OF LIVES AND PROPERTY IN CHINA—Continued

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1928 May 17 (359)	<i>From the Minister in China (tel.)</i> To Shanghai, May 16: Instructions to deliver a letter to the Foreign Minister at Nanking (text printed) bringing to his attention the delicacy of the situation at Tientsin, in the hope that only trusted and loyal Chinese forces may be employed in the event of operations around Tientsin and that all commanders be fully informed as to the real nature and object of U. S. military forces in that area. Information that a somewhat similar letter is being sent to the Foreign Minister at Peking.	222
May 17 (360)	<i>From the Minister in China (tel.)</i> Information that the 20-li zone was not adopted; that it was urged at the meeting of Tientsin commandants on May 11 by the Japanese general and that General Castner and General Butler declined to associate themselves with it. Opinion that it is not necessary to keep Chinese forces out of the native city.	223
May 17 (63)	<i>From the Ambassador in Japan (tel.)</i> Foreign Minister's interview with U. S., British, French, and Italian representatives in which he stated that Japan is prepared fully to fulfill its obligations in any joint measures for the protection of foreign lives and property in Peking and Tientsin; and informed them of a memorandum (text printed) which was being delivered to Chang Tso-lin and to the Nationalist Government on May 18, intimating that Japan may possibly be constrained to take appropriate and effective steps for the maintenance of peace in Manchuria. (Repeated to China.)	224
May 18 (162)	<i>To the Minister in China (tel.)</i> Instructions that there will be no U. S. participation in joint action with Japan or any other power to prevent extension of Chinese hostilities in Manchuria; that the greatest caution should be exercised in conferences with colleagues to prevent the United States from becoming involved in intervention in China. Approval of letters in telegram No. 359, May 17.	226
May 18 (163)	<i>To the Minister in China (tel.)</i> Agreement with position taken by Minister, General Butler, and General Castner.	226
May 22	<i>Memorandum by the Assistant Secretary of State</i> Conversation between the Japanese Ambassador and the Secretary of State concerning Japanese press reports that the Japanese memorandum to the Nationalist and Northern authorities had been looked upon with suspicion in the United States where it was interpreted as a desire on the part of Japan to declare Manchuria as being a protectorate of Japan; Ambassador's denial of any such intent on the part of Japan.	227
May 22 (383)	<i>From the Minister in China (tel.)</i> Foreign Minister's authorization of the publication of Minister's letter of May 18 to him and his reply, May 19 (text printed). Information of arrangements regarding publication of reply from Foreign Minister at Nanking. (Footnote: Information that the notes were released to the press on May 23.)	228

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MEASURES TAKEN BY THE UNITED STATES AND OTHER POWERS FOR THE PROTECTION OF LIVES AND PROPERTY IN CHINA—Continued

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1928 May 22 (860)	<i>From the Ambassador in Japan</i> Foreign Minister's interview with U. S., British, French, and Italian representatives for the purpose of explaining the steps Japan intended to take with respect to the situation now developing in China.	229
May 24	<i>Memorandum by the Assistant Secretary of State</i> Conversation between the Secretary of State and the Japanese Ambassador in which the Secretary expressed his inability to understand why the Japanese press should be so disturbed over the U. S. position with regard to the Japanese memorandum handed to the Northern and Southern factions; Secretary's explanation of his replies to press inquiries on the subject.	231
May 25 (393)	<i>From the Minister in China (tel.)</i> Formal declaration of the Peking Government (text printed) concerning the Japanese memorandum.	231
May 26 (399)	<i>From the Minister in China (tel.)</i> Information of the Minister's successful action to prevent a notification by commandants at Tientsin to various Chinese authorities, both Northern and Southern, extending beyond the agreed defense areas the lines within which Chinese forces would not be allowed.	232
May 29 (174)	<i>To the Minister in China (tel.)</i> Approval of action taken and gratification over results.	234
June 1 (412)	<i>From the Minister in China (tel.)</i> Meeting of representatives of the powers with Chang Tso-lin, whose remarks were generally received as being in the nature of a valedictory and as indicating he may leave for Manchuria at any time.	234
June 4 (425)	<i>From the Minister in China (tel.)</i> Telegram sent to certain Nationalist leaders (text printed) requesting arrangements for the peaceful withdrawal of General Pao's forces from Peking.	235
June 5 (426)	<i>From the Minister in China (tel.)</i> Report on the departure of principal remaining officials of the Fengtien regime and control of Peking by a committee of elder statesmen; plans for the peaceful withdrawal of the remaining Fengtien brigade upon the arrival of the incoming Nationalist troops.	235
June 5 (427)	<i>From the Minister in China (tel.)</i> From Shanghai: Receipt of a communication from the local Commissioner of Foreign Affairs, June 2 (text printed) in reply to the U. S. letter of May 18. Arrangements for publication.	236
June 8 (184)	<i>To the Minister in China (tel.)</i> Suggestion that, through the consul general at Shanghai, the receipt of the Chinese note be acknowledged and gratification expressed over the assurances given.	237

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MEASURES TAKEN BY THE UNITED STATES AND OTHER POWERS FOR THE PROTECTION OF LIVES AND PROPERTY IN CHINA—Continued

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1928 June 9 (442)	<i>From the Minister in China (tel.)</i> Nationalist Government reply to the dean of the diplomatic corps, June 6 (text printed) promising that arrangements would be made for the peaceful withdrawal of General Pao's forces. Telegrams sent by the dean to Nationalist authorities, June 9 (texts printed) concerning failure to live up to promise regarding Pao's forces.	237
June 10 (444)	<i>From the Minister in China (tel.)</i> Report that the Committee of Safety has abruptly relinquished its responsibilities; probability that this was induced by apprehensions resulting from violation by Kuominchun of safe conduct promised to Pao.	239
June 11 (446)	<i>From the Minister in China (tel.)</i> Report that Japanese and U. S. airplanes have been fired on; that U. S. Marine and Army officers are proceeding to Tientsin to confer with Feng's commander for purpose of informing him of presence of U. S. forces at Hsinho.	239
June 11 (448)	<i>From the Minister in China (tel.)</i> Receipt by the Senior Minister of a telegram dated June 10 from the Nationalist Foreign Minister (text printed) stating that commanders at the front are being instructed to investigate the situation and devise means for affording safety of Pao's force.	240
June 12 (457)	<i>From the Minister in China (tel.)</i> View that no reply should be made to the Nanking Foreign Office note of June 2.	240
June 12 (186)	<i>To the Minister in China (tel.)</i> Adoption of Minister's view.	241
June 12 (458)	<i>From the Minister in China (tel.)</i> Arrival of General Yen, June 11; his proclamation stating he assumes full responsibility for maintenance of law and order and protection of both Chinese and foreign lives and property.	241
June 19 (477)	<i>From the Minister in China (tel.)</i> Telegram received by the Senior Minister from the Nationalist Foreign Minister June 13 (text printed) stating an investigation has been instituted regarding Pao's forces and proper measures will be taken. Senior Minister's reply (text printed) acknowledging telegram of June 13, and conveying further indications that Nationalist Government's instructions have been ignored and assurances unfulfilled.	241
July 2 (1557)	<i>From the Minister in China</i> Letters exchanged, June 13-20, between the consul general at Tientsin and the commander in chief of the Asiatic Fleet (texts printed) concerning protection of the U. S. citizens at Peitaiho.	242

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MEASURES TAKEN BY THE UNITED STATES AND OTHER POWERS FOR THE PROTECTION OF LIVES AND PROPERTY IN CHINA—Continued

Date and number	Subject	Page
1928		
July 9 (84)	<i>From the Chargé in Japan (tel.)</i> Interview with Vice Minister for Foreign Affairs who stated that there are no new developments in Japan's policy in Manchuria; that in regard to Shantung the Japanese attitude had not changed.	245
July 14	<i>From the Minister in China to the Commander in Chief, Asiatic Fleet (tel.)</i> Opinion that there is no necessity for retaining a vessel at Taku Bar, but presence of one at Chinwangtao is highly advisable.	246
July 18 (87)	<i>From the Chargé in Japan (tel.)</i> Foreign Minister's interview given to U. S., British, French, and Italian representatives for the purpose of explaining the position of Japan in China with particular reference to the situation in Shantung and Tientsin.	246
July 18 (1581)	<i>From the Minister in China</i> Transmittal of Decanat circular of July 13 describing dean's call upon the Vice Minister for Foreign Affairs for the purpose of protesting against anti-foreign posters put up all over Peking; also copies of propaganda posters and hand bills. Probable reasons for the sudden flooding of Peking with propaganda literature.	247
July 24 (563)	<i>From the Minister in China (tel.)</i> From Paxton, July 23: Report that Ginling College has been three times demanded as headquarters for Yen Hsi-shan during Fifth Plenary Conference.	248
July 25 (570)	<i>From the Minister in China (tel.)</i> From Paxton, July 22 and 23: Reports of the seizure and occupation of American properties.	249
July 26 (242)	<i>To the Minister in China (tel.)</i> Instructions to make strong representations against the seizure and occupation of American properties.	249
July 26	<i>From the American Consul at Chefoo to the Commander of the Tunghai Defense Forces</i> Protest against indiscriminate firing of the commander's forces in sections of the city wherein many Americans reside, which resulted in the wounding of an American sailor; information of amount of compensation fixed on behalf of the sailor, in view of commander's voluntary offer of compensation.	250
July 28 (580)	<i>From the Minister in China (tel.)</i> Note being transmitted to the Nationalist Foreign Minister (text printed) making strong representations against the seizure and occupation of U. S. properties.	251
Sept. 1 (674)	<i>From the Chargé in China (tel.)</i> Report that General Pai Tsung-hsi called on diplomatic representatives and stated that he has received orders to proceed against the Chihli-Shantung troops in northeastern Chihli and also that he gave assurances that every protection would be given U. S. lives and property.	252

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MEASURES TAKEN BY THE UNITED STATES AND OTHER POWERS FOR THE PROTECTION OF LIVES AND PROPERTY IN CHINA—Continued

Date and number	Subject	Page
1928 Nov. 14	<i>From the Chinese Minister of Foreign Affairs to the American Minister in China</i> Information that all cases of occupation which have been reported have been dealt with and the properties evacuated and that inquiries have been instituted to ascertain whether other properties have been occupied and not reported. Explanation of occupations.	252

EVACUATION OF AMERICAN CITIZENS FROM PLACES OF DANGER IN CHINA

1928 Jan. 3 (1328)	<i>From the Minister in China</i> Information of the problems which the British are encountering with the reopening of their consulate at Chungking. Reference to his observations in telegram No. 1132, December 29, 1927, with respect to reopening consular offices in affected districts.	254
Jan. 7	<i>From the Minister in China to the Consul at Tsinan</i> Instructions, in view of problem created by the return of certain American missionaries to interior stations in Shantung without the approval of the consular office, to remind the secretaries of each mission having workers in the interior that the consulate has requested Americans not to remain in remote places and has never revoked its request, and that those Americans who still remain in such places do so entirely at their own risk and upon their own responsibility. Reasons for not following consul's suggestion as to effecting some understanding with the Southern leaders regarding the protection of American citizens and property in the territories which they may conquer.	255
Apr. 17 (235)	<i>From the Minister in China (tel.)</i> From Tsinan, April 16: Information that two missionaries have left Tengkhsien, but that five have decided to stay there; missionaries' report that Northern troops are preparing to make a stand at Chiehho, 20 miles north of Tengkhsien and that Shantung troops are remaining in Tengkhsien to delay advance of Southern army.	256
Apr. 17 (222)	<i>From the Consul at Tsinan to the Minister in China</i> Explanation that the consulate can do nothing with the five missionaries who decided to remain in Tengkhsien; their belief that the Southern forces are no longer antiforeign and that the mission property will suffer less if occupied. Minister's intention to advise all Americans south of Tsinan to withdraw should the Northern army be unable to hold the Chiehho line, and to advise those in Tsinan to withdraw when the Southerners reach Taian. Request for definite instructions whether American citizens should be advised to withdraw in the event of a successful Southern advance.	256
Apr. 19 (246)	<i>From the Minister in China (tel.)</i> From Tsinan, April 18: Report that the situation is serious; that Kuominchun troops have surrounded Northern forces at Tsining and have attempted to cut railway north of Yenchow; and that Northern troops have retreated from Chiehho.	257

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EVACUATION OF AMERICAN CITIZENS FROM PLACES OF DANGER IN CHINA—Con.

Date and number	Subject	Page
1928 Apr. 19 (250)	<p><i>From the Minister in China (tel.)</i></p> <p>To Tsinan, April 19: Advice to be guided by previous instructions; authorization to advise withdrawal from any areas in which there is possibility of danger; understanding that Americans residing in danger zones are doing so either contrary to the advice of the consular office or without having sought advice; instructions to report number of Americans now in southern Shantung.</p> <p>(Repeated to Tsingtau and copies to Tientsin and Chefoo by mail.)</p>	257
Apr. 20 (252)	<p><i>From the Minister in China (tel.)</i></p> <p>From Tsinan, April 19: Report that Northern troops have evacuated Yenchow and that Marshal Sun has reached Taian; Kuominchun reported advancing on Taian; information that Americans have been advised to leave Tsinan and that British authorities have advised their nationals similarly.</p>	258
Apr. 20 (253)	<p><i>From the Minister in China (tel.)</i></p> <p>From Tsingtao, April 19: Report that the Japanese plan to land 700 sailors; information that there are 200 Americans now in Tsingtau and that more are expected to come from Tsinan; request that American destroyers be detailed to Tsingtao in case of emergency evacuation; report of successful Nationalist advance toward Kiaochow Railway.</p> <p>Repeated to the commander in chief with recommendation that naval vessels be dispatched to Tsingtao, in accordance with request from consul.</p>	258
Apr. 22 (228)	<p><i>From the Consul at Tsingtao to the Minister in China</i></p> <p>Information that destroyers will leave Tsingtao probably for Chefoo on April 25 or 26 when it is expected that the U. S. S. <i>Beaver</i> and six submarines will arrive.</p>	259
Apr. 23 (259)	<p><i>From the Minister in China (tel.)</i></p> <p>From Chefoo, April 22: Possibility of collapse of Shantung government and seizure of Chefoo by bandits; recommendation for immediate dispatch of naval vessel; information that all Americans have been advised to come in from the interior; Japanese and British attitude.</p>	260
Apr. 24 (261)	<p><i>From the Minister in China (tel.)</i></p> <p>From Tsinan, April 23: General belief that Taian will be evacuated because of Kuominchun advance; unconfirmed report of recapture of Tsining; evacuation of 3 Americans from Taian and women and children from Tsinan; information that Americans in Tenghsien are unharmed.</p>	260
Apr. 25 (266)	<p><i>From the Minister in China (tel.)</i></p> <p>Information from consul at Tsinan regarding number and location of Americans in southern Shantung; report that Rev. L. C. Osborn of the Church of the Nazarene Mission was captured by the Kuominchun forces in southern Chihli and that representations have been made to the appropriate officers requesting the release of Osborn and adequate protection for American citizens.</p>	260

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EVACUATION OF AMERICAN CITIZENS FROM PLACES OF DANGER IN CHINA—Con.

Date and number	Subject	Page
1928 Apr. 25 (271)	<i>From the Minister in China (tel.)</i> Report from vice consul at Nanking, April 16, that, in general, missionaries who have returned to Kiangsu and Anhwei have found improvement in attitude of both civilians and soldiers, but that American buildings are still occupied by troops.	261
Apr. 26 (L. 3)	<i>From the Consul at Tsinan to the Minister in China</i> Information of circulars sent to Americans advising them to withdraw to Tsingtao or to Tientsin; plan to send motor car to Taian in attempt to persuade 13 Americans to leave; impossibility of communicating with other Americans in Southern controlled territory. Report that there are 102 Americans remaining in Tsinan consular district and that revised lists of citizens and properties in the district are being prepared.	261
Apr. 28 (L. 5)	<i>From the Consul at Tsinan to the Minister in China</i> Report that 91 Americans are now in the consular district, that 3 missionaries arrived from Taian, that 8 citizens will not leave Taian, and that citizens residing along the Kiaochi Railway are gradually withdrawing.	262
Apr. 30 (286)	<i>From the Minister in China (tel.)</i> From Tsinan, April 29: Information that Nationalist forces have cut the Kiaochow-Tsinan Railroad; that Tsinan is being evacuated, and the Japanese are fortifying two areas in the foreign settlement. (Repeated to Tokyo and to the commander in chief.)	263
Apr. 30 (139)	<i>To the Minister in China (tel.)</i> Authorization to use own discretion regarding closing of consulate at Tsinan.	263
May 2 (295)	<i>From the Minister in China (tel.)</i> From Chefoo: Report that 251 Americans are now in Chefoo; suggestion that the Department request the Southern Baptist Mission Board at Richmond, Va., to instruct its missionaries, Dr. and Mrs. Gaston and Miss Miller, at Laichowfu to withdraw to Chefoo.	264
May 2 (296)	<i>From the Minister in China (tel.)</i> Instructions to consul at Tsinan, May 1, to use own discretion in closing consulate.	264
May 2	<i>To the American Southern Baptist Mission Board (tel.)</i> Urgent request that missionaries at Laichow be instructed to withdraw from their station.	265
May 3 (302)	<i>From the Minister in China (tel.)</i> From Hankow: Information that several Navy wives have gone to Chungking and that other Americans are proceeding to Szechuan, Hunan, and Honan; that inquiries have been received regarding reopening of Chungking and Changsha consulates; that, however, there is no change in the situation upriver.	265
May 4 (146)	<i>To the Minister in China (tel.)</i> Information that the Mission Board has telegraphed missionaries at Laichow to withdraw.	265

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EVACUATION OF AMERICAN CITIZENS FROM PLACES OF DANGER IN CHINA—Con.

Date and number	Subject	Page
1928		
May 10 (332)	<i>From the Minister in China (tel.)</i> From Tsingtau, May 9: Report of arrival of train from Tsinan with 15 Americans on board. Report that Japanese may seriously consider the operation of the railway temporarily in agreement with Chinese authorities and without establishing a neutral zone.	265
May 11 (L. 13)	<i>From the Consul at Tsinan to the Minister in China</i> Report of killing of Mrs. W. T. Hobart at Taian; dispatch of special messenger with letters addressed both to Dr. Hobart and to the commanding officer of the Nationalist armies in Taian requesting an immediate investigation to determine responsibility for the death of Mrs. Hobart.	266
May 12 (343)	<i>From the Minister in China (tel.)</i> Report from consul at Chefoo that Dr. Gaston refuses to comply with instructions of Mission Board. Suggestion that Board be requested to cable Gaston direct ordering withdrawal.	267
May 17 (362)	<i>From the Minister in China (tel.)</i> Information that Osborn has telegraphed his wife from Kaifeng that he is with Ashcraft. Assumption that he is released and safe.	267
May 23 (L. 19)	<i>From the Consul at Tsinan to the Minister in China</i> Receipt of letters from Dr. Hobart and the local Nationalist commanding officer blaming Northern troops for death of Mrs. Hobart.	268
May 25 (874)	<i>To the Minister in China</i> Explanation why the Department will not follow the suggestion to request the Southern Baptist Mission Board to cable Dr. Gaston direct ordering his withdrawal.	268
May 26 (398)	<i>From the Minister in China (tel.)</i> From Hankow: Confirmation of reports regarding disorder in upper river and firing upon merchant vessels.	269
June 11 (890)	<i>To the Minister in China</i> Information that the consul at Foochow has requested a reconsideration of Department's instruction No. 684 of November 16, 1927, regarding travel certificates. Suggestion that the Legation inform the consul whether it is now safe for American citizens to reside and travel in that district.	269
July 14	<i>To the Consul at Tsinan</i> Commendation of manner in which he and Consul Stanton acted in matter of evacuation of Americans; and approval of various notes and letters issued on the subject.	270
July 23	<i>To the Reverend O. J. Johnson, President of the Board of Foreign Missions of the Augustana Synod</i> Explanation of attitude of U. S. Government with respect to the return of missionaries to China; advice that missions should defer sending representatives to those places in the interior at which they cannot be afforded protection or from which they cannot be evacuated with safety and expedition in case of necessity. Information that the consul general at Hankow does not consider conditions in Honan Province sufficiently stabilized to warrant a general return of Americans.	271

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EVACUATION OF AMERICAN CITIZENS FROM PLACES OF DANGER IN CHINA—CON.

Date and number	Subject	Page
1928 July 23	<p><i>To the Consul General at Hankow</i></p> <p>Transmittal of letter from the Board of Foreign Missions of the Augustana Synod, together with a copy of the Department's reply regarding the return of missionaries to Honan Province. Instructions to telegraph whether improvement of situation permits return of missionaries.</p>	272
Aug. 9 (807)	<p><i>From the Vice Consul at Nanking to the Minister in China</i></p> <p>Letter to Rev. Wm. F. Junkin (text printed) explaining that the Legation has instructed consular offices to discourage the return of Americans into the interior.</p> <p>Information that most of the missionaries have made a weekly report concerning their safety; that friendly treatment has been received from Chinese civilians.</p> <p>Letter to heads of missionary organizations, June 18 (text printed) explaining the Department's policy regarding return of Americans to Nanking consular district and requesting monthly statement listing Americans who have returned.</p>	272
Aug. 22 (54)	<p><i>From the Consul General at Hankow (tel.)</i></p> <p>Advice that Americans should not return to Honan Province; and that if return is made it should be at their own risk and that in case of trouble the only assistance that can be rendered is that obtainable from Chinese authorities.</p> <p>(Repeated to Legation.)</p>	274
Aug. 27	<p><i>From the Chargé in China to the Consul at Tsinan</i></p> <p>Suggestion of the consul general at Tientsin that Americans requesting official sanction for their return to points in the interior be advised (1) that the consulate general does not consider the political situation sufficiently settled to justify withdrawing its advice to Americans not to return to the interior for purposes of residence, and (2) the decision to re-return must be made on the responsibility of the citizen.</p> <p>Legation's reply (text printed) approving the suggestion and requesting a monthly list showing the names and places of residence of citizens who have returned.</p>	275
Oct. 9	<p><i>From the Consul at Shanghai to the Minister in China</i></p> <p>Transmittal of newspaper article dealing with assault on British subject who is Commissioner of Customs at Nanking. Information that no serious efforts have been made by the Nanking authorities to search out and punish the soldiers responsible for the outrage; apprehension among the foreigners of Nanking; unconfirmed news article regarding murder of a Nationalist officer by his own troops. Belief that foreigners in Nanking are not safe; recommendation that the Department continue its policy with reference to the return of women and children to the interior; opinion that return of missionaries would be unwise.</p>	276
Oct. 25 (1724)	<p><i>From the Minister in China</i></p> <p>Review of consular reports which tend to show that the mass of Nationalist soldiers have been so thoroughly indoctrinated with hatred of all foreigners as to constitute a danger to all foreigners residing in interior districts in which soldiers are stationed. Suggestion that these actualities of the situation be frankly brought to the attention of the Nationalist leaders in Washington.</p>	279

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EVACUATION OF AMERICAN CITIZENS FROM PLACES OF DANGER IN CHINA—Con.

Date and number	Subject	Page
1928 Dec. 29	<p><i>To the Reverend A. L. Warnhuis, Secretary of the Foreign Mission Conference of North America</i></p> <p>Information that the Legation at Peking and the consular officers have been authorized to use their discretion in the matter of advising U. S. citizens and of issuing travel passes for the interior of China; that the Department, however, continues to regard it as generally inadvisable for U. S. citizens to reside in the interior.</p>	281

EFFORTS OF THE UNITED STATES TO OBTAIN AMENDS FROM THE CHINESE GOVERNMENT FOR THE KILLING OF DR. WALTER F. SEYMOUR

1928 Apr. 25 (274)	<p><i>From the Minister in China (tel.)</i></p> <p>From Tsinan: Report of the shooting on April 16 of Dr. Walter F. Seymour, head of the Presbyterian Hospital at Tsining.</p> <p>Information that the Legation is endeavoring to secure details.</p>	281
Apr. 26	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation with the Chinese Minister in which the Minister expressed his regret over the press report of the killing of Dr. Seymour by a Chinese soldier.</p>	282
Apr. 26 (L. 2)	<p><i>From the Consul at Tsinan to the Minister in China</i></p> <p>Report of efforts through local authorities to secure information concerning the murder of Seymour.</p>	282
Apr. 28 (279)	<p><i>From the Minister in China (tel.)</i></p> <p>From Tsinan, April 26: Report that Americans in the Tsinan consular district have again been advised to withdraw to Tsingtao or Tientsin; and that efforts are being made to obtain further information concerning the Seymour incident and the location of Americans in Southern territory.</p>	283
Apr. 30 (L. 7)	<p><i>From the Consul at Tsinan to the Minister in China</i></p> <p>Account of Seymour's murder as given by a Northern officer named Li Chan-yuan, implicating Southern soldiers under the command of Feng Yu-lsiang.</p>	284
May 2 (298)	<p><i>From the Minister in China (tel.)</i></p> <p>From Shanghai, May 1: Report from missionary at Tenghsien stating that Seymour was shot, presumably by Feng's soldiers, when he attempted to prevent the soldiers from entering the girls' school.</p> <p>Minister's request that information remain confidential.</p>	286
May 21 (377)	<p><i>From the Minister in China (tel.)</i></p> <p>Note, May 15, delivered by the consul general at Shanghai, under instructions from the Legation, to the Shanghai Bureau of Foreign Affairs for transmission to the Foreign Minister (text printed) requesting among other things that the murderer of Seymour be arrested and executed, while reserving the right to make such further requests as may be necessary, especially with respect to payment of indemnity.</p> <p>Suggestion that the note be made public.</p>	286

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EFFORTS OF THE UNITED STATES TO OBTAIN AMENDS FROM THE CHINESE GOVERNMENT FOR THE KILLING OF DR. WALTER F. SEYMOUR—Continued

Date and number	Subject	Page
1928 May 28	<p><i>From the Chinese Commissioner of Foreign Affairs at Shanghai to the American Consul General at Shanghai</i></p> <p>Letter from the Foreign Minister, May 19 (text printed) quoting a reply to the U. S. Minister's note to the effect that an inquiry has been ordered and that he deplores the death of Seymour and expresses his regret.</p>	287
June 5 (880)	<p><i>To the Minister in China</i></p> <p>Approval of terms of note of May 15 to the Nationalist Foreign Minister with exception of passage reading "that the murderer be arrested and executed." Advisability questioned of specifying the nature of the punishment expected to be imposed upon the criminal; preference that the request call for arrest and trial of the criminal and the imposition of punishment commensurate with the offense committed. Information that the text of note was made public.</p>	288
July 17 (545)	<p><i>From the Minister in China (tel.)</i></p> <p>To Shanghai, July 16: Note to Commissioner of Foreign Affairs for transmission to the Foreign Minister (text printed) referring to previous message of May 4 and requesting information as to what has been done towards the apprehension and punishment of those responsible for the crime.</p>	289
Aug. 4 (598)	<p><i>From the Minister in China (tel.)</i></p> <p>Telegram sent to Nationalist Foreign Minister (text printed) again requesting information as to what had been done toward the apprehension and punishment of those responsible for the murder.</p>	290
Dec. 5 (858)	<p><i>From the Minister in China (tel.)</i></p> <p>Information that a note was again addressed on October 31 to the Foreign Minister who finally replied on November 17 to the effect that investigation had revealed that Seymour was killed by a stray bullet. Request, in view of this highly unsatisfactory reply, for authority to recapitulate to the Foreign Minister the facts of the case with a statement that the indifference of the Chinese authorities has created in the mind of the U. S. Government a sense of insecurity and of doubt as to the good faith and competence of the Nationalist Government.</p>	290
Dec. 28 (422)	<p><i>To the Minister in China (tel.)</i></p> <p>Approval of suggested note for Foreign Office, except with respect to statement. Modified statement (text printed).</p>	291

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CONTINUATION OF THE EMBARGO ON SHIPMENTS OF ARMS TO CHINA

Date and number	Subject	Page
1928 Jan. 19 (1361)	<i>From the Minister in China</i> Memorandum, January 17 (text printed) of a conversation between the Counselor of the Legation and the German Minister concerning a shipment of arms to China from Czechoslovakia and the Minister's comments with reference to the U. S. Government's attitude in regard to the extension of the arms embargo agreement. Information that several of his colleagues have discussed with him the arms embargo question and that it appears likely further discussion will lead to some proposal for respective governments' consideration.	292
Feb. 13 (12)	<i>From the Ambassador in Japan (tel.)</i> Foreign Minister's request that the U. S. Government be informed that the Japanese Minister at Peking has been instructed to confer with his colleagues with a view to securing adhesion of nonsignatory powers to the 1919 agreement for embargo of arms and ammunition for China; also his request that the U. S. Government instruct its Minister at Peking to give the Japanese Legation his active support in this proposal.	294
Feb. 18 (13)	<i>To the Ambassador in Japan (tel.)</i> Instructions to inform the Foreign Minister that the U. S. Government is responsive to the suggestion that the powers concerned confer, but feels that it would be advantageous first for the Ministers to investigate the degree of success that has attended the efforts of the signatory governments toward the achievement of the objectives of the 1919 agreement.	294
Feb. 18 (55)	<i>To the Chargé in China (tel.)</i> Transmittal of excerpt from telegram No. 12, February 13, from the Minister in Japan and the Department's reply. Department's doubt whether it will be found possible to so strengthen and broaden the 1919 embargo as to render advisable its continuance. Instructions to use opportunity to guide discussions along these lines but to avoid giving impression that the U. S. Government has arrived at any conclusion in the premises.	294
Feb. 20 (109)	<i>From the Chargé in China (tel.)</i> Information that, at the Japanese Minister's request, a meeting of Heads of Legations is set for February 21 to discuss the arms embargo.	295
Feb. 23 (119)	<i>From the Chargé in China (tel.)</i> Details of the meeting of diplomatic body, February 21; the Minister's unsuccessful efforts to guide discussion along lines desired by the Department; decision of the meeting to send identic telegrams to their Governments (text printed) drawing attention to the 1919 arms embargo and expressing their conviction that powers who have not taken any measure should be induced to do so as soon as possible; decision also to submit matter of publicity to respective Governments.	296
Feb. 25 (67)	<i>To the Chargé in China (tel.)</i> View that the U. S. Government is not involved in any expressed commitment by the identic telegram; and information that the Department interposes no objection to its publication, also that the Department perceives no objection to proposal that the initiative be taken by Japan with a view to inviting nonsignatory powers to participate in the embargo.	297

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CONTINUATION OF THE EMBARGO ON SHIPMENTS OF ARMS TO CHINA—Con.

Date and number	Subject	Page
1928 Mar. 9 (151)	<i>From the Chargé in China (tel.)</i> Information from the Japanese Minister that a note was handed to the Soviet Ambassador at Tokyo on March 1 urging that the Soviets refrain from permitting the importation of arms into China. Decision of diplomatic meeting that identic telegram should be released for publication March 10.	298
Mar. 14 (787)	<i>From the Ambassador in Japan</i> Report of interviews with the Vice Foreign Minister concerning possibility of securing adhesion of nonsignatory powers.	298
Mar. 28 (805)	<i>From the Ambassador in Japan</i> Report of interview with Foreign Minister March 22 in which the Ambassador sought to discover what progress was being made in the direction of the embargo on arms for China.	300
Mar. 28 (1451)	<i>From the Chargé in China</i> Concurrence in conclusion reached by consul general at Tientsin that it would be highly desirable to obtain early legislation dealing with question of U. S. participation in arms, opium, and narcotic traffic in China.	300
Mar. 29 (193)	<i>From the Chargé in China (tel.)</i> Reuters despatch dated March 26 (text printed) reporting that the Soviet Government, in reply to Japan, stated that import of arms to China is a matter exclusively within the competence of China and refused to join in the agreement.	301
Apr. 3 (829)	<i>To the Minister in China</i> Information of a discussion of arms embargo with the British Ambassador.	301
Apr. 11 (223)	<i>From the Minister in China (tel.)</i> Report of meeting of diplomatic body, April 2, in which the Japanese Minister made known the Soviet reply and the purpose of the Japanese Government to make further representations to the Soviet Government upon the matter.	302
May 4 (1491)	<i>From the Minister in China</i> Concurrence in view of the consul general at Harbin that the G. A. Bashkiroff and Company would not be violating the arms embargo agreement in importing a two-ton truck chassis from the United States, even though an armored car for that truck is to be constructed locally for use against bandits.	302
June 20 (484)	<i>From the Minister in China (tel.)</i> Request that the Department reconsider the question of including commercial airships under U. S. interpretation of the arms embargo agreement.	303
June 23 (198)	<i>To the Minister in China (tel.)</i> Information that the Department will grant permits to export commercial airplanes to China.	303
July 9 (908)	<i>To the Minister in China</i> View that it would be advisable for the present to postpone the proposing of new legislation to cover U. S. participation in arms and narcotic traffic in China.	304

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CONTINUATION OF THE EMBARGO ON SHIPMENTS OF ARMS TO CHINA—Con.

Date and number	Subject	Page
1928 July 11	<i>To the Secretary of the American Institute of Marine Underwriters</i> Information that the agreement which member companies of the Institute consider entering into not to insure shipments of arms and ammunition to China, is entirely in accord with the policy of the Department which would welcome its adoption. Suggestion that the agreement contain a clause allowing insurance to be placed on shipments from the United States for which licenses have been issued.	304
July 30 (937)	<i>To the Minister in China</i> Instructions with respect to the 1919 agreement and the President's proclamation of 1922, for the guidance of consular officers in China. Information that the Department is disposed to offer no objection to the exportation of the automobile chassis mentioned in the Minister's despatch No. 1491, May 4.	305
Sept. 24	<i>To Senator Hiram Bingham</i> Information that, in order to fulfill policies and duties arising from the 1919 agreement and the President's proclamation of 1922, export permits are required for export of airplanes to China; that permits for export of commercial planes are granted immediately following submission of application.	307
Dec. 5 (1787)	<i>From the Minister in China</i> Transmittal of minutes of meeting of representatives of powers on November 23, called to consider the desirability of maintaining, modifying, or doing away with the 1919 agreement; observation that it was decided to maintain the <i>status quo</i> in respect of the arms embargo.	308

REDUCTION OF AMERICAN MARINE FORCES IN CHINA

1928 Mar. 2 (135)	<i>From the Chargé in China (tel.)</i> Recommendation that the American forces in North China not be reduced at present.	309
Mar. 5 (138)	<i>From the Chargé in China (tel.)</i> From the Minister: Disagreement with recommendation of the commander in chief of the U. S. Asiatic Fleet that U. S. Marine forces in China be reduced; recommendation that no reduction take place until the Legation is able to report that American lives and property will not be imperiled.	309
Mar. 5 (80)	<i>To the Chargé in China (tel.)</i> Request for opinion as to advisability of withdrawing any of the U. S. cruisers on China station and for information as to number of British forces now in China.	311
Mar. 13 (160)	<i>From the Chargé in China (tel.)</i> Opinion, in which Minister concurs, that this is not an appropriate time for reducing U. S. naval, marine, or military forces in China and that if it is impossible for Navy to reconsider withdrawal of light cruisers, they should be held available for immediate return. Statement of number of British forces in China.	311
July 13 (222)	<i>To the Minister in China (tel.)</i> Request for views on the plan being considered by the Navy to reduce U. S. forces in China by about one thousand men.	313

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REDUCTION OF AMERICAN MARINE FORCES IN CHINA—Continued

Date and number	Subject	Page
1928 July 22 (558)	<i>From the Minister in China (tel.)</i> Communication sent to commander in chief of the U. S. Asiatic Fleet expressing the opinion that, if necessary, the Marines at Tientsin might be reduced to less than two thousand men without undue risk, and telegram which the commander in chief proposes to send to Navy Department approving the reduction of the Marine force at Tientsin as suggested by General Butler but recommending that the force at Shanghai be maintained (texts printed).	313
July 24 (237)	<i>To the Minister in China (tel.)</i> Information that the Navy will proceed in accordance with General Butler's plan as modified by the commander in chief.	315
Oct. 5 (749)	<i>From the Minister in China (tel.)</i> Telegram sent to the commander in chief stating belief that the Marine forces at Shanghai may soon be reduced by one half (text printed).	315
Oct. 12 (768)	<i>From the Minister in China (tel.)</i> Communication from the commander in chief quoting despatch which he plans to send to Navy Department proposing removal of two companies of Marines from Shanghai, and reply sent to commander in chief October 11 approving proposed removal (texts printed).	315
Nov. 5 ¹ (805)	<i>From the Minister in China (tel.)</i> Information that the commander in chief has asked for views on his plan to recommend that the withdrawal of all Marines from Tientsin be commenced and that a reply has been sent (text printed) stating reasons why it is believed that the maintenance of the forces at Tientsin is essential but expressing belief that forces at Shanghai might be further reduced.	316
Nov. 5 (810)	<i>From the Minister in China (tel.)</i> Telegram from the commander in chief (text printed) quoting an exchange of communication with Navy Department concerning reduction of the forces in China and the recommendations which the commander in chief proposes to make; Minister's reply (text printed) stating reasons why he disapproves of withdrawal from Tientsin and setting forth recommendation which he intends to submit to the Department of State.	317
Nov. 8	<i>Memorandum by the Assistant Secretary of State</i> View that the issue is in regard to the place from which the next withdrawal shall take place and that, in the opinion of the officers of the Department, the views of the Minister should prevail. (Footnote: Information that this paper bears the notation: "Memorandum for Cabinet.")	319
Nov. 9 (374)	<i>To the Minister in China (tel.)</i> Information that the Department understands that at present it is proposed to withdraw three hundred men from Tientsin and that before any further reduction is made the entire matter of the place from which to take men will be reconsidered.	320

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SATISFACTION OF THE DEPARTMENT OF STATE WITH THE SERVICES OF UNITED STATES ARMY FORCES AND AGENCIES IN CHINA

Date and number	Subject	Page
1928 Sept. 13 (311)	<i>To the Chargé in China (tel.)</i> Request that the Minister make a report in regard to the War Department's question as to whether the services of the Army forces in China had been satisfactory to the Department of State.	320
Sept. 27 (1679)	<i>From the Minister in China</i> Report that the services of the Army forces in China have been altogether satisfactory; and expression of enthusiastic appreciation.	320
Nov. 20	<i>To the Secretary of War</i> Transmittal of the Minister's report of September 27; and statement that the Department concurs in Minister's views.	322

AGREEMENT BETWEEN THE UNITED STATES AND CHINA IN SETTLEMENT OF THE NANKING INCIDENT OF MARCH 24, 1927, AND THE REOPENING OF THE CONSULATE AT NANKING

1928 Jan. 14 (28)	<i>From the Minister in China (tel.)</i> Minister's intention to go to Shanghai in the near future in an attempt to effect a satisfactory settlement of the Nanking outrages.	323
Feb. 29 (1)	<i>From the Minister in China (tel.)</i> Interview at Shanghai with Huang Fu, new Foreign Minister of Nationalist Government at Nanking; reasons for Minister's refusal of Huang's invitation to be his guest on trip upriver and intention not to land at Nanking; arrangements for preliminary negotiations between Cunningham, consul general at Shanghai, and a representative of Huang, while Minister is upriver; Huang's assurances of his intention to offer terms wholeheartedly making atonement for outrages; Minister's warning against overoptimism as to possibilities for settlement along lines desired.	323
Mar. 13	<i>From the Consul General at Shanghai (tel.)</i> From the Minister, March 12: Instructions to express to Huang the Minister's disappointment over Huang's proposals; request for reasons for Huang's <i>volte-face</i> and his apparent insistence upon a point which he well knew the United States could not consider.	326
Mar. 20 (99)	<i>To the Chargé in China (tel.)</i> For the Minister: Approval of decision not to land at Nanking; suggestion, however, that it might be advisable to delay at Nanking long enough for some qualified person to make a cursory investigation as to the condition of U. S. property.	327
Mar. 23 (183)	<i>From the Chargé in China (tel.)</i> From Shanghai, March 13: Desire of Huang to be informed of the total amount of reparations to be demanded; disposition of Nanking authorities to consider consular claims as preferred. To Nanking, March 15: Suggestion that Paxton inform the Department of claims of consular Chinese staff. Information that the Minister has been informed, together with the suggestion that the Department be asked to ascertain total claims from missionary board.	327

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THE NANKING INCIDENT OF MARCH 24, 1927, AND THE REOPENING OF THE
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Mar. 23	<i>From the Minister in China (tel.)</i> Intention not to have any officers visit Nanking at present time. Plan to arrive at Shanghai March 26.	328
Mar. 24 (106)	<i>To the Chargé in China (tel.)</i> For the Minister: Summary of Department's information regarding possibilities of effecting a settlement. Request to be informed whether there is no item in Huang's proposals which can be made a starting point for discussions; also of the alleged tentative agreement between British and Nanking authorities.	329
Mar. 27 (187)	<i>From the Chargé in China (tel.)</i> From Shanghai, March 26: Information that the British Minister left for Peking March 25 without reaching an agreement regarding settlement of Nanking outrage.	329
Mar. 28	<i>From the Minister in China (tel.)</i> Information that the British Minister has rejected the tentative agreement and abandoned the negotiation; that although considerable preliminary work has been done by Cunningham and Paxton the whole matter of settlement is nebulous.	330
Mar. 30	<i>From the Minister in China (tel.)</i> Information that settlement has been reached with Huang in accordance with terms in Secretary's memorandum of November 3, 1927, and oral instructions.	330
Mar. 30	<i>From the Minister in China (tel.)</i> Documents constituting the settlement (texts printed) consisting of (1) Minister's note accepting the terms of the Foreign Minister's note (which it quotes) stating that the Nationalist Government is prepared to bring about settlement along lines already agreed upon, (2) Minister's note with reference to the action of the <i>Noa</i> and the <i>Preston</i> , and (3) Minister's note with respect to revision of existing treaties and extraterritoriality. Information that a memorandum is being prepared regarding the functioning of a joint commission; that Huang has given only general assurances that the Nanking regime will exert itself to the utmost to pay off the claims.	331
Mar. 31	<i>To the Consul General at Shanghai (tel.)</i> For the Minister: Department's congratulations; and information that comments on notes and replies will be sent shortly.	333
Mar. 31	<i>From the Minister in China (tel.)</i> Details of the successful settlement with Huang.	334
Mar. 31	<i>To the Consul General at Shanghai (tel.)</i> For the Minister: Department's approval of notes signed.	335
Apr. 1	<i>From the Minister in China (tel.)</i> Plan to return to Peking without visiting Nanking and before exchange of notes which will be made through Cunningham.	335

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Apr. 2	<i>From the Consul General at Shanghai (tel.)</i> Exchange of notes. Arrangement for their publication on April 4.	336
Apr. 2	<i>To the Consul General at Shanghai (tel.)</i> Information that the press is carrying complete summaries of the notes evidently given out by Nationalist authorities at Nanking. Instructions to rush texts of Chinese notes.	336
Apr. 3	<i>From the Consul General at Shanghai (tel.)</i> Information that Huang's first note was quoted in the U. S. Minister's first reply. Huang's second note (text printed) regarding action of the <i>Noa</i> and the <i>Preston</i> ; and his third note (text printed) with respect to existing treaties and extraterritoriality.	337
Apr. 4 (112)	<i>To the Minister in China (tel.)</i> Department's estimate of amount of claims.	337
Apr. 8 (215)	<i>From the Minister in China (tel.)</i> Views with respect to the reopening of the consulate at Nanking; suggestion that, at an opportune moment, Huang suggest a visit to Nanking by Cunningham and Paxton to inspect the consular premises and make the acquaintance of Nanking authorities. Recommendation that Paxton be appointed consul at Nanking with understanding he will remain at Shanghai where he can cultivate the acquaintance of majority of Nanking leaders.	338
Apr. 11 (117)	<i>To the Minister in China (tel.)</i> Approval of proposed arrangements for Cunningham and Paxton to visit Nanking. Suggestion that at that time the reopening of the consulate be made a subject of discussion with Chinese officials. Plan to have Paxton reopen the consulate and Spiker be commissioned as consul at Nanking and be sent there.	339
Apr. 23 (260)	<i>From the Minister in China (tel.)</i> From Shanghai, April 22: Huang representative's oral undertaking to place in Cunningham's hand by April 28: (1) Letter enclosing March 30 instructions to commissioners (text printed), (2) names of Chinese commission, (3) letter accepting Minister's counter draft instructions (text printed), and (4) check for \$100,000 as initial payment. Recommendation that American commissioners be announced. Concurrence in Cunningham's recommendation. Request for authorization to designate, as commissioners, Spiker and either Patton or Lowrie of the Presbyterian Mission, since the commission should be constituted by April 30.	340
Apr. 24 (135)	<i>To the Minister in China (tel.)</i> Approval of recommendations.	341
Apr. 30 (290)	<i>From the Minister in China (tel.)</i> From Shanghai: Report that Patton is glad to accept designation, but Presbyterian Board of Missions refuses to decide prior to May 14 and is inclined to disapprove missionaries serving on commission; suggestion that Department take up matter with the Board.	342

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May 2 (141)	<i>To the Minister in China (tel.)</i> Recommendation that, since Presbyterian Board declines to act before May 14, some one else be appointed. Suggestion that Williams, Registrar of China Trade Act, be considered.	342
May 2 (301)	<i>From the Minister in China (tel.)</i> Receipt by Cunningham on April 26 of \$100,000 as initial payment of reparations. Announcement by Nationalist authorities of their designations to the Sino-American Commission, although they have wholly ignored the oral undertakings made to Cunningham in April.	342
May 5 (313)	<i>From the Minister in China (tel.)</i> Recommendation that, since settlement of hitch in constituting the commission has been delayed by Huang's absence, the Department proceed to obtain favorable action from the Presbyterian Board.	343
May 11 (339)	<i>From the Minister in China (tel.)</i> Information that it has been necessary to hold in abeyance the preliminaries looking toward the consular visit to Nanking, in view of the failure of the Nationalist authorities to live up to their assurances with respect to the constitution of the Joint Commission.	343
May 14 (348)	<i>From the Minister in China (tel.)</i> Proposal to designate Lyman, retired from Standard Oil Company, as second member of commission, should the Presbyterian Board not authorize Patton to serve.	344
May 17 (161)	<i>To the Minister in China (tel.)</i> Information that the Presbyterian Board has declined to authorize Patton; Department's approval of Lyman.	344
May 22 (382)	<i>From the Minister in China (tel.)</i> From Shanghai, May 21: Draft note (text printed) which Huang's representative is willing to exchange with Cunningham concerning instructions to commissioners. To Shanghai: Information that Minister is expecting to approve suggestion and will mail note in terms suggested.	345
May 24 (390)	<i>From the Minister in China (tel.)</i> From Shanghai, May 23: Copy of Huang's draft reply (text printed); Huang's request that Minister's note be dated May 11, his reply being dated May 19 owing to his resignation on May 22. To Shanghai: Information that Huang's note is acceptable and that Minister's note will be dated May 11.	346
June 3 (418)	<i>From the Minister in China (tel.)</i> From Shanghai, June 1: Futility of consideration of claims for real property while property is still occupied; suggestion that commissioners refrain from consideration of any claim of this nature until real property is permanently restored. Suggestion that commissioners be instructed to confine their examination of claims to those for personal injuries and losses until such time as real property is permanently restored.	346

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1928 June 8 (185)	<i>To the Minister in China (tel.)</i> Approval of suggestions. Desire that before termination of commission all claims for real property losses be examined.	347
July 11 (219)	<i>To the Minister in China (tel.)</i> Authorization for commissioners to accept further claims that may be received too late for submission to the Department. Desire for detailed and tabulated record of commission's action and decisions.	348
Aug. 10 (614)	<i>From the Minister in China (tel.)</i> Note to Cunningham from Wang, Nationalist Foreign Minister, July 25 (text printed) inviting him to visit the Nanking consulate in order to assess losses for use of commission. Cunningham's intention to accept invitation with statement he will visit to inspect all U. S. property there, and to proceed to Nanking August 9 accompanied by Paxton. Wang's desire that consulate be reopened and assertion that any desired ceremonial as to flag raising would be given.	348
Aug. 15 (629)	<i>From the Chargé in China (tel.)</i> Information that the British expect to reopen their consulate at Nanking about August 21.	349
Aug. 17 (273)	<i>To the Chargé in China (tel.)</i> Desire that Cunningham be instructed to reopen Nanking consulate at earliest possible date; that Spiker and Paxton take up residence at Nanking following return of premises. Instructions concerning ceremonies and U. S. representation at them.	349
Aug. 18 (643)	<i>From the Chargé in China (tel.)</i> Report from Paxton that a considerable number of persons are delinquent in filing claims. Instructions to Paxton to ask aid of mission secretaries, since majority of delinquents are missionaries. Suggestion that the Department urge all mission boards to cooperate.	350
Aug. 21 (281)	<i>To the Chargé in China (tel.)</i> Instructions concerning lease and repair of Nanking consulate, and its reoccupation.	351
Aug. 25 (287)	<i>To the Chargé in China (tel.)</i> Desire that return of consulate and ceremonies attendant thereon take place without awaiting completion of repairs.	352
Aug. 28 (664)	<i>From the Chargé in China (tel.)</i> From Spiker: Report on inaugural meeting of Joint Commission.	352
Aug. 29 (667)	<i>From the Chargé in China (tel.)</i> From commander in chief, Asiatic Fleet: Details of ceremonies to be held at Nanking and suggestion that official relations be resumed with the interchange of salutes, etc. Request for comments.	352
Aug. 30 (294)	<i>To the Chargé in China (tel.)</i> Belief that communication to missionary bodies is unnecessary. Approval of instructions to Paxton.	353

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1928 Aug. 31 (300)	<i>To the Chargé in China (tel.)</i> Authorization to proceed on assumption that the Nationalist Government has been fully recognized by the U. S. Government. Concurrence with views of commander in chief. Suggestion that Cunningham deliver suitable message from Minister at the ceremonies.	354
Sept. 6 (692)	<i>From the Chargé in China (tel.)</i> Report from Cunningham (text printed) concerning arrangements with Wang for the reopening and the ceremonies between September 20 and 25.	354
Sept. 8 (308)	<i>To the Chargé in China (tel.)</i> Approval of arrangements.	356
Sept. 11 (698)	<i>From the Chargé in China (tel.)</i> From Shanghai, September 10: Wang's acceptance of program proposed in March including full military ceremonies with guards of honor. Premature press reports giving date of ceremonies as October 1.	356
Sept. 13 (704)	<i>From the Chargé in China (tel.)</i> From Shanghai, September 12: Request for specific instructions, since the Chinese are seeking to make U. S. attitude in reference to claims precedential insofar as other international claims are concerned, with respect to: value to be used as measure of damages to be assessed, whether interest on amount of award is a proper charge against Nationalist Government, and whether award payments should be paid in Mexican currency according to proposal of Chinese Commissioners.	356
Sept. 16 (710)	<i>From the Chargé in China (tel.)</i> Tentative draft message to be delivered by Cunningham at ceremony (text printed).	358
Sept. 17 (315)	<i>To the Chargé in China (tel.)</i> Views that question of value should be settled by the commission; that interest on amount of award is a proper charge against the Nationalist Government; and that the Department perceives no objection to plan with respect to payment of awards in Mexican or U. S. currency.	359
Sept. 18 (319)	<i>To the Chargé in China (tel.)</i> Substitution for tentative draft of message to be delivered at ceremonies (text printed).	359
Sept. 20 (719)	<i>From the Chargé in China (tel.)</i> From Shanghai, September 17: Information from Foreign Minister that he has encountered opposition in Nanking to proposed honors to the U. S. flag.	360
Oct. 4 (334)	<i>To the Minister in China (tel.)</i> Inquiry as to facts of Associated Press story that reopening of Nanking consulate is deadlocked because of Nationalist Government's refusal to salute the U. S. flag unless the United States should salute first.	360

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1928		
Oct. 4 (335)	<i>To the Minister in China (tel.)</i> For the U. S. Commissioners: Information that, in reply to inquiry from the University of Nanking, the Department has stated that statements of losses will not be presented to Joint Commission against expressed wishes of claimants.	361
Oct. 5 (748)	<i>From the Minister in China (tel.)</i> Denial of press report of deadlock. Information that word is awaited from Wang both as to his efforts to overcome opposition to arrangements and as to progress of repairs of consulate. Recommendation that the issue not be forced.	361
Oct. 20 (354)	<i>To the Minister in China (tel.)</i> Instructions to inform U. S. Commissioners that the Baptist Mission Society prefers not to file any claims for losses in connection with the Nanking affair.	361
Oct. 23 (356)	<i>To the Chargé in China (tel.)</i> For U. S. Commissioners: Information that the trustees of Nanking University have decided that no statement of losses sustained by the University during the Nanking affair will be submitted to the Department or the Joint Commission.	362
Oct. 26 (359)	<i>To the Minister in China (tel.)</i> Inquiry whether return of consular officers to Nanking may be expected soon, as Secretary considers presence of U. S. official at seat of government very desirable.	362
Oct. 30 (801)	<i>From the Minister in China (tel.)</i> Report that Minister is hopeful the matter can be arranged in the near future.	362
Nov. 2 (367)	<i>To the Minister in China (tel.)</i> Request to be informed, in view of the constant questioning of the press, why time for opening consulate has been postponed, particularly whether on account of failure to agree on details of ceremonies.	362
Nov. 3 (807)	<i>From the Minister in China (tel.)</i> From Shanghai, November 2: Information from Wang that Nationalist Government's attitude remains unchanged, but that a warm reception would be given U. S. consular officer on his arrival in Nanking and assumption of his consular duties. Information that Cunningham and Spiker are being directed to proceed to Nanking and reoccupy consular premises about November 9 without any ceremonies. Hope that the Department may yet give consideration to belief of Minister, consular representatives, and commander in chief that it would be a mistake to dispense with a ceremony appropriate for the return of the U. S. flag to Nanking.	363
Nov. 4 (808)	<i>From the Minister in China (tel.)</i> Certain explanations of arrangements for reopening of Nanking consulate which might be made to the press.	364

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1928 Nov. 8 (372)	<i>To the Minister in China (tel.)</i> Desire that at the reopening of the consulate there should be no ceremonies whatsoever. Suggestion that naval personnel of rank and number equal to those expelled in 1927 might accompany Spiker and Paxton, thus constituting a return to <i>status quo ante</i> . Approval of November 9 as tentative date of proposed return.	364
Nov. 13 (827)	<i>From the Minister in China (tel.)</i> Reasons for not referring to the commander in chief the Department's suggestion regarding naval personnel. Plan to instruct Spiker to take oath as consul at Nanking on his next visit there in connection with his work on the Joint Commission.	365
Nov. 26 (844)	<i>From the Minister in China (tel.)</i> From Shanghai, November 23: U. S. Commissioners' inquiry whether Legation agrees with their position that claim for rental for mission premises while occupied is properly included as loss; also for Legation's sanction to acceptance of Chinese proposal that the Commission shall not consider claims originally filed after November 27, with proviso with respect to other claims.	366
Nov. 28 (846)	<i>From the Minister in China (tel.)</i> From Shanghai, November 24: Notification from Joint Commission (text printed) requesting sanction to extend the period for completion of work from November 27. To Shanghai, November 27: Note for Wang (text printed), suggesting extension of period for completion of Commission's work.	367
Nov. 30 (393)	<i>To the Minister in China (tel.)</i> View that claim for rental cannot be supported on legal grounds. Agreement to time limit for original filing of claims.	367
Nov. 30 (394)	<i>To the Minister in China (tel.)</i> Approval of Commission's recommendations and Minister's action.	368
Dec. 6 (861)	<i>From the Minister in China (tel.)</i> From Shanghai, December 4: Desire of Commissioners for definite instructions as to advices to be given claimants concerning remedy available in claims for rent.	368
Dec. 17 (410)	<i>To the Minister in China (tel.)</i> View that in the absence of the facts of a particular case the Department cannot lay down a definite rule for assessing damages due to occupation of property which would include rental value of the property.	368
1929 Jan. 3 (4)	<i>From the Minister in China (tel.)</i> Inquiry from Admiral Bristol as to what attitude he should adopt with respect to resumption of customary naval honors with Chinese authorities.	369
Jan. 5 (7)	<i>To the Minister in China (tel.)</i> Instructions that, in matters of official etiquette such as naval honors, U. S. officers should accord to Chinese authorities the usual courtesies accorded a fully recognized foreign state.	369

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CHINESE PROPOSALS FOR TARIFF AUTONOMY AND COOPERATION OF THE UNITED STATES AND OTHER POWERS WITH CHINA IN THE REVISION OF CHINESE TARIFF VALUATIONS

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1926 Aug. 7 (Conf. 57)	<i>From the American Delegation at the Chinese Tariff Conference (tel.)</i> Foreign Ministry's suggestion that the interested powers notify their commercial attachés or consuls at Shanghai to exchange views with Chinese representatives looking toward an early revision of the schedule of import duties provided for in the 1922 customs treaty. Recommendation for U. S. participation in the proposed revision, and suggestion of Julean Arnold, U. S. commercial attaché, as American delegate.	370
Aug. 27 (41)	<i>To the American Delegation at the Chinese Tariff Conference (tel.)</i> Designation of Julean Arnold as American delegate to Tariff Valuations Revision Commission.	371
1927 Apr. 29 (500)	<i>From the Minister in China (tel.)</i> Information from Arnold that office of Tariff Valuations Commission at Shanghai was taken over by Nationalist Government on April 4; Foreign Office proposal that Commission convene at Peking for completion of its work.	371
Nov. 10 (984)	<i>From the Chargé in China (tel.)</i> Agreement of diplomatic body to continuation in Peking of work of Commission; Foreign Minister's notification of next meeting on December 1; Arnold's suggestion that Treasury Department be requested to instruct Martin R. Nicholson, Treasury representative at Shanghai, to proceed to Peking to assist American delegate.	372
Nov. 25 (388)	<i>To the Chargé in China (tel.)</i> Information that Treasury Department has directed Nicholson to proceed to Peking.	372
Dec. 7	<i>From the Commercial Attaché in China to the Legation in China</i> Résumé of formation of Commission, its early sessions at Shanghai, and subsequent resumption of sessions at Peking; report of discussions on schedule of valuations under consideration at meeting of December 6, and counter proposals of various delegates.	372
Dec. 10	<i>From the Commercial Attaché in China to the Legation in China</i> Report of Commission's meeting of December 9; statement that Japanese delegate showed no disposition to accept any other than the valuations as proposed by him; that little progress was made toward an agreement on values for commodities under consideration.	375

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1927 Dec. 29 (1134)	<i>From the Minister in China (tel.)</i> Foreign Ministry's proposal for acquiescence by the powers in certain tariff arrangements which it is hoped can be arrived at between delegates of Northern and Southern regimes; explanation of the project by A. H. F. Edwardes, Inspector General of Customs. Recommendation for U. S. approval and support of the project as a basis for constructive action toward solution of existing conditions in China.	376
1928 Jan. 12 (12)	<i>To the Minister in China (tel.)</i> Statement that project described by Edwardes involves changes in U. S.—Chinese tariff treaties which can be made only by entering into a new agreement requiring Senate ratification or by a <i>modus vivendi</i> authorized in advance by Congress; U. S. opposition to reciprocal tariff bargaining by China, as anticipated in the proposal.	379
Feb. 13 (91)	<i>From the Minister in China (tel.)</i> Opinion that a <i>modus vivendi</i> would be perilous; understanding that the arrangements outlined in the Edwardes proposal would not involve any discrimination, and hope that there will therefore be no need for United States to oppose it.	382
Feb. 15 (1389)	<i>From the Minister in China</i> Note from the commercial attaché (text printed) concerning work of the Commission, and indicating conciliatory attitude of all the foreign powers represented except Japan.	383
Mar. 6 (142)	<i>From the Chargé in China (tel.)</i> Inclination of Chinese members of Commission to put on a 5 percent ad valorem basis any items of tariff on which they cannot agree to accept fixed values as offered in counter proposals of foreign delegates. Inquiry whether U. S. delegate should accept such basis for items affecting U. S. trade.	384
Mar. 8 (87)	<i>To the Chargé in China (tel.)</i> Department's willingness to approve 5 percent ad valorem basis for disputed items; concurrence of Commerce Department.	384
Mar. 17 (170)	<i>From the Chargé in China (tel.)</i> From Shanghai: Nationalist Government regulations creating the National Tariff Committee for the purpose of hastening realization of tariff autonomy; provisions outlining duties and functions of the Committee (text printed).	385
Mar. 21	<i>From the Commercial Attaché in China to the Legation in China</i> Difficulties of U. S. delegate to Tariff Valuations Revision Commission in arriving at a fixed value basis on certain commodities because of Chinese insistent desire to increase values of the 1922 schedules, irrespective of the relations of these increases to the Shanghai wholesale market values for the year 1925, which was the period selected by the Chinese as a basis for the revisions.	386

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1928 Mar. 29	<i>From the Treasury Representative at Shanghai to the Minister in China</i> Outline of organization of the National Tariff Commission of Shanghai.	388
Undated [Rec'd May 26]	<i>Memorandum by the Counselor of Legation in China</i> Conversation with A. H. F. Edwardes, April 12, in which Edwardes said that his project for an arrangement between Northern and Southern regimes regarding customs matters had been received favorably by civil officials of the Nationalist Government but not by the military, and hence it appeared that little could be done about customs matters until the Nationalists had finished their expedition in the North.	389
June 29	<i>From the Commercial Attaché in China to the Minister in China</i> Completion of work of Tariff Valuations Revision Commission on June 28, following instructions of the new Nationalist official in Peking that work be finished by June 30; likelihood that the new tariff schedules will be made effective by Nationalist Government; opinion that values finally assessed by the Commission are fair.	390
July 3 (505)	<i>From the Minister in China (tel.)</i> Request for authority to assent to the application of the revised schedules to American imports, contingent upon assent of other treaty powers concerned.	392
July 12 (220)	<i>To the Minister in China (tel.)</i> Department's doubt as to its authority to give the requested assent, since revised schedules are not in conformity with article 4 of Washington customs treaty; nonobjection to enforcement of schedules, however, if accepted by other powers concerned and if containing no discriminatory features.	393
Dec. 8 (864)	<i>From the Minister in China (tel.)</i> Message from the consul at Shanghai transmitting letter from the Chinese Foreign Minister to the American Minister (texts printed) giving notification of new import tariff to become effective February 1, 1929. Inquiry whether Department desires particulars as to the new tariff.	393
Dec. 11 (404)	<i>To the Minister in China (tel.)</i> Statement that Department does not need particulars of tariff schedules, but desires information concerning attitude of other governments.	394
Dec. 13 (875)	<i>From the Minister in China (tel.)</i> Notes on the new tariff schedules submitted by the commercial attaché (text printed), indicating that American trade must bear the heaviest burden of the increased tariff and stating that the findings of the Tariff Valuations Revision Commission were disregarded in the drafting of the new tariff.	394✓
Dec. 20 (884)	<i>From the Minister in China (tel.)</i> Desire for information as to likelihood of ratification of U. S.-Chinese tariff treaty by January 1, in view of message from Shanghai (text printed) stating that new tariff may not become effective February 1 because ratification of the treaty before January 1 seems problematical.	395

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CHINESE PROPOSALS FOR TARIFF AUTONOMY AND COOPERATION OF THE UNITED STATES AND OTHER POWERS WITH CHINA IN THE REVISION OF CHINESE TARIFF VALUATIONS—Continued

Date and number	Subject	Page
1928 Dec. 20 (885)	<i>From the Minister in China (tel.)</i> Report on the new tariff schedules which is being forwarded by the commercial attaché to the Department of Commerce (extract printed), covering certain details of the tariff and pointing out apparent unfavorable position of American trade in certain respects.	396

PROPOSALS FOR REVISION OF CHINESE TREATIES REGARDING TARIFF CONTROL AND EXTRATERRITORIALITY

1927 Dec. 31 (1137)	<i>From the Minister in China (tel.)</i> Information that, in view of the denunciation of the Spanish treaty by the Peking regime, certain members of the diplomatic body have met and agreed upon two formulas (texts printed), one to be used by each government in replying to a Chinese denunciation of its treaty and the other to be used by the other governments in case the treaty of one country is denounced; recommendation that authorization be given to act favorably on the above suggestions.	398
1928 Jan. 3 (2)	<i>To the Minister in China (tel.)</i> View that it is inadvisable to enter into any commitment such as that set forth in the Minister's telegram No. 1137 of December 31, 1927.	400
Jan. 5	<i>Memorandum by the Assistant Secretary of State</i> Conversation with Frank W. Lee, of the Nationalist Government, who described the political situation at Nanking and asked certain questions relative to the formation of the Chinese delegation to negotiate with U. S. representatives regarding treaty revision; the Assistant Secretary's reply that the delegation must be a creation of the Chinese and that after it is formed the U. S. Government will ascertain whether it is truly representative.	401
Jan. 12 (14)	<i>To the Minister in China (tel.)</i> Report of the Secretary's statement at a press conference January 11 that there is nothing new in the Chinese treaty matter (text printed).	403
Jan. 23	<i>Memorandum by the Assistant Secretary of State</i> Conversation with the Japanese Ambassador in which the proposed joint delegation of the Chinese was discussed.	403
Feb. 28 (42)	<i>From the Consul General at Shanghai (tel.)</i> Report of a statement by the new Foreign Minister of the Nationalist Government (text printed) setting forth the foreign policy of that Government.	406 ✓
Mar. 9 (153)	<i>From the Chargé in China (tel.)</i> From Shanghai, March 8: Statement by the Foreign Minister of the Nationalist Government (text printed) explaining his foreign policy.	407 ✓

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PROPOSALS FOR REVISION OF CHINESE TREATIES REGARDING TARIFF CONTROL
AND EXTRATERRITORIALITY—Continued

Date and number	Subject	Page
1928 Apr. 26 (1485)	<i>From the Minister in China</i> Report of various conversations with the Foreign Ministers of the Nanking and Peking regimes which seem to indicate that neither regime is prepared to enter into treaty negotiations either conjointly or concurrently; memorandum of a conversation with the Foreign Minister of the Nanking regime on February 26 (text printed).	408
May 29 (176)	<i>To the Minister in China (tel.)</i> Report of an informal conversation with a representative of the Nationalist Government who gave an account of Japanese activities in Tsinan and Manchuria, claiming that the recent Japanese action concerning Manchuria implies an assumption of extraordinary political rights.	412
June 17 (471)	<i>From the Minister in China (tel.)</i> Newspaper accounts of a declaration issued by the Nationalist Government stating that the time is ripe for beginning the negotiation of new treaties and of a statement issued by the new Foreign Minister of the Nationalist Government expressing a hope for the sympathetic assistance of friendly nations in the form of new treaties and material aid (texts printed).	413
July 11	<i>From the Special Representative of the Chinese Nationalist Government</i> Hope that the United States will now enter into treaty negotiations with the Nationalist Government as the representative of the Chinese people.	415
July 13	<i>From the Chinese Legation</i> Declaration made by the Foreign Minister of the Nationalist Government on July 7 that old treaties which have expired shall be replaced by new treaties, that steps shall be taken to terminate those which have not expired and to replace them by new ones, and that in the case of old treaties which have expired but have not yet been replaced, interim regulations shall be promulgated. (Footnote: Notation that this memorandum purports to be the text of a telegram to the Chinese Minister from the Ministry of Foreign Affairs at Nanking.)	416
July 16 (537)	<i>From the Minister in China (tel.)</i> Report from Shanghai of the interim regulations issued by the Nationalist Foreign Minister (text printed).	416
July 21 (557)	<i>From the Minister in China (tel.)</i> Reuters report that the Japanese consul at Nanking has been notified by the Nationalist Government that the three months' extension of the Japanese treaty has expired and that the interim regulations will now be applied to Japanese in China.	417
July 23 (560)	<i>From the Minister in China (tel.)</i> Information that, according to press reports from Tokyo, Japan has warned Manchuria against joining the Nationalist Government; opinion that if the Chinese decline to meet the Japanese halfway in the matter of treaty revision, a serious impasse may result.	418

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PROPOSALS FOR REVISION OF CHINESE TREATIES REGARDING TARIFF CONTROL
AND EXTRATERRITORIALITY—Continued

Date and number	Subject	Page
1928		
July 24 (82)	<i>To the Chargé in Japan (tel.)</i> Request for comments regarding official reaction in Japan to the denunciation of the treaty and regarding press reports of the Japanese warning to Manchuria.	418
July 25 (90)	<i>From the Chargé in Japan (tel.)</i> Report of a statement given out by the Japanese Foreign Minister to the effect that Japan would not admit of a unilateral denunciation of the treaty, that a new treaty could not be negotiated with the Nanking regime since it had not proved itself responsible, and that the Japanese consul at Mukden had advised that Manchuria await developments before accepting the Nationalist regime.	419
July 27	<i>To the Special Representative of the Chinese Nationalist Government</i> Notification that the American Minister in China has transmitted a statement dated July 24 to the Nationalist Foreign Minister setting forth the U. S. attitude in the treaty matter.	421
Aug. 4 (94)	<i>From the Chargé in Japan (tel.)</i> Report of a conversation with the Vice Minister for Foreign Affairs who gave assurances that Japan was not seeking any new advantage, but was determined to maintain as far as possible the <i>status quo</i> , at least in Manchuria.	422
Aug. 9 (609)	<i>From the Minister in China (tel.)</i> Note from the Japanese Minister to the Nationalist Foreign Minister, July 31 (extract printed) stating that if the Nationalist Government would withdraw their declaration to enforce the provisional regulations, the Japanese Government would agree to begin treaty negotiations, but that if the Chinese should attempt to enforce the regulations the Japanese would have to take suitable measures to protect their interests.	423
Undated [Rec'd Sept. 29]	<i>From the Japanese Embassy</i> Statement of Japan's policy toward China.	425
Sept. 29	<i>Memorandum by the Assistant Secretary of State</i> Conversation between the Secretary of State and the Special Japanese Ambassador to Paris, visiting in the United States, who set forth the Japanese Government's attitude toward China, and was told of the U. S. actions and informed that the U. S. Government was of the opinion that all the powers should go as far as they could in strengthening the efforts of the Nationalist Government to the end that a stable government might be built up.	427
Oct. 3 (745)	<i>From the Minister in China (tel.)</i> Information that the Nationalist Foreign Minister has communicated proposals to certain powers for the negotiation of new treaties; and indication of the replies of the various governments.	430

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PROPOSALS FOR REVISION OF CHINESE TREATIES REGARDING TARIFF CONTROL
AND EXTRATERRITORIALITY—Continued

Date and number	Subject	Page
1928 Oct. 6 (338)	<p><i>To the Minister in China (tel.)</i></p> <p>Information that the Chinese Minister brought in a telegram from the Nationalist Foreign Minister expressing the hope that the U. S. Government will immediately begin negotiations for a new general treaty and will use its influence to induce other powers to take similar steps, in reply to which the Secretary stated that he would canvass the other governments as to their attitude and would authorize conversations with officers of the Department but that they were not to be confused with negotiations.</p>	433
Oct. 29 (1026)	<p><i>To the Minister in China</i></p> <p>Information that the Special Representative of the Nationalist Government has presented his credentials empowering him to negotiate a new treaty with the United States; but that, although he has been given to understand that the Department is ready to begin conversations on the subject, he has not yet called for that purpose.</p>	433
Nov. 12 (1034)	<p><i>To the Minister in China</i></p> <p>Information that conversations are now in progress between the Special Representative of the Nationalist Government and the officers of the Department.</p>	434
Nov. 22	<p><i>To the British Embassy</i></p> <p>Request for information concerning the British Government's present views with regard to revision of the treaties with China. (Footnote: Information that the same <i>aide-mémoire</i> was presented, <i>mutatis mutandis</i>, to the Belgian, French, Italian, Japanese, Netherlands, and Portuguese diplomatic representatives at Washington.)</p>	435
Nov. 22	<p><i>Memorandum by the Assistant Secretary of State</i></p> <p>Conversation between the Secretary of State and the British Ambassador who stated his Government's attitude toward treaty negotiations with China, in reply to which he was handed the Secretary's <i>aide-mémoire</i> on the subject and was asked by the Secretary if he would put his statements into the form of a memorandum.</p>	436
Nov. 22	<p><i>Memorandum by the Secretary of State</i></p> <p>Conversation with the Japanese Ambassador in regard to the treaty situation in China during which the Secretary handed the Ambassador his <i>aide-mémoire</i> on the subject and informed him of the actions of the U. S. Government.</p>	437
Nov. 22	<p><i>From the British Ambassador</i></p> <p><i>Aide-mémoire</i> as requested by the Secretary (text printed) setting forth the British attitude that other questions should be postponed until the tariff question, which includes <i>de jure</i> recognition of the Nationalist Government, has been settled; and proposals for the waiver of treaty rights communicated by the then acting counselor of the British Legation in China to Mr. Eugene Chen at Hankow on January 27, 1927, and by the British Minister in China to Dr. Wellington Koo at Peking on January 28, 1927 (text printed).</p>	438

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PROPOSALS FOR REVISION OF CHINESE TREATIES REGARDING TARIFF CONTROL
AND EXTRATERRITORIALITY—Continued

Date and number	Subject	Page
1928 Nov. 26	<i>Memorandum by the Assistant Secretary of State</i> Conversation between the Secretary of State and the counselor of the Belgian Embassy who called to give information concerning the preliminary treaty signed at Nanking on November 22 between the Economic Union (Belgium-Luxemburg) and China.	441
Undated	<i>From the Italian Embassy</i> Opinion that the abolition of the extraterritorial rights should be accompanied by some guarantees and that this can be achieved more easily if the states parties to the Washington agreement exchange views and come to an understanding in advance.	442
Dec. 20	<i>Memorandum by the Assistant Secretary of State</i> Conversation between the Secretary of State and the Dutch Minister who said that his Government felt that they should proceed with caution, that the powers should consult together, and that they should use the Report of the Commission on Extraterritoriality as a basis for any negotiations.	442
Dec. 25	<i>From the French Embassy</i> French opinion that the extraterritorial guarantees should not be ended prematurely.	443
Dec. 26	<i>From the British Ambassador</i> Statement that the views of the British Government are fully expressed in the Ambassador's <i>aide-mémoire</i> of November 22.	444
Dec. 27	<i>Memorandum by the Secretary of State</i> Conversation with the French Ambassador who left the Embassy's memorandum dated December 25 and inquired as to the replies of other countries.	444
Dec. 29	<i>From the Japanese Embassy</i> Information concerning Japan's attitude in regard to the Chinese treaty situation, including the statement that the Japanese Government is prepared to enter into treaty negotiations if the Chinese Government do not insist upon repudiating the existing treaty and an expression of hope that, in lending assistance to China, the nations concerned will endeavor to prevent an entire disregard of past commitments.	445
Dec. 29	<i>Memorandum by the Assistant Secretary of State</i> Conversation with the Japanese Ambassador in which the Ambassador presented a copy of the <i>aide-mémoire</i> handed to the Secretary and proceeded to discuss it in detail; and in which the Assistant Secretary indicated certain reservations in regard to the matters concerning which the nations should take concerted action.	446

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TREATY REGULATING TARIFF RELATIONS BETWEEN THE UNITED STATES AND CHINA, SIGNED JULY 25, 1928

Date and number	Subject	Page
1928 June 23 (202)	<i>To the Minister in China (tel.)</i> Authority to commence, at appropriate time, conversations with the Nationalist authorities with a view to revision of tariff provisions of treaties. Basis for discussions. Intention to give statement to press. Request for views.	449
June 30 (503)	<i>From the Minister in China (tel.)</i> Inability to make any helpful suggestions because of apparent unwillingness of Nationalist authorities to make requisite overtures. Request for authority to postpone making of statement which Department requests.	452
July 7 (214)	<i>To the Minister in China (tel.)</i> Request for specific and detailed reply to certain parts of telegram No. 202, June 23; also for information regarding reported conference to be held at Nanking beginning July 20. Instructions with respect to conference.	453
July 11 (218)	<i>To the Minister in China (tel.)</i> View that the United States is obligated by statement of January 27, 1927, to proceed to negotiations with respect to tariff. Instructions that the first opportunity should be taken for opening discussions along lines of telegram 202, June 23. Proposed statement (text printed). Request for views.	453
July 11	<i>To President Coolidge</i> Request for approval of program for negotiating tariff treaty with China.	455 ✓
July 12	<i>From President Coolidge</i> Approval of program.	456 ✓
July 12 (529)	<i>From the Minister in China (tel.)</i> Detailed comments on the Department's program for tariff negotiations. Opinion that an offer on the part of the United States would be highly inexpedient as well as untimely; that a public statement of U. S. intentions would be a mistake; that only the British and Japanese should be consulted, and in strictest confidence; and that the question of negotiations for revision of treaty provisions on extraterritoriality should be postponed.	456
July 13 (221)	<i>To the Minister in China (tel.)</i> Transmittal of note of July 11 from C. C. Wu, special representative of the Nationalist Government, and information of receipt of Chinese declaration of July 7. Desire that the Foreign Minister be informed of the Department's receipt of Wu's note and that the Minister has been authorized to open discussions along lines of telegram No. 202, June 23. Instructions to inform Department when communication has been made and also to notify colleagues.	459
July 13 (532)	<i>From the Minister in China (tel.)</i> Minister's regret that he finds himself not in accord with Department's suggestion. Belief that the contemplated public announcement would tend to defeat the purpose for which it was made.	460

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TREATY REGULATING TARIFF RELATIONS BETWEEN THE UNITED STATES AND CHINA—Continued

Date and number	Subject	Page
1928		
July 13 (223)	<i>To the Minister in China (tel.)</i> Reasons for Department's desire that reply to Wu's note indicate U. S. willingness to take up negotiations of tariff treaty.	460
July 17 (546)	<i>From the Minister in China (tel.)</i> Information that a note has been prepared subject to Department's approval. Suggestion that the release of the note's text might well be the equivalent of a public statement. Comments in regard to the attitude the Foreign Minister may be expected to take.	462
July 17 (547)	<i>From the Minister in China (tel.)</i> Draft note for Foreign Minister (text printed).	463
July 20 (230)	<i>To the Minister in China (tel.)</i> Reasons why Department desires to act immediately. Draft note for the Foreign Minister (text printed). Information that all previous proposals regarding statements are superseded and canceled. Instructions with regard to delivery of the note July 25 to the Foreign Minister and colleagues and arrangements for publication.	464
July 20 (555)	<i>From the Minister in China (tel.)</i> Information of interview with T. V. Soong, the Finance Minister, who is prepared to negotiate a tariff treaty before he returns to Nanking July 26; Soong's approval, as basis of discussion, of draft treaty discussed last year at Department, except for reservation in regard to optional clause. Assumption that the Department will grant full authority to proceed.	467
July 21 (233)	<i>To the Minister in China (tel.)</i> Instructions that the note be delivered at once to Soong and Wang and that the Department be notified so that it may be released; also that Soong be informed, when handed the note, that the Minister has the authority to proceed. Substance of main stipulations of the treaty (text printed).	468
July 21 (556)	<i>From the Minister in China (tel.)</i> Agreement reached with Soong on main stipulations of treaty (text printed).	469
July 22 (559)	<i>From the Minister in China (tel.)</i> Intentions to carry out instructions with regard to note, although the final paragraph might well be modified, in the light of the new development, and communication of the note to colleagues might be delayed until the signing of the treaty. Recommendations with respect to these suggestions.	470
July 23 (235)	<i>To the Minister in China (tel.)</i> Approval of main stipulations of the treaty. Views with respect to optional clause and likin. Instructions with respect to procedure and the proposed note.	472
July 24 (566)	<i>From the Minister in China (tel.)</i> Information that the note is being sent to Wang that night together with information as to its release; that Soong has received authorization which makes it possible to conclude the treaty on July 25; that Soong has decided against inclusion of optional clause and likin; and that Soong requests that the treaty be withheld from publication until noon August 1.	473

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TREATY REGULATING TARIFF RELATIONS BETWEEN THE UNITED STATES AND CHINA—Continued

Date and number	Subject	Page
1928 July*24 (239)	<i>To the Minister in China (tel.)</i> Information concerning arrangements for release of the note on July 26 and its delivery, in confidence, to the 12 interested powers on July 25.	474
July 25	<i>To President Coolidge</i> Transmittal of main stipulations of the treaty and text of full powers for negotiating and signing the treaty, with request that approval be telegraphed.	474
July 25	<i>Treaty Between the United States of America and the Republic of China</i> Regulating tariff relations between the two countries.	475
July 25 (569)	<i>From the Minister in China (tel.)</i> Information of the signature of the treaty that afternoon: that Soong acted under authorization of a letter from the Vice Foreign Minister, July 24 (text printed), and has undertaken to obtain from Wang formal credentials for purposes of record; that it has been agreed to make the treaty public at midnight of the 26th; and that the notes which were exchanged regarding likin are to be considered <i>non avenu</i> at Soong's request.	477
July 26 (240)	<i>To the Minister in China (tel.)</i> Suggestion that publication of treaty be held up until about August 1.	478
July 26 (241)	<i>To the Minister in China (tel.)</i> Expression of appreciation and congratulations upon successful negotiation of treaty.	478
July 26	<i>From the Secretary to the President (tel.)</i> Information that the President has approved and signed the full powers.	478
July 27 (574)	<i>From the Minister in China (tel.)</i> Report that it was too late to change arrangements for publication and that fact of signature of treaty has leaked out.	478
July 27 (245)	<i>To the Minister in China (tel.)</i> Information that full powers have been issued; and that announcement will be made of signature and text of treaty.	479
July 28 (1592)	<i>From the Minister in China</i> Transmittal of treaty texts; and details of the negotiations.	479
July*30 (582)	<i>From the Minister in China (tel.)</i> Note from Foreign Minister (text printed) replying to U. S. note and containing a statement that C. C. Wu has been appointed as plenipotentiary delegate to negotiate with the representatives of the U. S. Government.	482
July 30 (584)	<i>From the Minister in China (tel.)</i> Note to the Foreign Minister (text printed) explaining that the conclusion of the treaty fulfilled what had been offered in the note of the Secretary of State and pointing out that such negotiations as the U. S. Government had in contemplation have already been satisfactorily concluded.	482

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TREATY REGULATING TARIFF RELATIONS BETWEEN THE UNITED STATES AND CHINA—Continued

Date and number	Subject	Page
1928		
July 30 (250)	<i>To the Minister in China (tel.)</i> Suggestion that last sentence of note be deleted.	483
July 30 (251)	<i>To the Minister in China (tel.)</i> Instructions to inform Department what date the Foreign Minister's note bears; whether Foreign Minister has been informed of conclusion of treaty. Inability to understand passage in note with reference to Wu's appointment.	483
July 31	<i>Memorandum by the Assistant Secretary of State</i> Conversation with Japanese Chargé in which the Assistant Secretary explained the rapidity with which the treaty had been negotiated.	484 ✓
July 31 (252)	<i>To the Minister in China (tel.)</i> Regret that the Minister regarded it necessary to deliver his note without consulting the Secretary of State.	484
July 31 (588)	<i>From the Minister in China (tel.)</i> Information that the translation of the Foreign Minister's note was communicated by telegram July 29; that the Chinese version is dated July 28. View that there is no reasonable doubt that when the Foreign Minister wrote his note he had full knowledge of the conclusion of the treaty three days earlier.	485
Aug. 1 (258)	<i>To the Minister in China (tel.)</i> Full powers, dated July 21 (text printed).	486
Aug. 2 (594)	<i>From the Minister in China (tel.)</i> Document from the Foreign Minister (text printed) certifying that Soong has been authorized to sign on behalf of the Nationalist Government. Inquiry whether this document is sufficient or whether more formal credentials should be requested.	486
Aug. 6 (261)	<i>To the Minister in China (tel.)</i> View that a more formal document expressive of Soong's full powers should be supplied.	487
Oct. 15 (1703)	<i>From the Minister in China</i> Full powers, dated July 23 (text printed), appointing Soong as delegate plenipotentiary to conclude and sign the treaty.	487
Oct. 23 (790)	<i>From the Minister in China (tel.)</i> Personal letter from Soong (excerpt printed) stating that China will announce its ratification as soon as word has been received of U. S. ratification, but suggesting that immediate ratification by China might be desirous. Opinion that it would be advisable to have treaty ratified on the part of the Nationalist Government as early as possible.	489
Oct. 26 (358)	<i>To the Minister in China (tel.)</i> Instruction to propose to Soong that ratification by his Government be expedited and to assure him that early ratification by the United States may be anticipated though it cannot be absolutely guaranteed.	489

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TREATY REGULATING TARIFF RELATIONS BETWEEN THE UNITED STATES AND CHINA—Continued

Date and number	Subject	Page
1928 Dec. 1 (851)	<i>From the Minister in China (tel.)</i> Receipt of advice from Soong on November 28 that the Political Council passed a resolution to confirm the treaty and had asked the State Council officially to confirm the treaty.	490
Dec. 1	<i>To President Coolidge</i> Transmittal of the treaty with request that it be transmitted to the Senate to receive the advice and consent of that body to its ratification.	490

PROPOSED TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND CHINA

1928 Dec. 21	<i>To the Chinese Minister</i> Transmittal, for consideration and as a basis for negotiation, of a draft treaty of arbitration.	492
Dec. 29	<i>From the Chinese Minister</i> Acknowledgment of receipt of note of December 21 and its enclosed draft. Information that the provisions are being brought to his Government's attention.	493

EFFORTS OF THE UNITED STATES TO MEET SITUATION CREATED BY IMPOSITION IN CHINA OF TAXES IN CONFLICT WITH TREATY PROVISIONS

1928 Jan. 9 (13)	<i>From the Minister in China (tel.)</i> From Hankow, January 6: Report that a 50 percent ad valorem tax on cigarettes became effective on January 5. Request for instructions whether to lodge a protest. Information that the consul general at Hankow has been authorized to lodge a protest.	494
Jan. 10	<i>From the Minister in China to the Consul General at Tientsin</i> Authorization to make a local protest, either singly or jointly with consular colleagues, if and when imposition of consumption tax on luxuries again appears likely.	494
Jan. 11 (21)	<i>From the Minister in China (tel.)</i> From Hankow, January 5: Report that the private agreement between the Standard Oil Company and the Nationalist authorities, December 12, 1927, for payment of special tax of 60 cents per unit of oil, is not being recognized.	495
Jan. 12 (1347)	<i>From the Minister in China</i> Transmittal of letter from the American Chamber of Commerce at Shanghai embodying a resolution of the Chamber's board of directors protesting against all illegal taxes imposed or to be imposed on U. S. business in China and requesting that U. S. consular officers be authorized to accept lawful import duties and from proceeds to reimburse U. S. citizens and firms for illegal impositions. Opinion that the dangers of such a course far outweigh any practical advantages to be gained from it. Request for instructions.	495

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EFFORTS OF THE UNITED STATES TO MEET SITUATION CREATED BY IMPOSITION IN CHINA OF TAXES IN CONFLICT WITH TREATY PROVISIONS—Continued

Date and number	Subject	Page
1928 Jan. 16 (32)	<i>From the Minister in China (tel.)</i> From Hankow, January 14: Report that tobacco companies have been approached with a view to a compromise arrangement on the 50 percent tax; that Bassett on behalf of British-American Tobacco Company is negotiating with Nanking authorities at Shanghai for a special agreement for payment of 22½ percent on cigarettes.	496
Jan. 20 (00548)	<i>From the Legation in China to the Chinese Ministry of Foreign Affairs</i> Request that the intention to put the luxury and special articles tax into effect be abandoned.	496
Jan. 21 (45)	<i>From the Minister in China (tel.)</i> From Hankow, January 19: Report that Bassett has been successful in his negotiations and a contract has been signed for payment of 22½ percent; probability that other companies will arrange compromise on 22½ percent.	497
Jan. 26 (51)	<i>From the Minister in China (tel.)</i> From Shanghai, January 17, 2 p. m. and 6 p. m.: Reports that there have been instituted a stamp tax on duty memos and a stamp tax on bills of lading. To Shanghai, January 23: Authorization to protest to the Commissioner for Foreign Affairs and request the cancellation of both requirements. From Shanghai, January 23: Receipt of a letter from the American Chamber of Commerce stating it has no objection to this method of raising revenue provided the taxes are legal and not discriminatory.	497
Feb. 6 (72)	<i>From the Minister in China (tel.)</i> From Shanghai, February 5: Receipt of new regulations promulgated January 18 to implement the agreement concluded that date between the British-American Tobacco Company. Information that the consul general at Shanghai is not being instructed to lodge a protest until a copy of the regulations is ready and it can be ascertained whether they involve discriminatory features.	499
Feb. 24 (121)	<i>From the Chargé in China (tel.)</i> From Swatow, February 7 and 19: Reports on the levying of a 5 percent luxury tax on imports and Standard Oil Company's inquiry whether they may deposit with consul general their regular taxes in the event that the matter cannot be adjusted, which proposal the consul general considers impractical. To Swatow, February 14 and 23: Authorization to protest against the tax and concurrence with views on Standard Oil Company's request.	499
Mar. 7 (802)	<i>To the Minister in China</i> Concurrence in opinion that it would be unwise and impractical to accede to requests of American Chamber of Commerce; and instructions to have the consul general at Shanghai inform the Chamber of Commerce to this effect.	501
Apr. 17 (124)	<i>To the Minister in China (tel.)</i> Inquiry as to present status of the proposed one-half of one percent surtax on imports and exports for famine relief.	501

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EFFORTS OF THE UNITED STATES TO MEET SITUATION CREATED BY IMPOSITION IN CHINA OF TAXES IN CONFLICT WITH TREATY PROVISIONS—Continued

Date and number	Subject	Page
1928 Apr. 25 (267)	<i>From the Minister in China (tel.)</i> Information that the British and Portuguese, as well as the Japanese, have not yet replied to the proposal for a one-half of one percent surtax.	501
Apr. 30	<i>From the Consul General at Shanghai (tel.)</i> Information that customs duty and dues collected by the consul general have been accepted by and paid to the Commissioner of Customs who agreed to accord importers the usual privileges with respect to extension fees, drawbacks, and transit passes.	502
May 5	<i>From the Minister in China to the Consul General at Tientsin</i> Approval of intention to decline to recognize the retroactive imposition of the 6 percent building tax on U. S. mission property.	502
May 18	<i>From the Minister in China to the Consul at Swatow</i> Suggestion that the consul return to the Commissioner for Foreign Affairs, as being couched in improper language, the Commissioner's reply to the consul's protest against the 20 percent surtax. Approval of recommendation that the consulate be permitted to refrain from making any protest unless the tax is discriminatory against U. S. interests.	503
May 25 (392)	<i>From the Minister in China (tel.)</i> From Tsingtao: Report that Chinese authorities have been notified that on and after May 23 Japanese subjects would no longer pay illegal taxes imposed in Shantung; that the consulate has notified the Chinese authorities that the imposition of these taxes on Americans while not fully imposed on other nationals would be regarded as discrimination and that Americans are being advised to refrain from paying as long as others do not.	503
May 29 (173)	<i>To the Minister in China (tel.)</i> View that action of consul at Tsingtao is technically correct but inopportune. Instructions to caution consular officers at Shantung, Tientsin, and Manchuria against taking advantage of opportunities for benefit created by and based upon the presence and use of armed forces of other foreign countries.	504
June 26 (494)	<i>From the Minister in China (tel.)</i> From Shanghai, June 21: Finance Ministry regulations published June 16 calling for special tax of 5 cents per sack on Chinese and imported flour. Request for instructions. Suggestion that authorization be given to protest as a matter of record.	504
June 28 (206)	<i>To the Minister in China (tel.)</i> Authorization for protest but only if based on official information showing collection of tax on U. S. imported flour in open ports or in transit under exemption certificates or transit pass, or that the tax is discriminatory. Instructions to investigate the report that authorities at Canton are threatening to impose a 7½ percent ad valorem duty on four imports and to protest to Nationalist higher authorities if treaty provisions are being violated.	504

CHINA

EFFORTS OF THE UNITED STATES TO MEET SITUATION CREATED BY IMPOSITION IN CHINA OF TAXES IN CONFLICT WITH TREATY PROVISIONS—Continued

Date and number	Subject	Page
1928 July 3 (506)	<p><i>From the Minister in China (tel.)</i></p> <p>From Canton, July 1 and 2: Reports that the Canton regime is preparing to levy a 5 percent ad valorem tax on imports of foreign flour and that the consul is protesting vigorously; also that Commissioner of Foreign Affairs is sending a strong protest to the Political Council.</p> <p>From Shanghai, June 29: Report that, effective July 1, there will be a special tax of 5 percent on all machine-made flour.</p>	505
July 7 (521)	<p><i>From the Minister in China (tel.)</i></p> <p>From Canton, July 5 and 6: Suggestion that a protest be made against flour tax which is deemed an infringement of the treaties; report that flour tax is to be reduced from 7½ percent to 2½ percent.</p> <p>To Canton, July 7: Opinion that a further protest is not advisable unless the Department specifically authorizes it.</p>	506
July 18 (548)	<p><i>From the Minister in China (tel.)</i></p> <p>From Canton, July 13: Intimation from Commissioner of Foreign Affairs that regulations taxing foreign flour may be promulgated soon and suggestion that a proposed basis from the American Minister might be useful.</p> <p>Proposed reply to Canton that it is obviously impossible to fall in with the Commissioner's suggestion if the proposed basis means the Legation's compounding with Canton concerning violation of U. S. treaty rights.</p>	506
July 21	<p><i>From the Minister in China to the Consul General at Hankow</i></p> <p>Approval of suggestion that Commissioner of Foreign Affairs be informed that tax upon the Liggett and Myers Tobacco Company's place of business cannot be considered as applicable to U. S. firms until agreement of U. S. authorities to it is obtained.</p>	507
July 23 (234)	<p><i>To the Minister in China (tel.)</i></p> <p>Approval of suggestions in telegram No. 548, July 18. Inquiry as to present situation with regard to the tax proposed at Shanghai.</p>	507
Aug. 3 (597)	<p><i>From the Minister in China (tel.)</i></p> <p>From Shanghai, August 1: Report that flour-tax regulations have been issued; that machinery of customs is used indirectly to enforce the tax; that the British and French have protested and the consul general will file a protest.</p>	508
Aug. 6 (948)	<p><i>To the Minister in China</i></p> <p>Instructions to give further consideration to the matter of protesting against the 20 percent surtax at Swatow for relief measures, in view of Department's receipt of a letter from a U. S. firm asking that a protest be made against this tax.</p>	508
Aug. 8	<p><i>From the Minister in China to the Consul General at Shanghai</i></p> <p>Authorization to enter protest against surtax on imported coal imposed at Shanghai.</p>	509
Aug. 22	<p><i>From the Chargé in China to the Consul General at Shanghai</i></p> <p>Concurrence in view regarding violation by the Finance Ministry of its agreement with the Standard Oil Company regarding kerosene oil and gasoline; and authorization to extend good offices in endeavoring to have carried out the provisions of such private agreements.</p>	509

CHINA

EFFORTS OF THE UNITED STATES TO MEET SITUATION CREATED BY IMPOSITION IN CHINA OF TAXES IN CONFLICT WITH TREATY PROVISIONS—Continued

Date and number	Subject	Page
1928 Aug. 25 (658)	<i>From the Chargé in China (tel.)</i> From Shanghai: Report that an unsuccessful attempt was made to hold up cotton belonging to a U. S. firm for the collection of an additional surtax; that a protest has been made against the attempted seizure. Request for authorization to protest against the tax on the ground that it is in addition to the usual duty and the Washington surtax. To Shanghai: Approval of protest but on the ground that it is contrary to existing treaty.	510
Sept. 10 (1662)	<i>From the Chargé in China</i> Intention to make no protest against the 20 percent surtax at Swatow for relief measures unless definite instructions to the contrary are received from the Department.	510
Sept. 19 (716)	<i>From the Chargé in China (tel.)</i> Information that Admiral Bristol in general conversation mentioned the taxation agreement between the Standard Oil Company and Generals Yang Sen and Lin Hsiang. Request for instructions on the subject.	511
Sept. 20 (323)	<i>To the Chargé in China (tel.)</i> Department's views regarding use of naval forces in preventing taxation and regarding private taxation arrangements between local military leaders in China and private American citizens or firms.	511
Sept. 23 (724)	<i>From the Chargé in China (tel.)</i> Information that Admiral Bristol has been made acquainted with the Department's views set forth in telegram No. 323, September 20.	513
Sept. 25 (327)	<i>To the Minister in China (tel.)</i> Instruction to telegraph whether flour tax at Canton is actually in force; also whether consul general at Shanghai protested against flour tax at Shanghai and result, if any, of protest.	514
Oct. 3 (743)	<i>From the Minister in China (tel.)</i> Information that the Canton flour tax has been in force since August; that the consul general at Shanghai has received, in reply to his protest, a note from the Commissioner of Foreign Affairs explaining the purpose of the tax (text printed).	514
Oct. 17 (783)	<i>From the Minister in China (tel.)</i> From Swatow, October 16: Request for instructions whether to protest against refusal of local likin authorities to recognize invoice transit certificates covering U. S. goods although they pass British cargo without molestation. To Swatow: Authorization to file protest as action of local authorities appears to be discriminatory.	515
Oct. 19 (785)	<i>From the Minister in China (tel.)</i> From Canton, October 18: Report on seizure of two Standard Oil Company lighters and their cargoes by tax collectors; recommendation that gunboat <i>Guam</i> be sent alongside. To Canton: Concurrence with opinion it would be advisable to have naval vessel stand by to prevent removal of lighters or their cargo.	515

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EFFORTS OF THE UNITED STATES TO MEET SITUATION CREATED BY IMPOSITION IN CHINA OF TAXES IN CONFLICT WITH TREATY PROVISIONS—Continued

Date and number	Subject	Page
1928		
Oct. 22 (786)	<i>From the Minister in China (tel.)</i> From Swatow, October 19: Report that local likin authorities are now recognizing inward transit certificates and that no further action should be taken.	516
Oct. 26 (794)	<i>From the Minister in China (tel.)</i> Telegram from the commander in chief of the Asiatic Fleet to the U. S. S. <i>Sacramento</i> (text printed) directing that aid be given to consul general and Standard Oil Company as far as possible without resorting to force, which might result in an armed clash.	516
Oct. 26 (360)	<i>To the Minister in China (tel.)</i> Instructions to inform consul general that the Secretary does not regard as desirable any use of force; that the gunboat may remain if she is already alongside; but the consul and naval commander should exercise utmost circumspection. Information that force should be used only for protection of U. S. lives or to prevent outrage to flag or to vessels properly flying it.	517
Oct. 30 (802)	<i>From the Minister in China (tel.)</i> From Canton: Information that the gunboat has not gone alongside; view that action of Chinese was an outrage to our flag.	517
Nov. 7 (817)	<i>From the Minister in China (tel.)</i> From Canton, November 5 and 6: Request for instructions to present a strong note demanding the release of the lighters and further reference to the seriousness of the affair. To Canton: Authorization to present strong protest.	518
Nov. 8 (373)	<i>To the Minister in China (tel.)</i> Approval of instructions to the consul general at Canton.	518
Nov. 11 (823)	<i>From the Minister in China (tel.)</i> From Canton, November 8, 9, and 10: Reports on Finance Department's decision to fine Standard Oil Company \$26,000 and confiscate the cargoes, and consul general's formal protest on ground that the proceedings were illegal and in violation of treaty rights. Recommendations.	519
Nov. 13 (828)	<i>From the Minister in China (tel.)</i> Note of protest to the Nationalist Foreign Minister (text printed).	521
Nov. 15 (384)	<i>To the Minister in China (tel.)</i> Approval of note of protest. Instructions to inform consuls general at Shanghai and Canton that they may say the Department is watching this and other cases closely and is unfavorably impressed by accumulative evidence of indifference to treaty rights and processes and requirements of municipal and international law.	522
Nov. 16 (833)	<i>From the Minister in China (tel.)</i> Report that Shanghai and Canton have been instructed in accordance with telegram No. 384, November 15. Inquiry whether the Department approves suggested representations by consul general at Canton and cooperation of naval authorities there.	522

CHINA

EFFORTS OF THE UNITED STATES TO MEET SITUATION CREATED BY IMPOSITION IN CHINA OF TAXES IN CONFLICT WITH TREATY PROVISIONS—Continued

Date and number	Subject	Page
1928 Nov. 17 (387)	<i>To the Minister in China (tel.)</i> Authorization for consul general at Canton to convey to local authorities any message or protest the company may wish to make in regard to threatened seizure of their property. Authorization to direct such further representations as may be considered expedient without involving use of force or threat of force.	522
Nov. 19 (1041)	<i>To the Minister in China</i> Department's reasons for adhering to the opinion that the Legation and U. S. consular officers should avoid making tax agreements entered into by U. S. companies with Chinese authorities the basis of protests against taxes or other imposition.	523
Nov. 23	<i>From the Minister in China to the Consul in Charge at Hankow</i> Approval of action in refusing to assist the Texas Oil Company in negotiation of a tax agreement with Generals Lin Hsiang and Yang Sen similar to that obtained by the Standard Oil Company.	526
Dec. 3 (854)	<i>From the Minister in China (tel.)</i> From Canton, December 1: Report that authorities before releasing the lighters are demanding adequate money guarantee by Standard Oil Company or official statement from consul general that the company will comply with final decision in the case; consul general's inclination not to give the guarantee but to reply in a formal note to the Foreign Office that the consulate general will be prepared to deal in the usual course with any demands that may be received from the local government in the case. To Canton, December 3: Approval of proposed reply to the Foreign Office.	526
Dec. 12 (870)	<i>From the Minister in China (tel.)</i> From Canton, December 12: Report that lighters have been released on consul general's written assurances.	527
Dec. 15 (880)	<i>From the Minister in China (tel.)</i> From Shanghai, December 13: Report that the Standard Oil Company has been approached by the Finance Minister with the proposal that the present tax arrangement be withdrawn; that the company is not disposed to consider the proposal favorably and would greatly appreciate comments and advices. To Shanghai: Instructions to inform the company that the making of such private agreements is a matter concerning which the Legation cannot undertake to give advice.	527
Dec. 21 (416)	<i>To the Minister in China (tel.)</i> Approval of reply to consul general at Shanghai.	528
Dec. 21 (417)	<i>To the Minister in China (tel.)</i> Instruction to inform consul general at Canton that the Department is gratified at his successful efforts in obtaining release of the lighters.	529

CHINA

ARRANGEMENT FOR PAYMENT BY AMERICAN CITIZENS AND FIRMS OF VOLUNTARY CONTRIBUTIONS IN LIEU OF TAXES TO THE HARBIN MUNICIPALITY

Date and number	Subject	Page
1928 Feb. 3 (33)	<i>To the Minister in China (tel.)</i> From Harbin, January 30: Inquiry whether contributions in lieu of taxes should be made by Americans through the consulate or direct to the municipal authorities. To Harbin, January 30: Department's desire that payments through the consulate should be discontinued, but that the consulate should offer advice to U. S. citizens as set forth in instructions of June 2, 1927, and should use all means to ensure for U. S. interests equitable treatment and extraterritorial immunities; view that it would be inadvisable at this time to raise question of participation of U. S. citizens in municipal government or to enter into any commitment with Chinese as to the principle involved in their taxation.	529
Nov. 19 (1070)	<i>To the Minister in China</i> Concurrence in opinion held by Minister and consul at Harbin that it is inadvisable to take any steps having as their object the participation by U. S. citizens in the meetings of the Assembly of Delegates or the Municipal Council. Belief that suggested arrangement for Japanese representative on the Municipal Council to represent all extraterritorial foreigners, would be inexpedient insofar as citizens of the United States are concerned.	530

PROTESTS BY THE UNITED STATES AGAINST PROPOSED CHINESE FINANCIAL MEASURES DIVERTING REVENUES FROM PAYMENT OF AMERICAN LOANS IN DEFAULT

1928 Aug. 15 (1614)	<i>From the Chargé in China</i> Chargé's memorandum, August 13 (text printed) of a conversation with the officiating Inspector General of Customs in China concerning the plan of T. V. Soong to float a domestic loan of some forty million dollars to be secured on the proceeds of the canceled German Boxer indemnity. Recommendation that the Chargé be authorized to protest in the event that the proposed loan is decided upon by the Nationalist Government.	531
Oct. 9 (343)	<i>To the Minister in China (tel.)</i> Authorization, either singly or jointly with interested colleagues, to file a general notification of outstanding Chinese obligations to U. S. citizens in general accord with joint representations made on March 18, 1926.	532
Oct. 15 (772)	<i>From the Minister in China (tel.)</i> Recommendation that the note be sent independently of any action of colleagues and that it be limited to a general reservation of U. S. rights and of continuity of governmental responsibility (text printed).	532
Oct. 16 (351)	<i>To the Minister in China (tel.)</i> Approval of proposed note.	533

CHINA

PROTESTS BY THE UNITED STATES AGAINST PROPOSED CHINESE FINANCIAL MEASURES DIVERTING REVENUES FROM PAYMENT OF AMERICAN LOANS IN DEFAULT—Continued

Date and number	Subject	Page
1928 Oct. 25 (792)	<i>From the Minister in China (tel.)</i> Information of negotiations between Yada, the Japanese consul general at Shanghai, and T. V. Soong in regard to obtaining Japan's approval of levying of interim surtaxes; Yada's insistence that Soong should set aside some definite revenue, such as customs surtaxes, for service of the Nishihara loans.	533
Nov. 1 (366)	<i>To the Minister in China (tel.)</i> Department's doubt whether statement authorized in telegram No. 351, October 16, will sufficiently safeguard U. S. interest if there is likelihood that the Nationalist Government may perpetuate the policy of hypothecating specific revenues for the payment of specially designated obligations. Requests for recommendations regarding action which might advantageously be taken on behalf of the general body of U. S. creditors.	534
Nov. 8 (818)	<i>From the Minister in China (tel.)</i> Opinion that it would be inadvisable to approach the Nationalist Government at this juncture as to its attitude toward payment of whole body of U. S. obligations. Proposed note (text printed) reinforcing by more specific statement of U. S. attitude the terms of the note to the Foreign Minister.	534
Nov. 15 (385)	<i>To the Minister in China (tel.)</i> Information that the Department is considering the proposed text of the note. Instructions to take no action until further instructed.	536
Dec. 12 (871)	<i>From the Minister in China (tel.)</i> Foreign Minister's reply, December 4 (text printed). Report that the Chinese Government has agreed to recognize the Nishihara loans and to provide for their liquidation; that the unsecured debts of other nationalities will have to receive consideration similar to that accorded to the Japanese. Request for instructions.	536
Dec. 19 (414)	<i>To the Minister in China (tel.)</i> Note for the Foreign Office (text printed) requesting assurance that any policy adopted by the Nationalist Government in relation to obligations due to foreign creditors will not either in principle or practice result in any discrimination against interests of U. S. creditors.	537

ARRANGEMENTS FOR THE CONTINUED PAYMENT OF THE BOXER INDEMNITY REMISSIONS FOR CHINESE EDUCATIONAL PURPOSES

1928 June 11 (453)	<i>From the Minister in China (tel.)</i> Information that, pending indications of some Chinese governmental organ having authority to handle and account for the May installment of the indemnity remission, the Minister is holding the customs check for this fund.	538
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CHINA

ARRANGEMENTS FOR THE CONTINUED PAYMENT OF THE BOXER INDEMNITY
REMISSIONS FOR CHINESE EDUCATIONAL PURPOSES—Continued

Date and number	Subject	Page
1928 June 15 (190)	<i>To the Minister in China (tel.)</i> Department's apprehension lest the withholding of remissions involve the Tsing Hua College and the Educational Mission in the United States in financial difficulties. Request for recommendations in regard to interim procedure. Possibility of constituting China Foundation the administrator of these funds.	538
June 19 (476)	<i>From the Minister in China (tel.)</i> Endorsement of suggestion made by board of directors of Tsing Hua College to the Foreign Minister that the American Minister be requested to pay over to the acting president, as an emergency measure, the amount of the June remission to be used subject to the board's approval. Belief that it will be necessary to amend the Executive order of December 28, 1928.	539
June 23 (201)	<i>To the Minister in China (tel.)</i> Authorization to hand to Stewart Yui, the acting president of the college, as an emergency measure, the monthly remittance payments. Assumption that an officer of the Legation is a member of the board of directors. Opinion that it will not be necessary to amend the Executive order.	540
June 26 (496)	<i>From the Minister in China (tel.)</i> Receipt of a garbled telegram from the Foreign Minister apparently suggesting that the June installment be handed over to Mei Yi-chi, whom the Minister understands has been appointed by the Nanking authorities in place of Stewart Yui as acting president of the college. Information that his reply requests clarification and inquires whether the Foreign Minister will direct that the installment will be expended in the established manner. Request for instructions.	541
June 29 (209)	<i>To the Minister in China (tel.)</i> Approval of reply to the Foreign Minister. View that, before making payment, the Minister should receive a written request from the Foreign Minister designating Mei as payee and subsequently a receipt from Mei.	541
July 16 (539)	<i>From the Minister in China (tel.)</i> Letter from the Foreign Minister (text printed) confirming his telegram and stating that explicit instructions as to its expenditure have already been given. Information of similar arrangements for the May installment.	542
Aug. 1	<i>From the American Minister in China to the Vice Minister of Foreign Affairs in the Chinese Nationalist Government</i> View, in reply to the Foreign Minister's inquiry, that it is not within the competence of the American Minister to approve or disapprove the decision of the Nationalist Government to abolish the present board of directors of the Tsing Hua College and to substitute a board or commission to be named by the Foreign Minister and the Minister of Education.	542
Aug. 5 (602)	<i>From the Minister in China (tel.)</i> Report, from private sources, that the Nationalist Government has decided to change the constitution and personnel of the China Foundation. Suggestion that the good offices of Dr. Sze and Dr. Wu be sought to avert action which would compel the United States to take the disagreeable alternative of discontinuing the 1925 remissions until the status of the Foundation is restored.	543

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ARRANGEMENTS FOR THE CONTINUED PAYMENT OF THE BOXER INDEMNITY
REMISSIONS FOR CHINESE EDUCATIONAL PURPOSES—Continued

Date and number	Subject	Page
1928 Aug. 14 (627)	<i>From the Chargé in China (tel.)</i> Receipt of telegram from the Foreign Minister announcing that Lo Chia-lun will be appointed as president of Tsing Hua College and Mei Yi-chi as director of students in the United States. Information that the telegram was merely acknowledged.	545
Aug. 21 (279)	<i>To the Chargé in China (tel.)</i> Instructions to explain circumstances of press report that the Minister declined to serve on the board of directors of the Tsing Hua College.	545
Aug. 24 (654)	<i>From the Chargé in China (tel.)</i> Explanation of his action in declining to serve on the board of directors.	545
Sept. 7 (694)	<i>From the Chargé in China (tel.)</i> Receipt by Bennett, the American treasurer of the Foundation, and Greene, the American member of the board, of similar letters from the National Educational Council containing certificates of appointees to the board of directors of the Foundation. Request for instructions with respect to the monthly remittance just received.	546
Sept. 11 (700)	<i>From the Chargé in China (tel.)</i> Request for authorization for payment to Lo Chia-lun, whose early arrival and assumption of office as president of Tsing Hua College is expected, of the August remission check as soon as written notice from Foreign Minister of his appointment and request for such payment has been received; also for authorization for payment of subsequent checks in same manner.	547
Sept. 21	<i>Memorandum by the Assistant Secretary of State</i> Conversation with the Chinese Minister during which a memorandum was handed to the Minister (text printed) setting forth the legal difficulties arising from material alterations in the constitution of the China Foundation.	548
Sept. 22 (324)	<i>To the Chargé in China (tel.)</i> Approval of requests. Instructions, however, to inform the Foreign Minister that this is an emergency measure pending formal arrangement.	548
Sept. 29	<i>To the Secretary of the Treasury</i> Inquiry whether the Treasury Department desires that the American Minister be instructed to remit future installments to the joint treasurers of the China Foundation and accept receipts signed by them on behalf of the reconstituted board of trustees or whether it considers that payment may legally be made only to the board of trustees appointed in accordance with the constitution.	549
Sept. 29 (329)	<i>To the Minister in China (tel.)</i> Department's hope that the Nationalist Government may be persuaded to revise its action in a manner to avert an issue; expectation that Dr. Monroe of Columbia University will go to China to consult the Nationalist Government.	551

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ARRANGEMENTS FOR THE CONTINUED PAYMENT OF THE BOXER INDEMNITY
REMISSIONS FOR CHINESE EDUCATIONAL PURPOSES—Continued

Date and number	Subject	Page
1928 Oct. 3 (744)	<i>From the Minister in China (tel.)</i> Information that a written request has been received from the Foreign Minister (text printed) and that the August remission has been paid over to Lo Chia-lun; also that the September check will be similarly disposed of, unless the Department directs otherwise. Proposed reply to the Foreign Minister (text printed).	551
Oct. 12 (769)	<i>From the Minister in China (tel.)</i> Information that the September installment has been paid over to Lo Chia-lun.	552
Oct. 15 (350)	<i>To the Minister in China (tel.)</i> Approval of procedure for August and September installments; also of proposed reply to the Foreign Minister, on the understanding that essential features of the Treasury arrangement shall be fully safeguarded.	552
Nov. 12 (1035)	<i>To the Minister in China</i> Information concerning interview November 1 with Dr. Monroe, who intends to leave for China about the middle of November.	552
Nov. 20 (388)	<i>To the Minister in China (tel.)</i> Receipt by Monroe of cable from Greene advising Monroe not to start. Instructions to inform the Department what is the difficulty and whether Monroe should be advised to proceed as planned.	553
Nov. 21 (838)	<i>From the Minister in China (tel.)</i> Information that interested Chinese have been working with a view to getting an arrangement that would preserve the legal continuity of the board and that Monroe's coming might force the issue at an unfavorable moment.	554
Dec. 11 (408)	<i>To the Minister in China (tel.)</i> Letter from the Treasury Department (excerpts printed) expressing opinion that, since arrangements for remission were made on a basis of mutual understanding, no change should be made therein without the consent of both parties; and the belief that further remissions should not be made except in accordance with the procedure heretofore established or an appropriate modification of Executive order of July 16, 1925.	554
Dec. 13 (874)	<i>From the Minister in China (tel.)</i> Information from Greene and Bennett that the matter is in a fair way of settlement; that a call will be issued for all old members of the board to meet January 4 and 5 at Hankow when the unacceptable members will resign and others will be elected, and a resolution will be adopted making recommendations to the Nationalist Government.	555

CHINA

CONTINUED NEGOTIATIONS CONCERNING THE FEDERAL TELEGRAPH COMPANY'S
CONTRACT WITH THE CHINESE GOVERNMENT

Date and number	Subject	Page
1928 Jan. 3 (1)	<i>From the Minister in China (tel.)</i> Report of interview with A. H. Ginman, deputy general manager of the British Marconi Company, in which Ginman suggested an informal conference on wireless matters between the American, British, and Japanese Ministers.	555
Jan. 9 (17)	<i>From the Minister in China (tel.)</i> Note from the Commissioner of Foreign Affairs addressed to consulate at Shanghai (text printed) declaring that the Nationalist Government will in no way be bound by agreements entered into by the Peking Government with the Japanese Mitsui Company and with the American Federal Corporation. Purpose, unless otherwise instructed, to concert with Japanese colleague in a reply to the effect that the Nanking authorities are not competent to invalidate contracts made with the duly recognized Government of China.	557
Jan. 9 (7)	<i>To the Minister in China (tel.)</i> View that it would be unwise to take concerted action with Japanese vis-à-vis the announcement of the so-called Nationalist authorities at Shanghai; that action should be directed solely to the question of the wireless contract.	558
Jan. 12	<i>To the British Ambassador</i> Reasons why the U. S. Government is not prepared to endorse the formation of a wireless consortium on the part of the powers concerned in the manner suggested in the Japanese memorandum of December 24, 1924.	558
Jan. 13 (27)	<i>From the Minister in China (tel.)</i> Information that the Chinese are pressing Ginman for action. Suggestion that a decision be expedited.	560
Jan. 16 (19)	<i>To the Minister in China (tel.)</i> Transmittal of excerpt from note to British Ambassador, January 12, setting forth the Department's position with respect to a consortium. Information that the Department perceives no reason for an informal conference as requested by Ginman.	560
Jan. 19	<i>From the Minister in China to the Ambassador in Japan</i> Surmise that the controlling groups in Peking and Nanking are alike anxious to throw over all commitments to U. S. and Japanese interests and to shop around for small, cheap short-wave stations so as to be in a position to dicker among rival groups; that to this end they are trying to create an antagonistic public sentiment.	561
Mar. 26	<i>Memorandum by the Assistant Secretary of State</i> Conversation with the Japanese Ambassador who was informed that advices received from the Radio Corporation seemed to indicate that the corporation was not prepared to accept Mr. Debuchi's memorandum of November 1927 as a basis for discussion.	562
Apr. 10	<i>To the President of the Radio Corporation of America</i> Information of a conversation on April 4 with the Japanese Ambassador who stated that the Japanese Government could take part in a conference only on the basis of Debuchi's memorandum and made known his desire to know the attitude of the Radio Corporation toward Debuchi's proposal.	564

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CONTINUED NEGOTIATIONS CONCERNING THE FEDERAL TELEGRAPH COMPANY'S
CONTRACT WITH THE CHINESE GOVERNMENT—Continued

Date and number	Subject	Page
1928 Apr. 25	<i>From the President of the Radio Corporation of America</i> Inability to find in Debuchi's memorandum any acceptable basis for undertaking negotiations.	566
May 4	<i>Memorandum by the Assistant Secretary of State</i> Conversation with the Japanese Ambassador during which he was informed of the Radio Corporation's reply.	568

ATTITUDE OF THE UNITED STATES TOWARD ENFORCEMENT OF CHINESE SCHOOL
REGULATIONS AGAINST AMERICAN MISSIONARY SCHOOLS

1927 July 26 (600)	<i>To the Minister in China</i> Instructions concerning the attitude to be assumed by the Legation and consular officers in case attempts are made to enforce the recent regulations governing private schools or similar regulations on schools conducted by U. S. missionary and educational societies.	569
1928 May 23 (871)	<i>To the Minister in China</i> Further instructions for Minister's guidance and for transmission of pertinent portions to U. S. consuls for their guidance.	570
Nov. 8 (1742)	<i>From the Minister in China</i> Despatch from consul general at Shanghai October 27 enclosing his letter to the president of the University of China (texts printed) stating that if the University desires to file a protest against registration requirements and requests assistance, a protest will be filed.	573

RESERVATION OF AMERICAN RIGHTS WITH RESPECT TO CHINESE REGULATIONS
AFFECTING FOREIGN MISSIONARY PROPERTY

1928 Aug. 2 (591)	<i>From the Minister in China (tel.)</i> Comments on property regulations (text printed) received from the Nationalist authorities. Suggestion that the Legation be authorized to inform the Nationalist Government that it is unable to recognize regulations as applicable to U. S. institutions and nationals insofar as they either contravene treaty rights or imply a right to confiscate legitimate U. S. interests.	576
Aug. 7 (263)	<i>To the Minister in China (tel.)</i> Concurrence in general in Minister's comments. Approval of suggestion.	578
Nov. 8 (1740)	<i>From the Minister in China</i> Note from the Foreign Minister, October 30 (text printed) which contains vague assurances that the regulations will not adversely affect U. S. missionary interests and that consequently the Legation need have no apprehensions.	578
Nov. 27	<i>From the Minister in China to the Consul at Tsinan</i> View that it is inadvisable at this time to take the consul's suggested action either as regards the sending of a list of U. S. property or of notifying U. S. missionaries along lines suggested by the consul.	580

CHINA

DUAL NATIONALITY OF UNITED STATES CITIZENS OF CHINESE DESCENT

Date and number	Subject	Page
1928 Apr. 6 (680)	<i>From the Consul General at Canton to the Minister in China</i> Despatch from the Commissioner of Foreign Affairs at Canton, March 24 enclosing provisional regulations governing issuance of certificates of expatriation in Kwangtung and Kwangsi Provinces (texts printed).	581
May 18 (5502)	<i>From the Consul General at Shanghai to the Minister in China</i> Despatch from the Commissioner of Foreign Affairs at Shanghai, December 31, 1927 (text printed) embodying a communication from the Shanghai Provisional Court in regard to the question of jurisdiction over persons having dual nationality; and the consul general's reply, May 12 (text printed).	582
May 22	<i>To the Consul General at Canton</i> Instructions that when persons of dual nationality apply for registration or passports they should be encouraged to submit the certificate of expatriation referred to in the provisional regulations but it should not be made a condition for registration or for a passport.	586
Aug. 31 (973)	<i>To the Minister in China</i> Transmittal of instruction of May 22 to the consul general at Canton, with instructions to transmit a copy of it to the consul general at Shanghai.	586

COLOMBIA

PROTECTION OF INTERESTS OF AMERICAN OIL COMPANIES IN COLOMBIA

1928 Feb. 13 (7)	<i>To the Minister in Colombia (tel.)</i> Instructions to report concerning decree No. 150 of January 28 regulating the petroleum law of 1927, which appears to impose extremely burdensome conditions on American oil companies; authorization for informal discussions with Colombian authorities.	588
Feb. 14 (10)	<i>From the Minister in Colombia (tel.)</i> Information that oil companies will institute proceedings before the Council of State to have the decree declared void, and that the Minister feels it inadvisable for him to do anything for the present.	588
Feb. 18 (9)	<i>To the Minister in Colombia (tel.)</i> Opinion that it would be highly advisable for the Minister to discuss the whole subject personally and confidentially with the President, pointing out that the regulations may have a serious effect on American companies and the Colombian oil industry in general, and stating that the Department is giving the matter very close consideration.	589
Feb. 20 (12)	<i>From the Minister in Colombia (tel.)</i> Opinion that discussion with the President and Foreign Minister may accomplish much; suggestion that a strong cable from the Colombian Minister to his Government would be helpful.	591
Feb. 21 (10)	<i>To the Minister in Colombia (tel.)</i> Advice that, as the Colombian Minister is away and will not return until March 1, the interview with the President should not be delayed.	591

COLOMBIA

PROTECTION OF INTERESTS OF AMERICAN OIL COMPANIES IN COLOMBIA—Con.

Date and number	Subject	Page
1928 Feb. 22 (14)	<i>From the Minister in Colombia (tel.)</i> Information that the Minister has conferred with the President and Foreign Minister, who intimated their desire for a statement of points contained in Department's telegram No. 9 of February 18; inquiry as to any objection.	592
Feb. 23 (11)	<i>To the Minister in Colombia (tel.)</i> Nonobjection to furnishing of informal memorandum.	592
Feb. 24 (16)	<i>From the Minister in Colombia (tel.)</i> Information that lawyers are trying to avoid litigation and wish decree suspended until Congress meets and passes law to replace present law No. 84.	592
May 15 (29)	<i>From the Minister in Colombia (tel.)</i> Press reports of instructions issued to authorities by Minister of Industry directing the execution of certain provisions of the petroleum decree.	593
May 17 (31)	<i>From the Minister in Colombia (tel.)</i> Report that instructions to enforce the decree are apparently being carried out, that three petitions for suspension of the decree have been denied by individual members of the Council of State, and that the Minister has requested an interview with the President to renew request for suspension of the decree.	593
May 17 (22)	<i>To the Minister in Colombia (tel.)</i> Memorandum for the President urging suspension of measures until their constitutionality can be determined (text printed); instructions to supplement the memorandum with vigorous oral representations.	594
May 19 (32)	<i>From the Minister in Colombia (tel.)</i> The President's decision to suspend action until final decision of the Supreme Court and his preference for suspension on petition of interested company. Information that the President accordingly returned the Minister's memorandum.	594
May 23 (33)	<i>From the Minister in Colombia (tel.)</i> Information from the Foreign Minister that the President will study the Minister of Industry's report on the decree and advise decision the following day.	595
May 25 (24)	<i>To the Minister in Colombia (tel.)</i> Instructions to return the memorandum, if the President has not carried out his assurance that decree will be suspended.	595
May 26 (36)	<i>From the Minister in Colombia (tel.)</i> Information that the memorandum has been returned to the President, and that he is studying the Minister of Industry's views and will issue an order in a few days.	595
June 2 (40)	<i>From the Minister in Colombia (tel.)</i> Suspension of decree on June 1, pending determination of constitutionality; information that law 84 is still in effect and that documents showing ownership of lands must still be presented.	596

COLOMBIA

PROTECTION OF INTERESTS OF AMERICAN OIL COMPANIES IN COLOMBIA—Con.

Date and number	Subject	Page
1928 Aug. 24 (79)	<i>From the Minister in Colombia (tel.)</i> Understanding that the House of Representatives' committee is studying American petroleum laws and is attempting to discover a basis on which Andian and Tropical concessions could be declared forfeit.	596
Sept. 19 (96)	<i>From the Chargé in Colombia (tel.)</i> Summary of <i>pro memoria</i> of Minister of Industry, September 18, attacking Tropical Oil, Andian Pipe Line, and United Fruit Companies.	596
Sept. 28 (110)	<i>From the Chargé in Colombia (tel.)</i> Approval by Senate committee of article of petroleum bill relating to authority for expropriation of oil properties.	597
Oct. 1 (116)	<i>From the Chargé in Colombia (tel.)</i> Recommendation in Senate committee report for passage of bill to declare the De Mares concession and its transfer to Tropical Oil Co. null and void (text printed).	597
Oct. 1 (117)	<i>From the Chargé in Colombia (tel.)</i> Information that Senate report evoked heated debate in the House, and that action will be postponed until report of minority member is presented.	598
Oct. 2 (118)	<i>From the Chargé in Colombia (tel.)</i> Summary of committee report.	599
Oct. 3 (119)	<i>From the Chargé in Colombia (tel.)</i> Recommendation of minority member for bill ordering Attorney General to proceed before September courts and stipulating bases for new contract with Tropical Co., which if accepted would result in nonprosecution of the suit.	600
Oct. 4 (120)	<i>From the Chargé in Colombia (tel.)</i> Absence of any definite action by the House on either majority or minority report.	601
Oct. 5 (121)	<i>From the Chargé in Colombia (tel.)</i> Evidences of unfavorable public reaction to attacks on Tropical concession.	601
Oct. 6 (122)	<i>From the Chargé in Colombia (tel.)</i> Indication that chances of passage of bills are diminishing.	602
Oct. 18 (130)	<i>From the Chargé in Colombia (tel.)</i> Intimation by Minister of Industry to Tropical Oil Co. representative that nothing more would be heard of committee reports if company would accept his interpretation of contract as it concerns the Government's royalty rights; the company's opinion that this action is admission of defeat of attempt to cancel the concession.	602
Dec. 16 (189)	<i>From the Minister in Colombia (tel.)</i> Arrival by Government and Tropical Oil Co. at agreement respecting the long-standing royalty controversy.	603

COLOMBIA

GOOD OFFICES OF THE DEPARTMENT OF STATE IN BEHALF OF AMERICAN INTERESTS
IN THE BARCO PETROLEUM CONCESSION

Date and number	Subject	Page
1928		
Jan. 5	<i>From the Carib Syndicate, Limited</i> Request for assistance in securing a reply from the Colombian Government to memorial of March 16, 1926, petitioning for reconsideration of declaration of forfeiture affecting the Barco concession; memorandum on the history of the concession and its acquisition by Colombian company organized and owned by U. S. interests (text printed).	603
Jan. 12 (2)	<i>To the Minister in Colombia (tel.)</i> Note for Foreign Minister (text printed) inquiring whether the Colombian Government will not reply to the company's memorial without further delay.	610
Jan. 18 (2)	<i>From the Minister in Colombia (tel.)</i> Reply for Foreign Minister that, inasmuch as the Compañía Colombiana del Petroleo is a Colombian company, the Department erred in instructing action by the American Minister. Information that the American Minister explained that the stock is owned almost exclusively by U. S. interests; suggestion that informal efforts might be made to effect a friendly settlement.	611
Jan. 24 (5)	<i>To the Minister in Colombia (tel.)</i> Instructions to explain that no impropriety was perceived in an inquiry on behalf of U. S. interests; approval of suggestion for informal efforts to effect friendly settlement.	611
Jan. 24 (6)	<i>From the Minister in Colombia (tel.)</i> Promise of Foreign Minister to urge early decision by Colombian authorities now considering case.	612
Mar. 17 (13)	<i>To the Minister in Colombia (tel.)</i> Instructions to report present status of Barco case and to endeavor to expedite promised decision.	612
Apr. 1 (24)	<i>From the Minister in Colombia (tel.)</i> Willingness of the President to settle controversy through Foreign Minister and American Minister; his suggestion that the company submit its best proposal. Request to be advised of company's representative in Bogotá with whom strictly confidential consultations may be held.	612
Apr. 2 (25)	<i>From the Minister in Colombia (tel.)</i> Receipt of intimation that the presence of Mr. Jordan Herbert Stabler, fully empowered to act for the company, would facilitate a settlement.	613
Apr. 3 (16)	<i>To the Minister in Colombia (tel.)</i> Belief of U. S. interests that progress would be facilitated through direct contact between their Bogotá representatives and Colombian officials. Suggestion that a meeting might be brought about by American Minister; instructions concerning nonparticipation in strictly business negotiations.	613
Apr. 5 (17)	<i>To the Minister in Colombia (tel.)</i> Understanding that Stabler will proceed to Bogotá.	614
Apr. 9 (18)	<i>To the Minister in Colombia (tel.)</i> Importance of restoration of concession and withdrawal of forfeiture decree before any changes in terms of concession are made.	614

COLOMBIA

GOOD OFFICES OF THE DEPARTMENT OF STATE IN BEHALF OF AMERICAN INTERESTS
IN THE BARCO PETROLEUM CONCESSION—Continued

Date and number	Subject	Page
1928 July 2 (53)	<i>From the Minister in Colombia (tel.)</i> Suggestion that, as Minister of Industry has presented a proposal involving no revocation of decree and which the company has rejected as impossible, a further word from the Department to the Colombian President, indicating desire for settlement, might be of material assistance.	615
July 3 (33)	<i>To the Minister in Colombia (tel.)</i> Instructions to obtain interview with the President, at which Stabler may be present, and to express the Department's regret over the position taken by the Minister of Industry. Hope that matter may be arranged before Stabler's departure, as Department would prefer for agreement to be reached by direct negotiations rather than by diplomatic intervention.	615
July 5 (54)	<i>From the Minister in Colombia (tel.)</i> Information that the President sees no basis for diplomatic intervention and that he will inquire of Minister of Industry as to status of the negotiations; also that Stabler has not received interview with the President and will soon depart if no progress is made.	616
July 16 (57)	<i>From the Minister in Colombia (tel.)</i> Departure of Stabler following failure of President and Minister of Industry to grant interviews.	617
July 16 (37)	<i>To the Minister in Colombia (tel.)</i> Résumé of Department's understanding of status of matter; instructions, if situation is as set forth, to advise the President and Foreign Minister that the Department believes the matter is eminently subject to diplomatic action.	617
July 17 (58)	<i>From the Minister in Colombia (tel.)</i> Agreement with Department's understanding; information that the Foreign Minister is ill and that efforts are being made to see the President.	618
July 19 (59)	<i>From the Minister in Colombia (tel.)</i> Information that the President does not desire to damage the company but earnestly wishes to bring about a satisfactory settlement if possible.	618
July 19 (38)	<i>To the Minister in Colombia (tel.)</i> Note for the Foreign Minister (text printed), renewing representations against continued delay in answering the company's memorial and failure to afford opportunity to their representative for negotiations with the competent officials.	618
July 20 (60)	<i>From the Minister in Colombia (tel.)</i> Information that the note will be delivered when the President returns to Bogotá and the Foreign Minister has recovered.	619
July 20	<i>From the Third Secretary of Legation in Colombia (tel.)</i> Personal suggestion that the delivery of note may force the President to confirm the expropriation decree.	620
July 23 (39)	<i>To the Minister in Colombia (tel.)</i> Authorization, if Minister also feels it unwise to present the note, to hold note and cable reasons and suggestions for modifying it.	620

COLOMBIA

GOOD OFFICES OF THE DEPARTMENT OF STATE IN BEHALF OF AMERICAN INTERESTS
IN THE BARCO PETROLEUM CONCESSION—Continued

Date and number	Subject	Page
1928 July 23 (61)	<i>From the Minister in Colombia (tel.)</i> Concurrence in Chargé's opinion; recommendation for diplomatic but firm insistence on revocation of expropriation decree and return of the concession.	621
July 27 (40)	<i>To the Minister in Colombia (tel.)</i> Instructions to substitute in the note two new paragraphs (texts printed) expressing the belief that the decree should be rescinded and the company allowed to resume possession under the concession; authorization for delivery to the Foreign Minister and the President and for accompanying oral remarks.	621
July 30 (62)	<i>From the Minister in Colombia (tel.)</i> Delivery of note to the Foreign Minister, and his approval.	622
Aug. 1 (63)	<i>From the Minister in Colombia (tel.)</i> Delivery of copy of note to the President, and his promise of an early decision.	622
Aug. 5 (64)	<i>From the Minister in Colombia (tel.)</i> Information that on August 4 the President signed a resolution confirming forfeiture of the concession.	623
Aug. 11 (41)	<i>To the Minister in Colombia (tel.)</i> Note for the Foreign Office (text printed) expressing U. S. concern over the resolution confirming forfeiture and assumption that concessionaire has a period of 30 days in which to present a new memorial answering alleged new grounds for forfeiture contained in resolution.	624
Aug. 11 (66)	<i>From the Minister in Colombia (tel.)</i> Receipt of formal notification from Foreign Minister of resolution of August 4.	625
Aug. 12 (67)	<i>From the Minister in Colombia (tel.)</i> Press reports of Foreign Minister's remarks in the Senate concerning Colombian attitude toward intervention of the U. S. Government and Stabler's visit; American Minister's observation that so far as he is concerned the remarks are absolutely contrary to the facts. Information that the note contained in telegram No. 41, August 11, will be sent the following day.	625
Aug. 15 (42)	<i>To the Minister in Colombia (tel.)</i> Instructions to address a note to the Foreign Minister referring specifically to the press reports and stating clearly the facts with regard to Stabler's visit and the propriety of diplomatic intervention previously acknowledged by the Foreign Minister.	627
Aug. 16 (68)	<i>From the Minister in Colombia (tel.)</i> Receipt of Foreign Office note of August 14 (text printed), stating inability to admit interference of U. S. Government in controversy between the Colombian Government and a private entity.	628
Aug. 17 (69)	<i>From the Minister in Colombia (tel.)</i> Press reports of further remarks in the Senate by the Foreign Minister and Minister of Industry regarding U. S. intervention and Stabler's visit.	628

COLOMBIA

GOOD OFFICES OF THE DEPARTMENT OF STATE IN BEHALF OF AMERICAN INTERESTS
IN THE BARCO PETROLEUM CONCESSION—Continued

Date and number	Subject	Page
1928 Aug. 20 (72)	<i>From the Minister in Colombia (tel.)</i> Confidential information to company's representative from Ministry of Industry official to the effect that no new memorial will be accepted.	629
Aug. 21 (73)	<i>From the Minister in Colombia (tel.)</i> Foreign Minister's explanation that he had been misquoted in the press; his desire that statements concerning Stabler's visit be expunged from American Minister's note.	629
Aug. 22 (76)	<i>From the Minister in Colombia (tel.)</i> Information that solicitor of Ministry of Industry formally notified company's representative of Barco resolution, advising orally and unofficially that no new memorial would be acted on nor would any written inquiry regarding the question be answered.	630
Aug. 23 (44)	<i>To the Minister in Colombia (tel.)</i> Opinion that accurate statement of the facts should remain on files of Foreign Office; instructions not to withdraw note or any part thereof.	630
Aug. 25 (45)	<i>To the Minister in Colombia (tel.)</i> Instructions to secure written statement from company's representative concerning visit from solicitor of Ministry of Industry and to transmit it to Foreign Office in order that it may be included in the record.	631
Aug. 27 (81)	<i>From the Minister in Colombia (tel.)</i> Advice that company's representative is awaiting authority from principals before delivering written statement.	631
Aug. 28 (46)	<i>To the Minister in Colombia (tel.)</i> Disinclination of company to instruct representative to make written statement. Instructions to take no further action on telegram No. 45, August 25.	632
Aug. 29 (83)	<i>From the Minister in Colombia (tel.)</i> Suggestion that record might be completed and embarrassment to company avoided if company's representative would inquire in writing of Minister of Industry whether a new memorial would be acceptable, and in case of no reply or a negative reply that fact could be stated to the Legation.	632
Sept. 11 (53)	<i>To the Minister in Colombia (tel.)</i> Note for Foreign Minister (text printed) stating that refusal of Colombian Government to deal with the Barco matter in manner usual in intercourse between friendly nations will not cause the U. S. Government to desist from according proper and necessary assistance to American citizens.	632
Nov. 22 (Air Mail 1)	<i>From the Minister in Colombia</i> Foreign Office note, November 16 (text printed) reaffirming the decision with respect to impropriety of U. S. intervention which was contained in Foreign Office note of August 14.	633

COLOMBIA

GOOD OFFICES OF THE DEPARTMENT OF STATE TO PROTECT THE INTERESTS OF
THE UNITED FRUIT COMPANY IN COLOMBIA

Date and number	Subject	Page
1928 Mar. 12 (12)	<i>To the Minister in Colombia (tel.)</i> Instructions to discuss again with the Colombian authorities the difficulties being experienced by the United Fruit Company due to recent resolution which prohibits the company from taking water from certain rivers; and, if latest information as to destruction of certain property on the company's land is accurate, to request officially that the Colombian Government postpone further action until the controversy can be judicially determined.	635
June 20 (48)	<i>From the Minister in Colombia (tel.)</i> Introduction into the House of Representatives of bill to enable Government to acquire irrigation canals without securing consent of Council of State.	635
June 25 (31)	<i>To the Minister in Colombia (tel.)</i> Opinion that beneficial effect might result from informal advice to the Foreign Minister that instructions have been received to follow progress of proposed legislation and to report on probable effect on U. S. interests in Colombia.	636
June 28 (51)	<i>From the Minister in Colombia (tel.)</i> Report of conversation with the Foreign Minister in which he promised to do everything possible to prevent passage of legislation which is regarded as highly detrimental to American interests. (Note: Information in despatch No. 579, September 18, 1929, from the Minister in Colombia that neither the land nor the irrigation problem of United Fruit Company has been satisfactorily settled, although the company's petitions have been pending before the Council of State for over a year.)	636

ARRANGEMENT BETWEEN THE UNITED STATES AND COLOMBIA RESPECTING THE
STATUS OF SERRANA AND QUITA SUEÑO BANKS AND RONCADOR CAY, EFFECTED
BY EXCHANGE OF NOTES, APRIL 10, 1928

1928 Apr. 10 (352)	<i>From the Colombian Minister</i> Arrangement respecting the status of Serrana and Quita Sueño Banks and Roncador Cay.	637
Apr. 10	<i>To the Colombian Minister</i> Confirmation of arrangement respecting the status of Serrana and Quita Sueño Banks and Roncador Cay.	638

DISAPPROVAL BY THE DEPARTMENT OF STATE OF PARTICIPATION OF AMERICAN
CONSULAR OFFICERS IN JOINT REPRESENTATIONS TO AUTHORITIES OF FOREIGN
GOVERNMENTS

1928 Sept. 29	<i>To the Consul at Cali</i> Disapproval of participation by American consular officers in joint representations to authorities of foreign governments, except in very special circumstances and after Department has granted specific authority in each case.	639
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CUBA

PROPOSAL BY CUBA THAT THE COMMERCIAL CONVENTION BETWEEN THE UNITED STATES AND CUBA, SIGNED DECEMBER 11, 1902, BE REVISED

Date and number	Subject	Page
1928 June 13	<i>To the Cuban Ambassador</i> Transmission of copies of the report of the U. S. Tariff Commission on the effect of the Cuban reciprocity treaty of 1902. Observation that when the Cuban proposals for revision of the treaty are examined in the light of this report it does not appear on what basis they can be justified.	640
June 19	<i>From the Cuban Ambassador</i> Statement that the Cuban Government continues to maintain its opinion that the treaty does not answer the reciprocal interests of the two countries as it ought to do.	641
June 23 (170)	<i>To the Ambassador in Cuba</i> Transmittal of the note of June 13 which was handed to the Cuban Ambassador, and a copy of Tariff Commission report, together with Department's comments.	641

EXTENSION OF CREDIT FOR \$50,000,000 TO THE CUBAN GOVERNMENT BY THE CHASE NATIONAL BANK

1928 May 3	<i>Memorandum by the Acting Economic Adviser</i> Data on condition of Cuban special public works fund; information that Cuban Secretary of the Treasury has requested bids for a credit of 40 to 50 million dollars.	642
May 3 (227)	<i>From the Chargé in Cuba</i> Inquiry for indication of Department's views concerning the proposed financing of the Central Highway project.	643
May 5 (143)	<i>To the Chargé in Cuba</i> Instructions to advise the Foreign Office that the Department expects to receive requests for information and for a statement of its views.	646
May 14 (67)	<i>From the Chargé in Cuba (tel.)</i> Submission of bids by National City Bank, Chase National Bank, and syndicate headed by First National Bank of Boston.	647
May 24 (73)	<i>From the Ambassador in Cuba (tel.)</i> For White: Inquiry, in view of nonreceipt from Cuban Government of statement of public works revenues informally requested, whether to advise Cuban Government formally of Department's expectation of being consulted and to ask officially for statement of the revenues.	648
May 25 (90)	<i>To the Ambassador in Cuba (tel.)</i> Receipt of inquiry from Chase National Bank whether the Department sees any objection to proposed credit arrangement; instructions to submit to Foreign Office a memorandum renewing request for information.	648
May 28 (280)	<i>From the Ambassador in Cuba</i> Memorandum presented to Foreign Office (text printed) in accordance with telegram No. 90, May 25.	649
June 2 (81)	<i>From the Ambassador in Cuba (tel.)</i> Official acceptance of Chase bid.	650

CUBA

EXTENSION OF CREDIT FOR \$50,000,000 TO THE CUBAN GOVERNMENT BY THE CHASE NATIONAL BANK—Continued

Date and number	Subject	Page
1928 June 14 (306)	<i>From the Ambassador in Cuba</i> Foreign Office memorandum of May 29 (text printed) containing data in connection with Chase financing, as orally requested by the Ambassador on May 25.	650
June 20	<i>To the Chase National Bank</i> Nonobjection to proposed credit arrangement with Cuba.	652
June 20 (107)	<i>To the Ambassador in Cuba (tel.)</i> Memorandum for Foreign Office (text printed) advising of the Department's nonobjection to proposed credit arrangement; instructions to indicate orally that an unfortunate impression would be produced if the public works fund were drawn upon even temporarily to meet ordinary expenses of the Cuban Government.	653
June 25 (320)	<i>From the Ambassador in Cuba</i> Reasons for belief that it would be inadvisable to make the oral communication directed in telegram No. 107, June 20.	654

SUGGESTION OF CUBA THAT A METEOROLOGICAL STATION BE ERECTED ON SWAN ISLANDS JOINTLY BY THE UNITED STATES, CUBA, GREAT BRITAIN, AND MEXICO

1928 Mar. 31 (109)	<i>To the Ambassador in Cuba</i> Instructions to advise the Cuban Government informally, in connection with its proposal for joint installation and maintenance of a meteorological station at Swan Islands by Cuba and the United States, that the U. S. Government feels that the station, if installed, should be solely at the expense and under the control of U. S. Government, and that a definite reply will be made in near future.	655
Apr. 19 (76)	<i>To the Ambassador in Cuba (tel.)</i> Instructions to advise the Foreign Minister that the matter of establishing a meteorological station is being given active consideration, and that if the station is established, the meteorological observations will be freely supplied to Cuba and other interested countries.	656
June 4	<i>From the Cuban Ambassador</i> Inquiry whether the U. S. Government would permit a Cuban concern to establish a temporary station until the United States might decide to establish a station.	656
Aug. 1	<i>To the Cuban Chargé</i> Information that arrangements have been completed whereby meteorological reports will be received from Swan Islands until October 30, that the Cuban meteorological service has been advised of their availability, and that the matter of permanent station is under consideration.	657

CZECHOSLOVAKIA

NATURALIZATION TREATY BETWEEN THE UNITED STATES AND CZECHOSLOVAKIA
SIGNED JULY 16, 1928

Date and number	Subject	Page
1923 Mar. 14 (394)	<i>From the Minister in Czechoslovakia</i> Foreign Office note of February 28 (text printed), accepting proposed naturalization treaty with certain modifications.	658
July 26 (130)	<i>To the Minister in Czechoslovakia</i> Transmittal of revised draft treaty incorporating certain Czechoslovak and U. S. modifications.	659
1926 Aug. 20 (1093)	<i>From the Minister in Czechoslovakia</i> Foreign Office note of April 30 (text printed), containing views on the provisions of the revised draft treaty, proposing reciprocal exchange of names of persons who become naturalized in the other country, and suggesting settlement of the dual nationality problem.	662
1927 May 13 (457)	<i>To the Minister in Czechoslovakia</i> Observations on the suggestions contained in the Czechoslovak note of April 30, 1926; transmittal of redraft of proposed treaty embodying amendments proposed by the Czechoslovak Government insofar as the U. S. Government is able to agree to them.	676
1928 Mar. 2 (1496)	<i>From the Minister in Czechoslovakia</i> Receipt of Czechoslovak note stating nonobjection to conclusion of treaty, but pointing out that it will not solve difficulties arising from Czechoslovak and U. S. legislation regarding citizenship of married women and dual nationality, expressing particular interest in being informed of naturalization of Czechoslovak citizens in the United States, and declaring readiness to study suggestions with regard to establishing certificates of birth.	681
Apr. 16 (531)	<i>To the Chargé in Czechoslovakia</i> Opinion that conclusion of treaty should not be postponed on account of difficulties arising from conflict of laws relating to married women and dual nationality. Instructions to proceed to signature of treaty. Information that the Department of Labor has been consulted regarding possibility of advising Czechoslovak nationals who obtain naturalization in the United States to notify the Czechoslovak Government.	681
May 7 (536)	<i>To the Minister in Czechoslovakia</i> Instructions to advise the Czechoslovak Government that the Commissioner of Naturalization is preparing instruction which will direct field officers to notify Czechoslovak nationals who obtain naturalization to advise Czechoslovak Legation or consulates of the change in their nationality.	683
July 16	<i>Treaty Between the United States of America and Czechoslovakia</i> Concerning status of former nationals of either country who have acquired, or may acquire, nationality in the other country by process of naturalization.	683
Oct. 30 (1660)	<i>From the Chargé in Czechoslovakia</i> Desire of Czechoslovak Government that Commissioner of Naturalization notify Czechoslovak Legation at Washington when a Czechoslovak citizen becomes a citizen of the United States.	685

CZECHOSLOVAKIA

TREATIES OF ARBITRATION AND CONCILIATION BETWEEN THE UNITED STATES
AND CZECHOSLOVAKIA, SIGNED AUGUST 16, 1928

Date and number	Subject	Page
1928 Mar. 27 (12)	<i>To the Minister in Czechoslovakia (tel.)</i> Information that drafts of an arbitration treaty and of a treaty similar to Bryan treaties have been handed to the Czechoslovak Minister.	686
June 11 (42)	<i>From the Minister in Czechoslovakia (tel.)</i> Foreign Minister's willingness to sign proposed arbitration treaty as it stands, but preference that the word "equity" be changed to "international law", on account of different connotation of "equity" under Czechoslovak law.	687
June 27 (28)	<i>To the Minister in Czechoslovakia (tel.)</i> Belief that differences in existing definitions of "equity" are not ground for concern.	687
July 11 (54)	<i>From the Minister in Czechoslovakia (tel.)</i> Foreign Minister's instructions to Czechoslovak Minister at Washington to sign arbitration treaty in the form proposed.	688
Aug. 16	<i>Treaty Between the United States of America and Czechoslovakia</i> Of arbitration.	688
Aug. 16	<i>Treaty Between the United States of America and Czechoslovakia</i> Of conciliation.	690

REPRESENTATIONS TO THE CZECHOSLOVAK GOVERNMENT FOR INCREASE IN
CONTINGENT ALLOWED FOR IMPORTATION OF AMERICAN AUTOMOBILES

1928 Jan. 12 (502)	<i>To the Minister in Czechoslovakia</i> Instructions to endeavor to secure a suitable contingent for importation of American automobiles.	692
Feb. 11 (1479)	<i>From the Minister in Czechoslovakia</i> Information that the Minister and commercial attaché have repeatedly argued against restrictions on importation of American cars, but that any efforts are unlikely to meet with success unless accompanied by hints of retaliation.	696
Mar. 6 (1501)	<i>From the Minister in Czechoslovakia</i> Receipt from Minister of Commerce of information that he is granting license importations for 500 additional cars and of intimation that later he might be able to grant more.	697
Mar. 15 (9)	<i>To the Minister in Czechoslovakia (tel.)</i> Information from commercial attaché to the Department of Commerce, March 7, that 500 additional licenses have been secured; instructions to keep the Department directly in touch with situation and in particular to report concerning any cases of discrimination.	698
Mar. 20 (21)	<i>From the Chargé in Czechoslovakia (tel.)</i> Advice that information appears to have been premature, as no licenses have been actually granted, but that the Chargé is requesting expedition of matter.	698
Mar. 23 (10)	<i>To the Chargé in Czechoslovakia (tel.)</i> Instructions to urge the Foreign Minister to make licenses available at the earliest moment practicable, as the Department, on strength of assurances received, notified Automobile Chamber of Commerce of the 500-car increase.	698

CZECHOSLOVAKIA

REPRESENTATIONS TO THE CZECHOSLOVAK GOVERNMENT FOR INCREASE IN CONTINGENT ALLOWED FOR IMPORTATION OF AMERICAN AUTOMOBILES—Continued

Date and number	Subject	Page
1928 Mar. 24 (11)	<i>To the Chargé in Czechoslovakia (tel.)</i> Understanding that the import quota has been fixed at 63 American cars monthly; instructions, in connection with representations pursuant to telegram No. 10, March 23, to state that fixation of monthly quota results in considerable hardship because of inflexibility and seasonal character of demand.	699
Mar. 28 (26)	<i>From the Chargé in Czechoslovakia (tel.)</i> Receipt of note from Minister of Commerce stating that extra allowance of licenses over the regular 800 will be granted and to such extent as not to make worse former practice, that 84 and 140 licenses will be granted for March and April, and that subsequent seasonal tendencies will be taken into consideration.	699
Mar. 28 (27)	<i>From the Chargé in Czechoslovakia (tel.)</i> Recommendation that quota now granted be accepted, in view of Czechoslovak Cabinet situation, and that broader issues be reserved for a more opportune time.	700
Mar. 29 (13)	<i>To the Chargé in Czechoslovakia (tel.)</i> Instructions to inquire of Minister of Commerce whether his statement means that not less than 1600 licenses will be granted for current year; warning to avoid any commitment as to acceptability of present quota.	700
Apr. 2 (28)	<i>From the Chargé in Czechoslovakia (tel.)</i> Figures from Minister of Commerce concerning import licenses for American cars during previous years, expectation for the coming months, and number of licenses issued to foreign countries.	701
Apr. 13	<i>To the Chairman of the United States Tariff Commission</i> Request for comment on the question whether Czechoslovak restrictions upon importation of automobiles are imposed in such a manner as to constitute a discrimination against American commerce within the meaning of section 317 of the Tariff Act of 1922.	702
May 1	<i>From the Chairman of the United States Tariff Commission</i> Opinion that, while the import restrictions are imposed in such manner as to constitute unequal treatment and place American commerce at a disadvantage compared with the commerce of the other foreign countries within the meaning of the statute, there may be a question whether the public interest would be served by applying retaliatory measures.	704
May 7 (1549)	<i>From the Minister in Czechoslovakia</i> Report of successful efforts with new Minister of Commerce to secure May allotment of the additional licenses and anticipation of June allotment.	707
July 23 (1606)	<i>From the Minister in Czechoslovakia</i> Report of efforts to secure increases in contingents, in view of increased demands for American cars and fact that 500 are now at customs and that 400 more are due to arrive August 1.	709

CZECHOSLOVAKIA

REPRESENTATIONS TO THE CZECHOSLOVAK GOVERNMENT FOR INCREASE IN CONTINGENT ALLOWED FOR IMPORTATION OF AMERICAN AUTOMOBILES—Continued

Date and number	Subject	Page
1928 Aug. 14 (39)	<i>To the Minister in Czechoslovakia (tel.)</i> Approval of efforts to obtain import licenses for additional automobiles; instructions to emphasize the discrimination which results from apportionment of quotas in such a way that American trade is restricted seriously, while the trade of several other countries in fact is unrestricted.	710
Aug. 27 (67)	<i>From the Minister in Czechoslovakia (tel.)</i> Receipt of Foreign Office note stating that, as indication of good will, the importation of 180 cars is authorized credited against the next year's contingent. Opinion that nothing further can be accomplished through ordinary argument.	711
Oct. 4 (44)	<i>To the Chargé in Czechoslovakia (tel.)</i> Instructions for presentation of note requesting additional import licenses for American cars.	712
Oct. 13 (74)	<i>From the Chargé in Czechoslovakia (tel.)</i> Presentation of note.	712
Oct. 15 (1650)	<i>From the Chargé in Czechoslovakia</i> Note to Czechoslovak Government, October 12 (text printed); comments on provisions thereof.	713
Nov. 24 (79)	<i>From the Chargé in Czechoslovakia (tel.)</i> Inquiry whether to file written protest against delay in answering U. S. note.	716
Nov. 30 (52)	<i>To the Chargé in Czechoslovakia (tel.)</i> Instructions to inquire formally when reply may be expected.	716
1929 Feb. 2 (13)	<i>From the Minister in Czechoslovakia (tel.)</i> Receipt of Foreign Office note advising confidentially that contingent will be increased from 800 to 1,500 cars.	717

DENMARK

TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND DENMARK, SIGNED JUNE 14, 1928

1928 Mar. 22	<i>To the Danish Minister</i> Transmittal of draft treaty of arbitration.	718
Apr. 19 (464)	<i>From the Minister in Denmark</i> Information that the Danish Minister in Washington has been instructed to sign treaty as proposed except for a few technical modifications to exclude the independent Government of Iceland.	719
June 14	<i>Treaty Between the United States of America and Denmark</i> Enlarging the scope of arbitration convention signed May 18, 1908. (Footnote: Signature of arbitration treaty with Iceland, May 15, 1930.)	720

DENMARK

REPRESENTATIONS BY DENMARK AGAINST DISCRIMINATION IN TONNAGE DUTIES
LEVIED AGAINST DANISH VESSELS IN AMERICAN PORTS

Date and number	Subject	Page
1926 June 3 (158)	<i>From the Danish Minister</i> Representations against 6-cent tonnage rate levied against Danish vessels in American ports, and claim, in virtue of most-favored-nation provisions of U. S.-Danish treaty of 1826, for the preferential rate of 2 cents accorded to Norwegian and Swedish vessels; reservation of right to propose arbitration of question and to claim refund of all previously paid tonnage dues in excess of the 2-cent rate.	722
Oct. 4 (11)	<i>To the Minister in Norway (tel.)</i> Instructions to advise nature of tonnage duties assessed in Norwegian ports.	725
Oct. 4 (34)	<i>To the Minister in Denmark (tel.)</i> Instructions to advise nature of tonnage duties assessed in Danish ports.	725
Oct. 5 (23)	<i>From the Minister in Norway (tel.)</i> Information that tonnage duties are uniform for all countries, including Norway.	726
Oct. 5 (40)	<i>From the Minister in Denmark (tel.)</i> Information that tonnage duties are the same for Danish and all foreign ships.	726
Oct. 18	<i>To the Secretary of Commerce</i> Opinion that, unless U. S. Government is prepared to grant the 2-cent rate to Danish vessels, it will be necessary to abrogate U. S.-Norwegian treaty of 1827 under which the preferential rate is granted; request to be advised whether any objection is perceived to abrogation.	726
Oct. 21	<i>Memorandum by the Chief of the Division of Western European Affairs</i> Conversation with the Danish Minister in which he was informed confidentially that the question of abrogating either the Norwegian or Danish treaty was under consideration.	728
Nov. 3	<i>From the Acting Secretary of Commerce</i> Nonobjection to abrogation of Norwegian treaty.	729
1927 Mar. 26	<i>To the Danish Minister</i> Information that it is considered desirable to terminate the present system under which Danish vessels pay a higher rate of tonnage dues than Norwegian vessels, and that it is hoped that a solution satisfactory to the Danish Government can be adopted after the convening of Congress in December.	729
Apr. 12	<i>Memorandum by the Assistant Secretary of State</i> Conversation with the Danish Minister in which he was informed of correctness of his supposition that a new treaty is being negotiated with Norway which will remove the discrimination in tonnage dues, and in which he reserved right to claim refund of the discriminatory rate charged Danish vessels.	730

DENMARK

REPRESENTATIONS BY DENMARK AGAINST DISCRIMINATION IN TONNAGE DUTIES
LEVIED AGAINST DANISH VESSELS IN AMERICAN PORTS—Continued

Date and number	Subject	Page
1928 Feb. 14 (15)	<i>From the Danish Minister</i> Inability to see in note of March 26, 1927, a complete reply to Danish contentions; request for reconsideration of matter in order that Danish rights to equal treatment with Norway may be fully recognized and satisfaction given to the Danish claim.	730
Apr. 9 (41)	<i>From the Danish Minister</i> Presumption that U. S. Government has now come to definite conclusion; request to be advised.	732
Apr. 14	<i>To the Danish Minister</i> Information that matter is being given careful study and consideration with a view to preparation of a reply in the near future. (Bracketed note: Information that Danish Legation, March 19, 1929, was notified that Danish vessels are properly subject to the 6-cent tonnage rate.)	732

PROPOSED RECIPROCAL EXTENSION OF FREE IMPORTATION PRIVILEGES TO
CONSULAR OFFICERS OF THE UNITED STATES AND DENMARK

1928 Apr. 5 (90)	<i>To the Minister in Denmark</i> Instructions to propose to Danish Government that free importation privileges be extended to American and Danish consular officers under most-favored-nation provisions of U. S.-Danish treaty of 1826.	733
July 21 (551)	<i>From the Chargé in Denmark</i> Information that Foreign Office is considering the matter, but that difficulty has arisen over interpretation of "imposts" in Danish text as covering customs duties or merely internal taxes and contributions.	734
Sept. 17 (115)	<i>To the Minister in Denmark</i> Instructions to inform Foreign Office of opinion that "imposts" as used in legal phraseology and in treaty includes customs exemptions.	736
Oct. 24 (152)	<i>From the Danish Minister</i> Inquiry as to interpretation of the words "all other personal property" in connection with enumeration of articles which may be imported duty-free.	737
Nov. 5	<i>To the Danish Minister</i> Explanation that articles or commodities of any kind may be imported for personal use, free of duty, except articles the importation of which is prohibited by the laws of either country.	738
Dec. 20 (695)	<i>From the Minister in Denmark</i> Report that numerous inquiries have been made concerning Danish decision, but that Foreign Office has not yet been able to obtain consent of the Ministry of Finance.	739

ECUADOR

EXTENSION BY THE UNITED STATES OF "DE JURE" RECOGNITION TO THE
GOVERNMENT OF ECUADOR

Date and number	Subject	Page
1928 Aug. 13 (24)	<i>To the Minister in Ecuador (tel.)</i> Note for Foreign Minister advising extension by the United States of full recognition to the regime of Dr. Ayora as the Government <i>de jure</i> of Ecuador (text printed).	742
Aug. 14 (33)	<i>From the Minister in Ecuador (tel.)</i> Delivery of note at 4:30 p. m.	742

EGYPT

PROPOSED CHANGES IN THE REGIME OF THE MIXED COURTS IN EGYPT

1927 Dec. 23 (146)	<i>From the Chargé in Egypt</i> Report that the Egyptian Government is preparing a note which will propose reconsideration of the Mixed Courts and capitulations in general, and will invite the powers to express their views and send delegates to a congress.	743
Dec. 30 (14)	<i>From the Chargé in Egypt (tel.)</i> Information that the Foreign Minister has addressed circular note to the capitulatory legations proposing modification of mixed trials and international conference at Cairo in February.	744
Dec. 30 (150)	<i>From the Chargé in Egypt</i> Foreign Minister's circular note of December 25 (text printed).	745
1928 Jan. 6 (155)	<i>From the Chargé in Egypt</i> Information concerning the attitude taken by the capitulatory legations in submitting Egyptian note to their Governments.	762
Jan. 10 (3)	<i>To the Chargé in Egypt (tel.)</i> Instructions to report views of American judges on Mixed Courts and of Americans residing in Egypt, and to inform Egyptian Government of the U. S. Government's sympathetic consideration of proposals and willingness to attend conference if it should later appear desirable to hold one, but that February would be too early.	764
Jan. 21	<i>Memorandum by the Secretary of State</i> Report of conversation with the Egyptian Minister in which he presented invitation to attend a conference to consider questions pertaining to the Mixed Courts.	764
Jan. 21 (172)	<i>From the Chargé in Egypt</i> Information that the Foreign Minister is reconciled to fact that proposals will not be accepted by the capitulatory powers by January 31 and that conference desired for February will not take place, although he hopes for one in the late spring.	765
Nov. 3 (44)	<i>From the Minister in Egypt (tel.)</i> Receipt by capitulatory powers of Foreign Office note of October 28 reopening general question of capitulations and hope for prompt realization of the reforms outlined in note of December 25, 1927; understanding that French reply will state disposition to give matter favorable consideration but will point out necessity of first drawing up suitable civil and criminal codes and will suggest direct conversations rather than international commission.	766

EGYPT

PROPOSED CHANGES IN THE REGIME OF THE MIXED COURTS IN EGYPT—Con.

Date and number	Subject	Page
1928 Nov. 3 (69)	<i>From the Minister in Egypt</i> Foreign Office note of October 28 (text printed).	767
Nov. 6 (47)	<i>From the Minister in Egypt (tel.)</i> Understanding that the Belgian and Greek Ministers plan to send replies similar to the French reply.	768
Nov. 22 (83)	<i>From the Minister in Egypt</i> Belief of British High Commissioner that the proposal for holding conference is the lesser of two evils; understanding that French, Italian, Greek, and Rumanian Ministers will employ obstructive tactics in replying to Egyptian note.	769
Dec. 1 (89)	<i>From the Minister in Egypt</i> Comments on French reply of November 22; inability to agree that an international conference is impractical.	770
Dec. 7 (90)	<i>From the Chargé in Egypt</i> Observation that Italian reply to Egyptian proposals is identical with French note in general sense but that it stresses desirability of informal conversations; understanding that Foreign Minister is disturbed by the conflicting attitudes taken by the British High Commissioner and the Franco-Italian group.	772

APPOINTMENT OF AN AMERICAN REPRESENTATIVE ON THE INTERNATIONAL QUARANTINE BOARD AT ALEXANDRIA

1927 Mar. 2 (307)	<i>To the Minister in Egypt</i> Instructions to communicate to appropriate Egyptian authorities the U. S. desire for representation on the International Quarantine Board at Alexandria.	773
Aug. 29 (326)	<i>To the Chargé in Egypt</i> Instructions to report the present status of matter.	774
1928 Mar. 3 (203)	<i>From the Chargé in Egypt</i> Assurance by Prime Minister that U. S. representation will be granted but that it may take some time to arrange.	775
May 18 (261)	<i>From the Chargé in Egypt</i> Information that the Legation is pressing for admission of an American representative but that the delay is apparently due to demoralization and confusion in the Ministry of the Interior.	775
June 22 (24)	<i>From the Chargé in Egypt (tel.)</i> Egyptian approval of American representation and request for name and record of proposed delegate.	776
June 22 (283)	<i>From the Chargé in Egypt</i> Foreign Office note of June 21 (text printed) communicating decision to accord to the United States representation on the International Quarantine Board and requesting name of delegate.	777

EGYPT

APPOINTMENT OF AN AMERICAN REPRESENTATIVE ON THE INTERNATIONAL
QUARANTINE BOARD AT ALEXANDRIA—Continued

Date and number	Subject	Page
1928 July 3	<i>From the Secretary of the Treasury</i> Suggestion by the Surgeon General of the Public Health Service that for the time being the U. S. representative be the ranking consular officer at Alexandria and that technical assistance by Public Health Service officer at Naples, Italy, can readily be made available upon request.	778
July 31	<i>To the Secretary of the Treasury</i> Information that the American consul at Alexandria has been nominated as U. S. representative and that he will be pleased to receive a visit from the Public Health Service officer at Naples.	779
July 31 (381)	<i>To the Minister in Egypt</i> Instructions to notify Foreign Office of nomination of American consul and to forward information to the consulate at Alexandria.	780
Aug. 24 (20)	<i>From the Chargé in Egypt</i> Information that instruction No. 381, July 31, has been executed.	781
Nov. 3	<i>To the Consul at Alexandria</i> Advice that Public Health Service representative at Paris will visit Egypt in November and will call upon the American consul.	781

CONSENT OF THE UNITED STATES TO EXTENSION OF PRIVILEGE OF SEARCH OF
DOMICILES OF ITS NATIONALS ON CONDITION OF SIMILAR CONSENT BY OTHER
POWERS

1928 Feb. 23 (355)	<i>To the Chargé in Egypt</i> Instructions, upon the granting of similar consent by other powers, to convey U. S. Government's consent to extension to the hours from sunset to sunrise of the privilege of searching domiciles of American nationals in connection with investigation of premises suspected of concealing illegal distilleries.	782
May 16 (259)	<i>From the Chargé in Egypt</i> Renewal by Egyptian Government of request for extension of privilege of search; advice that the Legation has not conveyed U. S. Government's consent because France, Italy, and Greece have withheld their consent; request for instructions as to reply.	783
June 25 (377)	<i>To the Chargé in Egypt</i> Instructions to limit reply to an acknowledgment and statement of U. S. position in the sense of draft note set forth in this instruction (text printed).	783

ETHIOPIA

PROJECT FOR CONSTRUCTION OF A DAM AT LAKE TSANA

Date and number	Subject	Page
1928 Apr. 26 (18)	<i>From the Minister in Ethiopia</i> Letter to the J. G. White Engineering Corporation (text printed) stating that the matter of the Tsana dam has been discussed at length with Ras Tafari, the Prince Regent; that Ras Tafari has received a British Foreign Office note indicating consent to the building of the dam provided work is given to competent engineers and guarantees are given concerning water for the Sudan and Egypt, and asserting that the British Government must be informed of the concession terms before entering upon formal negotiations; and that the Minister believes Ras Tafari will soon invite a company representative to confer either in Ethiopia or London.	786
Oct. 1 (13)	<i>To the Minister in Ethiopia (tel.)</i> Request of the White Corporation that an inquiry be submitted to Ras Tafari as to whether the matter of dam has progressed sufficiently to justify discussion in London, as present time is considered especially opportune.	787
Oct. 2 (51)	<i>From the Minister in Egypt</i> Résumé of the views of the Minister of Public Works in regard to the problem of Nile control; his opinion that only the Assuan dam project should take precedence over the Tsana project. Information that the Minister in Ethiopia has been informed.	788
Oct. 3 (74)	<i>From the Minister in Ethiopia</i> Reasons for postponing discussions with Ras Tafari with respect to White Corporation proposal for a conference.	789
Oct. 17	<i>From the Minister in Ethiopia (tel.)</i> Information that the White Corporation proposal has been discussed with King Tafari who considers it strategically inadvisable to call a conference until the British Government replies to his inquiry concerning terms under which they will use water. Expectation that the new British Minister will bring terms with him in December.	791
Oct. 17 (81)	<i>From the Minister in Ethiopia</i> Detailed information of the discussion with King Tafari.	791
Oct. 29 (18)	<i>To the Minister in Ethiopia (tel.)</i> Instructions to bring to King Tafari's attention additional arguments of White Corporation for holding conference at London before departure of new British Minister for Addis Ababa.	793
Nov. 5 (92)	<i>From the Minister in Ethiopia</i> Information that King Tafari is ill but that White Corporation proposal will be brought to his attention as soon as possible. Report that new British Minister is en route to Ethiopia.	794
Nov. 28	<i>From the Minister in Ethiopia (tel.)</i> Information that the matter has been discussed with King Tafari who refuses to call a conference or take any other step until a further communication has been received from the British. Expectation that the British Minister will give reply when he presents his letter of credence on December 2. Minister's opinion that the King has never yet definitely made up his mind to have the dam constructed.	794

ETHIOPIA

PROJECT FOR CONSTRUCTION OF A DAM AT LAKE TSANA—Continued

Date and number	Subject	Page
1928 Nov. 28 (101)	<i>From the Minister in Ethiopia</i> Detailed information concerning the discussion with King Tafari.	795
Nov. 30	<i>To the President of the J. G. White Engineering Corporation</i> Information that King Tafari is reluctant to take any action until further negotiations with the British; that the Department can do nothing further in the matter.	796
Dec. 3	<i>From the Minister in Ethiopia (tel.)</i> Information that King Tafari intimates that British action is delayed by difficulties with the Egyptian Government.	797
Dec. 3 (104)	<i>From the Minister in Ethiopia</i> Detailed information concerning King Tafari's intimation with respect to British delay; German interest in the project. Possibility of conference between Captain White and the King.	797
1929 Jan. 5	<i>To the President of the J. G. White Engineering Corporation</i> Information that, as a result of a conference between the King and the new British Minister, the King desires that the White Corporation send a representative to discuss possible contract.	798

PROPOSALS BY ETHIOPIA FOR OBTAINING MILITARY SUPPLIES AND INSTRUCTORS
IN THE UNITED STATES

1927 June 21 (7615)	<i>From the Ambassador in France</i> Information that there has been an exchange of notes between Great Britain, France, and Italy in which the powers agreed to apply in principle to Ethiopia the provisions of the Geneva convention of June 17, 1925; and that a conference with Ethiopian authorities was planned for this spring, but was postponed to the autumn.	799
1928 May 4 (4)	<i>From the Minister in Ethiopia</i> Inquiry from Ras Tafari regarding price of military equipment in the United States. Minister's request for catalogs of military supplies; his understanding that since Ethiopia's entrance into the League of Nations, there is no longer any restriction sponsored by Britain, France, and Italy to control the importation of war materials.	800
Sept. 14 (63)	<i>From the Minister in Ethiopia</i> Inquiry from the Ethiopian Government whether the U. S. War Department would purchase for it as a special favor one airplane and two tanks; also whether it would be possible to obtain the services of two Army officers to serve as military instructors in the Ethiopian Army.	800
Oct. 3 (341)	<i>To the Ambassador in France (tel.)</i> Instructions to ascertain the results of proposed conference of three powers with Ethiopia and present status of arms traffic control.	801

ETHIOPIA

PROPOSALS BY ETHIOPIA FOR OBTAINING MILITARY SUPPLIES AND INSTRUCTORS
IN THE UNITED STATES—Continued

Date and number	Subject	Page
1928 Nov. 3 (345)	<i>From the Chargé in France (tel.)</i> Information that the conference has not yet taken place but that the representatives of the three powers at Addis Ababa expected to renew their invitation to Ethiopia to attend the proposed conference.	801
Nov. 5 (26)	<i>To the Minister in Ethiopia</i> Information that the War Department is permitted by law to concern itself with the sale to foreign governments of surplus military equipment only and that at present it has no surplus airplanes or tanks; also that Army officers may be detailed for such purposes as requested by Ethiopia only in pursuance of a special act of Congress.	802
Nov. 14 (27)	<i>To the Minister in Ethiopia</i> Transmittal of Department of Commerce reply of October 25 to the request for catalogs and material from American manufacturers. Information that there is nothing to prevent the shipment of war materials from the United States to Ethiopia, although it is not Department's policy to encourage the exportation of arms and ammunition to any country.	802
Dec. 6 (30)	<i>To the Minister in Ethiopia</i> Transmittal of copy of letter of November 8 from S. F. Mashbir, a Major in the Reserve of the U. S. Army, to King Tafari. Information that Mashbir understands that any arrangement with the Ethiopian Government is made as a private citizen.	803

FINLAND

TREATIES OF ARBITRATION AND CONCILIATION BETWEEN THE UNITED STATES
AND FINLAND, SIGNED JUNE 7, 1928

1928 Apr. 9	<i>To the Finnish Minister</i> Transmittal, for the consideration of the Finnish Government and as a basis for negotiation, of a draft treaty of arbitration and a draft treaty of conciliation.	804
June 2	<i>From the Finnish Minister</i> Information that the Minister has been instructed to sign treaties.	805
June 7	<i>Treaty Between the United States of America and Finland</i> Of arbitration.	806
June 7	<i>Treaty Between the United States of America and Finland</i> Of conciliation.	808

FRANCE

TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND FRANCE, SIGNED
FEBRUARY 6, 1928

Date and number	Subject	Page
1927 Dec. 28	<i>To the French Ambassador</i> Transmittal, for the consideration of the French Government and as a basis for negotiation, of a draft treaty of arbitration (text printed).	810
1928 Jan. 7	<i>From the French Ambassador</i> Confirmation of oral modifications made the previous day in draft treaty at suggestion of French Foreign Minister; and transmittal of copy of draft containing these amendments (text printed).	812
Feb. 1	<i>To the French Ambassador</i> Detailed discussion of proposed changes in the amended draft treaty of arbitration; and transmittal of revised text embodying changes suggested by French Government and agreed to by the U. S. Government.	815
Feb. 6	<i>Treaty Between the United States of America and France</i> Of arbitration.	816
Mar. 1	<i>To the French Ambassador</i> Opinion of U. S. Government that the provisions of the arbitration treaty signed February 6 do not affect or modify the provisions of the Treaty for the Advancement of Peace signed on September 15, 1914. Request for note stating that the French Government's interpretation of the treaty is identical with that of the U. S. Government.	819
Mar. 5	<i>From the French Ambassador</i> Assurance of French Government that its interpretation of treaty is identical with that of the U. S. Government.	819

PROBLEMS OF TARIFF ADMINISTRATION REGARDING FRENCH EXPORTS TO THE
UNITED STATES AND AMERICAN EXPORTS TO FRANCE

1928 Jan. 31 (8272)	<i>From the Ambassador in France</i> Foreign Office note, January 27 (text printed) suggesting a procedure for the verification of valuation for customs purposes of French exports to the United States, and inquiring concerning privileges that might be accorded, as a matter of reciprocity, to French agents appointed to verify declarations of U. S. exporters.	820
May 14	<i>From the French Ambassador</i> Request for the lowering of excessive duties and for modification of administrative measures harmful to French commerce. Transmittal of lists of complaints.	822
July 20	<i>To the French Ambassador</i> Letter from the Secretary of Agriculture (text printed) containing observations with respect to the complaints annexed to the French note of May 14.	823

FRANCE

PROBLEMS OF TARIFF ADMINISTRATION REGARDING FRENCH EXPORTS TO THE UNITED STATES AND AMERICAN EXPORTS TO FRANCE—Continued

Date and number	Subject	Page
1928 Oct. 16 (361)	<i>To the Chargé in France (tel.)</i> Note for the Foreign Office (text printed) expressing regret that the procedure suggested by the French Government cannot be adopted and conveying assurances concerning reciprocal treatment of French agents. Instructions to suggest orally that if, as has been intimated, France is prepared to state that U. S. agents might be authorized to examine such French books and records as interested French businessmen may voluntarily submit to them, the U. S. Government would gladly agree.	827
Oct. 30 (367)	<i>To the Chargé in France (tel.)</i> Instructions to inform the Foreign Office that, in view of garbled press reports concerning the communication set forth in telegram No. 361, October 16, the Department has made public a summary of the communication and a statement (text printed); instructions also to make oral representations with respect to the fact that the French Government has permitted garbled reports of the Chargé's oral conversations to become current.	829
Oct. 31 (336)	<i>From the Chargé in France (tel.)</i> Information that Foreign Office has been informed of Department's publication and that oral representations have been made.	830
Nov. 8 (381)	<i>To the Chargé in France (tel.)</i> Statement of U. S. views in refutation of accusations that the United States is showing a lack of reciprocity pursuant to the understanding reached in the fall of 1927, for appropriate use in conversations with French officials and for discreet use in conversations with reliable members of the press. Information that the U. S. complaints will be communicated to the French Government shortly.	831

REPRESENTATIONS TO THE FRENCH GOVERNMENT REGARDING APPARENT VIOLATIONS OF CONSULAR CONVENTION OF 1853 BY FRENCH COURTS IN LANDLORD AND TENANT CASES

1928 Apr. 21 (2742)	<i>To the Ambassador in France</i> Instructions to urge the Foreign Ministry to devise some means whereby American citizens may be accorded equal treatment with French citizens under the rent law of April 1, 1926, since nondiscriminatory treatment is provided in article 7 of the consular convention of 1853.	832
Dec. 14 (9211)	<i>From the Chargé in France</i> Information that the matter has been brought before Foreign Ministry on several occasions but that as yet the question of principle has never been answered.	835
1929 Jan. 28 (3043)	<i>To the Ambassador in France</i> Opinion that it would seem unnecessary to take special means to obtain an early answer from the Foreign Ministry unless there are cases in which American citizens are suffering undue hardship.	836

FRANCE

INFORMAL REPRESENTATIONS REGARDING POSSIBLE DISCRIMINATION AGAINST
AMERICAN OIL IMPORTS INTO FRANCE

Date and number	Subject	Page
1928 Feb. 14 (8328)	<i>From the Ambassador in France</i> Information that the Chamber petroleum committee is about to consider a bill governing oil imports which contains amendments of a nature discriminatory to foreign interests.	837
Feb. 18 (8343)	<i>From the Ambassador in France</i> Advice that the objectionable amendments have been attenuated by the petroleum committee; report of informal interview with Foreign Minister Briand, in which he gave assurance that the Government would oppose the bill in its present form when it comes before the Chamber.	839
Mar. 3 (57)	<i>From the Ambassador in France (tel.)</i> Withdrawal of the amendments by petroleum committee at instance of the Prime Minister and Foreign Minister.	842
Mar. 9 (60)	<i>From the Ambassador in France (tel.)</i> Passage of bill by the Chamber, March 7; informal representations to the Prime Minister against reported intention of the Minister of Commerce and Industry to have the issuance of licenses administered by the governmental committee in such a way as would constitute discrimination against non-French interests.	842
Mar. 12 (70)	<i>To the Ambassador in France (tel.)</i> Approval of informal representations.	843
Mar. 16 (70)	<i>From the Ambassador in France (tel.)</i> Information that the Senate passed the bill with additional clause which prescribes consultation with the Council of State respecting licenses, thereby constituting an effective check on arbitrary action by the commission, and that the Chamber approved the bill as changed. (Footnote: Promulgation of law, March 30.)	843

EFFORTS BY THE DEPARTMENT OF STATE TO PROTECT AMERICAN MOTION PICTURE
INTERESTS FROM RESTRICTIONS IMPOSED BY FRENCH FILM REGULATIONS

1928 Mar. 15 (74)	<i>To the Ambassador in France (tel.)</i> Understanding that French Senate will pass law restricting foreign films; authorization to point out to Foreign Office informally the serious injury which will result to American motion picture interests in France; instructions to advise whether grounds for formal protest are perceived.	844
Mar. 16 (72)	<i>From the Ambassador in France (tel.)</i> Information that the restrictions are contained in what purport to be regulations by the film commissioner rather than legislation, and that M. Herriot, Minister of Public Instruction and the Fine Arts, had opposed the adoption of regulations providing for a film quota; doubt that formal protest is justifiable or informal action opportune.	845

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EFFORTS BY THE DEPARTMENT OF STATE TO PROTECT AMERICAN MOTION PICTURE INTERESTS FROM RESTRICTIONS IMPOSED BY FRENCH FILM REGULATIONS—Continued

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1928 Mar. 23 (80)	<i>From the Ambassador in France (tel.)</i> Absence of any definite information as to action taken by Film Commission at its meeting to put regulations into effect.	846
Mar. 24 (89)	<i>To the Ambassador in France (tel.)</i> Instructions to inform Herriot that Will H. Hays is on his way to Paris and to request that he be heard before the adoption of any regulations that may affect American film interests.	846
Apr. 3 (8491)	<i>From the Ambassador in France</i> Conclusion that the best course will be for Hays to see Herriot and to point out what the result will be to the French as well as American film interests if the present course is persisted in.	847
May 2 (111)	<i>From the Ambassador in France (tel.)</i> Report of informal, conciliatory efforts to ameliorate negotiations between Hays, Herriot, and French film interests.	848
May 4 (124)	<i>To the Ambassador in France (tel.)</i> Approval of conciliatory efforts.	849
May 4 (114)	<i>From the Ambassador in France (tel.)</i> Information that Hays and the Film Commission subcommittee reached agreement which will enable American interests to continue business in France under conditions of harmonious and cordial cooperation.	849

SUIT OF PRINCESS ZIZIANOFF AGAINST CONSUL DONALD F. BIGELOW, INVOLVING QUESTION OF CONSULAR IMMUNITY

1927 Mar. 26 (21)	<i>From the Consul General at Paris</i> Notes to Foreign Office, March 5 and 14 (texts printed) requesting withdrawal of suit against Consul Donald F. Bigelow by Princess Zizianoff and declaring that any effort to hold him responsible for his action in refusing the visa to the plaintiff or to have such act reviewed by a French court is improper.	850
June 30 (198)	<i>To the Ambassador in France (tel.)</i> Opinion that court decision of April 5 concerning jurisdiction seems to involve confusion of articles 2 and 27 of the consular treaty of 1853, and that article 2, which guarantees immunity of consuls from arrest and imprisonment except in cases of crime, in no way limits the scope of the most-favored-nation provision of article 12; instructions to address note to Foreign Office in this sense.	853
July 22 (7686)	<i>From the Chargé in France</i> Foreign Office note of July 20 (text printed) declaring that both sides recognize that personal immunity does not mean immunity from the jurisdiction of the courts, and that Consul Bigelow's statements to the press, which motivated the suit, were personal acts.	853

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SUIT OF PRINCESS ZIZIANOFF AGAINST CONSUL DONALD F. BIGELOW—Continued

Date and number	Subject	Page
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1928 Jan. 13 (8215)	<i>From the Chargé in France</i> Foreign Minister's reply, January 11 (text printed), stating that the U. S. and French arguments have been conveyed to the courts but that the Foreign Office finds it impossible to modify the position which it has taken.	856
Mar. 5 (727)	<i>From the Consul General at Paris</i> Judgment rendered against Consul Bigelow by the Court of Appeals of Paris on January 28 (text printed).	858
Apr. 10 (2723)	<i>To the Ambassador in France</i> Note for Foreign Office (text printed), recording U. S. views on the arguments set forth in court decision of January 28.	860
1929 Mar. 30 (1431)	<i>From the Consul General at Paris</i> Dismissal of suit of Princess Zizianoff against Consul Bigelow in judgment rendered by the Civil Tribunal of Paris on March 29.	861

GERMANY

TREATIES OF ARBITRATION AND CONCILIATION BETWEEN THE UNITED STATES AND GERMANY, SIGNED MAY 5, 1928

1928 Jan. 10 (3076)	<i>From the Chargé in Germany</i> Desire of German Government to conclude arbitration treaty with the United States.	862
Mar. 12 (23)	<i>To the Ambassador in Germany (tel.)</i> Information that draft treaties of arbitration and conciliation have been handed to the German Ambassador.	863
Apr. 11	<i>Memorandum by the Under Secretary of State</i> Conversation with the German Ambassador, who presented an informal memorandum (text printed) dealing with several questions of interpretation and procedure under the draft treaties.	863
Apr. 14	<i>Memorandum by the Under Secretary of State</i> Conversation with the German Ambassador, in which the Ambassador's queries of April 11 were discussed by the Under Secretary on the basis of an accompanying memorandum of comment (text printed).	865
May 5	<i>Treaty Between the United States of America and Germany</i> Of arbitration.	867
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1928 Sept. 28 (198)	<i>From the Chargé in Germany (tel.)</i> Possibility that committee of experts to effect final settlement of the reparation problem may soon be summoned; information concerning German attitude toward reparation question, and understanding that American citizens may be invited to sit on experts' committee.	871
Oct. 11 (207)	<i>From the Chargé in Germany (tel.)</i> Information that situation remains essentially unchanged.	872
Undated [Rec'd Oct. 30]	<i>Memorandum Handed by the German Ambassador to the Secretary of State</i> Proposals of the Belgian, British, French, Italian, and Japanese Governments for execution of the agreement reached at Geneva on September 16 for the calling of an experts' committee.	872
Oct. 31 (368)	<i>To the Chargé in France (tel.)</i> Instructions to advise the Agent General of Reparations that U. S. Government will give sympathetic consideration to request that Americans be permitted to serve, but will assume no responsibility for their designation and will not permit any Government official to serve in his private capacity; observation that this attitude is expressed on understanding that question of European debts to United States will not be a subject for consideration.	873
Nov. 22	<i>Memorandum by the Secretary of State</i> Conversation with the French Ambassador, in which the Ambassador was advised that if a request were received for participation of American experts it would receive sympathetic consideration.	874
Nov. 27	<i>Memorandum by the Secretary of State</i> Conversation with the German Ambassador, who informed the Secretary that his Government replied to the British and French representations by a memorandum (text printed) emphasizing necessity that Germany be allowed to fulfill obligations permanently out of its own economic resources without endangering German standard of living; also that question has arisen as to method of selecting American experts.	874
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1929 Jan. 8 (10)	<i>From the Chargé in France (tel.)</i> Request for verification of understanding that the Governments will submit to Department names of Americans selected.	880
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DISPOSAL OF UNUSED BALANCES OF SUMS ALLOCATED TO THE INTERALLIED
RHINELAND HIGH COMMISSION FOR ITS ADMINISTRATIVE EXPENSES

1928 Feb. 18 (50)	<i>From the Ambassador in France (tel.)</i> Request for authorization (1) to approve Reparation Commission's proposal for extension to articles 8-12 of the Rhineland Agreement of assurance given in Annex 3314-A regarding article 6, and (2) to concur in interpretation of this assurance and article 2 of the agreement of January 13, 1927, so as not to block the amounts available for distribution as reparations. (Footnote: Information that Annex 3314-A provides that unused balances of sums allocated for administrative expenses of the Rhineland High Commission shall be made available to meet such German claims under article 6 as may be found to be justified.)	882
Feb. 23 (53)	<i>To the Ambassador in France (tel.)</i> Authorization as requested.	883
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DISPOSAL OF UNUSED BALANCES OF SUMS ALLOCATED TO THE INTERALLIED RHINELAND HIGH COMMISSION FOR ITS ADMINISTRATIVE EXPENSES—Continued

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1928 May 9	<i>From the Ambassador in France</i> Request for authorization to sign draft protocol drawn up to settle question of the interpretation of article 2 of the agreement of January 13, 1927, and of the extended assurance covering German claims under articles 6 and 8-12 of the Rhineland Agreement.	885
June 7 (160)	<i>To the Ambassador in France (tel.)</i> Authorization for signature of protocol.	888
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Oct. 31	<i>To the Greek Minister</i> Disinterest of U. S. Government in Greek request to Reparation Commission for special charge in its favor against fifth Dawes annuity.	892
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AGREEMENT BETWEEN THE UNITED STATES AND GERMANY FOR EXTENSION OF THE JURISDICTION OF THE MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

1928 Nov. 26	<i>From the German Ambassador</i> Desire for conclusion of agreement for extension of jurisdiction of Mixed Claims Commission, United States and Germany, to include so-called late claims.	894
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Dec. 31	<i>From the German Ambassador</i> Concurrence in proposals contained in note of December 31.	897

POLICY OF THE DEPARTMENT OF STATE REGARDING AMERICAN BANKERS' LOANS TO GERMAN STATES AND MUNICIPALITIES

1928 Jan. 9 (5)	<i>To the Ambassador in Germany (tel.)</i> Instructions to inquire informally concerning proposed loans to Vestischen Kleinbahn, Westphalia, and Municipal Gas and Electric Corporation of Recklinghausen, and in particular to ascertain whether jurisdiction will be taken by the Beratungsstelle.	898
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POLICY OF THE DEPARTMENT OF STATE REGARDING AMERICAN BANKERS' LOANS
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Jan. 11 (6)	<i>From the Chargé in Germany (tel.)</i> Information that the Beratungsstelle has not received applications relating to the proposed loans but is investigating whether they are municipal or private loans.	898
Jan. 17	<i>From Messrs. Hornblower, Miller & Garrison</i> Opinion that the approval of the Beratungsstelle is not required for the proposed loan to the Recklinghausen Company because it is not a municipal loan but a loan to a public utility or corporation.	899
Jan. 19 (12)	<i>From the Ambassador in Germany (tel.)</i> Report that proposed loans are not within jurisdiction of the Beratungsstelle, but that Ministry of Finance has endeavored to discourage them.	900
Jan. 23	<i>To Messrs. Hornblower, Miller & Garrison</i> Observations on business risk involved in German loans; advice, however, that there appear to be no questions of Government policy involved which would justify the Department in offering objection.	900
Feb. 14 (14)	<i>To the Ambassador in Germany (tel.)</i> Instructions to take action similar to that indicated in telegram No. 5, January 9, in connection with proposed loan for the Rhine-Ruhr Water Service Union.	901
Feb. 16 (31)	<i>From the Ambassador in Germany (tel.)</i> Information that the Beratungsstelle does not have jurisdiction over the proposed loan mentioned in telegram No. 14, February 14. (Footnote: Transmittal to Messrs. Hornblower, Miller & Garrison, February 17, of a letter similar to letter of January 23 to the same firm.)	902
May 11 (56)	<i>To the Ambassador in Germany (tel.)</i> Receipt from Blair and Company of inquiry whether, in order to obtain consideration by the Beratungsstelle of their bids for proposed loan to East Prussia, they may accompany bids with a statement that they are conditional upon non-objection by the Department of State; instructions to inquire concerning regulations of the Beratungsstelle. Request to be advised meaning of approval "in principle" by the Beratungsstelle of a Speyer & Co. loan to the city of Berlin.	902
May 18 (104)	<i>From the Ambassador in Germany (tel.)</i> Information that approval "in principle" of Berlin loan means that permission has been given to contract a loan whose exact amount has not been determined.	903
May 21 (108)	<i>From the Ambassador in Germany (tel.)</i> Understanding that approval of the foreign authorities concerned is not a condition precedent to consideration by the Beratungsstelle of a foreign loan project; information that the proposed East Prussia loan has not yet been presented to the Beratungsstelle.	903

GERMANY

RESTRICTIVE MEASURES AGAINST AMERICAN BARLEY IMPORTED INTO GERMANY,
BECAUSE OF ALLEGED INJURIOUS EFFECT ON ANIMAL HEALTH

Date and number	Subject	Page
1928 Sept. 17	<i>From the Consul at Bremen (tel.)</i> Receipt of information from Bremen Senate, Chamber of Commerce, and Grain Importers' Association that animals have been poisoned after feeding with grade 2 American barley, and of request for immediate investigation and stoppage of further shipments of chemically regenerated barley.	903
Sept. 24	<i>To the Consul at Bremen (tel.)</i> Cable from Department of Agriculture to Grain Importers' Association (text printed), stating that shipments were inspected and graded and that chemical examination of official samples reveals nothing to cause sickness.	904
Sept. 26 (194)	<i>From the Chargé in Germany (tel.)</i> Probability that Reichsrat will pass decree admitting American barley only after actual feeding tests. Information that German authorities intend to carry out scientific tests, and that they urge similar tests by American authorities and efforts of both Governments to bring about a direct meeting of exporters and importers with a view to a general adjustment.	904
Sept. 27	<i>From the German Embassy</i> Possibility that German Government may be compelled to restrict importation of barley or impose temporary embargo; suggestion that barley be tested before being exported.	905
Sept. 28 (94)	<i>To the Chargé in Germany (tel.)</i> Communication from the Secretary of Agriculture (text printed), advising that bacteriological and feeding tests are being made to determine cause of difficulty, and stating that there is no justification for possible embargo on American barley.	905
Sept. 28 (197)	<i>From the Chargé in Germany (tel.)</i> Enactment by Reichsrat of decree providing that, effective October 1 to November 15, American barley (excepting Texas, Kansas, Oklahoma, and Colorado) may be admitted to commerce in Germany only after an examination showing its innocuous character.	906
Oct. 5 (202)	<i>From the Chargé in Germany (tel.)</i> Information that situation is growing worse, that absolute embargo may be laid down, and that German importers have decided not to take up documents on arriving shipments.	906
Oct. 5 (98)	<i>To the Chargé in Germany (tel.)</i> Instructions to secure from German authorities further information concerning provisions of the decree and to point out that number 2 barley must meet U. S. Government specifications and that all export shipments are properly inspected and graded.	907
Oct. 6 (99)	<i>To the Chargé in Germany (tel.)</i> Instructions to advise Foreign Office that U. S. Government views as a grave matter the imposition of restrictive measures without being fully apprised of sound scientific and technical grounds for the taking of such action.	907

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RESTRICTIVE MEASURES AGAINST AMERICAN BARLEY IMPORTED INTO
GERMANY—Continued

Date and number	Subject	Page
1928 Oct. 7 (100)	<i>To the Chargé in Germany (tel.)</i> Instructions to submit opinion on the exact situation and to furnish such statistical material and facts as will suggest how seriously the matter may be regarded and if an absolute embargo or the present restrictions are justified.	909
Oct. 8 (205)	<i>From the Chargé in Germany (tel.)</i> Report that feeding tests would seem to indicate that there is something wrong with the barley, and that results of official laboratory tests may be known in a few days; information that agrarian interests are pressing toward a complete embargo but that Foreign Office appears desirous of avoiding such drastic action.	909
Oct. 9 (101)	<i>To the Chargé in Germany (tel.)</i> Receipt from German Embassy of report that American consul at Hamburg has declined to certify under seal as to identity of particular shipments of American barley; authorization to instruct consuls to perform such certifications when samples are accompanied by full affidavits.	911
Oct. 12 (105)	<i>To the Chargé in Germany (tel.)</i> Memorandum handed to the German Ambassador containing statement of U. S. position regarding present situation, and accompanying statement by the Department of Agriculture dealing with technical and scientific phases (texts printed).	911
Oct. 23 (215)	<i>From the Chargé in Germany (tel.)</i> Probability of complete embargo; information that agrarian interests are bringing such pressure on Foreign Office that it is now apparently helpless.	914
Oct. 24 (217)	<i>From the Chargé in Germany (tel.)</i> Understanding that embargo will be deferred for the present and that scientific tests have so far failed to produce definite explanation regarding noxious character of the barley.	914
Oct. 26 (111)	<i>To the Chargé in Germany (tel.)</i> Observation that imposition of an absolute embargo might, without well-established scientific findings, lend color to the belief held in certain quarters that German Government's action is more influenced by financial and economic factors than by scientific considerations; authorization for representations in this sense in case of an emergency.	915
Nov. 3 (229)	<i>From the Chargé in Germany (tel.)</i> Confidential information from Foreign Office that danger of embargo seems past.	917
Nov. 7 (235)	<i>From the Chargé in Germany (tel.)</i> Statistics concerning imports and rejections of grade 2 barley at Bremen and Hamburg.	917
Nov. 13 (238)	<i>From the Chargé in Germany (tel.)</i> Extension of barley import restrictions to December 31.	917
Dec. 29 (4205)	<i>From the Ambassador in Germany</i> Further extension of restrictions to February 28, 1929.	918

GERMANY

NEW GERMAN REGULATIONS RESTRICTING IMPORTATION OF FOREIGN MOTION PICTURE FILMS

Date and number	Subject	Page
1928 Dec. 17 (130)	<i>To the Ambassador in Germany (tel.)</i> Request of Motion Picture Producers and Distributors Association for assistance in connection with protest against new German regulations governing importation of foreign films; instructions to investigate and submit recommendations for possible representations.	918
Dec. 21 (260)	<i>From the Ambassador in Germany (tel.)</i> Doubt that strong case for formal protest can be made; suggestion for informal efforts and for united agreement among the chief American film companies upon a common attitude.	919
Dec. 22 (4198)	<i>From the Ambassador in Germany</i> German decree, December 11, regulating film importations (text printed).	919
Dec. 26 (134)	<i>To the Ambassador in Germany (tel.)</i> Instructions to protest retroactive nature of the decree in its effect on companies such as United Artists.	922
Dec. 28 (263)	<i>From the Ambassador in Germany (tel.)</i> Suggestion that protest on behalf of United Artists would not be opportune in view of their pending negotiations with German authorities for adjustment of their status as affected by the new regulations and the fact that question of representations on behalf of all American companies has not yet been decided.	922

APPLICATION OF ARTICLE XIV OF THE TREATY OF DECEMBER 8, 1923, WITH RESPECT TO LICENSES FOR COMMERCIAL TRAVELERS

1928 Aug. 31 (III A 3479)	<i>From the German Chargé</i> Request for statement concerning nonrequirement by the United States of the licenses and certificates for commercial travelers provided under article XIV of the U. S.-German treaty of December 8, 1923; willingness to issue cards of occupational identity to American commercial travelers who come to Germany without the certificate required in the treaty.	923
Oct. 26	<i>To the German Chargé</i> Nonobjection to public announcement that foreign commercial travelers are not required to take out licenses, nor are they taxed for the right of carrying on business in the United States; request for statement showing procedure which will be followed in Germany in issuing cards of occupational identity. (Footnote: Receipt of German note dated July 29, 1929, containing the information requested.)	925

GERMANY

TAKING BY CONSULAR OFFICERS OF TESTIMONY ON OATH OF NATIONALS OF
COUNTRY WHERE CONSULAR OFFICERS RESIDE

Date and number	Subject	Page
1928 Undated [Rec'd A u g . 29]	<i>From the German Embassy</i> Request to be informed whether or not an American citizen who has declared his willingness to give testimony before a German consular officer in the United States could be prosecuted for perjury if in such testimony he made a false statement under oath.	926
Dec. 26	<i>To the German Embassy</i> Opinion that, because there is no U. S. law authorizing German consular officers to administer oaths, American citizens giving false testimony before them would not be liable to prosecution for perjury. Request for confirmation of understanding that German Government objects to the taking of depositions of German nationals by American consular officers in Germany.	927
1929 Mar. 22 (VZ 327)	<i>From the German Embassy</i> Adherence to opinion that no authority can be inferred for American consular officers to take testimony under oath from German nationals in Germany.	928

ARRANGEMENT BETWEEN THE UNITED STATES AND GERMANY FOR RECIPROCAL
FREE-ENTRY PRIVILEGES FOR NONCOMMISSIONED PERSONNEL OF EMBASSIES
AND CONSULATES

1927 Jan. 25 (1895)	<i>From the Ambassador in Germany</i> Suggestion for proposal to German Government that non-commissioned Embassy personnel be granted free-entry privileges; information that German Government now grants free-entry privileges to noncommissioned consular personnel.	929
Mar. 3	<i>To the German Ambassador</i> Notification that upon request in each instance arrangements will be made for the extension of free-entry privileges to German noncommissioned personnel of German consulates.	930
May 17 (1482)	<i>To the Ambassador in Germany</i> Instructions to advise Foreign Office of U. S. willingness to enter into reciprocal arrangement for extending free-entry privilege to noncommissioned Embassy personnel, including domestic servants.	930
1928 Jan. 6	<i>From the German Chargé</i> Interpretation of the terms "consular officers" and "suites" as contained in article 27 of the U. S.-German treaty of December 8, 1923, in connection with proposed free-entry privileges for noncommissioned consular personnel; inclusion of excise taxes in the category of taxes from which imports by such persons are to be exempt. Request to be advised if this interpretation is shared by U. S. Government.	931
May 11 (3516)	<i>From the Ambassador in Germany</i> Foreign Office note of April 16 (text printed) stating that free-entry privileges for office and chancery personnel of the Embassy will be granted at once, but that such privileges may not be extended to domestic servants.	932

GERMANY

ARRANGEMENT BETWEEN THE UNITED STATES AND GERMANY FOR RECIPROCAL
FREE-ENTRY PRIVILEGES FOR NONCOMMISSIONED PERSONNEL OF EMBASSIES
AND CONSULATES—Continued

Date and number	Subject	Page
1928 Nov. 17	<i>To the German Ambassador</i> Nonobjection to interpretation of the terms "consular officers" and "suites"; declaration that, while consular officers and consular employees are not exempted from excise taxes by virtue of the U. S.-German treaty, arrangements could be made for exemption of consular officers by application of the most-favored-nation clause and article 15 of the U. S.-Spanish treaty of 1902.	933
Nov. 24	<i>From the German Ambassador</i> Reservation of right to make further communication on the subject of interpretation of article 27. (Footnote: Receipt of further note from the German Ambassador, January 8, 1930.)	935
Dec. 20	<i>To the German Ambassador</i> Information that a special reciprocal agreement has been entered into between the German and U. S. Governments whereby the noncommissioned Embassy personnel of the two Governments are to be accorded free-entry privileges; observation that domestic servants employed at the German Embassy in Washington will not be accorded such privileges.	935
REPRESENTATIONS BY THE GERMAN GOVERNMENT REGARDING SPECIAL TAX ON THE USE OF CERTAIN FOREIGN-BUILT BOATS IN THE UNITED STATES		
1927 Jan. 8	<i>From the Secretary of the Treasury</i> Opinion that the effect of section 702 of the Revenue Act of 1926, which imposes a special tax on the use of certain foreign-built boats, is not to impose a different tax on German merchandise than on American merchandise, and that the act does not violate the provisions of the U. S.-German treaty of December 8, 1923.	936
Nov. 29	<i>From the German Embassy</i> Inability to agree that the special tax does not violate the U. S.-German treaty, and request for abolition of the tax.	938
Dec. 30	<i>From the Secretary of the Treasury</i> Adherence to conclusion expressed in letter of January 8; suggestion, however, that no objection is seen to bringing matter to attention of the Senate Committee on Finance.	942
1928 Mar. 20	<i>To the Chairman of the Committee on Finance of the United States Senate</i> Transmittal of the special tax correspondence, with suggestion that, as section 702 of the Revenue Act may possibly constitute a violation of the spirit of the U. S.-German treaty, it may well be considered in connection with new legislation.	943

GREAT BRITAIN

PROPOSED ARBITRATION TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN

Date and number	Subject	Page
1927 Dec. 29	<i>To the British Ambassador</i> Transmittal of draft treaty of arbitration extending arbitration policy enunciated in U. S.-British arbitration treaty of April 4, 1908.	945
1928 Mar. 20	<i>To the British Ambassador</i> Suggestions for changes to be incorporated in draft treaty in interest of uniformity of negotiations being conducted with other governments and to make it clear that the U. S.-British treaty of September 15, 1914, will in nowise be modified.	946
May 22 (1437)	<i>To the Ambassador in Great Britain</i> Proposal by British Ambassador that arbitration treaty of 1908 be extended by exchange of notes while the new treaties are being negotiated.	947
Oct. 17 (231)	<i>To the Ambassador in Great Britain (tel.)</i> Information that suggestion for prolonging treaty of 1908 proved impracticable; instructions to inquire whether Foreign Office will soon furnish British Embassy at Washington with instructions.	947
Oct. 18 (223)	<i>From the Chargé in Great Britain (tel.)</i> Report that Foreign Office is awaiting replies from the Dominions.	948
Oct. 30 (711)	<i>From the Minister in Canada</i> Expectation of Canadian Government that it will soon hear from British Government.	948
Nov. 28 (756)	<i>From the Minister in Canada</i> Canadian preference for settlement of Canadian-American questions by International Joint Commission established under Boundary Waters Treaty rather than by arbitration under the general arbitration treaty.	949
1929 Jan. 21 (11)	<i>To the Minister in Canada (tel.)</i> Instructions to advise the Canadian authorities of U. S. opinion that the arbitration provisions of each treaty would operate concurrently and that it would be unnecessary to refer in new treaty to the special provisions in Boundary Waters Treaty for settling Canadian-American questions.	950
Jan. 30 (822)	<i>From the Minister in Canada</i> Opinion of Canadian Cabinet that boundary waters treaty, rather than any arbitration treaty with Great Britain, should cover all purely Canadian-American questions, and that the International Joint Commission should be mentioned in the proposed treaty.	951
Jan. 31 (3335)	<i>From the Ambassador in Great Britain</i> Announcement to the House of Commons by the Foreign Secretary that, although further replies had been received from the Dominions, additional exchanges of opinion would be necessary before a definite reply was reached. (Footnote: Information that on October 8 the Department was informally advised that delay in replying to the American position was due to Foreign Office reexamination of the whole arbitration policy; also that no further communication on the subject appears to have been made by the British Government.)	951

GREAT BRITAIN

NEGOTIATIONS FOR CONVENTION BETWEEN THE UNITED STATES, GREAT BRITAIN, AND IRAQ REGARDING RIGHTS OF THE UNITED STATES AND OF ITS NATIONALS IN IRAQ

Date and number	Subject	Page
1928 Aug. 16	<i>To Messrs. Breed, Abbott & Morgan, of New York</i> Suggestion that pending conclusion of negotiations between U. S., British, and Iraq Governments for convention to determine rights of Americans in Iraq, American firm in Iraq might consider it desirable, for reasons of business policy, to pay income tax.	952
Sept. 6 (3020)	<i>From the Ambassador in Great Britain</i> Informal Foreign Office note, September 5 (text printed) advising agreement to all U. S. proposals amending draft convention, with exception of alteration in article concerning position of educational, philanthropic, and religious institutions, and setting forth Iraq assurances in this regard; request for instructions as to reply.	953
Nov. 30 (1616)	<i>To the Ambassador in Great Britain</i> Draft reply for Foreign Office (text printed), stating acceptance of Iraq Government's assurances and readiness to proceed to signature of convention, subject to certain comments and understanding concerning the assurances, and transmitting revised draft convention.	955

CLAIM OF THE STANDARD OIL COMPANY OF NEW JERSEY AGAINST THE BRITISH GOVERNMENT FOR THE DESTRUCTION OF PROPERTY IN RUMANIA IN 1916

1928 July 10 (2888)	<i>From the Chargé in Great Britain</i> Foreign Office note of July 5 and enclosures (texts printed), presenting evidence and arguments denying validity of Standard Oil Company claim against the British Government for destruction of oil properties in Rumania in 1916.	957
Sept. 28	<i>From the Attorney of the Standard Oil Company of New Jersey</i> Decision to follow the Department's suggestion to open negotiations with Rumania; desire that the Department inform the British Government and reserve company's rights; request that American Minister at Bucharest be instructed to lend all possible assistance toward conclusion of a satisfactory settlement.	980
Oct. 11 (1577)	<i>To the Chargé in Great Britain</i> Instructions to notify Foreign Office of Department's suggestion to Standard Oil Company regarding negotiations with Rumania and to reserve all rights and claims the company might have against Great Britain.	981
Oct. 11 (324)	<i>To the Minister in Rumania</i> Instructions to render every assistance to company's representatives in negotiations with Rumania.	982

GREAT BRITAIN

INTERPRETATION OF CONVENTION OF DECEMBER 2, 1899, AND MERCHANT MARINE ACT OF 1920 WITH RESPECT TO BRITISH COMMERCIAL RIGHTS IN AMERICAN SAMOA

Date and number	Subject	Page
1927 May 11	<i>From the Secretary of the Navy</i> Inquiry whether negotiations relating to the preferential treatment of British goods imported into Western Samoa have reached a stage which would justify establishment by the Governor of American Samoa of a tariff preferential to American goods.	982
1928 June 5	<i>To the Secretary of the Navy</i> Hope that no action will be taken to establish a preferential tariff for American goods at a time when effort is being made to adjust U. S.-British difficulties in regard to these matters.	983

NEGOTIATIONS IN REGARD TO THE ADMINISTRATION OF THE TURTLE ISLANDS AND TO THE BOUNDARY BETWEEN THE PHILIPPINE ISLANDS AND BRITISH NORTH BORNEO

1928 Mar. 7 (119)	<i>From the British Ambassador</i> Willingness to enter into negotiations on the basis of U. S. proposals of August 20, 1927, for the conclusion of a treaty definitely delimiting the boundary in respect of certain islands on the east coast of Borneo in conformity with treaty of July 10, 1907.	985
Sept. 21	<i>To the British Chargé</i> Transmittal of names of American negotiators; request to be advised names of British negotiators and satisfactory date for beginning discussions. (Footnote: Notification by the British Ambassador, May 21, 1929, that negotiations would be entrusted to him; information that a convention was signed January 2, 1930.)	986

ATTITUDE OF THE UNITED STATES GOVERNMENT REGARDING THE HOLDING BY BRITISH CONSULS OF NAVAL COURTS UPON BRITISH VESSELS IN AMERICAN WATERS

1927 Nov. 3	<i>From the British Ambassador</i> Memorandum of October 29 inquiring whether U. S. Government would be willing to permit British consuls to summon naval courts in American waters and to recognize and give effect to the findings of such courts (text printed).	987
Nov. 14	<i>To the British Ambassador</i> Information that decision of a naval court convoked in the United States by a British consul could not be accorded recognition or support by U. S. authorities.	989
1928 Jan. 14	<i>From the British Ambassador</i> Request for confirmation of impression that there is no objection to the holding of naval courts provided consuls do so on their own initiative and responsibility and without in any way invoking the aid of American authorities.	990

GREAT BRITAIN

ATTITUDE OF THE UNITED STATES GOVERNMENT REGARDING THE HOLDING
BY BRITISH CONSULS OF NAVAL COURTS UPON BRITISH VESSELS IN AMERICAN
WATERS—Continued

Date and number	Subject	Page
1928 Jan. 21	<i>To the British Ambassador</i> Opinion that U. S. Government would take no exception to the holding of British naval courts but that such proceedings would not be exclusive of U. S. jurisdiction in proper cases nor could any coercive jurisdiction be exercised off British naval vessels either on land or in U. S. territorial waters.	991

REPRESENTATIONS BY THE BRITISH GOVERNMENT REGARDING DETENTION AND
SEARCH OF BRITISH VESSELS IN DELAWARE BAY AND THE DELAWARE RIVER

1927 Dec. 28 (728)	<i>From the British Ambassador</i> Representations against the Coast Guard practice of detention and search of British vessels bound for Philadelphia at points in Delaware Bay and Delaware River.	992
1928 Feb. 8	<i>To the British Ambassador</i> Information that boarding and examination of vessels have been performed impartially and without discrimination to British vessels; also that such action has been made necessary because of British and other vessels' discharging liquor after entering Delaware Bay and during the voyage up the river.	993
Feb. 27 (102)	<i>From the British Ambassador</i> Observation that note No. 728 of December 28, 1927, did not allege discrimination against British vessels but merely drew attention to the serious loss of time and inconvenience involved in the Coast Guard practice, as well as the possible risk of grounding of vessels.	994
May 7 (201)	<i>From the British Ambassador</i> Request to be furnished full particulars of occasions on which liquor has been illegally discharged from British vessels.	995
June 6	<i>To the British Ambassador</i> Information concerning seizures of British vessels carrying or having discharged liquor in the Delaware River.	996

PROPOSED SPECIAL COMMISSION TO DEAL WITH CLAIMS REGARDING USE BY THE
UNITED STATES GOVERNMENT OF INVENTIONS OF BRITISH SUBJECTS

1928 Undated [Rec'd Jan. 5]	<i>From the British Embassy</i> Proposal for establishment of U. S. commission to deal with claims of British subjects for use of their patented and unpatented inventions by the U. S. Government during the war.	997
July 23	<i>To the British Chargé</i> Reasons why it is not found possible to give favorable consideration to request for establishment of a special tribunal.	1000

GREAT BRITAIN

ANTARCTIC EXPEDITION OF COMMANDER RICHARD E. BYRD

Date and number	Subject	Page
1928 July 11	<i>To the Consul General at Wellington</i> Instructions to approach the New Zealand Government in connection with the desire of Commander Richard E. Byrd that supplies and equipment for the forthcoming Antarctic Expedition be admitted free of duty.	1001
Aug. 24 (43)	<i>From the Consul in Charge at Wellington</i> Information that customs exemption has been granted.	1001
Oct. 10	<i>From the Personal Representative of Commander Richard E. Byrd</i> Request for U. S. views toward the claiming on behalf of the United States of hitherto uncharted lands.	1002
Nov. 13	<i>To the Consul General at Wellington (tel.)</i> Authorization to inform New Zealand Government of U. S. hope that it will render any practicable assistance to the Byrd expedition; instructions to advise Commander Byrd.	1002
Nov. 17 (526)	<i>From the British Ambassador</i> Information that the various British Governments will watch the progress of the Byrd expedition with especial interest; offer of assistance while the expedition is in the Ross and Falkland Islands Dependencies. (Footnotes: Excerpt from proceedings of Imperial Conference at London, entitled "British Policy in the Antarctic." Information that note No. 526 was acknowledged on November 15, 1929.)	1002
Nov. 30 (592)	<i>From the Consul General at Wellington</i> Note from the Minister of Internal Affairs, November 26 (text printed) advising that the New Zealand Government was pleased to extend courtesies to the Byrd Expedition during their stay in that Dominion.	1003
Dec. 5	<i>To the Personal Representative of Commander Richard E. Byrd</i> Acknowledgment of request of October 10 and information that if the occasion should arise the Department will indicate its conclusions.	1004

CANADA

ARRANGEMENT BETWEEN THE UNITED STATES AND CANADA GRANTING RELIEF FROM DOUBLE INCOME TAX ON SHIPPING PROFITS

811.512342 Shipping/11

The Canadian Minister (Massey) to the Secretary of State

No. 86

WASHINGTON, 8 May, 1928.

SIR: With reference to your note of January 10th. 1928¹ and previous correspondence regarding the exemption from taxation of the income of vessels of foreign registry granted in Canada and the United States, I have the honour to enclose a copy of a Bill which was introduced during this Session of the House of Commons of Canada for the purpose of amending the Income War Tax Act.² This Bill has been enacted into law without amendment and received the Royal Assent on March 30th. last in its present form.

It will be observed by Section 3 of this Bill, Section 4 paragraph (m) of the Income War Tax Act (chapter 97 Revised Statutes of Canada 1927) has been so amended as to provide as regards United States ships operating in Canadian waters for the equivalent exemption from taxation referred to in Section 213 (b) (8) of the United States Revenue Acts of 1921, 1924 and 1926.

I have the honour to bring to your attention the enactment of this legislation by the Parliament of Canada and to suggest that an understanding now be entered into by which each country shall agree to levy income tax upon its own citizens in this respect. In this connection I desire to state that His Majesty's Government in Canada is willing to regard the legislation now enacted as being reciprocal for all prior years, and to forego any claim which might have been made to tax the earnings of United States ships in Canadian waters.

I have [etc.]

VINCENT MASSEY

811.512342 Shipping/14

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, June 29, 1928.

SIR: I have the honor to refer to your note No. 86, of May 8 and my acknowledgment of May 16, 1928,¹ in regard to the matter of the

¹ Not printed.

² Bill 156, 2d sess., 16th Parliament, 1928 (Ottawa, F. A. Acland, 1928).

proposed exemption from taxation of the income of vessels of foreign registry granted in the United States and in Canada.

A communication on this subject has now been received from the Treasury Department.³ It is stated that under Sections 210 and 211 of the Revenue Acts of 1924 and 1926 and under Sections 11 and 12 of the Revenue Act of 1928, citizens of Canada who are residents of the United States are liable to income tax upon their income received from all sources, both from sources within and sources without the United States. There is no provision of law which would permit the Government of the United States to enter into an agreement with the Canadian Government, the effect of which would be to waive the requirements of the Sections of the Statutes referred to with respect to income derived by citizens of Canada residing in the United States from the operation of ships in Canadian waters.

The Treasury Department has considered the amendment of March 30, 1928, to the Canadian Income War Tax Act and has asked me to obtain the following information from you:

1) Whether it is the opinion of the Canadian Government that the provision of Section 213(b)(8) of the Revenue Act of 1926 is fairly reciprocal to the exemption provided in the above mentioned Statute of the Canadian Government.

2) If the answer to the preceding question is in the affirmative, whether the Canadian Government will give effect to the exemption from January 1, 1924, the effective date of Section 213(b)(8) of the Revenue Act of 1924.

3) If the answer to the preceding question is in the affirmative, whether it can be stated that from January 1, 1924, the Canadian Government has not imposed any income, war-profits or excess-profits tax upon the income of a citizen of the United States, non-resident as to Canada, or of a corporation organized under the laws of the United States, which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of the United States.

I shall be grateful if you will bring these inquiries to the attention of your Government and furnish me with your Government's replies.

For your convenience it may be stated that the provisions of Section 213(b)(8) of the Revenue Acts of 1924 and 1926 are as follows:

"(b) The term 'gross income' does not include the following items, which shall be exempt from taxation under this title:

(8) The income of a non-resident 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:"

³ Not printed.

The Revenue Act of 1928 provides for such exemption by Sections 212(b) and 231(b) as follows:

Section 212.

"(b) Ships under foreign flag.—The income of a non-resident alien individual 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, shall not be included in gross income and shall be exempt from taxation under this title."

Section 231.

"(b) Ships under foreign flag.—The income of a 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, shall not be included in gross income and shall be exempt from taxation under this title."

In the Department's note to you of April 28, 1927,⁴ information was requested concerning the ferries operated on the Great Lakes which are being taxed and the reason why a distinction is made between these and other ferries which are not taxed. Your note in reply, dated October 24, 1927,⁴ did not include this information and, at the request of the Treasury Department, I beg leave to renew my inquiry in this regard.

Accept [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

811.512342 Shipping/16

The Canadian Chargé (Wrong) to the Secretary of State

No. 111

WASHINGTON, July 24, 1928.

SIR: With reference to your note of June 29th, 1928 concerning the question of the exemption from taxation in the United States and in Canada of the income of vessels of foreign registry, I have the honour to inform you that His Majesty's Government in Canada would welcome an opportunity for the discussion of this subject between officials of the Department of National Revenue of Canada and officials of the Treasury Department. Mr. C. S. Walters, Commissioner of Income Tax, and Mr. C. F. Elliott, Counsel of the Department of National Revenue, are prepared to come to Washington for this discussion on July 30th or as soon thereafter as may be convenient. I shall be glad if you will be good enough to inform me at an early

⁴ Not printed.

date whether the suggestion that such a discussion should take place meets with the approval of the competent authorities of the Government of the United States, and, if so, whether the date proposed will be suitable.

I have [etc.]

H. H. WRONG

811.512342 Shipping/16

The Secretary of State to the Canadian Chargé (Wrong)

WASHINGTON, July 24, 1928.

SIR: I have the honor to acknowledge the receipt of your note No. 111, dated July 24, 1928, in regard to a proposed conference of Mr. C. S. Walters, Commissioner of Income Tax, and Mr. C. F. Elliott, Counsel of the Department of National Revenue, with officials of the United States Treasury Department in this city on July 30, 1928, concerning the question of the exemption from taxation in the United States and in Canada of the income of vessels of foreign registry.

In response it gives me pleasure to confirm the information which was furnished you on July 24 over the telephone to the effect that officials of the Treasury Department will be glad to discuss this question with Messrs. Walters and Elliott at ten a. m. on July 30 next.

Mr. Luther S. Cannon, of the Treasury Department, Room 301, Walker Johnson Building, 18th Street and New York Avenue, Northwest, will be happy to receive Messrs. Walters and Elliott on the date indicated and to discuss this matter with them.

Accept [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

811.512342 Shipping/17

The Canadian Chargé (Wrong) to the Secretary of State

No. 117

WASHINGTON, August 2, 1928.

SIR: I have the honour to refer to your note of July 24th, 1928, and to previous correspondence concerning the exemption from taxation in the United States and in Canada of the income of vessels of foreign registry. I am instructed to inform you that His Majesty's Government in Canada is prepared to conclude with the Government of the United States a reciprocal arrangement for relief from double income tax on shipping profits, and suggests as a basis the following draft which has been approved by the Minister of National

Revenue of Canada and which could be put into effect immediately if it should meet with the approval of the Secretary of the Treasury:

"Whereas it is provided by Section 4(m) of the Revised Statutes of Canada 1927, chapter 97, as amended, that the income of non-resident persons or corporations arising within Canada from the operation of ships owned and operated by such persons or corporations may be exempt from taxation within Canada if the country where any such person or corporation resides or is organized grants substantially an equivalent exemption in respect of the shipping business carried on therein by Canadian residents or Canadian corporations, and that the Minister may give effect to such exemption from the date on which the exemption granted by the country where the person or corporation resides took effect,

"And whereas it is provided by Section 213(B) (8) of the United States Revenue Acts of 1921, 1924, and 1926, and sections 212(B) and 231(B) of the Revenue Act of 1928, that the income of a non-resident 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 shall be exempt from income tax,

"And whereas the respective governments of the United States of America and the Dominion of Canada through their accredited representatives have signified that they regard the respective exemptions provided for in the above referred to legislation as being equivalent within the meaning of the said sections,

"Now therefore be it known that the Secretary of the Treasury of the United States and the Minister of National Revenue of the Dominion of Canada for and on behalf of their respective Governments hereby declare: (1) that, in respect of the Dominion of Canada, citizens of the United States not residing in Canada and corporations organized in the United States owning or operating ships documented in the United States shall be exempt from Canadian income tax on the earnings from sources within Canada derived exclusively from the operation of such ships; (2) that, in respect of the United States, persons resident in Canada who are not citizens of the United States and corporations organized in Canada owning or operating ships documented in Canada shall be exempt from United States income tax on the earnings from sources within the United States derived exclusively from the operation of such ships. The exemption from income tax on the income derived from the operation of ships (including ferries) herein provided for shall be deemed to have come into force and shall be applicable to the income for the year 1921 and to all subsequent years, upon the understanding that no refunds of taxes paid will be made for any years which by virtue of statutory limitations governing refunds are barred. Refunds will be made only for such years as are not barred by statute."

2. I shall be glad if you will be so good as to submit this draft to the competent authorities of the Government of the United States.

I have [etc.]

H. H. WRONG

811.512342 Shipping/19

The Secretary of State to the Canadian Chargé (Wrong)

WASHINGTON, September 17, 1928.

SIR: Reference is made to your note No. 117, dated August 2, 1928, and the Department's acknowledgment of August 13, 1928⁵ in regard to the proposed reciprocal exemption from taxation in the United States and in Canada of the income of vessels of foreign registry.

A communication on this subject has now been received from the appropriate authority of this Government and it gives me pleasure to inform you that this Government agrees to the following undertaking:

(1) that, in respect of the Dominion of Canada, citizens of the United States not residing in Canada and corporations organized in the United States owning or operating ships documented in the United States shall be exempt from Canadian income tax on the earnings from sources within Canada derived exclusively from the operation of such ships;

(2) that, in respect of the United States, persons resident in Canada who are not citizens of the United States and corporations organized in Canada owning or operating ships documented in Canada shall be exempt from United States income tax on the earnings from sources within the United States derived exclusively from the operation of such ships;

(3) that the exemption from income tax on the income derived from the operation of ships (including ferries) above provided shall be deemed to have come into force and shall be applicable to the income for the year 1921 and to all subsequent years, upon the understanding that no refunds of taxes paid will be made for any years which by virtue of statutory limitations governing refunds are barred.

The appropriate authority of this Government now has under preparation a Treasury Decision the purpose of which will be to give effect to the above mentioned agreement in so far as it relates to the United States. It is presumed that the appropriate authority of your Government will follow a similar course to give effect to the agreement in relation to Canada.

Accept [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

811.512342 Shipping/20

The Canadian Chargé (Wrong) to the Secretary of State

No. 143

WASHINGTON, 29 September, 1928.

SIR: I have the honour to acknowledge the receipt of your note of September 17th. 1928, in which you were good enough to inform

⁵ Not printed.

me of the acceptance by the Government of the United States of the reciprocal undertaking, concerning the exemption from taxation in Canada and the United States of the income of vessels of foreign registry, which I had suggested to you in my note Number 117 of August 2nd. 1928. It gives me pleasure to inform you that instructions are being issued by the Minister of National Revenue to the Inspectors of Income Tax to give effect to the terms of this agreement in so far as the Dominion of Canada is concerned. His Majesty's Government in Canada further considers that the exchange of notes which has now taken place constitutes a sufficient record of the agreement of the two Governments.

I have [etc.]

H. H. WRONG

PROPOSED CONVENTION TO REPLACE THE HALIBUT FISHERY CONVENTION OF MARCH 2, 1923, BETWEEN THE UNITED STATES AND GREAT BRITAIN*

711.428/1180

The American Member of the International Fisheries Commission (O'Malley) to the Secretary of State

WASHINGTON, May 31, 1928.

DEAR MR. SECRETARY: I am transmitting herewith the formal report of the International Fisheries Commission—United States and Canada—covering its investigation of the halibut fishery of the North Pacific.

I am also enclosing a suggested press release which you may use if you so desire.

Very truly yours,

HENRY O'MALLEY

[Enclosure]

Report of the International Fisheries Commission Appointed Under the Northern Pacific Halibut Treaty

The Treaty between Canada and the United States for the preservation of the halibut fishery of the northern Pacific Ocean, including Behring Sea, was ratified on October 21st, 1924. It is remarkable from the double standpoint that it is the first treaty entered into by Canada as a nation and that it is the first effective one anywhere having for its object the conservation of a threatened high seas fishery. It, therefore, serves as a precedent for international co-operative control of sea fisheries, where such is necessary. This forms an important additional reason why success should be achieved under it.

* For text of the convention of Mar. 2, 1923, see *Foreign Relations*, 1923, vol. 1, p. 468. For correspondence concerning ratification of the convention, see *ibid.*, 1924, vol. 1, pp. 335 ff.

The Treaty provides an entire cessation of halibut fishing for three months each year. This was regarded, at the time it was entered into, as an essential minimum of protection. It also provided for the appointment of an International Fisheries Commission, the duties of which are to make recommendations regarding the need for modification of the close season, to make a thorough investigation into the life history of the Pacific halibut, and to make recommendations as to the regulation of the fishery that may be deemed desirable for its preservation and development. The specific provisions of the Convention dealing with these phases follow:

The nationals and inhabitants and the fishing vessels and boats of the Dominion of Canada and of the United States, respectively, are hereby prohibited from fishing for halibut (*Hippoglossus*) both in the territorial waters and in the high seas off the western coast of the Dominion of Canada and of the United States, including Behring Sea, 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.

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 Behring Sea, which may seem desirable for its preservation and development.

The undersigned, having been appointed Commissioners under the Treaty by their respective Governments, undertook their duties without delay. At the outset they decided to employ a competent man as Director of Investigations, in which capacity the services of W. F. Thompson were secured. He not only brought to the work the needed training and ability, but the experience and knowledge that resulted from three seasons investigations in the Pacific halibut fishery, which he had undertaken some years previously on behalf of the Provincial Government of British Columbia. A competent staff of young energetic scientists to assist him was also employed. The Commission

further arranged for the appointment of an honorary scientific council, with which not only the Commission but the Director of Investigations could consult, and to which has been submitted the plans of investigations to be undertaken from time to time. This council consists of two representatives from each country:—

Professor John N. Cobb, Dean of the College of Fisheries of the University of Washington, Seattle.

Mr. N. B. Scofield, Head of the Department of Commercial Fisheries of the Fish and Game Commission of California.

Dr. C. McLean Fraser, Professor of Zoology in the University of British Columbia, and formerly Director of the Marine Biological Station at Nanaimo, B. C.

Dr. W. A. Clemens, present Director of the aforesaid Station.

The Director and staff have from time to time presented reports on the progress of the investigation and on their findings to the Commission, and to the scientific council. These findings are used in the formulation of the present recommendations. The scientific results are, however, not inserted in this report, but will be published later in more detailed form than is practicable here.

The task with which the Commission found itself to be charged is one of great magnitude and difficulty. The fishery covers a coast line of about 1,800 miles in length. The halibut can only be studied at sea and under difficult conditions. Hence it has not been possible in the three years during which the Commission has been at work to cover the whole field exhaustively. What has been accomplished has, however, been done with care and the information obtained is sufficient to satisfy the Commission as to the necessity of certain main lines of action, if the fishery is to be preserved.

Though the investigation has been highly scientific in character, the Commission determined at the outset that it would be carried out along practical lines, with close adherence to facts and avoidance of unsupported theory. Its aim has been to establish beyond doubt the actual condition of the fishery at present and the history of its trend to that condition. It has sought to define the remedial measures which should be adopted to save the fishery and to build it up, as well as the conditions that would have to be met in applying such measures.

Statistics have formed an indispensable part of the facts gathered. They have included not only complete records of landings, but of operations at sea. Through the splendid cooperation of the fishing vessel captains, the Commission has secured extensive records of the individual catches, from which the yield per unit of fishing effort, the "skate", has been ascertained for each section of the coast. These cover every season and are for years as far back as 1906.

Even more important have been the biological studies. These have included the rates of growth according to locality, the migrations, the

"races" existent, and the spawning habits. Material has been collected by the staff, not merely from voyages on fishing vessels, but through the operations of vessels chartered for the purpose. Thousands of halibut have been caught and released with numbered tags attached, and have been recovered from fishermen through rewards offered. From the records thus furnished it has been possible to determine the migrations of the halibut. Extensive studies of the physical characteristics and the growth of the different "races" have confirmed such findings. The drift of the eggs and larvae in the open ocean have been studied by means of finemeshed silk nets and by observation of the currents. The results of these biological studies, in conjunction with those from the statistics, form the basis for the conclusions reached in this report.

IMPORTANCE OF FISHERY

Fisheries for halibut are prosecuted in the North Pacific and the North Atlantic oceans, and yield about ninety millions of pounds annually. The Pacific halibut fishery, which is covered by the terms of this Convention, is the greatest in the world. The annual catch exceeds fifty millions of pounds, which represents about sixty per cent of the world's catch. Of the remainder about thirty millions are credited to European countries and six millions to the Atlantic coast of this continent. The value of the Pacific halibut catch to the fishermen is about seven million dollars annually, and it is consequently one of the most important fisheries in North American waters. The Pacific halibut is, therefore, one of the most important species of food fishes indigenous to the waters of the North American continent. The halibut fishery banks of the eastern Pacific are shown in Plates No. 1-3.⁷ The division into areas shown thereon is for statistical purposes and should not be confused with those referred to in the Commission's recommendations, which will be submitted later on.

CONDITION OF FISHERY

The Pacific halibut fishery originated soon after the first railway communication was established between the two coasts of the United States. It is, therefore, comparatively young. It had its inception in 1888 near Cape Flattery, at the entrance to Juan de Fuca Strait. The Fishery expanded rapidly and by 1910 it had extended to grounds off Cape Ommaney, Baranof Island, six hundred miles to the north. Subsequent expansion has extended the fishery until it now covers about 1,800 miles of coast. Formerly as many fish were taken from the 600 mile stretch as are now procured from the entire area of

⁷ Plates not reproduced.

1,800 miles. The banks on the eastern side of the Gulf of Alaska, which yield spawning fish, were first exploited in 1913. In 1926 the larger boats made by far the greater part of their catches in the vicinity of Kodiak Island, on the western side of the Gulf of Alaska, about 1,200 miles beyond the original fishery. The catch on the older grounds south of Cape Ommaney has decreased from a total in excess of fifty million pounds in 1910 to about twenty-one millions in 1926, and much greater effort was exerted in making the catch in the latter year. It is evident that the present level of production has been maintained by extending fishing operations to new areas, as the catch on the older grounds decreased, and by increasing the intensity of the fishing effort.

The amount of gear now used on the older banks is about two and one-half times the quantity formerly used, yet the present catch is only about forty per cent of the former yield from these grounds. Under the stress of this great intensification of fishing effort the abundance of fish on the older banks has fallen enormously, to sixteen per cent of the abundance in 1906. Where in 1906 the catch per set of a unit of fishing gear was nearly 300 pounds, in 1926 it was below 50 pounds. Expressed in another way it required six units of gear to catch as many fish as one unit caught in 1906. The decline has gone on at an even rate and shows no tendency to slacken. Accompanying this fall in abundance there has been a decrease in the average size of the fish landed, and a great increase in the percentage of undersized fish. For example between 1919 and 1926 the percentage of undersized fish from the older banks increased from twenty to thirty per cent.

The more recently exploited banks to the westward show the same trend, the catch having fallen from 160 pounds per unit of gear in 1923 to 100 pounds in 1926, and was still lower in 1927, while at the same time there was an increase in the number of fish under eleven and three-quarter pounds.

The rapidity of decline is regarded as especially serious because of the very slow rate of growth of the halibut, an adult being from twelve to twenty-five years, or over, in age. Hence the present decline has taken place within the life span of one halibut of ordinarily large size. As nearly all the fish which are being caught now were spawned eight or ten years ago, the abundance of the younger fish, which will annually be available for capture in the next ten years, has already been established. If these are greatly reduced in numbers, and the intensity of the fishery is maintained, the outlook for a future stock of spawning fish sufficient to maintain the supply, presents a hopeless picture. In fact the Commission's investigations

indicate that relatively few mature halibut are now found on the older banks.

These illustrations demonstrate beyond a doubt that the fishery is in a very serious condition, and that the banks cannot stand the intensity of fishing to which they are subjected. The Commission is fully convinced that the conditions are so serious that no delay should be permitted in the adoption of additional conservation measures. In the light of the investigations made, such action is essential to the maintenance of the fishery.

RECOMMENDATIONS

The Commission recommends certain additional measures of conservation, which are here summarized and are dealt with in detail in pages following.

It is recommended that power be given proper governmental authorities:—

1. (a) To establish areas, within each of which, if deemed necessary for the preservation of the fishery there, the total catch of halibut may be reduced by a predetermined percentage annually, commencing not less than one year after the putting into force of this recommendation, until the fishery therein shall reach a state of stability of yield.

- (b) To determine upon the amount of this percentage reduction, and to revise the same from time to time as may be found necessary, the intent being to restrain any increase in the amount of fishing within such area.

2. To close permanently to all fishing the two areas herewith defined, and known to be populated by small immature halibut, and to close such other grounds as may be found by the Commission to be populated by a similar class of fish.

3. To prevent the use of any fishing gear deemed unduly destructive.

4. To extend the present closed season by two weeks at its beginning, making the closure for all fishing in all areas from November 1st to February 15th, both dates inclusive, and to facilitate future alterations in the length of close season.

5. To license all vessels fishing for halibut in treaty waters, under such terms as are necessary for the purpose of the treaty, including statistical returns, and for clearance to regulated waters.

FIRST RECOMMENDATION: ESTABLISHMENT OF AREAS AND LIMITATION OF CATCH THEREIN

The Commission is unable, after careful scrutiny, to recognize in the close season as now constituted, any contribution to the preservation of the halibut fishery. From its study of the effects of the closure and of the fishery in general, it has reached the conclusion that to render any regulations beneficial from this aspect, they must be framed so as to distribute their effects according to the needs of the different banks or areas, and that on each of the badly depleted

areas the amount of fish taken must be reduced. The present measure is not thus formed.

Its investigations have shown that the banks along the Pacific coast are inhabited by stocks of halibut which are largely independent. Extensive tagging experiments have been carried on, with careful examination of physical characteristics and rates of growth. The fish below spawning size have thus been shown to be well differentiated according to bank, and to move but little in comparison with the great extent of the grounds. The fish of mature size are perhaps less limited in range, but are still sufficiently localized to render generally ineffective regulations of local application. In accord with these findings, and in checking them, the various banks have been found to be very unevenly depleted. A relative abundance exists on the more distant banks, with a marked degree of depletion on the nearer, the degree of depletion being dependent upon the distance of the banks from the markets. The proportion of spawners is high on the more distant, but almost non-existent on the nearby banks. There appears to be no such active interchange as would render regulations applied to one bank effective on all.

It has, therefore, become of paramount importance to discover how far the effects of regulation are localized, for each area must bear the burden of its own regeneration. The Commission has, therefore, carefully and laboriously collected statistics regarding the effect of the close season on the several main areas of the fishery. The closure being from November 16th to the following February 15th, it has affected directly the fisheries at that time taking place. These were along the eastern side of the Gulf of Alaska, between Cape St. Elias and Cape Spencer. Here there has been prevented a very considerable fall, winter and spring catch of mature fish. In contrast to this, the fishery on the older more depleted banks south of Dixon Entrance has for years been a summer fishery, and, accordingly, the amount of the catch eliminated has been very small. At the time of adoption of the present treaty, the newer, less depleted banks to the farther west of the Gulf of Alaska, did not have a fishery of any magnitude, but since then a very considerable summer, or open season, fishery has been developed. The close season has mainly affected, therefore, one area,—that on the eastern side of the Gulf of Alaska.

Examination of catches on these affected grounds has shown that the fish protected were largely fish collected there for spawning, which is well known. It is, therefore, evident from these facts that the close season has been operative almost entirely upon the fish of a given region, and upon a single category of these fish, facts which should be considered in connection with the independence of the various stocks of halibut.

The Commission finds that the fish thus protected by the closure were exposed to fishing that was increased in intensity during the open season, and consequently the abundance on the banks has undergone a further decline due to progressive depletion.

Tagging experiments with the spawning fish on the banks thus most affected—those on the eastern side of the Gulf of Alaska,—showed that a considerable migration occurred to the westward as far as Portlock Bank, where many of the tags were recovered. There fishing during the open season has increased enormously during the three years that have elapsed since the close season has been in effect, sufficient to more than offset the decline in the winter fishery on the other banks. But this increase has not been due to any increase in numbers of fish, for the intensification of the Portlock fishery has led to a rapid fall in yield per unit of gear fished, from 160 to 100 pounds per “skate”, and these western banks are not “holding up”. If further proof were required that this enormous increase of the fishery on Portlock is not due to the presence of more fish there, it will be remembered that halibut are on the average considerably more than five years of age when they first come into the commercial size, and that the great increase in catch was therefore from the pre-existing stock.

The same increase in the open season total catch is obvious on the banks referred to as most affected. This increase too, was due to the more intensive fishing and not to an increase in the abundance of fish. Had there been an increase in abundance, there would have inevitably been an instant increase in fishing, sufficient to destroy the increase in abundance before it progressed far—it could not escape the notice of the fleet.

On the older banks, as has been said, the effect of the closure was very small, and during each month of the open season there was a decrease in the total taken, due to the progressing depletion of the banks. Yet this decline did not suffice to balance the increase on the other banks.

In accord with this, the absence of marked effects beneficial to the perpetuation of the fishery is shown by the fact that there has been no reduction in the total annual catch. On the contrary, there has been an increase, as is shown by the following statistics of landings for the five year average preceding the close season and for the four years the close season has been operative:

5 years average 1910 to 1923	51,595,000 pounds
1924	57,691,000 “
1925	53,170,000 “
1926	56,278,000 “
1927	56,899,000 “

The close season therefore has merely shortened the period within which the catch has been taken.

The reasons for this increased intensity of fishing, which has more than balanced the effects of the close season, are not far to seek. The economic advantages of the closure are sufficiently great to explain the lack of decline in total catch. The season of the year during which fishing is prevented, was the most expensive because of the bad weather, the consequent loss of gear and of time, and the severe effect on the morale of the men. With the elimination of the three winter months the work during the remainder of the year has become more efficient, and the losses and delays inherent in fishing operations have been greatly reduced. Moreover, the vessel owners at present spend part of the close season in overhauling their gear and boats. A certain part of it is used enroute to and from the fishing areas. The market for frozen fish is steadier, giving better prices for frozen fish according to general opinion. Furthermore the grade of fish taken during the summer months is said to be superior to that formerly taken during the winter. The closure thus being of benefit from an economic standpoint, it follows that as long as the fishery continues to pay well, as it has in the past, there is no limit to the expansion it will undergo, beyond the satisfaction of the demand. The close season could not be expected to restrict, without adverse economic effects.

It is, moreover, true that in the past there has been a general and rapid increase in intensity of fishing sufficient to counterbalance the effect of the closure. Thus on the older banks the amount of gear fished is about two and one-half times that employed in 1910. This great and rapid increase in intensity has gone on unchecked during the nine most important months of the year. So great has it been that it has sufficed to maintain the total catch despite a fall in returns per unit of gear fished, and despite the fact that the new grounds exploited have yielded at their maximum but a third the abundance of fish found originally on the older southern grounds. Some measure of the effect of the closure in relation to this increased intensity can be gained by comparing the amount of catch formerly taken on the grounds along the eastern side of the Gulf of Alaska, with the effect of the fall in abundance from year to year. It is estimated that not more than six or seven million pounds came from these grounds before the closure, or about ten or twelve per cent of the total for the coast. The loss of this could not exceed that annually lost through a failing supply, since on the older grounds the fall in abundance was approximately ten per cent yearly, and on the newer grounds even greater.

It is evident that the close season has met a complexity of conditions which destroys its uniformity of operation, and that in its application to one subordinate portion of the fishery it has left abundant opportunity for all supposed benefits to be eliminated. A stream cannot be controlled by throwing a dam half across its course. The result is nothing more than an increased rate of flow in the other half.

The Commission has been unable to devise any general measure for the whole fishery which would properly meet the needs of the various areas.

Artificial propagation of the halibut is, for technical and scientific reasons impracticable. The numbers of young that could be thus produced would be a minute part of those hatched under natural conditions. Their culture would be expensive and the young fish could not be kept long after hatching. Hence it is evident that the natural supply is overwhelmingly the most important, and that it must be cared for. The only adequate manner of meeting the present situation is to preserve in each area a sufficient number of young to produce spawning adults, and to leave enough of the latter to produce an adequate amount of spawn under natural conditions.

It becomes evident, upon the first study of the halibut fishery that regulations designed to produce and protect such a spawning reserve must be adapted to very different conditions in the various areas. The state of depletion varies from area to area, and the need for regulation varies accordingly. Certain of the banks have been resorted to for many years, while others are undergoing their first exploitation. In accord therewith the yield and abundance of fish varies. Moreover, the initial returns from any bank reflect the abundance thereon under natural conditions, and the newer, more westerly banks are much less productive naturally than the older southern banks,—about a third in fact. In agreement with the state of depletion, the percentage of mature fish varies from a very small one on the southern banks to a high one on the western, and there is, therefore, a fishery for spawning-age fish on some banks and a fishery for immature fish on others. The fish on the banks vary not merely in their natural abundance, but in their rates of growth, and physical characteristics. Thus the trade terms applied to fish according to size have a very different meaning and do not indicate their age or their need of protection. The seasons of the fishery vary also, in accord with the biology of the fish and the geographic location of each bank. In agreement with all this, the same complexity is found reflected in the fleet, the fishery on various banks being carried on by different types of fishing vessels, with different seagoing ability, different methods of fishing to some extent, and different

landing ports. No uniform protection of a single class of fish, such as the spawners, no close season, no size limit or limit on gear, will be found to apply equally and efficiently.

The Commission, therefore, finds itself forced by the aforesaid conditions to a consideration of the treatment of each individual area according to its needs. In thus acting it sees two alternatives.

One of these is to follow the method used in adopting the present close season, and on the basis of an exact and intimate knowledge of the fishery in each area, to close such seasons, protect such classes of fish, or prohibit such gear, as will reduce the amount of fish caught to the amount which the species is able to replace. This alternative has the same faults as has the present close season. It is necessary to look forward to a compensating intensity of the fishery on those classes not protected or upon all classes during the open season. The degree of this reaction of the fishery is an economic matter, for as long as the fishery pays, there is no doubt but that it will increase gear and vessels to supply the demand. The restriction cannot be effective unless it so raises the expense of the fishery, the costs of operation, as to prevent this increase. In that sense the restrictions become, if successful, economic handicaps adjusted to limit to the required extent the fleet and the amount of fish removed. The results of the present closure, the complicated conditions to be met, the extensive and arbitrary powers which would be necessary to meet unforeseen changes in the economic world, and the wide knowledge necessary, discourage the adoption of this alternative.

The Commission feels that the effect of regulations so varied would be difficult to forecast, and that in many cases the results would be harmful rather than good. The manner in which the fishery compensates itself for the protection of a single category of fish, such as spawners or young, has already been referred to in the discussion of the close season, and will be further discussed when dealing with the closure of small-fish grounds. The biological conditions underlying the principle of protecting spawning, mature or young halibut are still unknown, and it is impossible to be certain that the shifting of the strain to any one of these classes rather than another is actually beneficial. Great fisheries exist which make exclusive use of one or the other. Many regulations, particularly those regarding gear, may be handicaps in the development of efficiency, or become causes of high cost of operation, which limit the output per man and prevent the sale of the catch at reasonable prices. Failure to dispose of the catch causes a surplus. The existence of the surplus creates a demand for further restriction of the

catch per man or per vessel, with still higher costs of operation, so that the evil may be intensified instead of relieved.

The Commission, therefore, regards this first alternative as undesirable and ineffective, both from scientific and administrative standpoints. It would be, at best, an attempt, by indirect methods, to reduce the amount of fish taken from the bank. The Commission regards it as the part of wisdom to proceed directly to a regulation of the amount of fish taken from each area, by closure when such amount reaches a predetermined limit.

The Commission is fully aware of the care which must be used in undertaking a task of this character. It has given careful consideration to the determination of the minimum reduction consistent with the perpetuation of the fishery, having in mind the least possible harm to the industry.

There has been, without restrictions, a decrease in the total catch from the older areas. The banks south of Cape Ommaney yielded, in 1910, more than fifty million pounds; whereas at present there are not more than twenty-one millions taken. Since the amount of fishing which produced these totals is and has been too great for the banks in their present state, this decrease must be taken into account, and the restriction imposed must be sufficient to more than cover this decline, or it would be meaningless.

This declining total yield is secured by means of an increasing amount of gear. In other words, the intensity of the fishery has become greater, and a constantly higher proportion of the stock is taken. Six units of gear are set now for the same result that one formerly yielded. This increase in the amount of gear and vessels is not in the best interests of either the fisherman or the halibut, and it is the greatest danger to which the fishery is subjected. The increased proportion of the stock taken lowers the abundance of fish on the banks progressively until a very minimum is produced, not merely for the effort involved, but in total. Therefore, if stability of return from the fishery is sought, the intensity of the fishery should not be continually increased.

Without positive restriction, the investment in gear and vessels already existent will face a decline in returns of fish, in accord with the decline in yield per set of a standard unit of gear, the "skate". This yield reflects the abundance of halibut on the banks, and its changes; and a certain number of sets of such skates should on the average take a definite proportion of the total stock on the banks. So that to maintain the present rate of removal, or proportion of the existing supply taken annually, the total catch allowed from a given area must be diminished at a rate at least equal to the rate of this decline in returns of the gear in present use.

But knowing that the present proportion of the supply captured is too great a strain upon the species, what hope can be held forth that the retention of that rate of removal would bring stability or permanence to the yield? The proportion taken is already in excess of the rate of replacement. We know that with the total yield as it is, this abundance,—as measured by the yield per unit of gear—is still declining. Is there any ground for believing that this decline would stop?

Hopefulness lies in the fact that the rate of replacement varies with the condition of the fishery. It is a well recognized biological law that under a state of nature a maximum population brings about a decline in the rate of reproduction until replacement just balances mortality. This is self-evident, since species cannot go on increasing indefinitely without overpopulating the world, which none of them do. But where, from one cause or another, the maximum population is not present, the rate of reproduction is much higher than the mortality, and up to a certain point becomes increasingly so. This has been observed in many organisms, ranging from man, and the various species of birds introduced into America, to transplanted species of fish such as the shad, and various insect pests. Among indigenous species this phenomenon must hold true, in order that they may recover from disastrous years. Whether this is caused by a greater abundance of food for the fewer individuals, or by some other factor, it would seem to be a general rule that the rate of replacement is higher when the species is below its maximum in numbers. Hence, if the decline has not gone too far, it is to be expected that in response to steadiness of the mortality rate the numbers of the species will decline only until the thereby increased rate of replacement is sufficient to balance the mortality.

With the data at hand, evidence of this increased productivity in the halibut is available. The abundance has fallen on the grounds south of Cape Ommaney in sixteen years to about 25% of its original amount, but the total catch seems to have fallen to about 40%, therefore not as fast. Such a calculation cannot in the nature of things be exact, yet it errs on the conservative side, as for reasons that cannot be detailed here, the fall in abundance may have been greater than this, possibly to such a degree that the present abundance is but 15% of its original amount. In this case, the contrast with the decrease in total catch is still more marked. The lower level of abundance seems to have produced in recent years a higher catch in proportion, although not in total figures.

There is, therefore, ground for believing that if the proportion taken does not increase, the halibut fishery on the older banks will

ultimately come to a position of stability. This would imply the reduction of the total catch at a rate equal to the fall in abundance of the stock of fish. The latter can best be measured by the returns per set of a standard unit of gear. This indicates that from 1906 to 1926 the fall has been at the rate of 10% a year. Such a reduction in total catch is the minimum which could be considered for the purpose, and is equivalent to the use of a fleet and gear the equal of that now employed.

It will be noted that the essential principle of the reduction in total catch is that it shall proceed at a rate at least equal to that of the declining return from a definite amount of fishing. Were this to be accomplished with precision, the reduction in catch would cease immediately with the cessation of the decline in abundance; and with a definite amount of fishing the returns would then be constant. It is the same principle upon which regulation of the salmon fisheries in Alaska and British Columbia is conducted—that a definite proportion of the fish shall be allowed to pass the commercial fishermen.

The adoption of such a procedure must be made with full knowledge that it may not suffice. The thinning out of the population may have already gone so far as to have increased the rate of replacement to its maximum. No further increase may be possible, so that the present degree of intensity of fishing may suffice to continue the decline, or the present drain on the species may exceed anything that even an increased rate of replacement may be able to care for. In such case, the only alternative would be to reduce the catch annually at a faster rate. That is for the future to indicate.

On the other hand, it is well recognized by the fishermen that the banks are now but very sparsely populated, and it is more than possible that the maximum rate of replacement was reached long before the thinning out had proceeded as far as it has. In that case a larger population of halibut than now exists on the banks would give a proportionately larger total replacement and a greater amount would be available for the fishery without harm to the species. Therefore, once the halibut fishery is brought to a stable condition, the question will undoubtedly arise as to whether a further step to increase the "breeding stock" may not be advisable. This distinct possibility of increase in total yield would necessitate a temporarily greater restriction than that which is here proposed.

The determination of the amount of the reduction in the total catch from any area must, then, be guided by a study of the amount of fishing in relation to the returns. In making this determination, the discretion of the regulatory powers must be relied upon in draw-

ing conclusions from the statistics obtainable. The latter should, however, be as accurate and comprehensive as is possible. The information now in the hands of the Commission is very extensive for recent, but less so for the earlier years. It must serve as a basis for the initial reduction. For the period 1906 to 1926 the rate of fall in abundance has been 10% a year, with minor fluctuations of one to five years in duration, when there may or may not have been a continuous fall. Further reductions should be based on accurate, comprehensive data as to men, boats and gear used, and the returns therefrom, so that the condition of the fishery may be measured in as many ways and as correctly as possible. Upon this information the rate of reduction in total catch should be revised at as frequent intervals as possible.

The frequent revision of this rate of reduction is necessary for several reasons. In case the reduction reflects the changes in the abundance of fish, as shown by the catch of a given amount of gear, unnecessary increases and decreases in fishing operations would be avoided. Furthermore, in case the rate of decline in abundance slackens, the reduction in the catch should be less, so that when the fishery becomes stable in yield, reduction will cease at once.

From present statistics, the initial total catch, from which the reduction should be made, can only be estimated for the several regions. The information at hand is designed to be representative only, and not comprehensive. It was obtained through voluntary returns, and may not give results comparable with those from a more complete, legally enforceable system. The Commission regards it as necessary that the installation of a complete system of records be made at once, so that the initial amount from which reduction is made shall have been obtained by the same system and under the same conditions as those subsequently determined as limits. For that reason no reduction should be made until complete returns are at hand for a full year.

As has already been said, the reduction made in the total catch should vary with the needs of the various areas. This implies the formation of such areas for administrative purposes. In view of the fact that such control, if adopted, would be applied for the first time in the history of deep-sea fisheries, it is the Commission's opinion that they should be large enough to render enforcement easily effective, and that they should correspond to a natural division of the fleet. For this purpose the first division should be into two main areas,—the banks south of Cape Spencer and those north and west thereof. Later, when there has been more experience with the matter, smaller areas may be chosen, if deemed necessary.

SECOND AND THIRD RECOMMENDATIONS: PERMANENT CLOSURE OF SMALL-FISH GROUNDS; PREVENTION OF GEAR DEEMED UNDULY DESTRUCTIVE

In the halibut fishery the sizes vary from two or three pounds to over two hundred. The value of the very small fish, if they are accepted at all, is very low. It is not until a size of eleven and three-quarter pounds is reached that full price is obtained.

The small fish are everywhere the young, still rapidly growing, and are not a different race of fish from the medium sized, first grade fish. The smallest fish, the so-called "baby chickens" are from five to eight years of age, and during that period treble their weights. The next class of fish, the "chickens", are from eight to eleven years of age, on the average, and within the three years they double their weight. These statements are, of course, approximate only, and pertain to halibut from Hecate Strait. On the western banks the ages are greater because of the slower growth. The mortality of these young fish is probably light, since even at their ages they are larger than most of those fishes which are presumably their enemies.

It, therefore, appears economically desirable to protect these small fish until they are of larger size. The gain in weight of the individual would be supplemented by the increased value, pound for pound, so that the economic gain would very probably be considerable. The hearings held by the Commission indicate almost universal acceptance of this view, one which the Commission endorses.

The Commission believes it very evident, however, that if the small fish become more valuable at a later stage of life, and that if the fishery thereby gains from an economic standpoint, the intensity of the fishery will correspondingly increase. It is natural that the profit in a fishery should govern its intensity, and the greater the profit in fishing the larger classes of fish, the more they will be sought after. What would be saved in one part of the fishery would simply be added to another part, and there is no economic reason why that part should not be fished just as closely and to as low a level as before. This being so, it is unlikely that any considerable part of the fish protected by regulation would survive the four or five years necessary to reach spawning size after leaving the "baby chicken" stage. To retain for the fishery the benefits that accrue from the protection of these small fish would involve restraint of the fishery within the area concerned for other grades of fish as well.

Nor can the gain by such protection be in any way a substitute for general restriction of the fishery. Even were there thus permanently withheld from the fishery, some small fraction of the total population, there would be serious doubt as to whether it could compare in magnitude with the loss in abundance that is year by year incurred

by the general increase in gear used. It would, as was remarked in connection with the closure of the winter season, simply cause a temporary setback that would be offset by an increase in intensity of the fishery.

Furthermore, it is to be considered that protection has to some extent been afforded these smaller sizes in the past, by trade usage and agreements with the dealers. The price obtainable for them has always been low. The sentiment against "baby chickens" being landed was, and still is, strong. They have constituted a third grade of fish, which were supposed to be destroyed and not sold. Yet the decline in the halibut fishery has gone on.

The percentage of the smallest size of fish landed is not known, but that of "chickens" is recorded. This should show the trend. There has been, for instance, a more or less steady increase from twenty percent to thirty percent of the total landed at Prince Rupert from Hecate Strait in the last seven years. There is little doubt that undersized fish are forming a continually larger share of the catches from the southern banks in general. Legal protection to these small fish may prevent their use in the future to an increasing extent, but it can be preventative only and not constructive. It cannot apply to the factors which have caused the damage in the past unless there are sizes included which have in the past formed acceptable parts of the market landings.

In considering the protection of these small fish, whatever sizes are included as such, their distribution is important. They are found to a greater or less extent in all areas, and form a factor in all catches. But the smallest sizes are found in much greater proportion on certain banks commonly called "nurseries". Whether the extent of these banks, or the number of small fish thereon, has increased is difficult to say, as accurate observations have not yet been completed. Those "nurseries" which have been recognized for many years are on the old more southern banks; but when the western grounds are better known, "nurseries" will doubtlessly be distinguished by fishermen there. At present, little can be discovered statistically as to distribution or relative abundance in various areas. Vessels fishing on "nurseries" are reluctant to admit the fact. Catches everywhere are mixed, and are rarely made from one area. The fishermen shake off the smaller sizes, frequently in great numbers, so that their catches do not give a fair picture of the proportion of small fish. They reflect, more than anything else, the market demand. But they also reflect the distance of the bank fished, since a catch of low priced fish is not likely to be brought from a great distance as long as there is any chance for first grade fish. Hence, although it is possible to say that certain "nurseries"

actually exist, it is not possible as yet to give an accurate picture of the distribution of young, nor of what the effect of various restrictive measures on the various areas might be.

There have been three methods of protection for small fish suggested, namely: the imposition of a size limit, the prohibition of the use of small hooks, and the closure of "nurseries" to all fishing.

The use of a minimum size limit would involve a great destruction of undersize fish, much more extensive than is now the case. The investigations of the Commission during tagging operations showed that more than fifty per cent of the small fish are seriously injured by hooking even when carefully handled. It is deemed highly probable that when such fish are handled as roughly as is done in commercial fishing, when they are jerked off the hook, only a very small part of the fifty per cent are in good condition for survival. Yet, as previously explained, in all commercial fishing, wherever the lines may be set, it is impossible to avoid the capture of a certain percentage of these small fish, and occasionally a high percentage. If such catches were to be discarded, great waste would be entailed.

To a certain extent, fishing on "nurseries" or small-fish grounds would be penalized. Yet when prices for fish are good, it is probable that vessels would never-the-less use these grounds, culling extensively, as is now frequently the case. It is therefore preferable to act directly in the protection of these "nurseries", as is proposed below.

Another proposed method of protecting small fish is to prohibit the use of smaller sized hooks (other than the standard #6283), which are used with lighter lines. This matter was carefully investigated by the Commission in a series of experiments. It was found that the small-hook gear, supposed to catch an undue proportion of small fish, actually did not do so, but took no larger nor smaller proportion of small fish than did the standard gear. On the other hand the small hook gear was more efficient, catching as much as sixty percent more fish per unit of gear set, whether large or small fish were considered. But the lighter lines are adapted to fishing in shoaler water, where fishing conditions are easier and where there are now greater quantities of small fish than formerly in proportion to large. In deep water, and for large fish, the amount of breakage was found to be high. The prohibition of this gear therefore becomes a possible means of penalizing the present fishery on the older grounds, where the fish are mostly small.

At present the Commission has not ascertained the efficient element in the combination, which would have to be covered by a "blanket" prohibition. Heavier, less flexible lines, would have to be required on all grounds. Yet it is entirely possible that the

efficient element could be adapted for use in deep water fishing for large fish, and the Commission is loath to block the development of efficiency for its own sake. If the shoaler grounds are to be fished at all, and indeed if the halibut fishery in general is to be carried on, it would seem the part of reason that it should be done with efficiency, and that the amount taken should be limited in a direct fashion, as has already been proposed.

The use of small hook gear is, moreover, a relatively recent matter. As with the "nurseries", prohibition of its use is a preventative of future additional ills, and not for those which have already injured the fishery. Its prohibition cannot suffice in itself, to meet all of the existing conditions, the extent of its effect cannot easily be foretold, and the great increase of the fishery could proceed unchecked along previous lines. It partakes of the disadvantages of indirect economic restrictions, which must in the end be justified by the amount of restriction in total catch they impose, a method regarded undesirable by the Commission (see page 21 ^{7a}).

In all the circumstances the Commission desires to defer its recommendation as to the use of this gear, but provision should be made to prevent the use of any such gear deemed unduly destructive in the light of future investigation.

The third alternative, the closure of the young-fish grounds, or "nurseries", remains to be considered. On these areas the Commission, by means of its own fishing operations, has found that the fish are actually the younger classes only. They are populated by very few fish over eleven pounds in weight, the majority being well under eight, and some being as small as three pounds. Their age, on the average, is from five to eight years. No mature fish are found among them except as strays.

Closure of these areas would, therefore, be a clear-cut protection of young fish. Unlike a size limit, it would not involve great waste of culled fish, but it would prevent the worst of what now occurs. No hindrance would thereby be placed upon the use of what small fish are taken on the banks in general in the course of ordinary fishing. There would be no penalty upon efficiency of method. The economic benefits to be derived from the increase in weight and value per pound would not be conditioned in any way by economic losses. If the protection of young fish is desirable, then the closure of the nurseries must be.

But the area thus protected is very small, in comparison with the extent of the banks as a whole. The some five or six hundred square miles includes but a very small fraction of the general halibut

^{7a} Paragraph 2, p. 17.

population, or indeed of the small-fish in general. To that extent their closure could, even if it completely removed these fish from the catch, be but of small effect compared to the general increase in intensity of the fishery. Moreover, what effect is observable must be confined to the general region in which these nurseries are located because of the slow migratory movements. For these reasons, the closure of nurseries being advisable, the principle should be extended to all similar banks, in all parts of the grounds, as soon as definite information is at hand.

In view of the present condition of our knowledge of marine fisheries, a word of caution in regard to such closures may be added. The maximum productivity of a bank may not be served by permitting overpopulation. Although it would seem unlikely that such would occur, nevertheless the condition of the "nurseries" should be under observation, and too implicit faith in their efficiency should be withheld.

The Commission, therefore, while it agrees with the universal sentiment for closure of these grounds, regards the principal justification for closure as economic. The value of such action for the perpetuation of the species must be conditioned upon the control of the remaining fishery, and must at best be insufficient to stem the course of overfishing in general.

The areas that the Commission recommends should now be closed are the so-called "nurseries" about Timbered Islands, Alaska, and Massett, British Columbia. Their description is as follows:

Timbered Islands Nursery:

The waters off the coast of Alaska within the following boundaries:—From the northwest extremity of Cape Lynch, Heceta Island, southwest (magnetic) eighteen miles to a point approximately latitude fifty-five degrees forty-two minutes twenty-one seconds north, longitude one hundred and thirty-four degrees twelve minutes thirty seconds west; thence southeast (magnetic) nineteen miles to a point approximately latitude fifty-five degrees twenty-four minutes north, longitude one hundred and thirty-four degrees three minutes forty-two seconds west; thence approximately northeast (magnetic) eight and five-tenths miles, to the southern extremity of Cape Addington, Noyes Island.

From the northwest extremity of Cape Lynch, Heceta Island, southeast three-fourth south (magnetic) approximately fourteen and five-tenths miles, to a point of Noyes Island in range with the peak shown on chart numbered eighty-one hundred and fifty published by the Coast and Geodetic Survey, said point being approximately in west longitude one hundred and thirty-two degrees thirty-nine minutes thirty seconds.

Massetts Nursery:

The waters off the north coast of Graham Island within the following boundaries:—From the northwest (magnetic) extremity of

Wiah Point, Graham Island, true north five and one-half miles to a point approximately latitude fifty-four degrees twelve minutes twenty seconds north, and longitude one hundred and thirty-two degrees nineteen minutes eighteen seconds west; thence true east twenty-five miles to a point approximately latitude fifty-four degrees twelve minutes forty seconds north and longitude one hundred and thirty-one degrees thirty-seven minutes west; thence magnetic south to a point on Graham Island.

FOURTH RECOMMENDATION: THE EXTENSION OF THE PRESENT CLOSE SEASON BY TWO WEEKS, AND THE FACILITATION OF FUTURE ALTERATIONS

Article I of the present Treaty provides a yearly closed season for all halibut fishing in the waters covered by the Treaty from the 16th day of November to the 15th day of February following, both days inclusive. The economic advantages of this closure and the absence of effects beneficial to the perpetuation of the fishery have been already commented upon. It is evident that the close season has merely shortened the period within which the catch has been taken.

The Commission is, however, satisfied that the adoption of the close season was a wise measure, as it has obvious beneficial economic effects as far as the whole fishery is concerned. It eliminates the most expensive fishing part of the year, and one which is also full of hardship. It stabilizes the price of frozen halibut, and this in turn has a favorable effect on the demand for such frozen fish. The catches at that time of year are claimed to be of poor quality, and frequently so great as to lower the selling price below what is profitable. On account of these conditions all branches of the industry and the Commission are unanimous in their support of maintaining the close season.

Indeed, with the exception of the owners of some of the large fishing vessels, who feel that their investment is too great to admit of a longer close season, the industry favors the lengthening of the closure by two weeks at both ends.

The Commission is satisfied that lengthening the close season by two weeks at the beginning would not be seriously detrimental to any interest, and would be economically beneficial to the industry as a whole. Hence it recommends that by special agreement of the character provided for in Article I of the Treaty, the annual close season be lengthened so to begin on the first instead of the sixteenth of November in each year.

It is entirely conceivable, however, that under other circumstances, the present length of the close season would be too great, and would lead to serious economic difficulties. Conditions in a fishery are not so stable as to justify reliance upon their indefinite continuation. At the present time, prosperity would seem to render the maximum closure possible, but it does not follow that this will be permanently true.

There should, therefore, be provided means whereby the length of the close season may be altered more readily than is now the case.

In concluding, the Commissioners desire to respectfully urge upon their governments the very serious condition of this great fishery and the necessity for prompt action to rehabilitate it.

JOHN PEASE BABCOCK

Chairman

HENRY O'MALLEY

WILLIS FREEMAN

WM. A. FOUND

711.428/1180

The Secretary of State to the Canadian Chargé (Wrong)

WASHINGTON, August 2, 1928.

SIR: I beg leave to refer to a memorandum which Mr. Beaudry left at the Department on May 29th [31] last^{*} in which it was stated that the recommendations contained in the first report of the International Fisheries Commission had been formally approved by the Canadian Government, which is prepared to adopt the necessary regulations to put them into effect provided a similar course is taken by the Government of the United States. Reference is also made to your inquiry at the Department on July 13th last in regard to whether this Government is ready to approve the recommendations of the Commission.

In response it gives me pleasure to inform you that the appropriate authorities of this Government approve and are disposed to adopt the recommendations made by the International Fisheries Commission. In view of the changes which the recommendations would, when adopted, effect in the provisions of the Halibut Fishery Treaty of 1923, this Government considers that action looking to the adoption of these recommendations should be taken by means of a new Treaty, supplemented by such legislation or administrative action as may be necessary in each country, rather than that the two Governments should undertake to place the recommendations in effect by concurrent legislation or administrative action without such a treaty.

This Government is therefore prepared to enter into negotiations with the Government of Canada looking to the adoption of the recommendations by both Governments by the conclusion of a Treaty to amend, supplement or supersede the existing halibut treaty which ever may be determined upon after further joint consideration of the matter. It would be understood, of course, that both Govern-

^{*} Not printed.

ments reserve the right to propose minor variations from the recommendations in the course of the negotiations.

If your Government is prepared to institute treaty negotiations with this Government on this subject, it would seem desirable that the members of the International Fisheries Commission be authorized carefully to review the recommendations contained in the report at the meeting of the Commission to be held next September with the view to suggesting a draft of the technical sections of the proposed treaty.

I shall be grateful if you will be good enough to let me know the views of your Government on this subject.

Accept [etc.]

FRANK B. KELLOGG

711.428/1207

The Canadian Chargé (Beaudry) to the Acting Secretary of State

No. 126

WASHINGTON, August 24, 1928.

SIR: I have the honour to refer to your note of August 2nd, 1928, regarding your suggestion that a new treaty to replace the existing treaty, signed at Washington, 2nd March, 1923, on the subject of the North Pacific Halibut Fishery, should be negotiated for the purpose of giving effect to the recommendations of the International Fisheries Commission.

According to information received from the competent authorities of His Majesty's Government in Canada it is considered that so far as Canada is concerned the recommendations of the Commission could be made effective by Order-in-Council under the existing treaty and legislation, but as the United States Government finds that it will require additional authority, Canada will have no objection to replacing the existing treaty by a new one. It is not apparent however that any technical section would be needed to give effect to the recommendations of the Commission. These recommendations are that the proper governmental authorities be given power to establish areas in each of which a limitation as to the total quantity of fish that may be taken therefrom may be fixed, and that such limitation may be reduced from time to time as found necessary; that certain areas be closed to all fishing; that the use of certain types of fishing gear be prevented; that the existing close season provided by the treaty be modified and that on vessels engaging in the fishery in treaty waters be licensed, so as to assure obtaining adequate statistical data.

It is understood that the United States Secretary of Commerce has the necessary powers to give effect to these recommendations in

connection with the regulation of the salmon fisheries of Alaska, so that if he or some other United States authority and the Governor in Council in Canada were given power to make regulations recommended by the Commission, and approved by the two Governments, the end in view would be achieved.

I have the honour to request that you be good enough to communicate the views as above set forth to the competent authorities of the Government of the United States.

It may be added that the competent Department of the Canadian Government thinks it unlikely that a meeting of the full Commission can be held in September.

I have [etc.]

LAURENT BEAUDRY

711.428/1207

The Acting Secretary of State to the Canadian Chargé (Beaudry)

WASHINGTON, August 29, 1928.

SIR: The receipt is acknowledged of your note No. 126 of August 24, 1928, in regard to the action to be taken by the United States and Canada on the recommendations made by the International Fisheries Commission in its report concerning the Halibut Fisheries.

The matter has been referred to the authorities of this Government concerned with the administration of fisheries.

This Department will be glad to communicate with you promptly, as soon as the comments of those authorities on the proposals of the Canadian Government shall have been received.

Accept [etc.]

W. R. CASTLE, JR.

PROPOSED CONVENTION BETWEEN THE UNITED STATES AND CANADA FOR THE PROTECTION OF THE FRASER RIVER SOCKEYE SALMON FISHERIES⁹

711.428/1054

The British Ambassador (Howard) to the Secretary of State

No. 509

MANCHESTER, MASS., August 19, 1926.

[Received August 20.]

SIR: I have the honour to refer to Sir Auckland Geddes' note No. 337 of May 18th [19th], 1922,¹⁰ and to subsequent correspondence re-

⁹ For previous negotiations regarding the protection of Fraser River sockeye salmon, see *Foreign Relations*, 1922, vol. I, pp. 669-676 *passim*.

¹⁰ *Ibid.*, p. 672.

garding the desirability of ensuring proper protection to the Fraser River sockeye salmon fisheries and to inform you of the receipt of a communication from the Governor-General of Canada drawing attention to the fact that although a treaty for the protection and rehabilitation of the Pacific halibut fishery has been concluded, the Fraser River situation, which offers much greater possibilities for the achievement of the end in view by international co-operation, remains unchanged.

I understand that as the result of the fish culture operations carried on by the Dominion Government in a somewhat small way for some years past in the Stuart Lake region, last year, for the first time since the slide into the River at Hell's Gate in 1913, an important number of sockeye salmon returned to the upper waters of the Fraser, thus indicating that by adequate international co-operation the River can be brought back to a maximum of productivity.

It is estimated that at present prices this would involve a production of sockeye salmon alone worth more than thirty-five million dollars annually, instead of one worth about two and a half million dollars, to both countries interested in the question.

In these circumstances, I should be glad to learn at your convenience whether the United States Government are disposed to take under early consideration the possibility of cooperating with the Dominion Government in the manner desired.

I have [etc.]

For the Ambassador:
HERBERT W. BROOKS

711.428/1054

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, *September 18, 1926.*

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 509 of August 19, 1926, inquiring whether this Government is disposed to take under early consideration the possibility of co-operating with the Canadian Government for the protection and rehabilitation of the Fraser River sockeye salmon fisheries.

I have the honor to inform you that a copy of your note has been referred to the Department of this Government concerned with the administration of fisheries and that a further communication in regard to the matter will be made to you at the earliest date possible.

Accept [etc.]

FRANK B. KELLOGG

711.428/1228½

Memorandum by the Assistant Secretary of State (Castle)

[WASHINGTON,] October 26, 1928.

MR. HICKERSON: I discussed this matter yesterday of the sock eye salmon treaty with the Canadian Minister. He feels very strongly that the situation is so serious that something should be done, if possible, in the next session of Congress. Of course, in this I agree. I pointed out to him that, as he well knew, the difficulty came from the unwillingness of the Governor of Washington to put through any treaty which did not make it certain that the State of Washington would be prominently represented. The Minister said that he felt quite sure that his Government would not wish to confine the choice of commissioners to any particular locality because they would want to appoint on the commission the best experts possible. I said that I understood this, although I felt the natural thing to do would be to appoint people from British Columbia and Washington. I told him that we were studying the treaty now and that we felt it was correct along general lines, that we also agreed that some action was very necessary and that I hoped we might be able to get it in shape to present to Congress so that a decision might be made. The Minister said that he would not suppose that a single Senator, talking for local reasons, would be able to hold it up. I told him that if the single Senator opposing it happened to be from Florida, the Senate might well feel that the question primarily was for the State of Washington, but that, therefore, any strong opposition from Senator Jones would be effective in the Senate. I told him, however, that if we decided to send the treaty to the Senate, as it was hoped we would, we should, of course, talk the matter over with Senator Jones before it went up.

W[ILLIAM] R. C[ASTLE]

711.428/1241

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

No. 762

OTTAWA, December 4, 1928.

[Received December 7.]

SIR: Adverting to the Legation's despatch No. 508 of July 6, 1928,¹¹ with particular reference to the second page, *et seq.*, which states that Mr. Alexander Johnston, Deputy Minister of Marine and Fisheries, had informed me confidentially that the Canadian Government was considering a new draft of a treaty for the protection of

¹¹ *Post*, p. 43.

the Fraser River system of sockeye salmon fisheries, the text of which Mr. Johnston was good enough to send to me quite informally and which I transmitted to the Department as an enclosure to the despatch referred to,¹² I now have the honor to inform the Department that the Under-Secretary of State for External Affairs has communicated to me a draft of a proposed treaty on this subject satisfactory to the Canadian Government, a copy of which I transmit herewith enclosed. It desires to learn in this connection whether the draft as presented is acceptable to the Government of the United States and, if so, whether it would be possible to proceed with the signing of a treaty in time to permit of consideration by the United States Senate and the Dominion Parliament during the coming Session. The Under-Secretary of State for External Affairs also would wish to know, for communication to London in connection with a request for full powers to sign any such treaty, the Plenipotentiary who would sign on behalf of the President of the United States and the place of signing.

As the Department may observe, the draft approved by the Dominion Government is identical with that transmitted to the Department in my despatch No. 508 of July 6, 1928, save that certain unimportant alterations are made in the introduction; and that Article II of the draft treaty referred to is materially changed in the manner desired by the Department according to informal exchange of correspondence between the Treaty Division and the Legation (See Mr. Barnes' letter to Mr. Newson of August 30th last,¹³ and ensuing correspondence on the subject of Article II of the Convention).

I have [etc.]

WILLIAM PHILLIPS

[Enclosure]

Draft of a Proposed Convention for the Protection of the Fraser River System of Sockeye Salmon Fisheries

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the United States of America, recognizing that the protection, preservation and propagation of the salmon fisheries in the Fraser River System is of common interest to the Dominion of Canada and the United States; that the Fraser River is potentially the greatest sockeye salmon producing area in North America; that its capacity is indicated by the catches of the so-called "big years" of the past, when approximately two million cases of sockeye salmon were packed in the whole System as compared with about one hundred and fifty

¹² Enclosure not printed.

¹³ Not printed.

thousand cases per annum at the present time; that at least seventy-five per cent of the natural spawning areas are above Hell's Gate Canyon, and that it was only during the so-called "big years" of the past that these areas were seeded; that with the application of proper fish cultural methods combined with adequate protection of the fisheries, there is no known reason why an annual fishery could not be established on the proportions of the "big years" of the past, and that it is in the common interest of both countries that this resource that now largely does not exist should be built up and maintained, have resolved to conclude a convention and to that end have named as their respective plenipotentiaries;

His Majesty for the Dominion of Canada;

The President of the United States of America;

Who, after having communicated to each other their full powers, found in good and due form, have agreed upon the following Articles.

ARTICLE I

The provisions of this Convention and the regulations issued pursuant thereto shall apply to the Fraser River and the streams and lakes tributary thereto and to all waters frequented by sockeye salmon included within the following boundaries;

Beginning at Carmanah Lighthouse on the southwest coast of Vancouver Island, thence in a straight line to a point three marine miles due west astronomic from Tatoosh Lighthouse, Washington, thence to said Tatoosh Lighthouse, thence to the nearest point of Cape Flattery, thence following the southerly shore of Juan de Fuca Strait to Point Wilson, on Quimper Peninsula, thence in a straight line to Point Partridge on Whidbey Island, thence following the western shore of the said Whidbey Island, to the entrance to Deception Pass, thence across said entrance to the southern side of Reservation Bay, on Fidalgo Island, thence following the western and northern shore line of the said Fidalgo Island to Swinomish Slough, crossing the said Swinomish Slough, in line with the track of the Great Northern Railway, thence northerly following the shore line of the mainland to Atkinson Point at the northerly entrance to Burrard Inlet, British Columbia, thence in a straight line to the southern end of Bowen Island, thence westerly following the southern shore of Bowen Island to Cape Roger Curtis, thence in a straight line to Gower Point, thence westerly following the shore line to Welcome Point on Seachelt Peninsula, thence in a straight line to Point Young on Lasqueti Island, thence in a straight line to Dorcas Point on Vancouver Island, thence following the eastern and southern shores of the said Vancouver Island to the starting point at Carmanah Lighthouse as shown on the United States Coast and Geodetic Survey Chart No. 6300, as corrected to October 20, 1924, and on the British Admiralty Chart No. 579.

The High Contracting Parties engage to have prepared as soon as practicable charts of the waters described in this Article, with the above described boundaries and the International boundary line indicated thereon. They further agree to establish within the territory of the United States and the territory of the Dominion of Canada such buoys and marks for the purposes of this Convention as may be recommended by the Commission hereinafter authorized to be established, and to refer such recommendations to the International Boundary Commission, United States-Alaska and Canada, for action pursuant to the provisions of the Treaty respecting the boundary between the United States and Canada signed February 24, 1925.¹⁴

ARTICLE II

The High Contracting parties agree to establish and maintain a Commission to be known as the International Pacific Salmon Fisheries Commission, hereinafter called the Commission, consisting of six members, three on the part of the United States of America, and three on the part of the Dominion of Canada.

The Commissioners on the part of the United States shall be appointed by the President of the United States, and one shall be the Commissioner of Fisheries of the United States and the other two shall be at all times residents and citizens of the State of Washington.

The Commissioners on the part of the Dominion of Canada shall be appointed by His Majesty on the recommendation of the Governor-in-Council.

The Commission shall continue in existence so long as this Convention shall continue in force, and each High Contracting Party shall have power to fill and shall fill from time to time vacancies which may occur in its representation on the Commission in the same manner as the original appointments are made. Each High Contracting Party shall pay the salaries and expenses of its own Commissioners, and the joint expenses incurred by the Commission shall be paid by the two High Contracting Parties in equal moieties.

ARTICLE III

The Commission shall make a thorough investigation into the natural history of the Fraser River Sockeye salmon, into hatchery methods, spawning ground conditions and other related matters. It shall conduct the sockeye salmon fish cultural operations in the area described in Article I, and to that end it shall have power to improve spawning grounds, acquire, construct and maintain hatcheries,

¹⁴ *Foreign Relations*, 1925, vol. I, p. 544.

rearing ponds and other such facilities as it may determine to be necessary for the propagation of sockeye salmon in the waters covered by this Treaty, and to stock the waters with sockeye salmon by such methods as it may determine to be most advisable. The Commission shall also have authority to recommend to the two Governments the removal of obstructions to the ascent of sockeye salmon in the waters covered by this Treaty, that may now exist or may from time to time occur, and to improve conditions for the ascent of sockeye salmon, where investigation may show such to be desirable. The Commission shall report annually to the two Governments what it has accomplished and the results of its investigations.

The cost of all such work shall be borne equally by the two Governments, and the said Governments agree to appropriate annually such money as each may deem desirable for such work in the light of the reports of the Commission.

ARTICLE IV

The Commission shall have power to regulate and shall regulate the conditions under which sockeye salmon fishing may be carried on in the waters covered by this Treaty, but no regulation, amendment or revocation of a regulation shall be effective unless it is affirmatively voted for by at least two of the Commissioners from each country.

ARTICLE V

Each High Contracting Party shall be responsible for the enforcement of the regulations provided by the Commission in the portion of their respective waters covered by the Treaty, and the Commission may at any time investigate the manner and efficiency with which the regulations are being enforced in the waters of either High Contracting Party, and report its findings to the two Governments.

ARTICLE VI

Inasmuch as the purpose of this Treaty is to establish for the High Contracting Parties, by their joint effort and expense, a fishery that is now largely non-existent, each of the High Contracting Parties should share equally in the fishery. The Commission shall, consequently, in regulating the fishery do so with the object of enabling, as nearly as they can, an equal portion of the fish that is allowed to be caught each year to be taken by the fishermen of each High Contracting Party.

ARTICLE VII

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 VIII

The present Convention shall be ratified by His Majesty in accordance with constitutional practice, and by the President of the United States of America, by and with the advice of the Senate thereof, and it shall become effective upon the date of the exchange of ratifications which shall take place at as soon as possible and shall continue in force for a period of sixteen years, and thereafter until one year from the day on which either of the High Contracting Parties shall give notice to the other of its desire to terminate it.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed the present Convention in duplicate, and have affixed their seals thereto.

Done in duplicate at, the day of, in the Year of Our Lord, Nineteen Hundred and . . .

DISINCLINATION OF CANADA TO JOIN THE UNITED STATES IN ESTABLISHING A COMMISSION TO INVESTIGATE THE FISHERIES PROBLEM IN MISSISQUOI BAY¹⁵

711.428/1172a

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

No. 225

WASHINGTON, May 9, 1928.

SIR: For a number of years the Department has received complaints from the State of Vermont regarding seine fishing for pike-perch, the most valuable fish in the lake, and other game fish in the Canadian waters connected with Lake Champlain, more particularly in the Missisquoi Bay and River. The State of New York has complained of the same practice during the spawning season, more particularly in the Missisquoi Bay and River and the Richelieu River waters. These Canadian waters are said to be the principal grounds to which the Lake Champlain pike-perch and other game fish migrate to spawn.

Various attempts have been made to settle this question, which arises from the fact that a few fishermen in Canada appear at present to be interested in wholesale commercial fishing while the Americans concerned are interested in rod and line fishing for sportsmen. It

¹⁵ For previous correspondence regarding the fisheries problem in Missisquoi Bay, see *Foreign Relations*, 1927, vol. 1, pp. 511 ff.

is believed that the present conflict of interests is not fundamental, since the Canadian waters connected with Lake Champlain are presumably as susceptible to development for rod and line sport fishing and the opening up of summer colonies along the Canadian shores as are the American waters and shores of the lake. It is believed that an abundance of game fish in the lake to attract large numbers of rod and line anglers will be of much greater economic value to the people directly concerned, in both countries, than the taking of these fish wholesale for commercial purposes by a few fishermen, to the detriment of those interested in summer recreation and angling. A sounder economic development accompanies the attraction of a large number of summer visitors to an area through hotels, resorts and real estate developments around good fishing grounds, than could possibly result from the commercial exploitation by a few fishermen of the game fish in such a small lake fishery.

There are enclosed for your confidential information and guidance copies of letters of June 25, 1923, August 20, 1923, February 18, 27, 29 and March 23, 1928, from the Honorable Frank L. Greene, United States Senator from Vermont.¹⁶ There are also enclosed copies of confidential reports of the American Consul at Montreal, Canada, dated June 2, 1923, and March 23, 1926.¹⁶ So that you will be advised of past negotiations, I am enclosing copies of the note of April 13, 1926, from this Government to the British Ambassador, the reply thereto of June 7, 1926, and a note from this Government to the Canadian Minister of March 1, 1927, and the reply thereto of March 22, 1927.¹⁷

The Honorable Frank L. Greene has taken up the matter again this year with the Department, in the four 1928 letters referred to above, with the request that effective action be taken to secure the settlement of this long-standing question.

The principal contentions of the United States are:

First, that the waters of Lake Champlain are stocked with pike-perch and other game fish by the United States Government fish hatchery at Swanton, Vermont, in cooperation with the fisheries department of the State of Vermont for the sole purpose of providing fish for rod and line sportsmen. It is manifestly unfair for the Canadians to seine these fish for commercial purposes, particularly just before and during the spawning season when they migrate to the Canadian waters connected with Lake Champlain, and sell them wholesale mostly in the American market. As the work of building up the Lake Champlain region as a fishing resort is being largely nullified by seine fishing in the Canadian waters connected with the

¹⁶ None printed.

¹⁷ *Foreign Relations*, 1927, vol. I, pp. 511, 513, 514, 515.

lake, the feasibility of continuing fish cultural operations in the Lake Champlain waters in this country is questionable. It chiefly results in maintaining a small commercial fishery for a few Canadian fishermen, who operate to the detriment of all others in Canada and the United States interested in the much greater project of the development of the lake as a summer resort region. A continuation of the present seine fishing in Canadian waters may result in much of the attractiveness of the whole section being destroyed both from the standpoint of summer resort developments and commercial fishing.

Second, that licensed seine fishing in the Canadian waters connected with Lake Champlain permits a wholesale destruction of pike-perch and other game fish life. It is believed that it would be desirable to prohibit licensed seining as was done by the Canadian Order in Council No. 376 of February 18, 1918, which, however, was rescinded by an Order in Council of March 1, 1922.

Third, that there is unlicensed seining in such waters throughout the entire pike-perch and other game fish spawning and fishing season during and after the licensed seine fishing season, which is so detrimental to the pike-perch and other game fish that it should be stopped.

Fourth, that Canadian fishermen, in violation of the laws of the State of Vermont, draw their seines into the American waters of Lake Champlain, landing their catch on Canadian shores.

The fact that the Canadian Government does not admit that seine fishing takes place during the spawning season of the pike-perch and other game fish would indicate the necessity for a joint, scientific investigation with a view to reaching an agreement on the facts. Our existing friendly relationship with our neighbor to the north is far too valuable to permit a difference of this nature to be the basis of a growing controversy. The feeling on the subject in the State of New York is already expressed in that section of its conservation law which provides that no person shall transport into that State, or possess, any fish caught in that portion of Lake Champlain or its tributaries known as Missisquoi bay lying and being in the province of Quebec, or the Richelieu river, which is the outlet of said lake, at any time. (New York Conservation Law, Laws of 1911 as amended to 1926, Article V, Chapter 647, Part XII, Section 370.)

It is with a view to ascertaining all the facts relating to these complaints, the period of the spawning season and the effect of this seine fishing upon the pike-perch and other game fishing in Lake Champlain, that a joint, scientific, fact-finding investigation by the Canadian and American fisheries authorities is proposed.

The Department of Commerce has indicated its desire to cooperate in such a scientific investigation by appointing a representative from the Bureau of Fisheries to cooperate with the Canadian representative. An effective fact-finding investigation can be conducted in Canadian waters only with the full cooperation of the Dominion authorities.

It is my earnest desire that this question be investigated and settled upon its individual merits, as a separate matter. It is my firm belief that tangible results can best be secured by concentrating upon the settlement of a single fisheries problem, as is evidenced by the success of the present convention with respect to halibut fisheries in the North Pacific.¹⁸ An attempt to deal with all the fisheries questions which might be suggested could only result in a confusion of issues, which might defeat the realization of an effective settlement.

It is apparent from the Canadian Order in Council No. 376 dated February 18, 1918, a copy of which will be found in the enclosures of this instruction,¹⁹ that the Canadian Government, as distinguished from the Government of the Province of Quebec, has jurisdiction over this fisheries question. It is believed that the proposed investigation can be conducted better by representatives of the Dominion Government of Canada and the Federal Government of the United States, rather than by representatives of the Province of Quebec and the States of New York and Vermont.

You will please communicate with the Secretary of State for External Affairs in the sense of the foregoing and inquire whether the Canadian Government is willing to designate a representative of the Department of Merchant Marine and Fisheries to cooperate with a representative of the United States Bureau of Fisheries in a joint, scientific, fact-finding investigation to determine the facts relating to the pike-perch and other game fish spawning seasons and the extent and effect of seine fishing during that season in Missisquoi bay and river and Richelieu river upon the pike-perch and other game fish in Lake Champlain, all with a view to effecting an equitable solution of this long-standing problem. It is proposed that the joint, scientific, fact-finding commission be instructed to submit a report to the two governments of their findings, with specific recommendations regarding a permanent solution of the problem upon the basis of cooperative conservation measures.

Inasmuch as the 1928 fishing season has already begun, it is the desire of this Government that this investigation be undertaken at the earliest possible moment so that the collection of scientific data

¹⁸ Treaty of March 2, 1923, *Foreign Relations*, 1923, vol. I, p. 468.

¹⁹ For text of Canadian Order in Council, see the *Canada Gazette*, vol. 51, p. 2858.

may be undertaken during the 1928 fishing season. Please transmit a report to me of the results of your negotiations as soon as you are in a position to do so.

I am [etc.]

FRANK B. KELLOGG

711.428/1186

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

No. 482

OTTAWA, June 19, 1928.

[Received June 25.]

SIR: With reference to the Department's instruction No. 225, of May 9, 1928, and my telegram of today's date, No. 129, 12 noon,²⁰ informing the Department that I am today in receipt of a reply from His Majesty's Government in Canada in regard to the establishment of a fact-finding commission to investigate seine fishing in the Canadian waters connected with Lake Champlain, I have the honor to enclose a copy of the note in question.

After calling attention to certain other facts in the Missisquoi Bay situation, and its relation to other pending fisheries questions, such as the Commission of 1917 and the Fraser River rehabilitation question,²¹ the note concludes that under these circumstances the Canadian Government does not find the present a feasible time for the appointment of a Commission to deal with the Missisquoi situation alone, but would, nevertheless, be pleased to cooperate in any necessary steps to advance the settlement of all questions as to fishery preservation in boundary waters, or at least the more important of such cases now outstanding.

I have [etc.]

For the Minister:

H. DORSEY NEWSON

Secretary of Legation

[Enclosure]

The Canadian Secretary of State for External Affairs (Mackenzie King) to the American Minister (Phillips)

OTTAWA, 16 June, 1928.

SIR: I have the honour to refer to your note No. 115 of May 12th, 1928, with reference to complaints which have been received as to seine fishing in the Canadian waters connected with Lake Champlain, and suggesting that a fact-finding commission should be established as early as possible to make recommendations for a permanent solution of this problem.

²⁰ Latter not printed.

²¹ See pp. 30 ff.

The Canadian Government has noted with care the considerations which are advanced in support of such a course. It desires, however, to call attention to certain other facts in the Missisquoi Bay situation and its relation to other pending fisheries questions.

The Treaty of 1908 concerning the protection of fisheries in water contiguous to the boundary between the United States and Canada²² covered Lake Champlain, and the regulations drawn up by the Commissioners under that Treaty dealt with fishing in Lake Champlain. The legislation to enable the approval of the regulations suggested by the Commission was adopted in Canada, but the United States Senate failed to approve of the regulations. The Treaty was consequently finally abandoned.

While the Missisquoi Bay question was not referred to the International Fisheries Commission that was appointed in the fall of 1917 to consider a settlement of outstanding fishery questions between the United States and Canada, it was brought to the attention of the Commission at its first public hearings. Following the conclusion of such hearings on the Atlantic coast, the Canadian members of the Commission recommended to their Government that in all the circumstances a regulation be adopted prohibiting all net fishing in Missisquoi Bay. This was done by Order-in-Council of February 18th, 1918. It was at the time anticipated that the recommendations that the Commission would submit on the matters referred to it would promptly be dealt with by the two Governments. The Commission submitted a unanimous report on all subjects dealt with by it in September, 1918. The report of the Commission was approved by the Canadian Government and though a Treaty based on the recommendations of the Commission was drafted, it has not yet been concluded.

Following the prohibition of all net fishing in Missisquoi Bay, emphatic and growing objection to the regulation developed. The objection was withstood in the expectation that the report of the Commission would be dealt with, but as this had not been done, it was finally decided in 1922 that in the circumstances the regulation could not longer be maintained, and it was rescinded by Order-in-Council of March first of that year.

The Missisquoi Bay situation is by no means the only question concerning the fisheries in boundary waters. The rehabilitation and protection of the sockeye salmon fishery of the Fraser River system is a matter of outstanding importance to both countries, and though a treaty to such end was signed as long ago as 1920²³ it has not yet

²² *Foreign Relations*, 1908, p. 379.

²³ See *Foreign Relations*, 1920, vol. I, pp. 387 ff.

been ratified by the United States Senate, and the rehabilitation of the fishery has consequently not yet been undertaken.

The fisheries in the mainland portions of the Province of Quebec are being administered by the Provincial authorities, and these authorities share the view of the Department of Marine and Fisheries that the Missisquoi Bay question should be dealt with in connection with other and more important fishery situations that are of common interest to both countries.

While under these circumstances it does not appear that the present is a feasible time for the appointment of a fact-finding commission to deal with the Missisquoi Bay situation alone, the Canadian Government would have pleasure in cooperating with the Government of the United States in any necessary steps to advance the settlement of all the questions as to fishery preservation in boundary waters, or at least the more important of such cases now outstanding.

Accept [etc.]

For the Secretary of State for External Affairs:

O. D. SKELTON

711.428/1188

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

No. 508

OTTAWA, July 6, 1928.

[Received July 9.]

SIR: With reference to my despatch No. 482 dated June 19, enclosing the Canadian Government's reply in regard to the establishment of a fact-finding commission to investigate seine fishing in the Canadian waters connected with Lake Champlain, I have the honor to report that I have recently had a conversation on this subject with Mr. Alex. Johnston, Deputy Minister of Marine and Fisheries. In this connection the Department will be interested to learn that Mr. Johnston is about to retire from that part of his work relating to the fisheries and will henceforth confine his activities wholly to questions relating to marine. Mr. W. A. Found, at present Director of Fisheries, will very shortly be appointed Deputy Minister of Fisheries.

During the conversation with Mr. Johnston to which I have referred, the question of the preservation of the sockeye salmon on the Fraser River was touched upon. Mr. Johnston informed me confidentially that the Canadian Government was considering a new draft of a treaty for the protection of the Fraser River system of sockeye salmon fisheries which, while not radically different from the original treaty, has been somewhat amended. Subsequently, Mr. Johnston was good enough to send me, quite informally, the new text

which is now being studied in the Department of External Affairs, and I beg to enclose herewith a copy thereof.²⁴ It is to be understood that the enclosed draft is not official in any sense and is transmitted for the information of the Department and merely as a matter of interest.

Furthermore, it developed during the conversation that the Canadian Government's note of June 16, transmitted with my despatch of June 19, was an attempt to bring pressure upon the United States Government in the protection of the sockeye salmon industry. Since the United States was greatly concerned in the protection of fisheries of Lake Champlain, it was felt here that this fact would be of use in persuading the Government of the United States to take the needed steps in the preservation of the Fraser River industry. I assume that on studying the Canadian Government's note referred to, the Department had reached the conclusion that the two fishing industries were closely associated in the minds of the Canadians, but the remarks of Mr. Johnston in this connection seemed to me, nevertheless, worthy of report.

It would be immensely gratifying to the Canadians to receive some assurance that the Government of the United States was determined to end the destruction of the salmon industry, which is regarded here as not only valuable to the Canadians but to the Americans as well.

I have [etc.]

WILLIAM PHILLIPS

PROPOSAL BY THE UNITED STATES TO CONSTRUCT COMPENSATING WORKS TO OFFSET EFFECT OF DIVERSION OF WATERS FROM THE GREAT LAKES²⁵

711.4216 M 58/136

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

E.D.7432(Great Lakes)

WASHINGTON, December 23, 1927.

DEAR MR. SECRETARY: I have the honor to recommend that the desirability of constructing compensating works in the Niagara and St. Clair Rivers be presented to the Government of Canada with the request that its sanction and approval be given to the execution by the United States of the works for this purpose recommended in the report of the Joint Board of Engineers on the St. Lawrence waterway, dated November 16, 1926.²⁶

²⁴ Not printed.

²⁵ For previous correspondence concerning the diversion of waters from the Great Lakes, see *Foreign Relations*, 1927, vol. I, pp. 484 ff.

²⁶ *Report of Joint Board of Engineers on St. Lawrence Waterway Project, Dated November 16, 1926* (Ottawa, F. A. Acland, 1927).

The instructions to the Joint Board of Engineers, agreed to by the two governments, charged the Board with reporting, among other matters, upon the extent to which the natural water levels on the Great Lakes were affected by diversions authorized by license by either Canada or the United States, and upon the measures by which these water levels could be restored.

The investigations made by the Joint Board and presented in the report, showed that the levels of Lakes Michigan, Huron and Erie have been lowered by approximately .5 per foot each on account of diversions made under license from the United States and Canada, but that the levels of Lakes Michigan and Huron have been lowered by a total of somewhat more than one foot by all causes other than the natural fluctuations of their levels, that the levels of Lake Erie have already been lowered a total of 0.6 foot by such causes, and that upon the opening of the new Welland Ship Canal the additional diversion required for its operation will increase the lowering of Lake Erie to 0.7 feet.

The principal causes of these lowerings are the diversion by the Sanitary District of Chicago from Lake Michigan into the Chicago Drainage Canal, diversions for navigation and power purposes through the Welland Ship Canal, and the enlargement of the St. Clair River through the dredging of gravel for commercial purposes and by natural agencies.

The Joint Board of Engineers reported that it is advisable to construct compensating works in the Niagara and St. Clair Rivers to counteract the effect of all diversions and outlet enlargements on the levels of Lakes Michigan, Huron and Erie. The work proposed in the Niagara River consists of longitudinal dike approximately one-half mile in length, connected to the Canadian shore by a rock-filled weir, and supplemented by submerged rock sills in the deeper portion of the river adjacent to the longitudinal dike. The estimated cost of these works is \$700,000. They lie in Canadian waters. The works proposed in the St. Clair River are a series of submerged rock sills, with crests thirty feet below the low water stage of the river, designed to restore the levels of Lake Michigan and Huron to the extent of one foot. The Board estimated that 31 sills, together with the back-water effect of the proposed compensating works in the Niagara River would raise the level of Lake Michigan and Huron by one foot. Their estimated cost is \$2,700,000. These sills lie partly in Canadian and partly in American waters.

A major part of the artificial lowering of the levels of the Great Lakes results from the diversion made by the Chicago Sanitary District. It is the policy of this Department to require that the diversion be reduced to reasonable limits with utmost dispatch. The Depart-

ment is forced to recognize, however, that a considerable diversion will be necessary for a period of years in order to safeguard the water supply of the City of Chicago. The reduction of the diversion by the Chicago Sanitary District to a reasonable and necessary minimum therefore will not render the construction of compensating works unnecessary. It will merely entail their modification. The design of the compensating works in the Niagara River is such that their effectiveness readily can be modified to meet a reduction in the amount of any diversion. The effectiveness of the proposed compensating works in the St. Clair River can equally well be modified to the extent that may be desirable, through an enlargement of the contracted reach at the head of this river.

The relatively small rise in the levels of Lakes Michigan, Huron and Erie, which will result in the execution of the work, will be of wide-spread benefit to the two countries. There is pending before this Department a report, made under the direction of Congress, upon the improvement of the interconnecting channels and principal harbors of the Great Lakes. The compensating works recommended by the Joint Board of Engineers on the St. Lawrence waterway will be included in the measures introduced for that purpose.

Under the provisions of the Treaty of 1909, between the United States and Great Britain, relating to boundary waters between the United States and Canada,²⁷ the approval of the International Joint Commission, created by that treaty, is requisite to the construction of all works affecting the natural level of the boundary waters. The plans for the works will be duly presented to that Commission for its approval if they be authorized by Congress and after the consent of the Canadian Government to their construction has been secured. It will, however, be of material assistance to the Department, in presenting the plans to the Congress for the improvement of the interconnecting channels and principal harbors of the Great Lakes, to be assured that acquiescence of the Government of Canada to the construction of the proposed compensating works by the United States may be counted upon.

Sincerely yours,

DWIGHT F. DAVIS

711.4216 M 58/136

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

No. 140

WASHINGTON, February 1, 1928.

SIR: There is enclosed herewith a copy of a letter, dated December 23, 1927, from the War Department,²⁸ requesting that the Department

²⁷ *Foreign Relations*, 1910, p. 532.

²⁸ *Supra*.

take up with the Canadian Government the matter of the construction by the War Department of the compensating works in the Niagara and St. Clair Rivers which were recommended in the report of the Joint Board of Engineers on the St. Lawrence waterway on November 16, 1926.

You will note that the works proposed in the Niagara River consist of a longitudinal dyke approximately one-half mile in length, connected to the Canadian shore by a rock-filled weir, and supplemented by submerged rock sills in the deeper portion of the river adjacent to the dyke. The estimated cost of these works, which lie in Canadian waters, is \$700,000.

The works proposed in the St. Clair River are a series of thirty-one submerged rock sills, with crests thirty feet below the low water stage of the river, designed to restore levels of Lake Michigan and Lake Huron to the extent of one foot. The estimated cost of these works is \$2,700,000. The sills lie in part in Canadian and in part in American waters.

Plans for these works will be presented to the International Joint Commission for the approval of that body, in accordance with the provisions of the Treaty of 1909, if the construction of these works be authorized by Congress and if the Canadian Government gives its consent to their construction by the War Department.

The War Department states, however, that it will be of material assistance to it in presenting the plans to Congress to be assured of the consent of the Government of Canada to the construction of the proposed works by the United States.

You are instructed to bring this matter to the attention of the Canadian Government, if you perceive no objection to so doing, and to report the results of your representations on the subject.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

711.4216 M 58/138

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

No. 187

WASHINGTON, March 23, 1928.

SIR: Reference is made to the Department's instruction No. 140, dated February 1, 1928, directing that you take up with the Canadian Government the matter of the construction by the United States War Department of the compensating works in the Niagara and St. Clair Rivers which were recommended in the report of the Joint Board of Engineers on the St. Lawrence Waterway on November 16, 1926.

In acknowledging the receipt of the War Department's letter of

December 23, 1927, on which the above mentioned instruction to you was based, in order to arrive at a definite understanding concerning the payment for these works, the Department included in its letter to the War Department ²⁹ the following statement:

"It is the understanding of this Department that the War Department will request Congress to appropriate funds necessary for the construction of these works and that the Canadian Government will not be requested or expected to pay any part of the cost. I should be grateful if you would let me know whether this understanding is correct."

A letter dated March 12, 1928, has now been received from the War Department ³⁰ from which the following paragraph is quoted for your information:

"The understanding expressed in the last paragraph of your letter is correct. It is the intention of this Department to recommend to Congress the appropriation of funds sufficient to cover the entire cost of the work without participation by Canada."

I am [etc.]

FRANK B. KELLOGG

711.4216 M 58/146

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

No. 520

OTTAWA, July 13, 1928.

[Received July 16.]

SIR: I have the honor to transmit herewith enclosed a copy of the Canadian Government's reply dated July 11 to the Legation's representations with regard to the construction of certain compensating works in the Niagara and St. Clair Rivers by and at the expense of the United States. Representations were made in accordance with the Department's instruction No. 187 of March 23, 1928.

Copies are also enclosed of the Legation's notes of March 5, 1928, No. 82, and March 30, 1928, No. 94, to the Department of State for External Affairs.

In its reply of July 11 the Canadian Government states that the proposals, while providing a substantial measure of compensation, so far as navigation is concerned, for diversions or losses of water from the Upper Lakes and Lake Erie, do not provide compensation as regards navigation in the St. Lawrence system below the Niagara River, nor compensation for the loss of power at any point. It declares that any plan for compensating works should cover all the waters and interests affected and should form part of a final settlement of the issues created by the Chicago diversion.

²⁹ Dated Feb. 11, 1928; not printed.

³⁰ Not printed.

Mr. King enquires whether a definite appropriation for the purpose in question has yet been made by Congress.

I have [etc.]

WILLIAM PHILLIPS

[Enclosure 1]

The American Minister (Phillips) to the Canadian Secretary of State for External Affairs (Mackenzie King)

No. 82

OTTAWA, March 5, 1928.

SIR: I have the honor to invite your attention to the report of the Joint Board of Engineers on the St. Lawrence Waterway made on November 16, 1926, and in particular to the recommendation therein that compensating works be constructed in the Niagara and St. Clair rivers.

The works proposed in the Niagara River consist of a longitudinal dyke approximately one-half mile in length, connected to the Canadian shore by a rock-filled weir, and supplemented by submerged rock sills in the deeper portion of the river adjacent to the dyke. The estimated cost of these works, which lie in Canadian waters, is \$700,000.

The works proposed in the St. Clair River are a series of thirty-one submerged rock sills, with crests thirty feet below the low water stage of the river, designed to restore levels of Lake Michigan and Lake Huron to the extent of one foot. The estimated cost of these works is \$2,700,000. The sills lie in part in Canadian and in part in American waters.

Provided that the Canadian Government gives its consent to the construction of these works by the United States War Department, and if the Congress of the United States likewise authorizes the undertaking, the plans therefor will be presented to the International Joint Commission, in accordance with the provisions of the Treaty of 1909.

The War Department states, however, that it will be of material assistance to it in presenting the plans to Congress to be assured of the consent of the Government of Canada to the construction of the proposed works by the United States. I have, therefore, the honor to inquire whether it is possible for you to give me an expression of your views on this subject.

I avail myself [etc.]

WILLIAM PHILLIPS

[Enclosure 2]

*The American Minister (Phillips) to the Canadian Secretary of State
for External Affairs (Mackenzie King)*

No. 94

OTTAWA, March 30, 1928.

SIR: With reference to my note No. 82 of March 5, 1928, in regard to the report of the Joint Board of Engineers on the St. Lawrence Waterway made on November 16, 1926, concerning compensating works to be constructed on the Niagara and St. Clair rivers, I have the honor to inform you that I am now in receipt of instructions from my Government to the effect that it is the intention of the War Department to recommend to Congress the appropriation of funds sufficient to cover the entire cost of the work without participation by Canada. I shall be very grateful if you will be so good as to advise me whether the Government of Canada consents to the construction of the proposed works.

I avail myself [etc.]

WILLIAM PHILLIPS

[Enclosure 3]

*The Canadian Secretary of State for External Affairs (Mackenzie
King) to the American Minister (Phillips)*

OTTAWA, 11 July, 1928.

SIR: I have the honour to acknowledge the receipt of your notes No. 82 of March 5th and No. 94 of March 30th, 1928, setting forth proposals for the construction of certain compensating works in the Niagara and St. Clair Rivers by and at the expense of the United States, and enquiring whether the Canadian Government would agree to these proposals.

The Canadian Government recognizes the value of the proposed works and appreciates the willingness of the Government of the United States to meet the whole expenditure, including that involved in the work in Canadian waters. The proposals, however, while providing a substantial measure of compensation, so far as navigation is concerned, for diversions or losses of water from the Upper Lakes and Lake Erie, do not provide compensation as regards navigation in the St. Lawrence system below the Niagara River, nor compensation for the loss of power at any point. It is the view of the Government of Canada that any plan for compensating works should cover all the waters and interests affected and should form part of a final settlement of the issues created by the Chicago diversion.

I should be obliged if you could inform me whether a definite appropriation for the purpose in question has yet been made by Congress.

Accept [etc.]

W. L. MACKENZIE KING

711.4216 M 58/150

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

7432 (Great Lakes) 70

WASHINGTON, September 14, 1928.

DEAR MR. SECRETARY: In accordance with the request contained in your letter of July 25, 1928,³¹ your reference W E 711.4216 M 58/146, I take pleasure in presenting to you my comments on the statements of the Canadian Government as set forth by the Secretary of State for External Affairs of Canada in a note to the Minister of the United States at Ottawa, dated July 11, 1928, regarding the proposed construction by this Department of compensating works in the Niagara and St. Clair Rivers.

The note points out that the proposals while providing for a substantial measure of compensation, so far as navigation is concerned, for diversions or losses of water from the upper lakes and Lake Erie, do not provide compensation as regards navigation in the St. Lawrence System below the Niagara River, nor compensation for the loss of power at any point. It expresses the view of the Government of Canada that any plan for compensating works should cover all the waters and interests affected, and should form a part of a final settlement of the issues created by the Chicago diversion.

Commenting on these statements, I may point out that the compensating works proposed in the Niagara and St. Clair Rivers have for their purpose the compensation of lowered lake levels irrespective of the cause of such lowered levels. The compensating works proposed for the St. Clair River, following the plans prepared by the Joint Board of Engineers on the St. Lawrence waterway, are intended to correct a total lowering of one foot in the levels of Lakes Huron and Michigan, resulting from diversions and the enlargement of the contracted section at the head of this river. The dredging of gravel for commercial purposes under color of authority of the Canadian Government is a major contributing cause to this enlargement.

The compensating works proposed in the Niagara River are similarly intended to correct the lowering of the levels of Lake Erie, resulting from diversions both in the United States and Canada for sanitary, canal, and power purposes.

³¹ Not printed.

A comprehensive and final settlement of the far-reaching issues created by the Chicago diversion is unquestionably desirable. Such settlement involves, however, covering all the waters and interests affected so as to render it impracticable within a reasonable time to present a satisfactory, all inclusive plan. It would appear contrary to the best interests of Canada as well as of the United States to defer for an indefinite period remedial measures whose immediate execution is feasible. The construction of the proposed projects will in no way prejudice any other features of the plan of final settlement.

From a physical standpoint, the works proposed for remedying the lowered lake levels are entirely independent of any works or measures appropriate for remedying the effect below the Niagara River. The Joint Board of Engineers on the St. Lawrence waterway made an exhaustive investigation into the possibility of constructing more elaborate works in the St. Clair and Niagara Rivers which might be operated to improve the outflow of the St. Lawrence and unanimously came to the conclusion that such works are inadvisable and impracticable.

While the recent rise in the levels of the Great Lakes, due to ample rainfall, has rendered somewhat less acute the need for works for the correction of their levels, yet it is in such periods of abundant supply that the compensating works should be constructed. Their construction will necessarily diminish slightly the flow of the St. Lawrence during the period of adjustment of the lake levels, and the works cannot be constructed at times of extreme low water without some injury to Canadian interests. By taking advantage of the present opportunity to construct them, future extreme low levels of the lakes, injurious to the interests of both Canada and the United States, will be forestalled.

I suggest that it may be advisable to bring these special considerations to the attention of the Canadian Government, and to request a further expression of views.

In reply to your specific inquiry, the Congress has not yet made an appropriation for the proposed works. The authorization of such an appropriation has been recommended to Congress in a report dated April 26, 1928, from the Chief of Engineers, United States Army, on a preliminary examination and survey of the Great Lakes—their connecting waters, principal harbors, and river channels, authorized by the River and Harbor Act approved January 21, 1927. This report is printed in House Document No. 253, 70th Congress, 1st Session.

Sincerely yours,

DWIGHT F. DAVIS

711.4216 M 58/150

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

No. 414

WASHINGTON, November 30, 1928.

SIR: Reference is made to the Department's instructions No. 140 of February 1, 1928 and No. 187 of March 23, 1928 and to your despatch No. 520 of July 13 last in regard to the matter of the proposed construction by the United States War Department of the compensating works in the Niagara and St. Clair Rivers which were recommended in the report of the Joint Board of Engineers on the St. Lawrence waterway on November 16, 1926.

A copy of your despatch was forwarded to the Secretary of War with the request that he comment on the statements of the Canadian Government in regard to this matter. There is enclosed for your information a copy of the reply, dated September 14, 1928, from the Secretary of War.³²

It is desired that you bring this matter again to the attention of the Canadian Government. You will point out that the compensating works proposed in the Niagara and St. Clair Rivers have for their purpose the compensation of lowered lake levels irrespective of the cause of such lowered levels. You will add that the compensating works proposed for the St. Clair River, following the plans prepared by the Joint Board of Engineers on the St. Lawrence waterway, are intended to correct a total lowering of one foot in the levels of Lakes Huron and Michigan, resulting from diversions and the enlargement of the contracted section at the head of this River; and that the appropriate authorities of your Government consider that the dredging of gravel for commercial purposes in Canada is a major contributing cause to this enlargement.

You will explain to the Canadian Government that the compensating works proposed in the Niagara River are similarly intended to correct the lowering of the level of Lake Erie, resulting from diversions both in the United States and in Canada for sanitary, canal and power purposes. You will add that while a comprehensive and final settlement of the issues created by the Chicago diversion is unquestionably desirable, such a settlement involves the covering of all the waters and interests affected and it would be impracticable to present within a reasonable time an all inclusive plan of settlement. It would appear contrary to the best interests of Canada as well as of the United States to defer for an indefinite period remedial measures whose immediate execution is not only feasible but has been recommended by the Joint Board of Engineers

³² *Supra.*

representing both countries. You will add that the construction of the proposed compensating works will in no way prejudice any other features of the plan of final settlement.

With respect to the statement of the Canadian Government that the proposed works do not provide compensation as regards navigation and power in the St. Lawrence system below the Niagara River, you will say that, from a physical standpoint, the works proposed for remedying the lowered lake levels are entirely independent of any works or measures appropriate for remedying the effect below the Niagara River. The Joint Board of Engineers on the St. Lawrence waterway made an exhaustive investigation into the possibility of constructing more elaborate works in the St. Clair and Niagara Rivers which might be operated to improve the outflow of the St. Lawrence and unanimously came to the conclusion that such works are impracticable and inadvisable.

You will state that while the recent rise in the levels of the Great Lakes, due to ample rainfall, has rendered somewhat less acute the need for works for the correction of the levels, yet it is in such periods of abundant supply that the compensating works should be constructed. Their construction will necessarily diminish slightly the flow of the St. Lawrence River during the period of adjustment of the lake levels, and the works cannot be constructed at times of extreme low water without some injury to Canadian interests. By taking advantage of the present opportunity to construct them, future extreme low levels of the lakes, injurious to the interests of both Canada and the United States, will be forestalled.

You will say that in view of the foregoing considerations you venture to express the hope of your Government that the Government of Canada will see fit to consent to the construction of the proposed works by the United States War Department.

In response to Mr. King's inquiry as to whether a definite appropriation for the proposed works has yet been made by Congress, you will note that the letter from the War Department states that Congress has not yet made an appropriation for this purpose but that the authorization of such an appropriation has been recommended to Congress in a report, dated April 26, 1928, from the Chief of Engineers, United States Army, on a preliminary examination and survey of the Great Lakes, their connecting waters, principal harbors and river channels, authorized by the River and Harbor Act approved January 21, 1927.

I am [etc.]

FRANK B. KELLOGG

REFERENCE OF THE PROBLEM OF THE IMPROVEMENT OF THE
ROSEAU RIVER DRAINAGE SYSTEM FOR STUDY AND REPORT TO
THE INTERNATIONAL JOINT COMMISSION⁸³

711.42157 R 72/28

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *February 25, 1928.*

SIR: Adverting to previous correspondence exchanged with you regarding the improvement of the drainage in the valley of the Roseau River, particularly to your note of November 1, 1927,⁸⁴ and the Department's reply thereto of December 12, 1927,⁸⁵ I have the honor to inform you that I am advised by a resident of the State of Minnesota who has recently visited the Roseau River valley that dikes and a dam are under construction about two miles from the international boundary on the Canadian side of the line.

As indicated by my note of December 12, 1927, people who have made a study of the Roseau River drainage problem apprehend that if the dikes and dam, which are said to be under construction, are built extensive damage would ensue by the flooding of lands in Roseau and Kittson Counties, Minnesota.

You will recall that in my note of December 12, 1927, I renewed the suggestion that the entire problem of the improvement of the Roseau River system be referred to the International Joint Commission for investigation, report and recommendations and requested that action to carry out the present plans for the improvement of Roseau River on the Canadian side of the boundary be suspended until the International Joint Commission shall have made an investigation and report under the reference.

In view of the urgency of the matter and of its importance to a considerable number of residents of the Roseau River valley I venture to express the hope that I may be apprized at an early date of the decision of the Canadian Government regarding the proposed reference of the matter to the International Joint Commission and advised as to the status of the improvements on the Canadian side of the boundary and what the intentions of the Canadian Government with respect to the improvements are.

The Government of the United States would appreciate the co-operation of the Canadian Government to the end that the best interests of the people on both sides of the boundary may be most conveniently served.

Accept [etc.]

FRANK B. KELLOGG

⁸³ For previous correspondence, see *Foreign Relations*, 1927, vol. I, pp. 490 ff.

⁸⁴ *Ibid.*, p. 492.

⁸⁵ *Ibid.*, p. 493.

711.42157 R 72/33

The Canadian Minister (Massey) to the Secretary of State

No. 61

WASHINGTON, 2 April, 1928.

SIR: I have the honour to refer to previous correspondence regarding the improvement of the drainage in the valley of the Roseau River, and especially to your note of February 25th. last and my acknowledgment thereof of February 27th.³⁶ The Secretary of State for External Affairs has now instructed me to inform you that he has taken note of your observations that apprehensions exist lest the construction of the Roseau River improvement works on the Canadian side of the boundary should cause extensive damage by flooding of lands in Roseau and Kittson Counties, Minnesota, and also of your request that the entire problem of the improvement of the Roseau River system be referred to the International Joint Commission for investigation, report and recommendations, and that meanwhile work on the Canadian side of the boundary be suspended.

His Majesty's Government in Canada has given careful consideration to these representations. A further analysis has been made of the effect of the proposed improvements upon the water levels at the boundary, and communications upon the subject have been exchanged with the Government of the Province of Manitoba.

The further examinations which have been made of the lower Roseau River improvement project confirm the view expressed in my note Number 269 of November 1st. 1927, that the effect of the works is not believed to be contrary to the spirit or provisions of the Boundary Waters Treaty of 1909,³⁷ and that it is not believed that the works as designed will raise the natural level of the waters on the south side of the International Boundary. The discharge sections of the proposed floodway have been checked, and the calculations confirm the opinion that flood-flows recorded prior to the adoption of the scheme of improvement can be handled without any back-water effect in Minnesota.

As there appears, however, to be some apprehension on the part of interests in the United States as to possible detrimental effect of the works on the upper reaches of the Roseau River, His Majesty's Government in Canada will have pleasure in joining with the United States in referring the entire problem of the Roseau River system to the International Joint Commission for investigation, report and recommendation under Article 9 of the Boundary Waters Treaty.

As previously indicated, the surface channel or floodway capacity of the River could be increased to receive the additional flood waters

³⁶ Acknowledgment not printed.

³⁷ *Foreign Relations*, 1910, p. 532.

from Minnesota, if this action should prove to be necessary at a future date on a recommendation of the International Joint Commission accepted by the Governments of Canada and the United States.

His Majesty's Government in Canada has also given consideration to the advisability of including the Red River within the scope of the proposed reference, having in mind the damaging effects on the foreshore of that River in Canada resulting from increased flood-flows brought about by the construction of very extensive drainage works in its upper watershed in the United States. It has been concluded, however, that this would open up a question requiring very lengthy consideration on the part of the Commission; and in view of the fact that the Roseau problem is simple and self-contained and will permit of an early finding by the Commission, it is prepared to proceed at once with the consideration of the Roseau, leaving to a future time the proposal that the Red River should be made the subject of a reference.

His Majesty's Government in Canada desires to nominate Mr. K. M. Cameron, Chief Engineer, Department of Public Works, to confer with the authorized representative to be named by the Government of the United States for the purpose of drawing up suitable terms of reference to the International Joint Commission.

In view of the further check which has been made of the effect of the proposed works and in view of the fact that a reference to the Commission will very shortly be under way, His Majesty's Government in Canada assumes that there will be no objection to proceeding with the preliminary works now under construction.

I have [etc.]

LAURENT BEAUDRY
(For the Minister)

711.42157 R 72/35

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, April 26, 1928.

SIR: Adverting to your notes of April 2, and April 4,^{ss} 1928, in regard to the improvement of drainage in the valley of the Roseau River, I have the honor to inform you that Mr. N. C. Grover, Chief Hydraulic Engineer, United States Geological Survey, has been designated to confer with the Canadian engineers for the purpose of formulating suitable terms of reference of the Roseau River problem to the International Joint Commission.

^{ss} Note of April 4 not printed; it requested that the name of Mr. R. de B. Corriveau, Chief Engineer, Department of Public Works, be substituted for the name of Mr. K. M. Cameron as the Canadian representative.

Mr. Grover suggests that a meeting take place at St. Paul, Minnesota, or Winnipeg, Manitoba, on May 23, or June 5, 1928. I shall be pleased to have you advise me whether either of the dates and places mentioned are satisfactory to the Canadian Government and to Mr. Cameron, the engineer last designated by the Canadian Government to represent it in conferences with the United States engineers.

With respect to the observation made in the last paragraph of your note of April 2 that the Canadian Government assumes that there will be no objection to proceeding with the preliminary works now under construction on the Canadian side of the International Boundary, I beg to inform you that I am advised that the United States engineers lack authentic and specific information as to the location and dimensions of the proposed works in Canada and are, therefore, not in a position to form an opinion as to the probable effect of those works on the United States side of the boundary. However, as indicated in my note to you of December 12, 1927,⁸⁹ people who have made a study of the Roseau River drainage problem apprehend that after the dikes and dam which are said to be under construction are built extensive damages would ensue by the flooding of lands in Roseau and Kittson Counties, Minnesota. It would be extremely unfortunate if the solution which the International Joint Commission recommends after investigation would be rendered difficult or impossible of execution by reason of construction in Canada which may be completed or under way before the Commission renders its report. In the circumstances, I venture to express the hope that the Canadian authorities can see their way to suspend the construction of any works which would affect the entire drainage problem in the Roseau valley.

Accept [etc.]

FRANK B. KELLOGG

711.42157 R 72/38

The Canadian Minister (Massey) to the Secretary of State

No. 101

WASHINGTON, June 16, 1928.

SIR: I have the honour to refer to your note of April 26th, 1928, and previous correspondence on the subject of the Roseau River improvement. I am now instructed by the Secretary of State for External Affairs to inform you that His Majesty's Government in Canada has noted that you consider that difficulties might arise from the continuance of the works at present under construction on the Canadian side of the border.

⁸⁹ *Foreign Relations*, 1927, vol. I, p. 493.

It is stated by the competent authorities of the Canadian Government that while they were confident that the 500-foot dyked floodway as at first proposed would be adequate for past recorded flood flows without increase in flood stages at the boundary, the dykes are being laid out 1000 feet apart, providing amply for any increase in flood flow. The only work now being undertaken is at the lower end of the floodway, several miles from the international boundary, and involves merely the provision of two low earthen embankments south of and parallel to the present river channel. This work it is believed cannot in any way restrict channel flow or affect water levels in the Roseau River.

It is suggested that advantage be taken of the presence of the Chief Hydraulic Engineer of the United States Geological Survey in Winnipeg to examine the project. If, after examination, Mr. Grover is of the opinion that the work at present under way in any manner prejudices the situation, the Canadian Government would at once take up the matter with the Province of Manitoba and endeavour to arrange a satisfactory solution.

I shall be grateful if you will advise me also whether the proposal communicated informally a few days ago to an officer of your Department that Mr. Grover and Mr. Corriveau should meet on July 9th at Winnipeg is satisfactory to the competent authorities of the Government of the United States. If that date is not convenient to Mr. Grover, Mr. Corriveau will endeavour to meet him in Winnipeg at any later date that he would suggest.

I have [etc.]

VINCENT MASSEY

711.42157 R 72/42

The Secretary of State to the Canadian Chargé (Wrong)

WASHINGTON, August 4, 1928.

SIR: Referring to the Department's note to your Legation of July 6, 1928,⁴⁰ I have been advised that Mr. N. C. Grover, Chief Hydraulic Engineer, United States Geological Survey, and Mr. R. de B. Corriveau, Chief Engineer, Department of Public Works of Canada, met at Winnipeg on July 9 and 10, at which time they drafted and signed a memorandum of proposed terms of submission of the Roseau River drainage problem to the International Joint Commission.

A copy of the memorandum signed by Mr. Grover and Mr. Corriveau, is enclosed herewith. The form of reference proposed by Messrs. Grover and Corriveau is satisfactory to the Government of the United States. Please advise me whether the form of reference

⁴⁰ Not printed.

proposed by Messrs. Grover and Corriveau is satisfactory to the Government of Canada and whether the Canadian Government is now ready to have the Roseau River drainage matter submitted to the International Joint Commission for investigation, report and recommendations.

With respect to the suggestion made in your Legation's note of June 16, 1928, that Mr. Grover on the occasion of his visit to Winnipeg examine the works now under construction along the Roseau River on the Canadian side of the boundary, I have to inform you that Mr. Grover reports that although he is of the opinion from such data as he was able to obtain that the danger that the works in Canada would substantially increase the stages of waters at the international boundary and cause injury on the United States side of the boundary is remote, yet he is not in a position to form an opinion whether those works would constitute a unit of a coordinated system for the control of the waters of the Roseau River on both sides of the boundary. Inasmuch as one of the questions which it is proposed to submit to the International Joint Commission for investigation and report is whether it is practicable and desirable to coordinate projects for the control of the waters of the Roseau River and its tributaries on both sides of the boundary, it would seem desirable that the construction of works on the Canadian side be suspended until the International Joint Commission shall have had an opportunity to investigate the problem of drainage in the Roseau Valley and to have made its report and recommendations in order that the works in Canada may not prove to be an obstacle to the adoption of the recommendations of the International Joint Commission if its recommendations are acceptable to the two Governments.

Accept [etc.]

FRANK B. KELLOGG

[Enclosure]

Terms of Reference, Signed at Winnipeg, July 10, 1928

QUESTIONS RECOMMENDED FOR SUBMISSION TO THE INTERNATIONAL JOINT COMMISSION RELATIVE TO THE ROSEAU RIVER AND ITS TRIBUTARIES IN THE STATE OF MINNESOTA AND THE PROVINCE OF MANITOBA

1. In order to insure the most advantageous development of lands in the State of Minnesota and the Province of Manitoba affected by the waters of Roseau River and its tributaries, and to provide for the control of the flood waters of the Roseau River and its tributaries, is it practicable and desirable to co-ordinate projects for the control of the waters of Roseau River and its tributaries on both sides of the Boundary? If so, what are the controlling features of such

co-ordinated projects, what measures are recommended in order to insure them and in what way should these measures be made effective?

2. Will the protective works adjoining Roseau River in Manitoba as now projected by the Government of the Dominion of Canada have the effect of raising the natural level of the river on the United States side of the Boundary? If so, what changes or modifications are recommended? Do these works constitute a unit of a co-ordinated system contemplated by question 1?

3. What has been the effect, if any, of drainage and other works designed to control the waters of Roseau River and its tributaries in Manitoba and Minnesota on flood flows of Roseau and Red Rivers? If remedial or protective structures and/or measures are found by the Commission to be, or to have been necessary to provide for any change in flood flow caused by such works, on what basis should the costs incident to such structures and/or measures be apportioned between the United States and Canada? What additional remedial or protective structures, and/or measures, if any, will be required to provide for changes in flood flows of Roseau and Red Rivers attributable to future works designed to control the waters of Roseau River and on what basis should the costs of such structures and/or measures be apportioned between the two countries?

R. DE B. CORRIVEAU

Representing the Dominion of Canada

N. C. GROVER

Representing the United States

WINNIPEG, MANITOBA, July 10, 1928.

711.42157 R 72/46

The Canadian Minister (Massey) to the Secretary of State

No. 186

WASHINGTON, 10 December, 1928.

SIR: I have the honour to refer to my note Number 152 of October 5th. 1928⁴¹ and previous correspondence concerning the reference to the International Joint Commission of the drainage problem of the Roseau River. You will recall that in a note dated August 4th. 1928, you informed me that the terms of reference which were drafted and signed at Winnipeg on July 10th. 1928, by Mr. R. de B. Corriveau and Mr. N. C. Grover, accredited representatives of Canada and the United States, were acceptable to the Government of the United States, and that you considered it desirable that the construction of works on the Canadian side of the international bound-

⁴¹ Not printed.

ary should be suspended until the International Joint Commission had had an opportunity to investigate the problem of drainage in the Roseau Valley.

The delay in replying to your note of August 4th. has been caused by the necessity of discussing with the Government of the Province of Manitoba the matter of the suspension of work on the Roseau River protective works which have been under construction by the Government of Canada in co-operation with the Government of the Province of Manitoba.

I have now been instructed to inform you that the Terms of Reference agreed to by Messrs. Grover and Corriveau are satisfactory to His Majesty's Government in Canada, and that arrangements have now been made for the temporary suspension of work on the Roseau River protective works in Manitoba until such time as the International Joint Commission shall have had an opportunity of reviewing the situation. His Majesty's Government in Canada is therefore prepared formally to transmit the Roseau Reference to the International Joint Commission for examination and report in accordance with the provisions of Article 9 of the Boundary Waters Treaty of 1909.

In making this reference to the Commission, it is desired to draw the attention of the Government of the United States to the fact that the protective works which have been under way in the lower Roseau river in the Province of Manitoba have been designed to offset the excess flood flows resulting from the extensive drainage works which have been constructed in the upper Roseau river watershed in the United States without regard to the effect of such works upon the lands bordering upon the lower reaches of the Roseau river in Manitoba. Faced with the resultant extensive flooding of Manitoba lands bordering on the Roseau river, the Government of Canada, jointly with the Government of the Province of Manitoba, arranged for the construction of the protective works which have been the subject of this present interchange of correspondence between the Governments of Canada and of the United States. It is the opinion of the Canadian engineers who have designed and reported upon these works that they will not affect the natural levels of the Roseau river at the international boundary. Even in the event of their affecting these water levels, the works are so planned as to permit of such conditions being relieved by channel excavation between the embankments which have been designed and partly constructed. The design will further permit of any channel enlargement which may be considered necessary to accommodate larger flood flows than have been experienced heretofore. This flexibility will permit of the works fitting in with any reclamation project which may be

reported upon favourably by the International Joint Commission as a result of its investigations under the Reference.

Having the above mentioned points in mind, His Majesty's Government in Canada has, nevertheless, in order that the situation might be approached and examined by the Commission without complications, arranged to suspend temporarily the construction of the protective works in Canada, although such suspension is working a decided hardship upon Canadian landed interests affected by the excess flows which have developed on the Roseau river.

In view of these conditions, His Majesty's Government in Canada, in transmitting the Roseau River Reference to the International Joint Commission, proposes to suggest to the Commission the desirability of giving early consideration to the questions incorporated in Paragraph 2 of the Reference—which questions have to do with the approval or modification of the protective works as at present projected—in order to ascertain whether some measure of approval of these protective works might not be expressed at an early stage in the Commission's investigations without prejudice to its consideration of the questions of the Terms of Reference as a whole. It has occurred to the Government of Canada that the Government of the United States, in transmitting the Reference to the Commission, might feel disposed to include some such similar suggestion, in order that the protection of Canadian landed interests affected may not be unnecessarily delayed.

The Government of Canada would also suggest that in transmitting the Reference to the Commission, an intimation might be included to the effect that the technical assistance which the Commission will probably require in making its investigations into this problem could be supplied from the technical services of the two Governments, should the Commission so desire.

I have [etc.]

H. H. WRONG
(For the Minister)

711.42157 R 72/46

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, December 14, 1928.

SIR: I have the honor to acknowledge the receipt of your note of December 10, 1928, in which, referring to my note to your Legation, dated August 4, 1928, in regard to the proposed submission to the International Joint Commission of the problem of drainage in the Roseau River Valley in the State of Minnesota and the Province of Manitoba, you inform me that the terms of reference which were

drafted and signed at Winnipeg on July 10, 1928, by Mr. R. de B. Corriveau, representing the Government of Canada, and Mr. N. C. Grover, representing the Government of the United States, are acceptable to your Government.

I note that your Government has arranged for the temporary suspension of work on the Roseau River protective works in Manitoba until such time as the International Joint Commission shall have opportunity to review the situation.

I am today addressing to the International Joint Commission, a communication⁴² submitting to the Commission for investigation, report, and recommendations, the questions described in the memorandum signed by Messrs. Corriveau and Grover. In my communication to the International Joint Commission I emphasized the importance of expediting the investigation which it would be necessary for the Commission to make in order that its report may not be unnecessarily delayed, and informed the Commission that the Department of the Interior of the United States would doubtless be glad to furnish engineers to assist the Commission in making its investigation.

I take this opportunity to express to you, and through you to your Government, my appreciation of the sympathetic consideration which your Government has given to the proposed reference of the Roseau River problem to the International Joint Commission and the cooperation of your Government in consummating the arrangement for the reference.

Accept [etc.]

FRANK B. KELLOGG

RENEWED CONSIDERATION OF A JOINT INTERNATIONAL PROJECT
FOR THE IMPROVEMENT OF THE ST. LAWRENCE WATERWAY⁴³

711.42157 Sa 29/402

The Canadian Minister (Massey) to the Secretary of State

No. 30

WASHINGTON, 31 January, 1928.

SIR: I have the honour to refer to your note of April 13, 1927⁴⁴ in which, after reviewing the steps taken in recent years by the United States and Canada to enquire into the feasibility of a St. Lawrence ocean shipway, you stated that the Government of the United States had accepted the recommendations of the St. Lawrence River Commission, appointed by the President as an advisory body, and was accordingly prepared to enter into negotiations with Canada

⁴² Not printed.

⁴³ Continued from *Foreign Relations*, 1927, vol. I, pp. 487-490.

⁴⁴ *Ibid.*, p. 487.

with a view to formulating a convention for the development of the waterway.

Acknowledgment of this communication was made in a note of July 12, 1927, addressed to the Minister of the United States at Ottawa,⁴⁵ in which it was stated that, as the report of the Joint Board of Engineers⁴⁶ indicated differences of opinion as to the solution of the engineering difficulties presented by the international section of the waterway, the National Advisory Committee, appointed by His Majesty's Government in Canada to report on the economic and general aspects of the waterway question, would not be in a position to advise the Government until certain alternative schemes under consideration by the Joint Board, and to be included in the appendices to the main report, had been received and duly considered.

The full report of the Board has now been received, and the National Advisory Committee, which met in Ottawa this month, has reported its conclusions to His Majesty's Government in Canada.⁴⁷ The National Advisory Committee concurs in the finding of the Joint Board of Engineers that the project is feasible. It recommends, however, that should the work be undertaken, fuller allowance should be made for future requirements by providing, in addition to 30-foot depth for the permanent structures, 27-foot navigation in the reaches rather than the 25-foot navigation proposed by the Joint Board. While the National Advisory Committee regards the project as feasible from an engineering standpoint, and notes the findings of the International Joint Commission in 1921 as to its economic practicability, it considers that the question of its advisability at the present time depends upon the successful solution of a number of financial and economic difficulties, and upon further consideration of certain of the engineering features as to which the two sections of the Joint Board of Engineers are not as yet agreed. I am instructed by the Secretary of State for External Affairs to inform you that His Majesty's Government in Canada concurs in these conclusions of the National Advisory Committee.

In your note of April 13, it was observed that the St. Lawrence River Commission had reported that the construction of a shipway at proper depth would relieve the interior of the continent, especially agriculture, from the economic handicaps of adverse transportation costs which, it was indicated, now operate to the disadvantage of many States and a large part of Canada. It was added that the Govern-

⁴⁵ *Ibid.*, p. 489.

⁴⁶ *Report of Joint Board of Engineers on St. Lawrence Waterway Project, Dated November 16, 1926.*

⁴⁷ Printed in *St. Lawrence Waterway Project* (Ottawa, F. A. Acland, 1928), pp. 18-21.

ment of the United States appreciated the advantages which would accrue equally to both countries by opening up the waterway to ocean shipping, and that the necessary increase in United States railway rates due to the war, and the desirability of early development of hydro-electric power, were factors which must have equal application to, and influence upon, the Dominion of Canada.

In view of the implications as to Canadian conditions contained in these observations, it may be well to indicate certain features of the transportation situation in Canada which have a direct bearing upon the St. Lawrence waterway question.

For many years past the improvement of transportation has been the foremost task of successive governments of Canada. At heavy cost, an extensive programme of railway, waterway and harbour development has been carried out, with the object of linking up all parts of the Dominion and providing adequate outlets for foreign trade. Two great transcontinental railway systems have been built up, largely with State aid, and both western and eastern Canada are now reasonably well served by railways, though increasing settlement and increasing production render it necessary for both systems to continue to spend large sums annually in the provision of branch lines. Western Canada is now looking to the early completion of the Hudson Bay route to Europe. This route, which it is anticipated will be available in about three years, will shorten the haul to Europe from the Canadian West by a thousand miles and more, and will also be of substantial benefit to shippers from the Western States. Since that work was projected, the completion of the Panama Canal, by the efforts of the United States, has supplied an alternative outlet for much of western Canada through Vancouver and Prince Rupert; and at the present time the Canadian Government is faced with a strong demand for an additional and more direct outlet to the Pacific for the Peace River country. The St. Lawrence route itself has been progressively improved, and has proved of steadily increasing service.

Partly as a result of the existence of competitive alternative outlets, railway rates in Canada are in general lower than in the United States. The rates on grain, which provides fifty-two per cent of the total traffic of western lines, are now below pre-war level. Material reductions have also been made in another bulk movement of importance to both eastern and western Canada, namely, coal. General commodity rates, which were the subject of the same percentage of relative increase in both countries, due to war conditions, have subsequently been reduced in Canada, in certain instances, to a greater extent than in the United States. In recent months a rate on grain has been established from the head of the Lakes to Quebec which approximates the charges incident to the movement by water by the present Great

Lakes-St. Lawrence route, a route which, in Canada, has always exercised a restraining influence on railway rates. As the greater part of Canada's railway mileage is now owned and operated by the State, the St. Lawrence proposals, in so far as they may possibly affect the revenues of the railways, present considerations as to which Canada's point of view is necessarily somewhat different from that of the United States.

Canada's interest in the improved navigation of the Great Lakes-St. Lawrence route would be associated largely with the movement of bulk commodities, such as grain, timber and coal. The movement of package freight by water in Canada is at present of small volume, and Canadian railways, unlike, it is understood, those of the Midwest of the United States, are in a position to handle much more of that traffic than at present is offered.

It is believed that development of the waterway would prove of advantage to Canadian commerce and industry, not merely in the sections directly tributary to the Great Lakes and St. Lawrence, but in the Maritime sections, which would be afforded more direct access to the great interior markets of the continent. It is, however, apparent that the United States would benefit much more from the enlarged navigation facilities, both in extent of use and in margin of saving. The report of the International Joint Commission in 1921, after a comprehensive review of the economic aspects of the project, presented the following conclusions, to which the National Advisory Committee calls attention:

"As to the economic practicability of the waterway, the commission finds that, without considering the probability of new traffic created by the opening of a water route to the seaboard, there exists today, between the region economically tributary to the Great Lakes and overseas points as well as between the same region and the Atlantic and Pacific seabords, a volume of outbound and inbound trade that might reasonably be expected to seek this route sufficient to justify the expense involved in its improvement.

It finds that, as between the American and Canadian sides of the tributary area, the former contributes very much the larger share of this foreign and coastwise trade, and in all probability will continue to do so for many years to come. The benefits to be derived from the opening of a water route to the sea will, therefore, accrue in much larger measure to American than to Canadian interests, though it is reasonable to assume that eventually the advantages may be more evenly distributed."

The report of the International Joint Commission continues, in a direct reference to comparative transportation conditions:—

"It finds that the existing means of transportation between the tributary area in the United States and the seaboard are altogether inadequate, that the railroads have not kept pace with the needs of the country, but that this does not apply to the Canadian side of the

area, where railway development is still in advance of population and production”.

It will therefore be observed that the transportation situation in the two countries is not identical as to available facilities, extent of use, or rates, and that the economic handicaps to which you referred in your note of April 13th. appear to have more application to United States than to Canadian conditions. In this connection, it may be said that Canadian agriculture is more directly affected by the restrictions on the importation of Canadian farm products which have been imposed by the United States in recent years, with the object, it is understood, of assisting agriculture in those Western States which would share so largely in the benefits of the proposed St. Lawrence Waterway. This situation, and the effects upon the Maritime sections of Canada of United States duties on the products of the fisheries, are among the factors which have contributed to bringing it about that public opinion in Canada has not so clearly crystallized in favour of the waterway project as appears to be the case in the United States.

Reference was made in your note to the early development of hydro-electric power as a factor which must have equal application to and influence upon the Dominion of Canada. The opportunity of developing great quantities of power incidental to navigation is, it is agreed, a special advantage possessed by the St. Lawrence project, and an important consideration in determining its advisability. In this aspect of the project, however, there are again special features in the Canadian situation which it is desirable to make clear. Public opinion in Canada is opposed to the export of hydro-electric power, and is insistent that such power as may be rendered available on the St. Lawrence, whether from the wholly Canadian section, or from the Canadian half of the international section, shall be utilized within the Dominion to stimulate Canadian industry and develop the national resources. With this view the National Advisory Committee expresses itself as in complete accord. The Committee further indicates that, in view of the relatively limited capacity of the Canadian market to absorb the vast blocks of power contemplated by the St. Lawrence proposals, it follows that it is most important, in any arrangement which may be considered, that the development of power on the Canadian side should not exceed the capacity of the Canadian market to absorb it.

The situation presented by the differences of opinion brought out in the report of the Joint Board of Engineers as to the best method of development in the international section of the St. Lawrence has also received consideration by the National Advisory Committee. The Committee considers it greatly in the public interest that a further attempt should be made to reconcile these varying views. Con-

clusive assurance is necessary as to control of the fluctuations of flow from Lake Ontario, so essential to the interests of the purely national sections of the river and the port of Montreal, and as to the situation of those Canadian communities on the St. Lawrence, which under certain of the present plans might be obliged to live under levees or to rebuild in part. A plan has been presented in the appendices to the report of the Joint Board of Engineers proposing an alternative location of the upper works of the Canadian two-stage plan. It is also considered advisable that opportunity should be afforded for further conference on these alternative proposals between the Canadian section of the Joint Board and engineers representing the Province of Ontario, who have themselves formulated plans dealing with the international section.

The financial phases of the project have been reviewed by the Committee. It is pointed out that for many years Canada has been engaged in improving the navigation of the St. Lawrence river, both above and below Montreal, and in providing navigation facilities across the Niagara peninsula. At the same time, the United States has been similarly engaged in deepening inter-connecting channels of the Upper Lakes, and in providing suitable works at Sault Ste. Marie. Towards the common object, Canada has made particularly heavy contributions. It has expended over thirty millions on the ship channel which has made possible ocean navigation on a large scale to the port of Montreal, an expenditure by which the proposed St. Lawrence project will directly benefit. The Dominion has spent fifty millions on canals and channel improvements between Montreal and Lake Erie, in which improved navigation United States shipping has had equal use and advantage. To the present, Canada has spent eighty-seven millions on the Welland Ship Canal. In view of these facts and of the very heavy financial burdens imposed by the war, by the railway obligations arising out of the war, and by the necessity, since the war ended, of finding the large sums required for needed public works throughout the Dominion, it is considered that it would not be sound policy to assume heavy public obligations for the St. Lawrence project.

The National Advisory Committee has reached the conclusion that it is possible to work out a method by which provision could be made for the construction of the waterway on terms which would be equitable to both countries and would take adequate account of the special factors in the Canadian situation to which attention has been directed. Several methods have been considered, but the plan which chiefly commends itself to the Committee is, in brief, that Canada should consider providing for the construction of the waterway in the sections wholly Canadian, that is, the Welland Ship Canal and the works in the St. Lawrence below the international boundary, and

that the United States should consider undertaking the completion of a 27-foot waterway to the head of the Lakes, in addition to meeting the entire cost of the development, under joint technical supervision on lines to be agreed upon, of the international section of the St. Lawrence, both for navigation and for power. The construction of the wholly Canadian (Welland and St. Lawrence) sections, and, if the United States should see fit, of the upper lakes works, would, on this plan, be given precedence of the international section, because of the necessity alike of providing for further consideration of the engineering problems involved in the international section and of permitting reasonable absorption of the power developed on the Canadian side.

In support of this view, the following statement is submitted by the Committee, based on expenditures by both countries on the present through waterway, and on the estimated cost of the presently recommended scheme, with 27-foot navigation, a new United States lock at Sault Ste. Marie of the same dimensions as proposed for the St. Lawrence shipway, and the development, on the St. Lawrence, of such power as is incidental to navigation:—

CANADA

Present works:

St. Lawrence ship channel . . .	\$30, 000, 000	
St. Lawrence and Welland Canals	50, 000, 000	
Lock at Sault Ste. Marie, On- tario	5, 560, 000	\$85, 560, 000

Proposed works:

Welland Ship Canal	\$115, 600, 000	
Wholly Canadian section, St. Lawrence shipway, 27-ft. navigation and development of 949,300 h. p.	199, 670, 000	\$315, 270, 000
Total for Canada		<u>\$400, 830, 000</u>

UNITED STATES

Present works:

Dredging St. Clair & Detroit Rivers.	\$17, 536, 000	
Locks at Sault Ste. Marie, Michi- gan	26, 300, 000	43, 836, 000

Proposed works:

International section St. Law- rence shipway 27-ft. navi- gation and initial develop- ment of 597,600 h. p. . . .	\$182, 157, 000	
To complete development—ad- ditional power 1,602,000 h. p.	92, 090, 000	
Upper lake channels to 27-ft . .	65, 100, 000	339, 347, 000
Total for United States		<u>\$383, 183, 000</u>

In bringing these conclusions of the National Advisory Committee to the attention of the Government of the United States, His Majesty's Government in Canada desires to add that there are phases of the question, particularly as regards the development of power, as to which it is necessary to take account of the special concern of the two provinces of Canada bordering on the waterway. The relation between navigation and power involves certain constitutional difficulties, of which, in accordance with the wishes of the Governments of Ontario and Quebec, the Government of Canada proposes to seek a solution by reference to the Courts. With this preliminary difficulty in process of solution, the Government of Canada will be in a position, upon learning from the Government of the United States whether in its view the procedure above outlined affords an acceptable basis of negotiation, to consult with the Provinces of Ontario and Quebec on the aspects of the problem with which they may be concerned, and thus to facilitate an understanding being reached between all concerned as to the methods and means by which the project could be undertaken.

It is the hope of the Government of Canada that, in any such further consideration of the waterway question, opportunity may be found for reaching a comprehensive settlement of all outstanding problems affecting the Great Lakes and the St. Lawrence, including the preservation of the waters properly belonging to the St. Lawrence watershed, of which the present discussion indicates the paramount importance.

I shall be obliged if you will be good enough to inform me at your convenience, for transmission to His Majesty's Government in Canada, of the views of the Government of the United States on the representations which are outlined above.

I have [etc.]

VINCENT MASSEY

711.42157 Sa 29/402

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, *March 12, 1928.*

SIR: I have the honor to acknowledge your note of January 31, 1928, in which you inform me of the findings and recommendations of the National Advisory Committee in regard to the proposed St. Lawrence waterway improvement.

I note the view of the National Advisory Committee that the question of the advisability of the improvement at the present time depends upon the solution of a number of financial and economic difficulties and upon further consideration of certain of the engineering features

and the conclusion of the Committee that it is possible to work out a method by which provision could be made for the construction of the waterway on terms which would be equitable to both countries and would also take adequate account of the factors in the Canadian situation which you have set forth.

The suggestions outlined in your note have received thorough consideration. While the United States is not in complete agreement with the representations made by the Canadian Government as to the relative benefits and ultimate costs to the two countries of the proposed improvement of the St. Lawrence and the division of expense to be borne by each country, it is inclined to regard as an acceptable basis of negotiation a proposal along the general lines suggested in your note: that the prosecution of the improvement of the St. Lawrence waterway be based on the undertaking by the United States of the deepening of the necessary channels through the interconnecting waters of the Great Lakes and the improvement of the international section of the St. Lawrence both for navigation and for power; and the undertaking by Canada of the construction of the waterway in the sections wholly Canadian, that is, the Welland Canal and the works in the St. Lawrence below the international boundary.

Whether the United States expends its share of the cost on the international section and Canada its share on the national sections would seem to be immaterial if, in the negotiations, there is a fair division of expense for a through deep waterway to the Ocean. Of course, in such an arrangement, all sections of the deep waterway should be so constructed as to make them most suitable for a through system of transportation. This is a detail to which I have no doubt your Government will entirely agree. The use of the waterway should be properly safeguarded by treaties between the two countries.

Concerning the value of the route to the sea to the two countries, I have noted the suggestions made in your note of January thirty-first. I might say that, while it may not be very material to the main issue, the United States has the use of the Panama Canal which is of great benefit to it especially on the Pacific, Atlantic and Gulf coasts. It has also the use of the Gulf of Mexico which reaches a considerable way across the Continent on the South and furnishes valuable water transportation for a large portion of the Southwestern part of the United States. Both of these waterways exercise a great influence on freight rates. The United States has other harbors on the Atlantic, such as New York served by both railways and the Erie Canal, Philadelphia, Baltimore and Norfolk, which involve a shorter railroad haul from the Great Lake territory to the Ocean than is enjoyed by Canada. Nevertheless, I feel that the construction of a deep waterway through the St. Lawrence to the Ocean will be of tremendous advantage

to most, if not all, of the territory in the northern part of the United States, as well as to the corresponding territory in Canada.

Referring to your suggestions as to the order in which the different works should be undertaken, it would seem to me that this matter will also have to be the subject of negotiation because the works ought to proceed so that all parts of the navigation system would be completed substantially at the same time and the United States ought to have the advantage of its share of the power of the international section without waiting until Canada may be able to sell her power from these works.

Referring to the balance sheet, which undoubtedly was included in your note to illustrate the principles of the division of costs and the work to be done by each country, I am in general accord with those principles. The amounts and some of the items would have to be considered and discussed in the negotiations. To illustrate: I am not inclined to the view that it is right to include in the balance sheet the costs of the St. Lawrence and old Welland Canals except so far as they may be of use to the deeper system. These works are understood to be for lighter craft and of little value for the purposes of the works now proposed. These waterways are understood to have served their purpose in economic returns. It would also seem to be necessary to differentiate between the costs that may properly be chargeable to navigation and those to power in general. Those who now or in the future profit by the power should bear their share of the expense. It is understood that the power development will carry itself. To illustrate: under the suggestions you make, the United States will have no proprietary interest in the power on the national section. It would, therefore, seem that as this development is for the benefit of Canada, your Government should be responsible for that expense, and that such expense should take into account the costs to be borne by the respective interests whether the power is actually installed now or later. The amount, therefore, which power on the national section should contribute to the cost of the improvement should be left open for consideration and subject to determination in the negotiations. All power, of course, developed for joint benefit in the international section should ultimately be paid for as a part of the joint venture. The application of this principle would change the proposed balance sheet considerably. Therefore, if, as you suggest as to this section, the United States is willing to build not only the waterway but the power, it would seem that the United States ought to be permitted to develop its power and use its half, the other half to be used by Canada or not as it should desire.

The United States is agreeable to the proposal that all navigation channels provided in improvements have a minimum depth of 27

feet, the permanent structures having a depth of 30 feet for future expansion. The United States has at present under consideration the deepening of the lake channels to the extent economically justified by the present commerce of the Great Lakes. There is one question that we should like to leave for discussion and that is, whether it would be economical to at once build a new lock and deepen the Soo Canal until such time as the St. Lawrence is nearing completion so that there would be a demand for deeper channels. It is clearly advisable that the large expenditures required for depths in excess of present needs be deferred until the greater depths can be profitably used.

The United States fully recognizes the right of the Dominion of Canada to the ownership and use of the Canadian share of the power which may be developed in the international section of the waterway as well as to all that developed in the national section and it recognizes also that the disposition of the power is purely a domestic question. It recognizes further that this share is an inherent attribute of Canadian sovereignty, irrespective of the agency by which the power may be developed.

The United States regards it a fundamental economic principle that the beneficiaries of power developed in the improvement of the International Section of the St. Lawrence should pay ultimately their fair share of the cost of its production, whether the agency constructing these works be a corporation, a state or province, or a national government. It believes that a practicable means can be found for effecting the fulfillment of this principle in the arrangements made for the improvement of the international section of the river for the joint benefit of navigation and power development, and believes that the negotiations entered into in furtherance of the undertaking of the project should have this end in view.

The large expenditures required for the undertaking are a matter of grave concern to the United States as well as to Canada. It is felt that when the United States embarks on the enterprise all expenditures should be on a sound economic basis.

The United States accepts without reservation the principle that the operation of works in the International Section must be such as will control fluctuations of the outflow from Lake Ontario in such manner as to safeguard all interests on the purely Canadian sections of the river, including especially the Port of Montreal. It regards as acceptable the proposal that the design and operation of works in the International Section of the river be under joint technical control and assumes that the design of all works on the waterway will comply in general with the plans agreed upon by the Joint Engineering Board as embodying the best principles.

The United States is fully in accord with the view that the advisability of undertaking the improvement at the present time depends on the solution of the financial and economic problems involved. It shares the hope expressed that a solution will be found which will fully safeguard the interests of the two countries and will afford an equitable basis for a division of the cost. It is confident that when these economic principles are determined, the solution of the engineering problems required for their fulfillment will be speedily realized.

I have the honor to suggest, therefore, that the two countries proceed with the appointment of commissioners to discuss jointly the problems presented in your note, and those which I have presented herein with a view to the formulation of a convention appropriate to this subject.

The Government of the United States will be glad to have this discussion extended to the further consideration of any outstanding problems affecting the Great Lakes and the St. Lawrence as suggested in your note.

Accept [etc.]

FRANK B. KELLOGG

711.42157 Sa 29/434

*The Canadian Minister (Massey) to the Secretary of State*⁴⁸

No. 64

WASHINGTON, 5 April, 1928.

SIR: I have the honour to refer to your note of March 12th. 1928, on the St. Lawrence Waterway project.

The Secretary of State for External Affairs has noted that while the United States is not in complete agreement with the representations contained in my note Number 30 of January 31st. 1928, as to the relative benefits and ultimate costs to the two countries of the proposed improvement and the division of expenses to be borne by each country, it is inclined to regard as an acceptable basis of negotiation the suggestions of the National Advisory Committee summarized in my note as to the division between Canada and the United States of the tasks involved in the completion of the Deep St. Lawrence Waterway.

The Secretary of State for External Affairs has also noted that the United States agrees that a channel of twenty-seven feet minimum depth would be advisable, accepts the principle that the works in the international section must be so operated as to control fluctuations of the outflow from Lake Ontario in such manner as to safeguard all interests on the purely Canadian sections, including the port of Montreal, and agrees that the design and operation of the works in

⁴⁸ Handed to the Secretary of State by Mr. Laurent Beaudry, First Secretary of the Canadian Legation, on Apr. 6, 1928.

the international section should be under joint technical control. It is noted also that the United States would be prepared to have the discussion extended to the consideration of any outstanding problems affecting the Great Lakes and the St. Lawrence watershed, as suggested in my previous note.

In your note under reference you raise some question as to the relative advantage of the waterway to each country and as to the validity of some of the items included on the Canadian side of the balance sheet presented for illustrative purposes by the National Advisory Committee, and refer also to the problems involved in the allocation of costs as between navigation and power. At the present stage it does not appear necessary to discuss these points in detail.

It is further noted that you do not favour the recommendation of the National Advisory Committee, which was an integral feature of its plan and of the division of tasks which it proposed, that the works on the national section should be given priority over the works on the international section in order to permit an agreed solution of the engineering difficulties in this area, and to ensure reasonable absorption of the power developed on the Canadian side. In view of the fact that the market for hydro-electric power in Canada, though large and rapidly expanding, has definite limitations, and that export of power is considered contrary to public policy, it is an essential factor in any plan economically feasible from the Canadian standpoint that, whether through the priority procedure set out by the National Advisory Committee or by some alternative method, the development of power to be utilized in Canada should not outrun the capacity of the Canadian market to absorb and thus to meet the proportion of the costs of the waterway fairly chargeable to power.

The National Advisory Committee laid emphasis on another phase of the situation—the necessity of reconciling the divergent views of the two sections of the Joint Board of Engineers as to the best method of development in the international section of the St. Lawrence. Definite and agreed engineering proposals for the development of this section would appear to be a necessary preliminary to any computation of costs or decision as to the order of construction or division of tasks. His Majesty's Government in Canada has previously referred to the view of the National Advisory Committee, which it shares, that a conference should be held between the Canadian section of the Joint Board and engineers representing the Province of Ontario. It would appear advisable that such a conference should be followed by re-consideration of the engineering problems in the international section by the whole Joint Board.

Reference was made in my previous note to certain constitutional questions affecting the Canadian situation, and to the intention of His

Majesty's Government in Canada, in accordance with the wishes of the Governments of Ontario and Quebec, to seek a solution by reference to the Courts. Steps have since been taken to this end, and it is anticipated that the reference will come before the Supreme Court of Canada at an early date.

It was further indicated in my previous note that, with the constitutional question in process of solution, His Majesty's Government in Canada would be in a position, upon learning whether the Government of the United States considered that the procedure suggested by the National Advisory Committee formed an acceptable basis of negotiation, to consult with the Provinces of Ontario and Quebec upon the aspects of the problem with which they may be concerned. While the acceptance by the United States of this basis of negotiation is attended with important qualifications, yet the position of the Government of the United States has been made sufficiently clear and definite to permit the Government of Canada to take the necessary step thus contemplated and discuss with the provinces the aspects in question. Following this consultation, His Majesty's Government in Canada will be in a position to inform the Government of the United States further of its views on the proposals contained in your note of March 12th.

I have [etc.]

LAURENT BEAUDRY
(For the Minister)

711.42157 Sa 29/434

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, April 7, 1928.

SIR: I have the honor to receive your note of April 5, 1928, with reference to the negotiations between the Canadian Government and the United States looking to the construction of the deep St. Lawrence waterway. I note your suggestion that the position of the United States has been made sufficiently clear and definite to permit the Government of Canada to take the necessary steps contemplated and to discuss with the provinces of Ontario and Quebec the aspects in question. I entirely agree with you that there is no reason why at this time the Government of Canada should not take up such discussion with the provinces.

I note also that His Majesty's Government of Canada suggests that it would be advisable that definite and agreed engineering proposals for the development of the International Section would appear to be necessary preliminary to any computation of costs or decision as

to the order of construction or division of tasks and that a conference should be held between the Canadian section of the Joint Board and engineers representing the province of Ontario. Further that it would be advisable that such a conference should be followed by reconsideration of the engineering problems in the International Section by the whole Joint Board. Of course, the Government of the United States fully realizes the desirability of the Canadian Government's consultation with the provinces and with the Canadian section of the Joint Board of Engineers. The United States section of the Joint Board will be prepared at any time to take up with the full Board and discuss and reconsider engineering problems connected with the construction of the International Section. I have the honor to suggest, however, that it would seem as though the entire subject of treaty negotiation need not be postponed until the termination of these discussions and of the reconsideration by the Joint Board of Engineers and that it might be desirable for the negotiations to go on concurrently with the examination of such engineers as their advice and assistance would be necessary. The United States will be prepared to cooperate to the fullest extent with the Canadian Government at any time for the purpose of accomplishing the improvement contemplated.

Accept [etc.]

FRANK B. KELLOGG

**REFERENCE TO INTERNATIONAL JOINT COMMISSION OF CERTAIN
QUESTIONS RELATING TO DAMAGES TO PROPERTY IN THE STATE
OF WASHINGTON BY FUMES FROM THE SMELTER AT TRAIL, B. C.**

711.4215 Air Pollution/37a

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

No. 111

WASHINGTON, December 20, 1927.

SIR: American property owners in the State of Washington on the American side of the boundary between the United States and Canada have complained of extensive damages to their properties including trees and crops resulting from the drift of fumes from the works of the Consolidated Smelting and Mining Company of Canada, Limited, at Trail, British Columbia.

In compliance with instructions from the Department the Consul General at Ottawa brought this question to the attention of the Canadian authorities.⁴⁹ In a despatch dated August 20, 1927, from the Consul General⁵⁰ it was stated that the matter had been referred to

⁴⁹ Previous correspondence not printed.

⁵⁰ Not printed.

the British Columbia authorities for investigation and report, and that he had received a communication from the Acting Under-Secretary of State for External Affairs informing him that steps had been taken to have the submission of the report expedited.

In the judgment of the Department this is a question which might be referred for examination and report to the International Joint Commission in pursuance of Article IX of the Boundary Waters Treaty Between the United States and Canada of 1909.⁵¹ In view of the fact that American properties have been damaged by the fumes from the smelting works at Trail, British Columbia, over a period of several years and the Canadian authorities have not as a result of representations made by the Consulate General taken any definite steps to afford relief to the American property owners, it is desired that you inquire of the Canadian Government whether it would be agreeable to having a joint reference of this matter made by the two Governments to the International Joint Commission for examination and report.

It is requested that you inform the Canadian Government that this Government suggests that it be provided in the terms of reference to the Commission that the Commission shall make an investigation in order to determine the extent to which properties on the American side of the boundary have been injured or destroyed as a result of the fumes, and the extent of damages caused to property owners, and to submit a report containing its findings on these questions and recommendations as to such measures as in the view of the Commission will protect the American property owners from damage by these fumes in the future. In taking up the matter with the Canadian Government, you should request that if it agrees in principle to the suggested terms of the reference, it designate a scientist to confer with a scientist to be designated by this Government and prepare the exact terms of reference.

As the American property owners desire that some action be taken as soon as possible with a view to remedying the situation complained of it is requested that you inform the Department as soon as possible of the views of the Canadian Government in regard to this proposal.

I am [etc.]

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

⁵¹ *Foreign Relations*, 1910, p. 532.

711.4215 Air Pollution/48

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

No. 160

WASHINGTON, February 18, 1928.

SIR: In your despatch No. 182 of December 22, 1927,²² you reported that you had addressed a note to the Secretary of State for External Affairs, suggesting that the question of the extent of damages to trees and crops of property owners in the State of Washington from the drift of fumes from the Consolidated Smelting and Mining Company of Canada be referred to the International Joint Commission for investigation, report and recommendations.

The complaint of property owners in Washington whose property has been damaged by the fumes from the smelter was called to the attention of the Canadian Government by the Consulate General at Ottawa as long ago as June 1927.

If the matter is to be referred to the Joint Commission as suggested it will be necessary to obtain from the present Congress an appropriation to defray the portion of the cost of the investigation which will be chargeable to the United States. It is therefore important that the Department be informed at an early date regarding the attitude of the Canadian Government with respect to the suggested reference to the Joint Commission.

The Department will appreciate anything that you can do to expedite a reply to the note which you stated in your 182 of December 22, 1927, had been addressed to the Secretary of State for External Affairs.

I am [etc.]

For the Secretary of State:

WILBUR J. CARR

711.4215 Air Pollution/49

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

No. 259

OTTAWA, February 27, 1928.

[Received March 1.]

SIR: Referring to the Department's instruction No. 160, of February 18, concerning the question of the extent of the damages to trees and crops of property owners in the State of Washington from the drift of fumes from the Consolidated Smelting and Mining Company of Canada, I have the honor to transmit herewith enclosed an original duplicate, with enclosures, of a note received from the Department of External Affairs today on this subject.

²² Not printed.

In view of the observations of the Secretary of State for External Affairs on page 2, I should be pleased to be instructed as to what further action, if any, the Department desires the Legation to take in the matter.

I have [etc.]

For the Minister:

H. DORSEY NEWSON

Second Secretary of Legation

[Enclosure]

The Canadian Secretary of State for External Affairs (Mackenzie King) to the American Minister (Phillips)

OTTAWA, 24 February, 1928.

SIR: I have the honour to refer again to your despatch No. 68 of December 22nd, 1927, regarding a complaint by certain property owners in the State of Washington as to damage to their properties from fumes from the works of the Consolidated Smelting and Mining Company of Canada at Trail, British Columbia.

A lengthy report has now been received from the Government of British Columbia. I am enclosing the summary presented by A. G. Langley, Resident Mining Engineer, in charge of the investigation, to the Provincial Minister of Mines.⁵³ I am also enclosing an extract from a statement by R. C. Crowe, solicitor to the Consolidated Mining and Smelting Company, dated November 23rd, 1927,⁵³ and report of a trip to Trail made May 28th to June 8th, 1926, by Dr. R. W. Thatcher, Director of the Agricultural Experimental Station, Cornell University, New York.⁵³ We have also been supplied with a copy of the report on agricultural conditions by A. T. Crandall of the Smelter Smoke Department of the Anaconda Copper Company; a report on the areas and crops near Northport by F. Mathews, Smelter Smoke expert of Salt Lake City, Utah; an excerpt from a report by Macy H. Lapham, Soil Scientist, United States Department of Agriculture Bureau of Soils; a summarized report of Smelter Smoke Investigation by Dr. Ray E. Neidig, Professor in the Department of Agriculture, University of Idaho, Moscow, Idaho, and other documents.

The reports would appear to indicate that in some instances damage had been done by the fumes, though the claims which have been put forward in the State of Washington as to the extent of the damage and the compensation to be expected have not been accepted by the Company and would not appear to be borne out by the reports sub-

⁵³ Not printed.

mitted. The Company has, however, expressed its willingness to settle all reasonable claims and has appointed Dr. Neidig to endeavour to make equitable arrangements as regards claims. It is pointed out that while on the Canadian side of the line the Company has been able to purchase lands or easements in the areas affected, it has not been found possible to follow a similar course in the State of Washington as the laws of the State prohibit an alien corporation purchasing land or easements.

I am to ask whether in the light of the reports transmitted herewith the Government of the United States still considers that it would be desirable to make a reference to the International Joint Commission, and whether, in case such a reference were made, there is ground for believing that through the agency of the International Joint Commission, or otherwise, facilities could be secured for enabling the Company to make the purchases of land or easements which it is claimed are essential to any final settlement of the difficulty.

I have [etc.]

For the Secretary of State for External Affairs:

O. D. SKELTON

711.4215 Air Pollution/49

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

No. 177

WASHINGTON, *March 12, 1928.*

SIR: The Department has received the Legation's despatch No. 259 of February 27, 1928, transmitting a copy of a note, dated February 24, 1928, received by the Legation from the Department of External Affairs, in regard to the complaint of property owners in the State of Washington about damages to their properties from fumes emitted at the plant of the Consolidated Smelting and Mining Company of Canada at Trail, British Columbia. Inquiry is made in the note whether the Government of the United States still considers it desirable to refer the matter to the International Joint Commission and whether there is reason to believe that through the Commission or otherwise provision can be made for the purchase by the Company of the land or easements.

While reference is made in the note to reports and communications from Mr. A. G. Langley, Resident Mining Engineer, Mr. R. C. Crowe, Solicitor of the Consolidated Mining and Smelting Company, Dr. R. W. Thatcher, Director of the Agricultural Experimental Station, Cornell University, Mr. A. T. Crandall of the Anaconda Copper Company, Mr. F. Mathews of Salt Lake City, Mr. Macy H. Lapham, of the United States Department of Agriculture and Dr. Ray E. Neidig of the University of Idaho, only the reports of Messrs.

Langley, Crowe and Thatcher accompanied the Legation's despatch. Moreover, exhibits mentioned in Mr. Langley's report did not accompany the despatch.

Although the reports of the gentlemen mentioned in the note of the Department of External Affairs doubtless contained useful information, it is not felt that the conclusions reached by them can be accepted by the Government of the United States, without further investigation, as a basis of adjustment. Nor does the Government of the United States consider that it has been demonstrated that the purchase of the land or easements thereon by the Consolidated Smelting and Mining Company is essential to any final adjustment of the difficulty.

The information contained in the enclosures to the note of the Department of External Affairs does not conform to the information which has been furnished this Department regarding the character and extent of the damages and the number of complainants. It is felt that an impartial investigation of the matter is essential to the adoption of any satisfactory basis of adjustment. It is probable that if the matter is referred by the two Governments to the International Joint Commission for investigation, report and recommendation, the Commission, after investigation, might be in a position to recommend a method of adjustment which would render unnecessary the purchase of the land or easements thereon. The Government of the United States therefore, does not desire to consider any plan contemplating the purchase of the land or easements until the International Joint Commission shall have investigated the matter and submitted a report with recommendations.

You will please communicate with the Department of External Affairs in the sense of the foregoing and express the hope that the Canadian Government will agree, without further delay, to refer the problem to the International Joint Commission. The importance of an early decision is indicated by the Department's No. 160 of February 18, 1928, to the Legation.

I am [etc.]

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

711.4215 Air Pollution/57

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

No. 375

OTTAWA, April 26, 1928.

[Received May 1.]

SIR: Referring to the Department's instruction No. 177, of March 12, 1928, in regard to the complaint of property owners in the State of Washington about damages to their properties from fumes emitted

by the plant of the Consolidated Smelting and Mining Company of Canada, at Trail, British Columbia, and to the Legation's telegram No. 78, April 26, 1 p. m.,⁵⁴ I have the honor to transmit herewith enclosed copy of a note dated April 25, 1928, from the Department of External Affairs.

It will be observed from the enclosure that the Canadian Government is prepared, in pursuance of Article 9 of the Treaty of 1909, to join in a reference to the International Joint Commission to determine the extent of injury of the property and to submit a report as to how adequate compensation may be provided.

The Canadian Government, it will be noted, will be further prepared to adopt the suggestion that it should designate a scientist to confer with a scientist to be designated by the Government of the United States to prepare the exact terms of reference.

I have [etc.]

For the Minister:

H. DORSEY NEWSON

Secretary of Legation

[Enclosure]

The Canadian Secretary of State for External Affairs (Mackenzie King) to the American Minister (Phillips)

OTTAWA, 25 April, 1928.

SIR: I have the honour to acknowledge your note of March 16th, 1928, in regard to the complaint of property owners in the State of Washington of damage to their properties from fumes emitted by the plant of the Consolidated Smelting and Mining Company of Canada at Trail, British Columbia.

I observe that it is considered that the conclusions set forth in the report from the Government of British Columbia, which was transmitted to you on the 24th February, 1928,⁵⁵ cannot be accepted by the Government of the United States as a basis of adjustment without further enquiry, and that the information contained in the report in question does not conform exactly to that furnished the Department of State from other sources. It is also noted that the Government of the United States does not consider that it has been demonstrated that the purchase of land or easements by the Consolidated Smelting and Mining Company, as to which the laws of the State of Washington impose difficulties, is essential to any final adjustment of the difficulty, though no alternative method of providing compensation is indicated.

In view of the difference of opinion as to the extent and importance of the damages said to be involved, the Canadian Government agrees

⁵⁴ Not printed.

⁵⁵ Report not printed.

that it is desirable to have an impartial investigation. It would therefore be prepared, in pursuance of Article 9 of the Boundary Waters Treaty of 1909, to join in a reference to the International Joint Commission, requesting the Commission to determine the extent, if any, to which properties in the State of Washington have been injured or destroyed as the result of the drift of fumes from the works of the Consolidated Smelting and Mining Company at Trail, and to submit a report giving their findings and recommendations as to how adequate compensation may be provided for such damages as are established.

The Canadian Government will be further prepared to adopt the suggestion that it should designate a scientist to confer with a scientist to be designated by the Government of the United States to prepare the exact terms of reference.

I have [etc.]

For the Secretary of State for External Affairs:

O. D. SKELTON

711.4215 Air Pollution/57 : Telegram

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

WASHINGTON, May 4, 1928—6 p. m.

49. Your despatch 375, April 26, also 305, March 23.⁵⁶

In Department's 111, December 20, it was proposed that the Commission be authorized (1) to investigate the extent to which properties on the American side have been injured or destroyed as a result of fumes; (2) to investigate the extent of damages caused to property owners on the American side; (3) to submit recommendations as to measures to protect property owners from damage by fumes in the future. Answer of Canadian Government does not cover number (3).

Take up question immediately and inquire whether Canadian Government is not willing that number (3) should be incorporated in the reference to the Commission.

In view of the importance which is attached to this matter by residents in the section affected and by Senators from the State of Washington, it is desired that you urge upon the Canadian Government the desirability of making the reference sufficiently broad to admit of the Commission considering and reporting on all elements of the problem which are essential to a proper and satisfactory solution of the difficulty.

KELLOGG

⁵⁶ Latter not printed.

711.4215 Air Pollution/64 : Telegram

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

OTTAWA, June 28, 1928—3 p. m.

[Received 4:12 p. m.]

139. Your 86, June 27, 2 p. m.⁵⁷ In a further discussion this morning regarding Trail smelter two points were raised:

1. The possibility that article 9 of the boundary waters treaty of 1909 does not include matters in dispute between private persons on either side of the boundary. In reply I pointed out that first paragraph of article 9 seems to cover this particular case entirely.

2. Even though Canadian Government may not be disposed to press point 1, it is still reluctant to authorize Commission to submit recommendations for measure to protect property owners from damages by fumes in the future. (See my confidential despatch 305 March [23, 1928].)⁵⁷ Feeling here is that damages should be paid all sufferers in the past as well as in the future until the company has its own disposition of smoke and fumes. Experiments to this effect are going forward intensively and with considerable success.

Since Magrath, Chairman of the Canadian Commission, is now in Europe and will not return until the end of July and since another Canadian member will probably resign within a week, External Affairs does not see how it would be possible to summon Joint Commission before the end of July. Under Secretary thinks that immediately upon Magrath's return Commission would be ready to act and that since vegetation will still be in foliage this would not be too late. A written reply is promised me next week.

PHILLIPS

711.4215 Air Pollution/67 : Telegram

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

WASHINGTON, June 29, 1928—8 p. m.

88. Department informed that Consolidated Smelting and Mining Company plans to enlarge smelter. This information, reaching Department after futile efforts of American property owners in Washington State to obtain from company indemnity for damages already suffered from operation of Trail Smelter and after Department has persistently endeavored, so far without success, to get whole problem before International Joint Commission, is disturbing to Government of the United States. The government cannot be indifferent to the destruction of property, impairment of human, animal and plant

⁵⁷ Not printed.

health and despoiling of homes entailing ruin to considerable number of American citizens which operations of Trail smelter has caused or threatens.

Government of the United States is confident that Canadian Government will agree that private enterprises, however profitable, should not be permitted to operate without restriction to detriment of neighboring home owners. Two governments already committed to principle that private enterprises in territory of one country are not to be permitted to operate without restraint and without regard to effect in other country.

Probable enlargement of smelter at Trail emphasizes urgency of getting problem before Joint Commission. Communicate with Canadian government in sense of foregoing and urge that Canadian government agree without further delay to proper submission of whole question to International Joint Commission and that restrictions be placed on operation of smelter which will serve to check drifting of fumes to United States and consequent devastation.

Department hopes that Canadian government can be induced to single out this fumes matter for immediate attention in order that damages already inflicted may be redressed and further irreparable injury prevented.

KELLOGG

711.4215 Air Pollution/67 : Telegram

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

OTTAWA, June 30, 1928—1 p. m.

[Received 2:10 p. m.]

143. In the absence of Prime Minister this morning presented personally to the Under Secretary of State for External Affairs strong note following your 86 [88], June 29, 8 p. m., regarding Trail smelter. Am making every possible effort to arrange precise terms of reference.

PHILLIPS

711.4215 Air Pollution/64 : Telegram

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

WASHINGTON, July 2, 1928—1 p. m.

90. Your 139, June 28, 3 p. m. Department is surprised at apparent unwillingness of Canadian Government to join Government of United States in reference to International Joint Commission of questions arising from deposit of fumes in State of Washington from Trail

Smelter in a form which will admit of Commission rendering the greatest possible degree of assistance to the two governments and to inhabitants of both countries in solution of a problem which is daily becoming more aggravating.

Emission of fumes from Trail Smelter with consequent devastation in Washington presents question of grave concern to inhabitants of that state. Government of United States and Government of Canada are necessarily interested in solution.

International Joint Commission was established and is maintained by the two governments at large expense for the purpose of dealing with border problems and it would occasion keen regret if utility of the Commission were impaired by refusal of Canadian Government to submit to the Commission in proper form the questions which the Commission was established to investigate.

The Government of the United States is satisfied that the fumes from the Trail Smelter cause and threaten damage on a large scale to animal and plant life and probably to the health of the inhabitants. A sovereign state has a right to expect that the soil and the air over its territory shall not be polluted by agencies beyond its control and if the Canadian Government is unwilling to arrange for a proper reference of this question to the International Joint Commission the Government of the United States must look to the Government of Canada to suppress the nuisance which has caused such large damage to inhabitants of the United States and threatens to force the removal of entire communities.

The absence of the Chairman and forthcoming resignation of another member of the Canadian Section of the Commission presents no reason for delay in submitting problem to the Commission. Some time may be required for Commission to study matter before investigation can be planned and matter ought to be put before Commission so that available members can be studying it preparatory to convening of whole Commission. It seems obvious that if question is not put before Commission at once, little if any progress in investigation will be made by Commission this summer season.

If Canadian Government has any other solution to propose than reference to Joint Commission, Government of the United States desires to know what it is. It is imperative, however, that early indemnification of American citizens for losses already inflicted on them be arranged and that further spoliation of their homes and interests be prevented.

Please address note to Canadian Government in sense of foregoing and urge immediate action.

CASTLE

711.4215 Air Pollution/73 : Telegram

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

OTTAWA, July 11, 1928—7 p. m.

[Received 9:25 p. m.]

151. Your 90, July 2, 1 p. m., regarding Trail smelter. After many conferences on the subject am today in receipt of note dated July 11⁵⁸ which after reciting conflict of information concerning extent of damages inflicted agrees with view of Government of the United States as to the necessity of establishing actual facts of the situation by thorough inquiry by an impartial authority; it is not able to see that the findings of such an authority should be prejudged by acceptance of a course of policy based upon one interpretation of the facts which are in dispute. The supposed enlargement of the smelter is said to be a construction now under way of an experimental plant to be built at cost of \$500,000 for the purpose of ascertaining whether it is technically and economically feasible to dispose of deleterious gases in question. In the circumstances Canadian Government considers situation would be fully met by joint reference to International Joint Commission under article 9 of the boundary waters treaty providing inquiry and report upon the facts as to present effect of the fumes upon property in the State of Washington and the probable effect in the future under such plant extensions or modifications in process as are contemplated and as to the extent of damages so caused and [omission?] of providing adequate compensation Canadian Government is prepared to facilitate early reference to Commission and is inclined to believe that a reference could be drawn in general terms leaving it to the Commission to provide for the scientific and other expert inquiries called for.

George W. Kyswo [*Kyte*] of New Brunswick, former Liberal whip, is about to be appointed to fill the vacancy of Henry A. Powell. Magrath, Chairman, is expected to return shortly.

PHILLIPS

711.4215 Air Pollution/74 : Telegram

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

OTTAWA, July 12, 1928—1 p. m.

[Received 1:30 p. m.]

153. My cipher telegram 151, July 11, 7 p. m. Canadian note goes forward today's mail.⁵⁸ The Government here understands that the Canadian Section of the Joint High [*sic*] Commission or representa-

⁵⁸ *Post*, p. 91.

tive thereof is prepared to meet the American Section or its representative between August 1st and 4th at a place to be agreed upon with a view to arranging details for the formal investigation at Trail and also to the appointments of the necessary experts. The Government is asking the Department of Agriculture and the National Research Council to suggest the names of three or more outstanding scientists, possibly one chemist, one horticulturist, and one forester soil expert who would be ready to go immediately to the West for the purpose in question. Please reply by telegraph whether this arrangement meets with the approval of the Department.

PHILLIPS

711.4215 Air Pollution/75

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

No. 516

OTTAWA, July 12, 1928.

[Received July 16.]

SIR: With reference to my telegrams No. 151 of July 11, 7 p. m. and No. 153 of July 12, 1 p. m., in regard to the complaints of property owners in the State of Washington as to damages by fumes from the Trail plant of the Consolidated Smelting and Mining Company of Canada, I have the honor to enclose herewith a copy of the Canadian Government's note of July 11th.

I have had many conferences with the Under-Secretary of State for External Affairs and with the Prime Minister himself, and have lost no opportunity to urge the immediate submission of the complaint to the Joint High [*sic*] Commission. Confidentially, I may point out that there has been a decided reluctance on the part of the authorities here to agree to anything which might appear to endanger the existence of the Consolidated Smelting and Mining Company plant at Trail. As the Department is no doubt aware, the majority of the stock of this important company is owned by the Canadian Pacific Railway, which is the most powerful commercial activity in the Dominion. The Government's reluctance, therefore, to accept completely the Department's point of view in the submission of the matter to the Commission may be accepted, I think, as an indication of the attitude of the Canadian Pacific Railway itself.

The Canadian reply of yesterday's date concludes with the statement that the Canadian Government considers that the situation will be fully met by a joint reference to the International Joint Commission, under Article IX of the Boundary Waters Treaty, providing for inquiry and report upon the facts as to the present effect of the fumes upon property in the State of Washington and the probable

effect in the future under such plant extensions or modifications in process as are contemplated, and as to the extent of damages so caused and methods of providing adequate compensation.

I have [etc.]

WILLIAM PHILLIPS

[Enclosure]

The Canadian Secretary of State for External Affairs (Mackenzie King) to the American Minister (Phillips)

OTTAWA, 11 July, 1928.

SIR: I have the honour to acknowledge your note of July 5th and previous communications, with reference to complaints of property owners in the State of Washington as to damages by fumes from the Trail plant of the Consolidated Smelting and Mining Company of Canada.

I note that the Government of the United States is inclined to the view that any inquiry into the situation should include provision for measures involving restrictions on the operation of the smelter, to check the emission of the fumes of which some part at times drifts across the boundary into the State of Washington. Under present conditions such action, we are advised, would involve disaster for a Canadian industry of predominant importance, and obviously the adoption of such a drastic course could be warranted only if its necessity were established beyond question.

The proposal of this remedy by the Government of the United States appears to rest upon the view that the fumes in question are causing or threatening to cause vast and irreparable damage to plant, animal and even human life in the State of Washington, and to involve the removal of entire communities, and also upon the understanding that the property owners have endeavoured in vain to obtain from the Company indemnity for damages suffered. The Government of Canada is not aware of the evidence upon which these views are based, aside from the affidavits by property owners made in May and June of 1927, of which copies were furnished. Information in its possession, including a detailed report of a responsible officer of the Province of British Columbia, and reports by United States scientists of standing, copies of which were duly forwarded or referred to in my note of the 24th February, 1928, indicate first, that it is held that any damage inflicted in the State of Washington has been slight, second, that the Company has made repeated offers of indemnity and has in fact effected compensation in a number of instances, and third, that a chief difficulty in the way of effecting such indemnity lies in the laws of the State of Washington, which are said to make it impossible for an alien corporation to acquire lands

or easements. In view of this conflict of information, the Canadian Government agrees with the view of the Government of the United States as to the necessity of establishing the actual facts of the situation by thorough enquiry by an impartial authority; it is not able to see that the findings of such an authority should be prejudged by acceptance of a course of policy based upon one interpretation of the facts which are in dispute.

It may be observed that the Province of British Columbia itself has not found it necessary to adopt such a course for the protection of the interests of property owners in the neighbourhood of the smelter. Provision has been made for compensation when damage is established, by direct agreement between the parties, or if this is not possible, by reference to a County Court under the Arbitration Act. While desirous of furthering in the fullest measure within its power the observance of neighbourly policies, the Canadian Government is not aware of any grounds of international comity which would require granting to the inhabitants of a neighbouring country a remedy not accorded to the inhabitants of Canada itself.

The proposal in question is also based upon information conveyed to the Government of the United States to the effect that the Company is planning to enlarge its smelter, from which the inference is apparently drawn that the fumes will be intensified in the future. Inquiry has accordingly been made of the Company. The Canadian Government is informed that the exact contrary is the case. The extension contemplated is stated to be for treatment of residues which are practically sulphurized now, and will not increase the emission of sulphur. The construction now under way consists of an experimental plant to be built at a cost of five hundred thousand dollars for the express purpose of ascertaining whether it is technically and economically feasible to dispose of the deleterious gases in question. It is recognized that the most desirable solution would be a reduction of the emission of any fumes harmful to vegetation if this could be effected with due regard to all the interests involved. The experiments now being carried on, as to which full information would presumably be available in any inquiry, appear to furnish an effective and fully adequate method of seeking such a solution.

In view of these considerations, the Canadian Government considers that the situation would be fully met by a joint reference to the International Joint Commission, under Article IX of the Boundary Waters Treaty, providing for inquiry and report upon the facts as to the present effect of the fumes upon property in the State of Washington and the probable effect in the future under such plant extensions or modifications in process as are contemplated, and as to the extent of damages so caused and methods of providing adequate compensation.

The Canadian Government would be prepared to facilitate in every way an early reference to the Commission, and is not aware of any reason why such an investigation could not be initiated during the summer season. Whether a reference should be framed in detail by scientists nominated by the two Governments, or drawn in more general terms leaving it to the Commission to provide for the scientific and other expert inquiries called for, is a matter which might be considered. The Canadian Government is inclined to believe that the latter course would be more expeditious.

Accept [etc.]

W. L. MACKENZIE KING

711.4215 Air Pollution/74 : Telegram

*The Secretary of State to the Minister in Canada (Phillips)*⁶⁰

WASHINGTON, July 14, 1928—1 p. m.

99. According to rules of International Joint Commission and precedents heretofore established, two governments should refer matter for investigation and report to the Commission. Department not in a position to arrange meeting of American section with Canadian section of Commission. Matter should be referred by two governments to Commission. Two sections of Commission can then arrange for meeting and for prosecution of investigation. Department's efforts have been directed to obtaining reference of smelter matter to Commission in order that Commission would be in a position to move.

Suggestion of Canadian Government communicated your 151, July 11, 7 p. m., that reference be drawn general terms, leaving it to Commission to provide for investigation, conforms to views of United States Government, provided terms are sufficiently broad to permit the Commission under the reference to submit recommendations as to measures which should be adopted to protect property owners in the future. Please advise whether Canadian Government is willing to join in reference in general terms sufficiently broad to include third point designated in Department's number 49, May 4, 6 p. m.

KELLOGG

711.4215 Air Pollution/78 : Telegram

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

OTTAWA, July 16, 1928—6 p. m.

[Received 9:55 p. m.]

154. Department's 99, July 14, 1 p. m. The Under Secretary of State for External Affairs declares that the Canadian Government is

⁶⁰ The substance of this telegram was communicated by the Minister in Canada to the Canadian Department of External Affairs in a memorandum of July 16, 1928 (not printed).

in entire agreement with the Department of State that the two Governments should refer to the Commission the matter for investigation and report, which would then arrange for a meeting and for the prosecution of the investigation. He pointed out that only one member of the Commission might be available for the first meeting. Accordingly it is his understanding that designated members of the Commission could initiate action.

Department's 49, May 4, 6 p. m. Third point was touched upon in the Legation's 305 of March 23⁶¹ which considerations still influence the Canadian Government. Dr. Skelton stated that he felt that note of July 11 inclosure to despatch 516, July 12 answers this point that the recommendation might mean closing of smelter.

PHILLIPS

711.4215 Air Pollution/78 : Telegram

*The Secretary of State to the Minister in Canada (Phillips)*⁶²

WASHINGTON, July 19, 1928—2 p. m.

101. Your despatch No. 516 July 12 and telegram No. 154 July 16, 6 p. m. Department stated it would expect suppression as alternative to proper reference of whole problem to commission which Canadian Government seemed unwilling to have done. Note of Department of External Affairs accompanying your No. 516 leaves Canadian Government in position of refusing to permit commission to investigate and report on measures which should be adopted to protect property owners from future damages because conditions might be found to justify suppression of smelter. Gravity of existing conditions is emphasized by fear of Canadian Government that impartial tribunal might if authorized to do so, recommend suppression of smelter.

Purpose of Government of United States is to have matter referred to commission in form which will admit of commission recommending solution fair to all parties concerned. Please ascertain whether reference to commission for investigation report and recommendation in form specified below is satisfactory to Canadian Government.

1. Extent to which property in state of Washington has been damaged by fumes from smelter at Trail, British Columbia.

2. Amount of indemnity to which American interests in the state of Washington are entitled for past damages.

⁶¹ Not printed.

⁶² The substance of this telegram was communicated by the Minister in Canada to the Canadian Department of External Affairs in a note of July 20, 1928 (not printed).

3. Probable effect in Washington of future operations of smelter.
4. Method of providing adequate indemnity for damages caused by future operations.
5. Any other phase of problem arising from drifting of fumes on which commission deems it proper or necessary to report and make recommendations in fairness to all parties concerned.

Numbers 1 to 4 inclusive constitute adaptation of question to be submitted as defined in note of July 11 from Department of External Affairs⁶³ and number 5 is an addition to question so defined.

KELLOGG

711.4215 Air Pollution/82

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

[Extract]

No. 548

OTTAWA, July 27, 1928.

[Received July 30.]

SIR: I have the honor to transmit herewith enclosed copy of a note received from the Department of External Affairs dated July 26, 1928, with regard to the terms of reference to the International Joint Commission of the Trail Smelter question.

I have [etc.]

For the Minister:

LAVERNE BALDWIN

Secretary of Legation

[Enclosure 1]

The Canadian Secretary of State for External Affairs (Mackenzie King) to the American Minister (Phillips)

The Secretary of State for External Affairs presents his compliments to the Minister of the United States, and has the honour to refer to his memorandum of July 20th⁶⁴ with reference to the complaints of property owners in the State of Washington of damages by fumes from the Trail plant of the Consolidated Mining and Smelting Company of Canada.

The Canadian Government is not able to accept the interpretation of its position which is contained in the memorandum. The view of the Canadian Government was that the gravity of conditions in the State of Washington had not been sufficiently demonstrated to war-

⁶³ *Ante*, p. 91.

⁶⁴ See footnote 62, p. 94.

rant provision of a remedy of the drastic character suggested. It may be added that this is particularly the case since in Canada the control of industrial establishments of this nature falls within the jurisdiction of the provincial rather than of the federal government.

The Canadian Government is, however, pleased to state that it is wholly in sympathy with the wish of the Government of the United States to have the matter referred to the International Joint Commission in a form which will admit of the Commission recommending a solution fair to all parties concerned. It is prepared to agree to a reference in the form proposed in Mr. Phillips' memorandum of July 20th, subject to a verbal alteration, which it trusts will commend itself to the Government of the United States.

The second clause in its present form might be construed as referring to the Commission the decision of the question whether the interests affected are entitled to damages, and the Commission might therefore be restricted in its findings merely to damages that resulted in a legal right vested in interests in the State of Washington. The object of the reference, it is understood, is to establish the amount that would indemnify the aggrieved persons, and with that in view, to obtain the necessary findings of fact. It is therefore proposed that the second clause be amended in such a way as to preclude the possible restriction of the enquiry to claims based on existing legal rights. The following amendment is suggested:

"The amount of indemnity which would compensate United States interests in the State of Washington for past damages".

OTTAWA, 26 July, 1928.

711.4215 Air Pollution/82 : Telegram

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

WASHINGTON, August 1, 1928—6 p. m.

103. Your despatch No. 548 July 27. Amendment proposed by Canadian Government is accepted.

Department understands Canadian Government now ready to have Smelter matter submitted to Commission in form proposed in Department's telegram 101, 2 p. m., July 19, amended as proposed by Canadian Government. Please obtain and telegraph confirmation this understanding.

KELLOGG

711.4215 Air Pollution/83 : Telegram

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

OTTAWA, August 2, 1928—3 p. m.

[Received 4:35 p. m.]

167. Your 103, August 1, 6 p. m. Under Secretary of State for External Affairs informally states the matter will be at once referred to the Prime Minister and considers that there is no doubt of immediate reference in the form proposed.

PHILLIPS

711.4215 Air Pollution/84 : Telegram

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

OTTAWA, August 4, 1928—1 p. m.

[Received 2:06 p. m.]

171. Department's 103 August 1, 6 p. m., Legation's 167, August 2, 3 p. m. Note received from Department of External Affairs dated August 3rd states in the matter of Trail smelter:

"It is the understanding of Canadian Government that the question may now be submitted to the International Joint Commission in the form suggested in your memorandum of July 20 with the amended second clause as set forth above".

Copy by mail.

NEWSON

711.4215 Air Pollution/84 : Telegram

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

WASHINGTON, August 7, 1928—3 p. m.

108. Your 171, August 4, 1 p. m. By letter dated today⁶⁵ Department submitting Trail Smelter matter to International Joint Commission in accordance with agreement.

Please express to Canadian Government this Government's appreciation of its cooperation in this matter.

KELLOGG

⁶⁵ Not printed.

REPRESENTATIONS BY CANADA AGAINST THE FIRING OF BULLETS
INTO CANADIAN TERRITORY BY PREVENTIVE OFFICERS OF THE
UNITED STATES

842.0144/10

The Canadian Minister (Massey) to the Secretary of State

No. 78

WASHINGTON, 27 April, 1928.

SIR: I have the honour to bring to your attention a serious situation which is reported as existing on the international boundary along the Detroit River. It has recently been stated in the Canadian House of Commons by the Member of Parliament who represents that region, that on three occasions within the last month stray bullets, fired by preventive officers of the Government of the United States, have lodged in Canadian territory. In one instance a bullet passed through a house in the town of Sandwich within three feet of a four year old child; the bullet was found and was shown to be from a high powered rifle such as is carried by preventive officers. On another occasion on Saturday April 21st. at 7.15 p. m. while a local resident was driving on the road along the river front from Walkerville to Windsor, a bullet penetrated the wind shield of his automobile and nearly blinded him with broken glass.

I am instructed to request that you will be good enough to have an enquiry made with a view to furnishing an explanation of the events which are reported above, and preventing the occurrence of similar incidents in the future.

I have [etc.]

VINCENT MASSEY

842.0144/10

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, May 1, 1928.

SIR: I have the honor to acknowledge the receipt of your note No. 78, dated April 27, 1928, concerning stray bullets alleged to have been fired by preventive officers of the Government of the United States, which have lodged in Canadian territory. You request that an inquiry be made with a view to furnishing an explanation of the events set forth in your note and preventing the occurrence of similar incidents in the future.

I have requested the appropriate authorities of this Government to cause an investigation to be made with respect to these matters and upon receipt of replies a further communication will be addressed to you. It would be helpful if you could find it possible to furnish

a complete statement of the facts and circumstances under which these incidents occurred, including the names of the persons injured, the approximate place at which each incident occurred, the approximate place on the boundary of the United States from which the shots are alleged to have been fired, and the grounds for believing that preventive officers of this Government fired the shots. Such information would greatly facilitate the investigation of these incidents, which I assure you this Government is anxious to make in order to ascertain whether the charges are warranted and if so to punish the guilty persons.

Accept [etc.]

FRANK B. KELLOGG

842.0144/16

The Acting Secretary of State to the Canadian Chargé (Beaudry)

WASHINGTON, August 30, 1928.

SIR: I have the honor to refer to Mr. Massey's notes of April 27 and May 26, 1928,⁶⁶ in regard to several occasions on which stray bullets, alleged to have been fired by preventive officers of the United States Government, have landed in Canadian territory in the vicinity of the Detroit River.

A thorough investigation of the incidents mentioned in those notes has been made. From this investigation it appears evident that in Incident No. 1, mentioned in Mr. Massey's note of May 26, the bullet which passed through the window of a house occupied by Mrs. Arthur Powers at 24 Wyandotte Street, Sandwich, Ontario, was from the revolver of an employee of this Government. In this regard it seems pertinent to mention that prior to the recent investigation of these incidents, there seemed to be a misapprehension on the part of many of the preventive officers in regard to the distance which bullets from their revolvers would carry, and, according to my information, most of the officers appeared to believe that there was no danger of bullets from their weapons carrying across the Detroit River. In the circumstances, I wish to express the regret of this Government at this incident and to assure you that steps have been taken which should preclude any repetition of such occurrences.

Incident No. 2, mentioned in Mr. Massey's note of May 26, relates to the case of Mr. Edward Warren of Windsor, whose automobile was struck by a missile at 7 p. m. on April 21, 1928; the windshield of Mr. Warren's car was shattered and his face was cut by fragments of

⁶⁶ Latter not printed; it supplied additional details regarding the incidents mentioned in the note of April 27, p. 98.

broken glass. In the investigation which has been made of this incident, the evidence tends to show that Mr. Warren's windshield was struck by a bullet which probably originated on the American side of the river. There appears, however, to be no evidence whatever that the bullet was fired by officers of this Government. Preventive officers of the several departments of the United States Government in the vicinity of Detroit are emphatic in their denial that any shots were fired by them at the time of this incident.

The third incident, mentioned in the note under reference, concerns a bullet or bullets which struck a metal sign beside the White Star gasoline station in Sandwich on the afternoon of April 2, 1928. The investigation of this case indicates that these bullets might have originated on either side of the river. Since the bullets were not found, and since Mr. Clifford Thomas, an employee of the White Star gas station appears to be the only person who knows anything about this incident, it was found to be virtually impossible definitely to fix the origin of these bullets.

Accept [etc.]

W. R. CASTLE, Jr.

842.0144/26

The Canadian Minister (Massey) to the Secretary of State

No. 145

WASHINGTON, 1 October, 1928.

SIR: I have the honour to acknowledge the receipt of Mr. Castle's note of August 30th, 1928, in which he informed the Legation of the results of the investigation, conducted by the appropriate authorities of the Government of the United States, into certain incidents in which bullets apparently fired from territory of the United States had landed in Canadian territory in the vicinity of the Detroit River. These incidents I brought to your attention in my note Number 93 of May 26th, 1928.⁶⁷

I am instructed to express to you the appreciation of His Majesty's Government in Canada at the action which has been taken in investigating the incidents in question, and particularly to acknowledge the expression of regret in regard to the first incident which Mr. Castle was good enough to offer in his note under reference.

I have [etc.]

VINCENT MASSEY

⁶⁷ Not printed.

PROPOSED EXCHANGE OF COMMERCIAL AVIATION ATTACHÉS
BETWEEN THE UNITED STATES AND CANADA

701.4211/80

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

No. 271

OTTAWA, March 6, 1928.

[Received March 9.]

SIR: I have the honor to report that Wing Commander J. Lindsey Gordon called upon me this morning and informally gave me his views in regard to the desirability of establishing in the American Legation in Ottawa and in the Canadian Legation in Washington official representatives who would concern themselves with the development of commercial aviation between the two countries. Wing Commander Gordon is the new Director of Civil Government Air Operations. He foresees the early development of civil aviation between Canada and the United States, and believes that it will be of great assistance, certainly from the point of view of Canadian interests, to have a representative of American aviation with whom his associates can be in close touch.

Canada, he reminded me, was a member of the International Convention for Air Navigation, signed in 1919,⁶⁸ which grew out of a sub-division of the Peace Conference. Already Canada appreciates the fact that certain aspects of this convention are inappropriate for the development of civil aviation in this country, in view of the fact that the United States is not signatory to the convention in question. According to Wing Commander Gordon, the Dominion must follow the development of commercial aviation in the United States rather than in Europe, and being a small country must be guided by the rules and regulations adopted by its powerful neighbor. He feels that it would be very helpful for Canada to keep in touch with the progress of aviation in the United States, and perhaps from time to time to be able to express the Canadian viewpoint on matters which would touch upon the extension of commerce by air across the border.

He gave me the impression that an exchange of military attachés for air was not what he had in mind. Already, he said, through the intermediary of the British Attaché for Air in Washington, the Canadian Government was able to obtain such information of a military character as it desired. This country's concern is not to obtain additional military information, but to keep in touch with all the aspects of the development of civil aviation on this continent.

⁶⁸ *Foreign Relations*, 1926, vol. I, p. 152.

He thought that a representative of the Aeronautics Branch of the Department of Commerce might well be appointed to Ottawa, and that his assignment to the Legation here would be greatly appreciated. His views, he said, represented those of the Deputy Minister of National Defence, and he was authorized so to advise me.

As I have already pointed out, the call of Wing Commander Gordon was a purely personal one and should not be taken, therefore, as any official step on the part of the Dominion Government towards an exchange of civil air attachés.

I venture to express the hope, however, that the Department will give careful consideration to this subject, and should it be found practicable to adopt the suggestion of the appointment of an air attaché, that I may be instructed to sound the Dominion Government informally in order to obtain an expression of its views.

I have [etc.]

WILLIAM PHILLIPS

701.4211/84

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

No. 201

WASHINGTON, April 12, 1928.

SIR: The Department has received your despatch No. 271 dated March 6, 1928, reporting that Wing Commander J. Lindsey Gordon suggested to you the desirability of establishing in the American Legation at Ottawa and in the Canadian Legation at Washington official representatives who would concern themselves with the development of commercial aviation between the two countries.

A copy of your despatch was forwarded to the Secretary of Commerce with the request that he furnish the Department with any comments he might care to make in regard to this matter. A letter dated March 30, 1928, has now been received from the Secretary of Commerce,⁶⁹ approving in general terms of the proposed exchange of commercial aviation attachés at some future time.

In the Department's opinion, it is doubtful whether commercial aviation has reached a stage of development in either the United States or Canada to warrant the appointment of officials of this nature.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, JR.

⁶⁹ Not printed.

**EMBARGO ON THE IMPORTATION OF PEACHES INTO CANADA FROM
THE UNITED STATES**

842,612 Peaches/5

The Secretary of State to the Consul General at Ottawa (Foster)

WASHINGTON, June 11, 1927.

SIR: There is enclosed for your information and guidance a copy of a letter, dated June 3, 1927, from the Acting Secretary of Agriculture⁷⁰ relative to the embargo against the importation into the Dominion of Canada of fresh peaches and peach nursery stock from certain states of the United States. You are instructed to bring this matter immediately to the attention of the appropriate Canadian authorities with the view to securing a removal of the embargo at the earliest date possible.

In making your representations in this regard the following points should be emphasized:

1. That the embargo, other than that section of it applicable to importations into British Columbia, appears to be no longer justifiable on the ground of protection against pests, and is consequently in violation of the "contiguous country policy", adopted in the interests of Canada.

2. That the pest in question, the Oriental peach moth is, according to the information available to the Department, already prevalent in Canadian peach growing areas, notably that of the Niagara Peninsula.

3. That, whereas the Oriental peach moth is stated to have come to both the United States and Canada through the importation of flowering cherry trees from Japan, the United States has long maintained a quarantine on this pest carrier, while Canada has not.

4. That although the Destructive Insect and Pest Act Advisory Board is said to have recommended the removal of the embargo for all the states concerned, it was lifted only for peaches from Arkansas. There appears to be no valid reason for this discrimination against the other states.

5. That, finally, as the peach crop is already in movement and important interests in the United States are anxious for the opening to it of the Canadian market, a prompt decision is wanted.

In this last connection, you are informed that Senator Harris, of Georgia, and several representatives of the peach growers of that state, have communicated to the Department their interest. The Georgia peach crop is the most considerable of those of the states affected by the embargo, as well as one of the earliest in the market.

⁷⁰ Not printed.

Before this month has elapsed, several thousand carloads of peaches from that state will already have been routed to their destinations.

It is desired that you inform the Department at frequent intervals of the progress of your efforts to secure the removal of the embargo.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

842.612 Peaches/14

The Consul General at Ottawa (Linnell) to the Secretary of State

No. 22

OTTAWA, July 18, 1927.

[Received July 19.]

SIR: Reference is made to the Department's instruction of June 11, 1927, with which was transmitted a copy of a letter from the Acting Secretary of Agriculture, concerning the embargo against the importation into the Dominion of Canada of fresh peaches and peach nursery stock from certain States of the United States.

As was reported in Mr. Hickerson's despatches No. 6695 of June 23, 1927, No. 6675 of June 15, 1927, and No. 6673 of June 14, 1927,¹ it proved to be impossible to obtain a definite decision from the Canadian Department of Agriculture until the return of Mr. Motherwell, the Minister of Agriculture.

Mr. Motherwell returned to Ottawa on July 14th, and an interview was arranged with him for July 16th, which was the earliest date possible, when I attended at his office with Mr. Hickerson. Dr. J. H. Grisdale, the Deputy Minister of the Canadian Department of Agriculture, was also present at the interview.

The representations suggested by the Department in its instruction of June 11th, and Mr. Marvin's letter to the Department of June 3rd, were again presented fully to Mr. Motherwell, but he replied that he was not convinced that the fact that Canada now has some of the oriental peach moth, was any reason why Canada should take any chances of admitting more of these moths to the peach-growing areas. The only peach growing areas of Canada are in the Provinces of Ontario and British Columbia, and the final result of the conference was that Mr. Motherwell agreed to consider whether it would be possible to raise the embargo against American peaches for all the provinces of Canada, other than the provinces of Ontario and British Columbia.

Mr. Motherwell also pointed out that the statement made by the United States Department of Agriculture, (bottom of page 1 in its

¹None printed. John D. Hickerson was the consul in charge at Ottawa.

letter of June 3rd, referred to above), that "Canada has placed no restrictions on the movement of fruit to other parts of the Dominion from infested areas in Ontario where the peach crop is an important feature" is incorrect, since Canada has an embargo against the shipment of peaches from Ontario to British Columbia.

It is appreciated that the province of Ontario is the most densely populated province and furnishes one of the principal possible markets for American peaches, but Mr. Motherwell said that under present conditions, he did not feel that the embargo could be removed for Ontario, in any event. He promised to give a definite answer concerning the removal of the embargo for the provinces, other than Ontario and British Columbia, as soon as possible, probably by July 20th or 21st.

In the course of the conversation, he intimated that he would have liked to have dealt personally with Mr. Jardine, the Secretary of the United States Department of Agriculture in this matter, and had hoped to have seen him at the Poultry Congress, which begins in Ottawa on July 27th.

Mr. Motherwell also stated that his Department had been unable to ascertain definitely with reference to Georgia, Michigan and Illinois, in particular, what measures have been taken to control the peach moth and to what extent these measures have been effective.

I have [etc.]

IRVING N. LINNELL

842.612 Peaches/15 : Telegram

The Secretary of State to the Consul General at Ottawa (Linnell)

WASHINGTON, August 8, 1927—1 p. m.

Your despatch No. 22, July 18, 1927, stated Motherwell promised decision respecting peach embargo by July 21. Please telegraph status of this matter. Peach interests are pressing for action.

KELLOGG

842.612 Peaches/20 : Telegram

The Consul General at Ottawa (Linnell) to the Secretary of State

OTTAWA, August 13, 1927—noon.

[Received 2:20 p. m.]

Order in Council dated August 11 just issued to the following effect.

1. Importation of fresh peaches and peach nursery stock into Province of Ontario prohibited from all States east Mississippi and St. Croix Rivers.

2. Importation of fresh peaches, peaches nursery stock and peach fruit pits or seeds for propagating purposes into Province of British Columbia prohibited from above stated area and from Arkansas, Louisiana, Missouri and Texas.

3. All importations fresh peaches and nursery stock consigned to places in Ontario and originating in States other than mentioned in section 1 and peach fruit pits or seeds for propagating purposes consigned to places in British Columbia and originating in States other than those mentioned in sections 1 and 2 cannot be released from customs unless entry papers accompanied by a statement signed by consignor indicating name of State in which products originated.

4. This regulation does not prohibit the movement fresh peaches, peach nursery stock, or peach fruit pits of whatever origin passing through Ontario on a through bill of lading and consigned to places in Canada outside Ontario with the exception of British Columbia. Full report by mail.

LINNELL

842.612 Peaches/32

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

No. 183

WASHINGTON, March 20, 1928.

SIR: On June 11, 1927 the Department instructed the American Consul General at Ottawa to take up with the appropriate Canadian authorities the matter of an embargo against the importation into Canada of fresh peaches and peach nursery stock from certain States of the United States and to endeavor to bring about a removal of this embargo.

Through the efforts of the Consulate General, the Canadian Government was persuaded to remove the embargo from all of Canada except the two Provinces which grow peaches, namely British Columbia and Ontario. Reference is made in this regard to Mr. Newsom's despatch No. 61 of August 18, 1927,⁷² transmitting a copy of the Order-in-Council of August 11 incorporating the above mentioned changes.

Senator Harris wrote the Department on March 10, 1928,⁷³ referring to the efforts made last summer to bring about a removal of this embargo and inquiring whether it would be possible to obtain at this time a removal of the embargo against the importation of American peaches into the Province of Ontario.

⁷² Not printed; see telegram of Aug. 13, 1927, noon, from the Consul General at Ottawa, *supra*.

⁷³ Letter not printed.

The Department desires that you take up this matter with the appropriate Canadian authorities and that you ascertain whether they would be disposed to remove this embargo from the Province of Ontario. It is considered desirable that you and the Consul General at Ottawa cooperate in this regard on account of the fact that the Consul General had a part in the discussions on this subject last year and that there is a considerable file on this subject in the Consulate General.

As of possible assistance to you in making representations on this subject, there is enclosed a copy of a letter dated August 6, 1927, from the Department of Agriculture in regard to this embargo.⁷⁴ It is desired that you submit an early report on the results of your representations on this subject.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

842.612 Peaches/33

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

No. 301

OTTAWA, *March 23, 1928.*

[Received March 26.]

SIR: Replying to the Department's instruction No. 183, of March 20, 1928, I have the honor to state that this morning I called on Dr. Skelton, the Under Secretary of State for External Affairs, and explained to him that I had a request to make regarding the lifting of the Canadian embargo against peaches. I said that the general embargo against peaches was a matter that had been taken up last year by the Consul General directly with Mr. Motherwell, the Minister of Agriculture, with fairly satisfactory results, but that this year we hoped that the embargo could be raised against peaches entering Ontario.

I pointed out that we knew that the Destructive Insect and Pest Act Advisory Board of the Dominion Government had recommended to the Canadian Department of Agriculture the lifting of this embargo, with the exception of the Province of British Columbia, a recommendation which was perfectly acceptable to my Government. I also pointed out that the United States Department of Agriculture had information that the lifting of the embargo from Ontario was strongly opposed by the peach growers of that province. I read to him the clause in the Secretary of Commerce's [*Agriculture's*] letter to the Secretary of State, dated August 6th,⁷⁴ "with respect to means

⁷⁴ Not printed.

of control and remedies", etcetera, and said that in our opinion the status of control of this pest is on all fours between Canada and the United States.

Dr. Skelton replied that the peach growers were complaining that the American peaches, because they ripened earlier than the Canadian peaches, had a great advantage over the latter. Towards the end of the season prices fell, and the sale of Canadian peaches was very seriously handicapped. He promised, however, to take up the matter with the Minister of Agriculture and would see what could be done.

I have [etc.]

WILLIAM PHILLIPS

842.612 Peaches/35

The Minister in Canada (Phillips) to Secretary of State

No. 365

OTTAWA, April 23, 1928.

[Received April 28.]

SIR: Referring to the Department's instruction No. 183, of March 20, 1928, on the subject of the Canadian embargo on peaches, and particularly with reference to the question of whether the Dominion Government might be disposed to lift the embargo for the province of Ontario, I have the honor to report that I made further inquiry this morning concerning the matter.

The Under Secretary of State for External Affairs informed me that although he had received no definite reply from the Department of Agriculture on the subject, he was practically certain that there was no prospect of Minister Motherwell acceding to the Legation's request to lift the Ontario embargo.

I have [etc.]

For the Minister:

H. DORSEY NEWSON

Secretary of Legation

EMBARGO ON THE IMPORTATION OF MILK AND CREAM INTO THE UNITED STATES FROM THE MONTREAL AREA

158.429/189 : Telegram

The Consul General at Montreal (Halstead) to the Secretary of State

MONTREAL, March 25, 1927.

[Received 2:30 p. m.]

Referring to my despatches No. 2968, and 2986.⁷⁶ Typhoid epidemic continues. Cream and milk shipments from western Quebec

⁷⁶ Neither printed.

might spread infection to the United States. Shall I refuse invoices? Health officer in Montreal states no control of cream and milk exported. Have informed Collector of Customs, Rouses Point regarding one shipment cream today . . .

ALBERT HALSTEAD

158.429/189 : Telegram

The Secretary of State to the Consul General at Montreal (Halstead)

WASHINGTON, March 26, 1927—5 p. m.

Your March 25. Notify all shippers that Bureau of Chemistry has ordered milk and cream from places within radius of 200 miles of Montreal be prohibited entry into United States until source of typhoid infection has been determined and United States authorities are satisfied that measures taken are adequate to insure against danger from milk and cream.

Repeat to all consular offices in your supervisory jurisdiction which may be concerned with this order.

Similar instructions have been telegraphed Ottawa.

KELLOGG

158.429/195

The Consul General at Montreal (Halstead) to the Secretary of State

No. 3003

MONTREAL, March 31, 1927.

[Received April 2.]

SIR: I have the honor to quote the following article from the Montreal *Star* of yesterday:

"In connection with the rumored probability of having the embargo on importation of milk and cream into the United States lifted or the area from which the importation is prohibited reduced, Albert Halstead, local Consul General for the United States, today made the following statement:

"The embargo on importation of milk and cream into the United States from the specified Montreal area will only be lifted when the Public Health Department in Washington, D. C., has been satisfied that there is no further danger of infection.

"This decision will be made after the fullest study of the situation.

"The imposition of the embargo was solely for the purpose of protecting the health of the people of the United States, and the prohibited area will be reduced or the embargo lifted only when it is assured that there is no further danger of infection.

"This assurance alone will influence action'."

The statement is correct and was made in answer to an inquiry because of intimations that the dairy industries in the United States

are behind the move and because of the idea that influence from this city might change the policy of the United States Government in the matter of the protection of its people from typhoid infection.

The Department may be interested in knowing that everyone whom I have met since the embargo has expressed approval of the action of the United States Government and because of the feeling that it will lead to improving sanitary conditions amongst Montreal dairies, will make more efficient the sanitary administration throughout the province, and in general be a salutary lesson. It should not be thought, however, that there is a large proportion of insanitary dairies in Quebec. Many of the farmers are not up-to-date in their methods and doubtless much of the milk is unclean but there are many sanitary dairies, some in the eastern townships and some around Athelston on the New York Central Line from Montreal to Malone, and clean dairies can result from proper education and attention to the subject.

I have [etc.]

ALBERT HALSTEAD

158.429/204

The Canadian Minister (Massey) to the Secretary of State

No. 78

WASHINGTON, April 8, 1927.

SIR: With reference to embargo on the importation into the United States of milk and cream originating within a two hundred mile radius of Montreal.

I have the honour to state that after a thorough and most careful investigation into the health conditions in the Eastern part of the Province of Ontario, and the two counties of Vandreuil and Soulanges in the Province of Quebec, the Canadian Department of Agriculture has found no trace whatsoever of typhoid in any municipality east of Belleville and North Bay and lying between the Ottawa and St. Lawrence Rivers, with the exception of three cases in the city of Ottawa. These three cases are apparently traceable to a slight infection up the Gatineau River in the Province of Quebec, some few miles north of the city of Ottawa, where a number of cases developed during the summer of 1926, presumably from workmen engaged on the large power development going on in that district.

I would point out that every county or rural district in which milk is produced in the eastern part of Ontario, and the two above mentioned counties in Quebec, are absolutely free from typhoid, there being no record of any cases having been found in these parts for many months, in fact, in years.

In these circumstances, I have the honour to bring this matter to your notice, and to express the hope that the competent authorities

of the United States Government may now see their way to allow entry of milk and cream at the Port of Nyando, N. Y., and ports west thereof, provided always that the milk or cream comes from points within the triangle formed by the Rivers Ottawa and St. Lawrence, or west thereof.

It may be added that an investigation by the Department of Agriculture, of the existing situation in the Province of Quebec, seems to indicate that most cases outside the City of Montreal are found on the north shore of the St. Lawrence, from which no milk is being shipped to the United States. I would therefore like to recommend that as soon as the counties outside of, say, a fifty mile radius of Montreal in the Province of Quebec are able to show a clean Bill of Health insofar as typhoid is concerned, that consideration be given to the shortening up of the radius from Montreal, as covered by the embargo, thus to permit of milk from the outlying parts of the Province being exported to the United States. In view of the fact that since there does not appear to be any point in Quebec beyond the 100 mile radius where a case of typhoid has been found for some months past, it would appear as though this 200 mile radius might very safely be reduced to a 150 mile radius at a very early date. This would not, as a matter of fact, admit any milk from Quebec Province, since no milk has been shipped to the United States from any point at a greater distance than about 100 miles from Montreal in the Province of Quebec.

I have the honour to transmit herewith, for your information and convenience of reference, maps of Ontario and Quebec, showing clearly the incidence of the radii mentioned.

I have [etc.]

(For the Minister)

LAURENT BEAUDRY

158.429/213

The Secretary of State to the Canadian Minister (Massey)

WASHINGTON, May 4, 1927.

SIR: I have the honor to refer to your notes Nos. 78 and 98 of April 8 and 21, 1927,⁷⁷ respectively, submitting information with respect to the typhoid situation in Canada and requesting a modification of the embargo on the importation into the United States of milk and cream originating within a 200 mile radius of Montreal. The request is addressed particularly on behalf of the eastern counties of the Province of Ontario, lying between the Ottawa and St.

⁷⁷ Latter not printed.

Lawrence Rivers, and also of the counties of Vaudreuil and Soulanges, in the southwestern section of the Province of Quebec.

In reply I have the honor to advise you that the Department is in receipt of a communication dated April 27, 1927, from the Department of Agriculture,⁷⁹ stating that the latest advices received by this Government are to the effect that the health authorities in Canada are making substantial progress in checking the spread of the epidemic, and that inasmuch as the United States Public Health Service, after careful investigation by its representatives on the ground, has expressed the opinion that the health of the citizens of the United States would in no way be jeopardized if the existing embargo with respect to milk and cream produced in the Province of Ontario were raised, the Department of Agriculture has accordingly notified its representatives, and has requested the Treasury Department to notify collectors of customs at border ports to permit the entry of importations of milk and cream produced in the Province of Ontario, thereby lifting, effective April 27, 1927, the embargo in so far as the Province of Ontario is concerned.

With respect to the counties of Vaudreuil and Soulanges in the Province of Quebec, the United States Public Health Service is of the opinion that conditions are such that this Government cannot be fully assured that all danger of transmission of the disease has been actually removed in connection with the introduction of milk and cream from the counties named. The Department of Agriculture states that when conditions existing in this territory, which is in the proximity of the city of Montreal, are considered entirely safe, prompt steps will be taken to lift the embargo with regard to the output of the counties of Vaudreuil and Soulanges.

Accept [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

158.429/276

*The Acting Secretary of Agriculture (Marvin) to the
Secretary of State*

WASHINGTON, September 1, 1928.

DEAR MR. SECRETARY: Reference is made to a serious outbreak of typhoid fever in Montreal in the early part of the year 1927, which was first called to our attention by your letter of March 26⁷⁹ (FA 158.429/188 and 189) transmitting a letter from the American Consul at Montreal dated March 25, 1927.⁸⁰ This matter was taken up at

⁷⁹ Not printed.

⁸⁰ i. e., the telegram of Mar. 25, 1927, from the consul general at Montreal, p. 108.

once with the United States Public Health Service and as a result of a conference with that service, an embargo was placed on all milk, cream and dairy products coming from the territory within a radius of 200 miles of Montreal, on the ground that such products might be dangerous to the health of the people of the United States, such goods being refused entry in accordance with the provisions of the Federal food and drugs act. As conditions improved, this embargo was lifted over a portion of the territory concerned and in letter of May 7, 1927,⁸¹ we advised you that the embargo had been removed insofar as it concerned the provinces of Quebec and Ontario, except the city of Montreal itself and its immediate vicinity.

Conditions did not improve rapidly in the city of Montreal and the embargo has existed up to the present time, although requests for the removal have been made from time to time. In our letter to you of May [*December*] 27, 1927,⁸¹ in reply to your letter of December 8,⁸¹ (FA 611.424-53) we made statement to the effect that "in view of the nature of the advice received from the United States Public Health Service it is believed that the time is not propitious for withdrawal of the embargo, but that as soon as our Public Health Service feels that it is entirely safe to withdraw this embargo, steps will be taken to remove the prevailing restrictions."

In your letter of May 16, 1928,⁸¹ (FA 611.424 Milk-24) you enclosed a despatch from the Consul at Montreal calling attention to improvements which had been made at Montreal and pointing out that shortly the Canadian authorities would present a full statement and request that the embargo be lifted. Such full statement of the case with information regarding conditions prevailing at Montreal and regarding additional steps which have been taken to secure adequate sanitary control and adequate sanitary conditions has now been brought to the attention of the United States Public Health Service and that Service has made an investigation of the matter on the ground and has reported to this Department that the epidemic has entirely disappeared and that sanitary conditions and sanitary control have improved markedly in every way to the extent that they are at the present time thorough and efficient and the opinion has been expressed that conditions no longer obtain which would be a basis for further continuance of the embargo. In consequence, this embargo has been raised effective September 4, 1928, and we would request that the American Consul at Montreal and the Canadian Legation, with whom you have had communication regarding this matter, be formally notified to that effect.

⁸¹ Not printed.

In conclusion, I wish to thank you for your hearty cooperation in this matter and to thank the American Consul at Montreal for the interest which he has taken and for the valuable information which he has furnished.

Sincerely yours,

C. V. MARVIN

611.424 Milk/39 : Telegram

*The Acting Secretary of State to the Consul General at Montreal
(Halstead)*

WASHINGTON, September 4, 1928.

Embargo on milk and its products from Montreal and vicinity
lifted by Department of Agriculture September 4.

CLARK

CHILE

REPRESENTATIONS TO THE CHILEAN GOVERNMENT REGARDING PROPOSED LEGISLATION FAVORING CHILEAN MERCANTILE MARINE¹

825.85/74 : Telegram

The Ambassador in Chile (Collier) to the Secretary of State

SANTIAGO, *January 24, 1928—3 p. m.*

[Received 5 p. m.]

20. Parliamentary Tariff Commission has included in proposed tariff law provision to rebate duties [on] certain articles arriving Chile in Chilean vessels (see my telegram of November 9, 5 p. m., 172²), but as result of my representations Minister of Hacienda has asked President of Senate in the name of Government to suppress this article.

COLLIER

825.85/73 : Telegram

The Secretary of State to the Ambassador in Chile (Collier)

WASHINGTON, *January 24, 1928—6 p. m.*

8. Department is informed by Grace and Company that the *Arancel Aduanero*³ provides for customs rebate of 25 pesos per ton on machinery and metal construction material imported in Chilean vessels. Please cable whether foregoing statement is correct and whether action has been taken by Embassy pursuant to paragraph 5(a) of Department's telegraphic instruction No. 61 of November 19, 1 p. m.⁴

KELLOGG

825.85/75 : Telegram

The Ambassador in Chile (Collier) to the Secretary of State

SANTIAGO, *January 26, 1928—11 a. m.*

[Received 1:25 p. m.]

22. Department's 8, January 24, 6 p. m. I have finally after repeated representations secured the withdrawal of objectionable pro-

¹ Continued from *Foreign Relations*, 1927, vol. I, pp. 526-537.

² *Ibid.*, p. 535.

³ Schedule of Tariffs.

⁴ Not printed; see telegram No. 62, Nov. 22, 1927, 1 p. m., to the Chargé in Chile, *Foreign Relations*, 1927, vol. I, p. 536.

vision from the tariff bill and the bill thus corrected has passed both Houses of Congress.

COLLIER

825.85/84

The Ambassador in Chile (Collier) to the Secretary of State

No. 1369

SANTIAGO, May 5, 1928.

[Received May 31.]

SIR: I have the honor to transmit herewith copies of the regulations issued by the Chilean Government for putting into effect the law subsidizing the merchant marine service through the Panama Canal.⁵ These would have been sent to you earlier had it not been that, immediately after their promulgation, I had talks with the Minister of Foreign Affairs and later with the Minister of the Treasury and with señor Raul Simon, head of the Commission upon whose report the legislation was based. With all of these I discussed informally the language of Article 3 of the regulations, stating that, although I appreciated that the law itself subsidized only the service that was maintained through the Panama Canal, I felt that it was somewhat unfortunate that the regulation fixing the subvention per 1,000 tons of cargo carried, should so specifically relate to the Panama Canal as to create, in my opinion, the impression that it was intended to be the reimbursement of the Panama Canal tolls. I recalled to them that the original draft of the bill explicitly stated that the subvention was a reimbursement of the tolls, but that pursuant to the representations that I made under your instruction, the Chilean Government withdrew the bill and Congress passed it in a form which ostensibly did not make the subvention a repayment of these tolls. I told them that while the regulation did not specifically declare that the subvention was to be a reimbursement of these tolls, I felt that the reference to the Canal and to the tonnage carried was certain to create that impression both in the United States and abroad and that it would be unfortunate if such impression were made, based upon language which naturally suggested this interpretation.

At first, both the Ministers told me that they could modify and were willing to modify the regulations by making the subvention a payment for freight carried a certain distance, the distance being so fixed that necessarily the cargo would have to pass through the Panama Canal. The bill itself provides only for a service maintained through the Canal. Several times both of these Ministers and señor Simon have told me that such a change would be made if my

⁵ Regulations not printed.

Government preferred, and even that it would be made if I thought such language would be preferable; but at my last interview with the Minister of Foreign Affairs, he said that he would rather that I communicate the regulations to you. He intimated that if you then felt that they would generally receive an interpretation which would be embarrassing to the American Government, they would be changed.

Possibly the question is an academic one, inasmuch as whatever language is used, the subvention is for freight moving through the Canal and the tolls as an element of expense to the shipping lines will always be one of the features taken into consideration by the Government in determining the amount of the subvention. It may perhaps be immaterial that the reference is so specific as in Article 3; nevertheless, I have thought it not unlikely that our Government would prefer a regulation that did not so clearly justify the inference that the subvention is a repayment of the Canal tolls.

I await your further instructions.

I have [etc.]

WM. MILLER COLLIER

825.85/86

The Assistant Secretary of Commerce (Brown) to the Secretary of State

WASHINGTON, July 5, 1928.

MY DEAR MR. SECRETARY: I have received your communication dated June 7,⁶ and the accompanying despatch No. 1369 of May 5, from the American Embassy at Santiago, with reference to the regulations issued by the Chilean Government for the purpose of putting into effect the law subsidizing the Chilean merchant marine service through the Panama Canal.

Apparently there is no ground for any fundamental objection to the action of the Chilean Government. The fostering of national shipping by that Government, whether on routes that traverse the Panama Canal or on other routes, is of itself solely a matter of national concern. However, inasmuch as the Panama Canal is open to ships of all nations on terms of equality, it would seem preferable that the regulations issued by the Chilean Government did not take the form of providing or of apparently providing for the repayment of Panama Canal tolls.

Very truly yours,

WALTER F. BROWN

⁶ Not printed.

825.85/85

The Secretary of State to the Ambassador in Chile (Culbertson)

No. 907

WASHINGTON, December 5, 1928.

SIR: The Department refers to despatch No. 1369 of May 5, 1928, from your mission, transmitting copies of the regulations issued by the Chilean Government for putting into effect the law subsidizing the merchant marine service through the Panama Canal, and transmits herewith for your information a copy of a letter under date of July 5 last from the Department of Commerce,⁷ to which the despatch in question had been referred for comment. There is also enclosed, as of interest in showing that the reimbursement of canal dues is a fairly common practice among nations, an excerpt from the Dictionary of Tariff Information, page 652.⁸

While in the light of the information available the Department sees no occasion for any further action, it will be glad to have your further comment on the matter in case you feel that any such comment is called for in the circumstances.

I am [etc.]

For the Secretary of State:

FRANCIS WHITE

THE TACNA-ARICA DISPUTE

(See volume I, pages 660 ff.)

⁷ *Supra.*

⁸ Excerpt not printed.

CHINA

CONTINUED CIVIL WAR IN CHINA; OVERTHROW OF THE PEKING GOVERNMENT; AND REORGANIZATION OF THE NATIONALIST GOVERNMENT¹

893.00 P. R./3

The Chargé in China (Mayer) to the Secretary of State

[Extract]

No. 1403

PEKING, February 20, 1928.

[Received April 2.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,² I have the honor to submit the following summary, with index, of events and conditions in China during January, 1928:

The month under review was a relatively quiet one due in part to the traditionally thoroughgoing observance of Chinese New Year, which fell on January 23rd, and in part to the cold weather which hampered military operations. The state of comparative calm was also due in large measure to lack of cohesion among the various so-called Nationalist factions.

The power and influence of the Kuomintang continued to diminish during January. The importance of a group of Kwangsi militarists increased correspondingly and interest during the month may be said chiefly to have centered in its activities. The aim of the group, generally speaking, appeared to be to control Kwangtung, Hunan, and Hupeh, and then to attack the position of Chiang Kai-shek.³ The plan was not carried out during the period covered by this report. As indicated below, some progress, however, was made in this direction.

CONDITIONS IN CANTON

One of the prominent Kwangsi military leaders was Li Chai-sum, whom the radical Cantonese leader, Chang Fa-kwei, had ousted from Canton in November. As it turned out, General Chang's control over the city was short-lived. His influence as well as that of the

¹For previous correspondence concerning political conditions in China, see *Foreign Relations*, 1927, vol. II, pp. 1 ff.

²Not printed; it instructed the Minister to supplement his political reports by a brief monthly summary of events and conditions in China.

³Generalissimo of the Chinese Nationalist armies.

subordinates of Wang Ching-wei, who appear to have been associated with him, were undermined by the Communist disturbances which racked Canton during December and, early in January, the American Consul in charge at Canton⁴ telegraphed the Legation that Li Chai-sum had returned on the 4th of the month. It was Mr. Huston's opinion, under the disturbed conditions existing in that region, that the group headed by General Li was the greatest hope of the moderate elements of Kwangtung. The report was current that Li Chai-sum found the Central Bank emptied of all its silver reserves, several million dollars in silver having been removed by Chang Fa-kwei, by his generals, and by his political followers. It was further stated that Chang had attempted to remit half a million Mexican dollars to Chiang Kai-shek in Shanghai.

On January 20th Mr. Huston apprised the Legation of a reported re-alignment of forces which, while it did not take definite shape during the period covered by this report, served at least to indicate certain of the numerous possibilities inherent in a complex situation. He stated that the Kwangsi leaders expected to call a secret conference at Canton after Chinese New Year to be attended among others by Pei Chung-hsi, Li Chung-jen, and Wu Pei-fu, the last named remaining in the background. T'ang Sheng-chih⁵ was to be restored to power and in this readjustment a combination was to emerge which would associate itself with Generalissimo Chang Tso-lin against Feng Yu-hsiang and Chiang Kai-shek. The mooted plan was for Feng to be allowed to penetrate well into Shantung where he would be attacked from two sides and for Marshal Wu to draw the "Red Spears" of Honan into the fray.

EVENTS IN SHANGHAI

On January 4th the American Consul General at Shanghai⁶ informed this Mission that Mr. C. C. Wu had been appointed Minister for Foreign Affairs of the Nationalist Government with instructions to proceed to the United States immediately to conclude a new treaty on the basis of the statement of the Secretary of State of January 27, 1927,⁷ in which were laid down the conditions under which the United States was willing to negotiate. In this relation it was the Legation's understanding that Mr. Frank W. Lee had been sent to the United States last autumn by the Nanking authorities on the double mission of securing American recognition of the regime he

⁴Jay C. Huston.

⁵Former commander at Hankow, who lost control to the Nanking forces in November 1927.

⁶Edwin S. Cunningham.

⁷See telegram No. 28, Jan. 25, 1927, to the Chargé in China, *Foreign Relations*, 1927, vol. II, p. 350.

represented and of negotiating for treaty revision. Furthermore, the Nanking Nationalist authorities appeared to envisage the possibility of affecting [*sic*] a diplomatic *rapprochement* with Peking through Minister Alfred Sze,⁸ as the potential head of a united Chinese delegation to the United States charged with bringing about a revision of existing treaties. These matters remained inchoate during January.

Early in the month General Chiang Kai-shek, accompanied by Tan Yen-kai and certain other members of the Central Executive Committee of the Kuomintang, left for Nanking. Mr. Cunningham informed the Legation that before their departure it was semi-officially announced that C. C. Wu would retain the portfolio of Foreign Affairs but that Quo Tai-chi would be the acting Minister during Wu's absence. T. V. Soong was slated for the post of Minister of Finance and Sun Fo for that of Minister of Reconstruction. The Consul General stated that it was assumed from this reorganization either that Chiang Kai-shek had already received the endorsement of the Central Executive Committee of the Kuomintang or that he would do so upon its assembling in Nanking. The date of assembly was postponed again and again, however, and it did not take place during the period covered by this report.

In a telegram of January 21st Mr. Cunningham reported that C. C. Wu, Sun Fo, Hu Han-min, and four other prominent Nationalists procured Section Six certificates at the Consulate General with the intention of leaving for the United States on the 25th. He expressed the opinion that this exodus indicated disappointment on the part of certain of the conservative members of the Nationalist Government and of the Kuomintang with the efforts which were being made to create a government.

DEVELOPMENTS IN THE HANKOW AREA

Hostilities between the Wuhan cities and the militarists of Hunan, to which reference was made in the Legation's report for December,⁹ persisted during January. Conditions along the upper reaches of the Yangtze also continued to be unsettled.

The American Consul General at Hankow¹⁰ telegraphed the Legation on January 5th that he was reliably informed that the 19th army under Hu Tsung-tu, the Wuhan garrison commander, was at that time proceeding from Hankow against Yang Sen, the *Tupan* of Szechwan, at Shasi and Ichang and that there was a possibility that Liu Hsiang at Chungking would cooperate in this move by

⁸ Sao-Ke Alfred Sze, Chinese Minister at Washington.

⁹ *Foreign Relations*, 1927, vol. II, p. 38.

¹⁰ Frank P. Lockhart.

sending an expedition against Yang Sen's forces at Wanhshien. Mr. Lockhart reported further that Changsha, in whose neighborhood many mission properties were occupied by troops, was at that time still controlled by former subordinates of T'ang Sheng-chih who were driven from Wuhan in November by Nanking forces.

By January 19th reliable information had reached Mr. Lockhart that Chiang Kai-shek had persuaded the Hunan generals, Liu Hsiang, Ho Chien, Li Ling-hsi, and Chou Lan, to make war on Hankow and that Mexican \$200,000 had been remitted to Changsha from Shanghai for that purpose. It seemed that the Hankow regime then dominated mainly by Generals Chen Chien and Pei Tsung-chi was becoming more and more isolated from Nanking.

On January 25th Mr. Lockhart reported that Hankow was definitely allied with Li Chai-sum at Canton against Chiang Kai-shek and that the latter thus would be compelled to align himself with Chang Fa-kuei, at that time in northern Kwangtung, as well as with other radical elements in the Nationalist party. A few days later the Consul General informed the Legation that the Hunan campaign was progressing favorably for the Hankow faction and that Changsha was captured by Hu Tsung-tu's troops on the 25th. At Hankow the strictest martial law continued to be maintained.

MILITARY ACTIVITY

In the Legation's monthly summaries for November and December ¹¹ reference was made to the fact that serious fighting was confined during that time to North China. The elements involved were the Fengtien forces and their associates, and Chihli-Shantung armies, in opposition respectively to Shansi troops and to the supposedly allied forces of Feng Yu-hsiang and the Nanking Nationalists.

Active hostilities during January, on the other hand, were restricted largely to Hunan, in South China. The Military Attaché to the Legation, in reports from which this section is taken, affirmed that the outcome of the military operations in that province constituted a victory for the Kwangsi faction, at present apparently the only cohesive group in South China, over Hunanese elements associated with Nanking and General Chiang Kai-shek.

In the north the outstanding military event of January was the final capitulation on the 11th of the Shansi garrison which had held the city of Chochow since October 11, 1927. The surrender of the town occurred in a general lull on the Fengtien-Shansi conflict. Peace negotiations between Generalissimo Chang Tso-lin and Gov-

¹¹ *Foreign Relations*, 1927, vol. II, pp. 34, 38.

ernor Yen Hsi-shan were carried on sporadically during the month without definite result.

During the latter part of January the Kuominchun made gains in southern Chihli, northern Honan, and western Shantung. Kuominchun elements were reported as far north as Hantan on the Kin-Han railway, while to the east they were in the vicinity of Taming. The defense of Shantung from the Nanking armies was assigned to General Sun Ch'uan-fang and Chihli-Shantung concentrations of doubtful military value were made against Feng Yu-hsiang on the Tsinpu railway in the vicinity of Tehchow.

On January 24th and 25th a conference was held in Peking among the Ankuochun leaders, presided over by Generalissimo Chang Tso-lin. The one concrete accomplishment of the meeting apparently was the appointment of General Yang Yu-t'ing as commander of the 3rd and 4th army group (the true Fengtien Army) in conjunction with Chang Hsueh-liang and in succession to Han Lin-ch'un.

I have [etc.]

FERDINAND MAYER

893.00/9851

The Chargé in China (Mayer) to the Secretary of State

No. 1410

PEKING, March 1, 1928.

[Received April 2.]

SIR: I have the honor to report briefly as follows with reference to certain political and military movements and tendencies in China which are beginning to be apparent with sufficient definiteness to warrant their informal discussion.

Feng Yu-hsiang, to my mind the principal figure among the Chinese militarists whose progress we must watch the most carefully from the point of view of concern for American lives and interests, seems to be growing more influential in the Nanking regime. According to recent newspaper accounts whose accuracy I do not doubt, his staunch adherent, Mr. Huang Fu, has become Minister of Foreign Affairs, and two others of his associates have taken office under Nanking, Mr. H. H. Kung, whose wife is the sister-in-law of the late Dr. Sun Yat-sen, as Minister of Industry, and a Mr. Hsueh Tu-pi as Minister of the Interior. The local newspapers now carry the report that Mr. Y. L. Tang, one of Marshal Feng Yu-hsiang's closest advisors both by reason of his relationship and otherwise, has been made Vice Minister of Foreign Affairs at Nanking. There is an added significance in this appointment since it is the first time that

Mr. Tang has accepted high office, hitherto having confined himself to very important but informal negotiation and effort in behalf of the Marshal, his brother-in-law. The fact that Chiang Kai-shek recently went to Chengchow for a conference with Feng Yu-hsiang rather than vice versa is evidence of the position which Feng Yu-hsiang occupies vis-a-vis Nanking in general and Chiang Kai-shek in particular. And the strong tie now existing between Feng Yu-hsiang on the one hand and Chiang Kai-shek on the other through H. H. Kung, Feng Yu-hsiang's close partisan, whose wife is a sister of Madam Chiang Kai-shek, is an item to be considered in this general relation.

I believe that we may accept as correct that Feng Yu-hsiang is gradually gaining an ascendancy in the Nanking regime, either in order to come to grips with the Fengtien forces this spring or to consolidate himself in the area under the control of that regime, prior to a northern campaign. It is not possible to tell which course Feng will choose. He . . . has had no opportunity to accumulate a war chest other than what the Soviets have given since ousted from the Peking-Tientsin area in 1926. The logic of the situation would seem to be for Feng to try to establish himself at least in Nanking and if possible in Shanghai before developing any real offensive against Chang Tso-lin. But as is so frequently the case logic is not followed in China and Feng Yu-hsiang, being in addition an exotic, may quite possibly attempt some tour de force of a nature corresponding to his surprise attack and capture of Peking on October 23, 1924.¹²

In the south there is a further interesting development away from both Nanking and Feng Yu-hsiang on the part of the Kwangsi group now controlling Hankow, and making progress in the capture of Hunan doubtless with the idea of linking up with Li Chai-Sum at Canton. This faction appears so hostile to the present Nanking regime that it does not seem improbable that they would prefer to associate themselves with Chang Tso-lin rather than with Chiang Kai-shek. It is quite likely that the latter's visit to Feng Yu-hsiang was made with the idea of coming to some arrangement with Feng in defense of Nanking against the Kwangsi generals rather than in connection with the immediate initiation of a campaign against the north. The situation as regards the Kwangsi group is still too inchoate to arrive at any understanding of the definite state of affairs around Hankow. It bears watching however as possibly the crucial factor in any military movement that may take place this spring. It is interesting to note that from their position at Hankow the Kwangsi

¹² See *Foreign Relations*, 1924, vol. I, pp. 383-385.

generals constitute a threat both against Chiang Kai-shek and Nanking and against Feng Yu-hsiang in Honan.

In the north there appears to be a regrouping of the component parts of the old Ankuochün. For a considerable period of time it has been felt that Chang Tso-lin has considered Chang Tsung Chang rather a debit than an asset. The latter's army has been growing less and less effective and it is therefore not a surprise to note in the newspapers that he has been named *Tupan* of Chihli concurrently with that of Shantung, with his headquarters moved to Tientsin from Tsinan. Sun Ch'uan-fang has taken over the latter place and, it would seem, the control of Shantung. Chang Tsung-chang's retention of the title of *Tupan* for that province is apparently a mere face-saving device, a step along the line of a surrender of his prerogatives there. This movement on the part of the Tayuanshuai¹³ will undoubtedly strengthen its position if reliance can be placed upon Sun Ch'uan-fang's loyalty. Mention should be made of Chang Tso-lin's efforts to come to an understanding with Nanking for the purpose of gaining a free hand to deal with Feng either defensively or offensively and with the idea of being able to bring about an appearance of political unity in China sufficient to persuade the Powers that they are warranted in commencing negotiations for tariff adjustment and treaty revision. It is not known what success Chang Tso-lin has met with in this respect. He is undoubtedly playing off the Kwangsi group against Chiang Kai-shek and vice versa.

I venture to hope that the foregoing brief sketch may prove of some interest as a background for possible future activities in China. As the situations develop a further report will be made to the Department.

I have [etc.]

FERDINAND MAYER

893.00 P.R./4

The Chargé in China (Mayer) to the Secretary of State

[Extract]

No. 1443

PEKING, March 21, 1928.

[Received April 28.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,¹⁴ I have the honor to submit the following summary, with index, of events and conditions in China during February, 1928.

Expressed in general terms, the state of comparative calm char-

¹³ On June 17, 1927, Marshal Chang Tso-lin proclaimed himself Dictator, with the title "Tayuanshuai".

¹⁴ Not printed.

acteristic of the month of January was maintained throughout February as well. It was felt, however, that this equipoise was both precarious and transient. From all quarters came rumors of impending political readjustments and of renewed military operations on an extensive scale in the near future. It was difficult to foresee during February what developments would ensue from the readjustments under contemplation. As the Department is aware from various previous reports from this field, Chinese political thinking is very pliant and it is possible, for instance, and even customary, in the civil wars of the country for direct private negotiations through regular emissaries to go on simultaneously with sporadic and frequently inconclusive military operations.

The American Consul General in Shanghai reported that the month had opened with rumors of a *rapprochement* between Canton and Nanking, and also with rumors of negotiations between Chiang Kai Shek, Chang Tso-lin, Yen Hsi-shan, and Feng Yu-hsiang. On the other hand, the American Consul General at Tientsin, in a despatch dealing with political conditions in his district during February,¹⁵ stated that close observers inclined to the opinion that the situation held all the elements pointing to a successful occupation of the Tientsin-Peking area by the combined Kuomintang, Kuominchun and Shansi forces in the spring or early summer of this year.

That the so-called Northern Expedition had not been abandoned seemed evident from an interview granted the representative of the *North China Daily News* on February 21st, by Mr. T. V. Soong, Minister of Finance of the Nanking Nationalist Régime. Mr. Soong stated *inter alia*:

"There may be differences of opinion among your readers as to the North Expedition, but our policy is fixed and we are going ahead with it. To give up the North Expedition would be a betrayal of our cause which is the unification of our country under the leadership of the Kuomintang and for the achievement of the principles of Dr. Sun Yat Sen."

MILITARY OPERATIONS

From a military point of view, the month witnessed no change in the broad alignments already in existence. In Hunan, the Kwangsi generals continued their exploitation of the victory that gained them Changsha, and Chen Chien consolidated his hold on that city. Chang Fa-k'uei was engaged during the month in an endeavor to reorganize his Cantonese troops on the Fukien and Kiangsi borders of Kwangtung. In the North, there were no hostilities of consequence.

¹⁵ Not printed.

ACTIVITY OF COMMUNISTS

Numerous accounts received during February testified to the fact that communism was not eradicated in China, in spite of the anti-communist propensities of recent months which witnessed the Canton uprising in December and the wholesale executions along the Yangtze. Reports from various sources were received of the capture of villages and towns, notably in Kwangtung, by roving bands of "reds" under circumstances of barbarous bestiality. In a despatch of February 14th¹⁶ illustrative of this state of affairs the American Consul at Swatow¹⁷ reported that many refugees from neighboring scenes of communist disturbances had fled to Swatow, conservative estimates placing their number at close to fifty thousand. Mr. Berger informed the Legation that the local police had unearthed a plot on the part of the "reds" to seize and loot the city of Swatow itself on the 10th of February. Fifty persons were captured and nineteen men and two women were executed on the 13th, the temper of the authorities and of the populace being such that the police permitted the mob after the executions to commit various indignities upon the bodies. The Consul expressed the opinion that the radicals were at that time the only really unified and purposeful political group in that section of Kwangtung and that it seemed certain that without a marked change of heart and a considerable increase in the political sagacity and honesty of the moderates the radicals must finally triumph. Mr. Berger's remarks relative to the organization of the communists in Kwangtung apply with equal accuracy to the rest of China.

THE KUOMINTANG CONFERENCE

The American Consul General at Shanghai, in a despatch of February 11th,¹⁸ stated that December had ended with all eyes focused upon the efforts of Chiang Kai Shek to bring about the convening at Nanking of the Fourth Plenary Session of the Kuomintang. "Bitter factional disputes within the party" Mr. Cunningham continued, "had been only intensified by the Communist outbreak in Canton on December 11th, and in spite of the strenuous efforts of Chiang to compose even temporarily the political differences of the party leaders, the entire month of January passed without the calling of the conference . . ."¹⁸

The Fourth Plenary Session of the Central Executive Committee of the Kuomintang was finally convened on February 2nd at Nan-

¹⁶ Not printed.

¹⁷ David C. Berger.

¹⁸ Omission indicated in the original.

king, adjourning again on the 6th after electing various new committees and officers and adopting a number of resolutions which, however, did not appreciably modify the character of the existing organization. A standing committee of the Central Executive Committee was constituted including among others T'an Yen-k'ai, Chiang Kai Shek, Tai Chi-tao, and Ting Wei-feng. T'an Yen-k'ai was likewise made chairman of the standing committee on governmental affairs. A military committee was appointed with Chiang Kai Shek as chairman. Huang Fu was made Minister for Foreign Affairs of the Nanking regime and Wang Ching-wei Minister of Justice, while T. V. Soong was confirmed in the post of Minister of Finance.

In a despatch on political conditions in his district during February Mr. Cunningham made the following comment on the conference ²⁰:

"While this session was under party law perhaps illegal and served to accentuate the split between the right wing and the center groups of the Kuomintang, its mere meeting and assumption of responsibility and staunch insistence upon a continuance of party rule have served, for the time at least, to infuse a certain amount of vitality into the party."

NEW MINISTERS FOR FOREIGN AFFAIRS

Mr. Wang Yin-t'ai submitted his resignation as Minister for Foreign Affairs of the Peking regime on February 24th giving as his reason his inability to handle the diplomatic situation. In his memorial of resignation he stated that the question of treaty revision was the most urgent task confronting the Peking Ministry of Foreign Affairs at the present time and a matter to which the whole nation attached paramount importance. However, he stated also, with unusual candor, that the powers had adopted a policy of watchful waiting in this regard "for the unfortunate reason that as a result of years of civil strife the nation is unable to speak with one united voice".

Mandates of the Generalissimo promulgated February 25th appointed Wang Yin-t'ai Minister of Justice and Dr. Lo Wen-kan, who had been the President of the Board of Audit, the new Minister for Foreign Affairs. In a statement to the press upon assuming his duties Dr. Lo stated *inter alia* that he would do his best to continue the work of his predecessors for the revision of China's unequal treaties and that he hoped the whole country would cooperate in that task. In a statement issued to the press on February 28th, however, he made the penetrating comment that only when internal

²⁰ Despatch not printed.

affairs are put in order can success be expected in the intercourse between nations.

On February 22nd General Huang Fu assumed office as Minister for Foreign Affairs of the Nanking regime and shortly thereafter made a statement to the press,²¹ the first section of which reads in translation as follows:

"With a view to hastening the early abrogation of China's treaties now universally recognized to be unequal, the Nationalist government will make all necessary preparations in the hope of opening negotiations at the earliest possible moment with the friendly powers for the conclusion of new treaties on the basis of equality and mutual respect for territorial sovereignty."

He added that pending the conclusion of such new treaties his government was prepared to maintain and develop friendly relations with the foreign powers and to protect the lives and property of foreigners in China in accordance with international law and usage.

General Huang Fu is commonly regarded as an adherent of the "Christian General" Feng Yu-hsiang and the Department will recall that he functioned for a time as Acting Premier after Feng Yu-hsiang seized control of Peking in October, 1924.

The statements of the retiring and the new Ministers for Foreign Affairs of the Peking regime as well as of the new Minister for Foreign Affairs of the Nanking regime reveal a more moderate attitude toward the foreign powers and a franker acceptance of the realities inherent in the present situation than was the case in the utterances of Chinese politicians during the past years.

It may also be of interest in this relation to record, as among the occurrences falling in some measure within the period under review, that the Ministers of France, the United States, and Great Britain recently undertook trips to South China to familiarize themselves at first hand with conditions there and met with friendly receptions.

Mr. MacMurray left Peking on February 20th and both he and Sir Miles Lampson, the British Minister, were still in South China at the end of the month.

Count de Martel, the French Minister, returned to Peking during the middle of February. In an interview granted the press upon his return he stated that he had arrived at the conclusion, as a result of his trip, that an early union among the southern factions was unlikely. He indicated that the division among the Kwangsi, Nanking, and Wuchang political bodies was still apparent and that however much friends of China might hope to see greater cohesion

²¹ For complete text of statement, see telegram No. 42, Feb. 28, from the consul general at Shanghai, p. 406.

and stability it would not seem as if much progress were being made in that direction. Count de Martel expressed the opinion that the outstanding cause for the recent suspension of concentrated military activity and for a growing inclination toward compromise was lack of money.

DEVELOPMENTS IN SZECHWAN

Certain new political and military alignments in Szechwan Province were brought to the attention of the Legation during February by the American Consul General at Hankow and the American naval authorities on the Yangtze. It seemed that Szechwan was, for the first time in a year, free from outside military influences. Liu Hsiang and Lai Hsin-whei at Chungking and Liu Wen-whei at Chengtu controlled those two places and the river territory between them, while Yang Sen and his associates were reported to control the Yangtze River east of Chungking, approximately as far as the Hupeh border, together with northern Szechwan. Wu Pei-fu, who appeared to be a factor in Szechwan affairs, was being mentioned as a possible head of the Yang Sen group and was understood, at the middle of the month, to be residing at Suifu under Yang Sen's protection.

I have [etc.]

FERDINAND MAYER

893.00/9863 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 13, 1928—5 p. m.

[Received April 14—9:20 a. m.²²]

229. 1. Following from Shanghai:

"April 10, 6 p. m. Chiang Kai-shek in mandate published in local vernacular press on April 8th and in foreign press on following day [made] *inter alia* following statements:

(1) China's civil war continues because of constant support by 'the imperialists' of munitions and secret loans to 'the militarists'. Unless this practice ceases another world war will ensue in the Far East involving all the great powers;

(2) The Chinese question is one of self-determination and will be determined by the Kuomintang revolutionary forces who will press their anti-Northern campaign. Militarism is the vanguard of imperialistic [exploitation; the] militarists must be able to agree as [a] preliminary to China's fight for freedom and equality.

(3) Northern militarists have been saying that Nationalist Government [is impotent] and it is hoped that friendships [*friendly powers*] will not be misled by this imperialistic people.

²² Telegram in two sections.

Chiang then made the following statement relative to the protection of foreign lives and property:

'By virtue of the authority entrusted to me as commander in chief of the Nationalist armies, I hereby guarantee to assume full responsibility for my troops' behaviour. I guarantee that, wherever the Nationalist troops are stationed, there shall be no antiforeign movements. I guarantee that the Kuomintang and the revolutionary forces shall shoulder full responsibility for the protection of foreign lives and property.

At the same time, it is my earnest hope that all foreign friends will understand that, if they support the Northern militarists, they will be prolonging China's civil warfare and causing a breach of world peace. I earnestly appeal to all foreign friends immediately to stop supplying arms and ammunition or secretly making loans or in any way supporting the Northern militarists. I appeal to all foreigners and the friendships [*friendly powers*] to maintain a strictly neutral attitude so far as China's civil warfare is concerned.

Come what may, the revolutionary movement will be successful. If foreigners maintain a friendly attitude towards us, the Chinese people will always be grateful, but if they interfere without reason and attempt to prevent the progress of the revolutionary movement, they will make themselves the enemies of the Chinese people and will have only themselves to blame.'

While these promises may be considered as friendly gesture . . . There are abundant proofs that the military pay little if any attention to the orders of Nanking, while various Nationalist military units now engaged in the anti-Northern advance have most noted reputations in reference to their flagrant disregard of foreign property rights. On the day following signing of the Nanking agreement,²³ Nationalist troops occupied hitherto unmolested American mission property at Woosung while other American mission property in environs of Shanghai has been occupied by troops for a number of months in spite of repeated assurances of protection from Chiang and the Minister of Foreign Affairs."

2. [Paraphrase.] As to the statement contained in the first paragraph of the manifesto . . . The record of the Italian Government, as well as that of certain French Government representatives, in regard to the supplying of munitions is very unsatisfactory, it is true. Likewise, it is possible the Japanese in past years have been lax, although at the present time such does not seem to be the case. The governments party to the Chinese arms embargo agreement²⁴ have, on the whole, abided by the provisions of that arrangement, and it has been necessary for the Chinese to procure munitions wherever they could, largely by means of purchases from nationals of nonadhering governments.

3. It is doubtful, in regard to loans, whether Chinese militarists have made any foreign loans for some time. It would seem that the closest approach to such loans are advance payments of special taxes upon tobacco and oil which, for the most part, have been made to the Nationalist authorities themselves. [End paraphrase.]

MACMURRAY

²³ See telegram of Mar. 30, 8 p. m., from the Minister in China, p. 331.

²⁴ See *Foreign Relations*, 1919, vol. 1, pp. 667 ff.

893.00 P.R./5

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1468

PEKING, April 17, 1928.

[Received May 26.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,²⁵ I have the honor to submit the following summary, with index, of events and conditions in China during March, 1928:

The most significant occurrence of the period under review, at least as far as Sino-American relations are concerned, doubtless was the settlement of the Nanking incident of March, 1927, after extended conversations at Shanghai between the Nanking Minister for Foreign Affairs and myself.²⁶ The United States was the first of the powers concerned to arrive at an adjustment of this matter with the interested Chinese authorities. . . .

THE NORTHERN EXPEDITION

From a military point of view, or in other words from the point of view of the so-called "Northern Expedition", the state of comparative calm characteristic of the months of January and February was maintained during March as well. In spite of sundry disquieting rumors of imminent hostilities, no major military operations took place.

The following Reuter despatch, published locally under the date line of Shanghai, March 5th, regarding an interview granted a representative of the *North China Daily News* by General Chiang Kai-shek, is illustrative of the numerous reports on military affairs current during the month. The General is reported to have said:

"The Northern Expedition will proceed according to programme. I cannot divulge the date on which we shall commence operations but all arrangements have been made. There is the closest cooperation between Marshal Feng Yu-hsiang, General Yen Hsi-shan and ourselves. We are being supported by Canton and when Hunan difficulties have been cleared up the Hankow faction will also join us."

In evaluating this pronouncement it may be noted, in passing, that Chiang Kai-shek's influence is dependent upon his success as a military leader and that it is thus to his interest to emphasize the inevitability of a military adjustment of present dissensions in this country. It is probable that the opportunist civilian leaders of the

²⁵ Not printed.²⁶ See pp. 323 ff.

Kuomintang would not be averse to abandoning the much discussed Northern Expedition and to arriving at an adjustment of the differences between the North and the South by other than military means. They are without ultimate authority, however, and their hesitant administrative labors cannot prevent and only inadequately screen the internecine maneuverings of the dominant militarists.

In a report of the middle of the month the Military Attaché to the Legation indicated, in this relation, that the spirit which energized the Nationalist armies in 1926 and 1927 was lacking among the disillusioned and ill-paid soldiers who would attempt the continuance of the temporarily quiescent drive against Peking. "With the exception of Feng Yu-hsiang's own personal army", Major Magruder stated, "the will-to-fight is probably no more pronounced among the Nationalists than among the Fengtien soldiery". Major Magruder further stated that the indifference of many of the Southern leaders, the near-hostility of the Kwangsi Party, the internal communist disorders and the dubious aims of Feng Yu-hsiang, all constituted an unhappy augury for a successful campaign against the Northern militarists.

General Chiang Kai-shek asserted in the statement quoted above that the Nanking faction would be joined by Hankow as soon as the latter's differences with Hunan had been adjusted. The situation in this regard remained indeterminate during March. On the 4th I had a conversation in Hankow with the local Commissioner for Foreign Affairs in which Mr. Kan, in answer to a question regarding the northern expedition, frankly stated that he did not believe that troops from the Wuhan area would participate actively in the campaign. He gave as the reason for this that the Hunan situation was still unsettled and that, in any event, Feng Yu-hsiang and Yen Hsi-shan had an adequate number of troops on the Kin-Han Railroad. Commissioner Kan stated that of course help would be welcome on the Tientsin-Pukow line but that the local military authorities would be afraid to undertake operations in that area. They were not certain of Chiang Kai-shek's attitude toward them and consequently would not like to have General Chiang's troops in their rear. The Commissioner concluded in view of these circumstances that the assistance rendered by the Wuhan area probably would take the form of money and ammunition but that at any rate that much assistance would be forthcoming if only to satisfy public opinion. He gave me to understand that some money and ammunition was being supplied to Feng Yu-hsiang at that time and that further contributions of the same sort would be sent to him.

The American Consul General at Hankow informed the Legation in a telegram of March 28th,²⁷ in this matter of cooperation between the two factions, that for the first time some evidence was then on hand that preparations were being made for Hankow troops to join in the Northern drive. Mr. Lockhart added that General Li Tsung-jen was expected to arrive there the next day from Nanking to assume the duties of Chairman of the Wuhan Political Council and to compose alleged differences between Hankow and Nanking.

Fengtien, on its side, was reported, at the end of the month, to be on the point of undertaking an offensive against the Kuominchun. The object of this maneuver, as the American Consul General at Tientsin noted in a despatch²⁷ dealing with conditions in his district during March, apparently was to crush Feng Yu-hsiang before a synchronized general push materialized against the whole northern position by the associated Nanking, Shansi, and Feng Yu-hsiang forces. Mr. Gauss considered the weak point in the northern lines to be in the southern Chihli-Tamingfu area where were stationed the poorly disciplined and generally unreliable forces of Chu Yu-pu, *Tupan* of Chihli. The Consul General added that Chu Yu-pu was reported to be greatly exercised over the fact that control of military and civil affairs in the province largely had been taken from his hands by the appointment of Chang Tsung-chang, *Tupan* of Shantung, concurrently to control military affairs in Chihli, and by the appointment of Sun Shih-wei, a councillor to Chang Tsung-chang, as Civil Governor of the province.

LI CHAI-SUM

Considerable interest was aroused during the period under review by General Li Chai-sum's visit to Hongkong early in March and his official reception there as the Governor of Kwangtung Province. The Governor General of Hongkong returned the visit shortly afterwards. In a telegram of March 13th the American Consul in charge at Canton stated²⁸ that, as a result of the Governor General's return visit to Canton, it was reported in Chinese circles that Hongkong was to lend Canton thirty million Mexican dollars to complete the loop around the city connecting up the Canton-Kowloon Railway and the Canton-Hankow Railway.

Belief in the relative permanence of Li Chai-sum's tenure of office may have been strengthened by these visits but it was somewhat shaken again by the General's sudden and secret departure for Shanghai with Chen Ming-chu on March 15th to consult with General Chiang Kai-shek. General Huang Shao-hsiung²⁹ who was in

²⁷ Not printed.

²⁸ Telegram not printed.

²⁹ Member of the Canton branch of the Kuomintang Central Political Council.

control of Kwangsi was left in charge of Canton during Li's absence. In a telegram of March 16th³⁰ Mr. Huston reported that the city was quiet and the government functioning as usual, although an under-current of anti-British feeling aroused by the exchange of visits was to be noticed. The Consul added in this telegram that, as far as he had been able to gather from conversations with several members of the local government, the local military leaders had agreed to cooperate with Li Chai-sum in clearing the province of bandits, pirates, and communists.

Li Chai-sum reached Shanghai on March 19th, and, in a telegram of the 21st, the American Consul General at Shanghai informed the Legation³⁰ that the General stated to the foreign press upon his arrival that he had come (1) to discuss the anti-Northern expedition with the Military Council at Nanking, (2) to report directly on the political situation at Canton, and (3) to discuss with the Nationalist government the future policy with reference to Canton and China as a whole especially in reconstruction measures.

General Li Chai-sum did not return to Canton during the period covered by this report. Mr. Huston telegraphed from Canton on March 28th,³⁰ however, that he was expected back on April 4th. Apparently Huang Shao-hsiung had stationed his troops in and about the city in such numbers that it was not thought that Li Chai-sum would be ousted.

FOREIGN POLICY OF NANKING RÉGIME

Early in the month General Huang Fu, the Minister for Foreign Affairs of the Nanking régime, gave out an interesting statement of his government's foreign policy.³¹ . . .

BOYCOTT AT AMOY

In telegrams from the Commander-in-Chief of the United States Asiatic Fleet³² and in reports from the American Vice Consul in charge at Amoy,³³ the Legation was apprised of a boycott against Japanese shipping at that port during March which for a time seemed to foreshadow other more serious disturbances. The boycott had its origin in the arrest in the native city on March 2nd by Japanese Consular police of four Koreans who were accused of communist activities. The local authorities actuated by the local Kuomintang and the General Labor Union demanded (1) the release of the

³⁰ Not printed.

³¹ See telegram No. 153, Mar. 9, from the Chargé in China, p. 407.

³² Admiral Mark L. Bristol, U. S. Navy.

³³ Harvey Lee Milbourne.

Koreans, on the ground that having expatriated themselves they were not amenable to Japanese jurisdiction, (2) an apology by the Japanese Consul, and (3) the abolition of the Japanese Consular police force at Amoy. The Japanese Consul refusing to accede to these demands a boycott of Japanese shipping was declared, starting on March 10th. On the 23rd, following the removal of the Koreans to Formosa, the General Labor Union declared a general strike. On the 24th Admiral Bristol telegraphed the Legation that press reports concerning the general boycott indicated that all harbor transportation had been stopped. He added that he planned to have a destroyer division arrive at Amoy on the 26th to cooperate with the American Consulate in the protection of American interests. However from subsequent telegrams from the Admiral and from Vice-Consul Milbourne it appeared that the newspaper accounts of the Amoy labor troubles had been much exaggerated. Mr. Milbourne stated in his telegram of March 30th in the premises that the general strike of the 24th had lasted only half a day; that the situation was quiet; and that the continuing boycott was confined to Japanese shipping.

I have [etc.]

J. V. A. MACMURRAY

893.00/9884 : Telegram

The Ambassador in Japan (MacVeagh) to the Secretary of State

TOKYO, April 20, 1928—5 p. m.

[Received April 20—9:05 a. m.]

50. Embassy's telegram 48, April 19, 5 p. m.³⁴ Foreign Office has just sent me following statement issued today by Japanese Government:³⁵

"At the time the Japanese troops were withdrawn from Shantung, the Japanese Government took occasion to declare that, while they had no intention of countenancing any particular party or faction in connection with the disturbances in China, yet if the peace and order in localities containing many Japanese residents were disturbed, giving cause for apprehension that the safety of the said residents might be affected, the Japanese Government would be constrained to take such measures of self-protection as might be required.

In spite of the sudden change of the situation in Shantung which has precipitated disturbances threatening to involve that region where the Japanese reside, the Japanese Government are now compelled, in pursuance of the above-mentioned declaration, to despatch from Japan proper a contingent of about 5,000 soldiers to the

³⁴ Not printed.

³⁵ This statement is identical with an unsigned memorandum handed to the Secretary of State by the Japanese Ambassador, Apr. 20, 1928, 12:30 p. m. (893.0146/32).

Kiaochow-Tsinan Railway zone via Tsingtau for the protection of the Japanese residents. Pending the arrival of those soldiers, three companies drawn from the Japanese garrison in China will be sent to Tsinan as an emergency measure to meet the situation.

It need scarcely be stated that the despatch of troops by the Japanese Government again to the Shantung districts is an unavoidable measure of self-protection, by no means implying anything like an unfriendly intention [toward] China and her people, or an interference with the military operations of any of the Northern and Southern forces. It may be added that as soon as the Japanese Government consider it no longer necessary to maintain the troops for the protection of the Japanese residents in the affected areas referred to above, the troops will be immediately withdrawn as on the last occasion."³⁶

Copy by mail to Peking.

MACVEAGH

893.00 Tsinan/8 : Telegram

*The Consul General at Shanghai (Cunningham) to the
Secretary of State*

SHANGHAI, May 5, 1928—noon.

[Received May 5—5:55 a. m.]

Following telegram has been received somewhat garbled from Tsinanfu and repeated to the Legation:

"May 4, 11 a. m. On the morning of May 3rd at about 10 o'clock there occurred a clash between Japanese and Nationalist troops, the precise cause of which is as yet unknown. General firing from both sides then ensued, the Japanese sending out armored cars and detachments to clear the settlement of Southern troops. In the course of the fighting which continued with considerable intensity until 6 p. m. and intermittently all night, it is understood the Japanese employed field artillery with which the Chinese wireless station was destroyed. Both sides suffered casualties the precise extent of which as yet unknown but which is believed to be heavy.

This consulate during the day made every effort to persuade both sides to cease firing but each side claimed that while strict orders had been issued to that effect the other side continued firing. The fact appears to be that units from both sides had become isolated and that orders could not be got through, but eventually apparently the Chinese troops were withdrawn from the foreign settlement which it is understood is now clear of Nationalist[s]. Negotiations between representatives of Chiang Kai-shek, who is now here, and the Japanese commander in chief took place last night, the principal result of which was apparently that the Nationalist troops should be withdrawn 20 li beyond the borders of the foreign settlement.

³⁶ See telegram No. 236, May 28, 1927, to the Minister in China, *Foreign Relations*, 1927, vol. II, p. 123.

The American, British, and French consulates have been requested by the Chamber of Commerce and other Chinese organizations to mediate but our position is that beyond the use of good offices to attempt to persuade both sides to cease actual fighting endangering lives and property of our nationals we cannot assist in subsequent negotiations except at the request of both sides and under the specific instructions of our Governments.

All American lives and property believed to be safe. Representatives of General Chiang called at the consulate last night offering us safe conduct to the Nationalist headquarters which I declined. They then offered special police guard for the consulate which I accepted.

German consul requests that the German Minister be informed that all Germans safe but that Nationalist troops looted Stein Hotel. Please repeat to Department and Legation. Price."

Local Commissioner of Foreign Affairs this morning transmitted message to this consulate general from Minister for Foreign Affairs Huang Fu, now at Tsinanfu, informing me that American consul and all American nationals Tsinanfu safe. Assurances made American citizens are being and will be given full protection by Nationalist military authorities there.

CUNNINGHAM

893.00 Tsinan/17 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 7, 1928—5 p. m.

148. For Price, Tsinan.

"Your May 4, 11 a. m. Department commends all action taken by you as reported and was greatly relieved to learn of the safety of consular staff and other Americans. Your wife informed. Cover situation and important developments by telegraph fully as opportunity offers. Send full despatches as promptly as possible."

KELLOGG

893.00 Tsinan/38

*The Japanese Embassy to the Department of State*³⁷

(1) When recently disturbances in China threatened to spread to Tsinan, Japanese Government dispatched troops for protection of Japanese residents in that region and took occasion to explain their attitude in connection with that unavoidable course of action. It is now to be observed that since occurrence of deplorable incident at Tsinan, the situation in that district has so much increased in gravity

³⁷ This paper bears the notation: "Handed to Mr. Johnson, May 9, 12 o'clock noon, by the Japanese Ambassador."

that the present strength of Japanese troops there is insufficient for protection of Japanese residents. Shantung Railway connecting Tsingtao and Tsinan is destroyed at various places, making it impossible as things stand at present to ensure means of communication by that route. In these circumstances, it has been decided to dispatch Third Division to Shantung with object of securing necessary protection to Japanese residents and ensuring communication of Shantung Railway. Present dispatch of additional troops being intended as stated above to protect Japanese residents in Shantung and to ensure communication of Shantung Railway which is essential for that purpose, its object is in no way different from that of the first dispatch of troops.

(2) Together with dispatch of Third Division [it] has been decided to send five other companies from Japan proper to Tientsin. They were originally scheduled to be sent in June next as periodical relief for Japanese garrison in China, but date of their departure has been advanced in view of circumstance that part of garrison has been sent to Tsinan as emergency measure. It has also been decided to dispatch additional number of cruisers and destroyers to the Yangtze and to South China for purpose of safeguarding Japanese residents in case unforeseen happenings should occur in southern districts out of possible misunderstandings relating to Tsinan incident. Present dispatch of additional troops and warships is intended for no other purpose than that of protecting lives and property of Japanese residents against such unfortunate incidents as might possibly occur in connection with Tsinan affair, and it need scarcely be added that they will be withdrawn as occasion permits on the disappearance of necessity for their continued maintenance.

893.00 Tsinan/35 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 9, 1928—6 p.m.

153. Shanghai's telegram of May 5, noon, repeating Price's telegram of May 4, 11 a.m.

With reference to third paragraph of Price's telegram Department desires that you inform Price that if and as soon as good offices asked by authorities on both sides, he is authorized, with or without his consular colleagues, to mediate to terminate fighting. Instruct him to telegraph momentarily any developments in this connection.

Department also desires your own views as to possibility of mediation.

Repeat to Tokyo.

KELLOGG

893.00/9928 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 10, 1928—1 a.m.

[Received May 9—11:35 p.m.]⁸⁸

330. Following is the translation of a circular telegram to the country at large which has just been issued by Chang Tso-lin:

"Civil war has been going on for several years since the Communists attempted to ruin [*rule?*] the country. The southeastern provinces have repeatedly gone through indescribable sufferings of which I have heard a good deal and invariably with a feeling of pain. I could not bear to see the bolshevization of this nation, and it was responding to the call of the provinces that I determined to lead my troops for a campaign against bolshevism. From the very beginning I declared that I would regard my personal foes as friends if only they concurred with me in the suppression of bolshevism. On the other hand, I made up my mind to deliver a decisive blow to the Communists with a view towards its total elimination. Wherever my troops went, strict orders were issued to them for the maintenance of discipline and the protection of lives and properties of both the Chinese and foreigners, for I always apprehended that civil war might effect [*affect*] diplomacy and thereby impair China's friendly relations with the powers.

During the last year or two unfortunate international incidents had happened in Canton, Hankow, Nanking and Tsinan. It is highly regrettable that foreigners should be involved in our domestic struggles. If this state of affairs should be allowed to continue I shall be unable to face the whole nation as well as our friendly powers. In view of this situation I have ordered my victorious troops at Changteh and along the Cheng-Tai Railway to cease hostilities at once. As regards national politics I will not be insistent if our people can agree on a fair and impartial decision. The question of right and wrong rests with the people. I had [*have*] been in the military service ever since I was a youth. As an old resident in Manchuria I knew perfectly well the evil influences of communism and the preventive measures taken by the other nations, indeed I feel that my personal experience along that line qualifies me to give a better view of the whole question than many of our prominent men in the country. Knowing that certain traitors, ignorant of the consequences that carry in its wake, have been deeply imbued with the idea of communism [and] are sure to bring havoc to the country, I considered the extermination of communism and the extreme caution to be taken in our diplomatic dealings as the sole means of attaining our independence. Presently there seems to be no end to our civil strife and the Ship of State is sinking rapidly. I hope our people will come to their senses and save this country from destruction. This, in brief, is my appeal, and I hope to hear from you all."

MACMURRAY

⁸⁸ Telegram in three sections.

893.00/9945

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] May 10, 1928.

The Chinese Minister came to see the Secretary this morning during diplomatic hour and he stated that about noon on May 8 he had sent a telegram to his Foreign Office at Peking asking whether they would have any objection to his making a proposal to both Northern and Southern factions in China that they reach some kind of a peaceful settlement of their differences, with a view to showing a united front. He explained that he had for some time been wondering what he might do to help the situation and that he had finally determined to do this. He said that yesterday (May 9) he had a telegram in reply, expressing approval on the part of the Foreign Office at Peking and that he had at once sent off a telegram to the Southern Government at Nanking. He said, therefore, that he had been somewhat surprised to see in the papers of last evening the announcement that Chang Tso-Lin had issued a circular telegram calling for a peaceful settlement of the difficulties between himself and the Southern Government. He expressed himself as being somewhat uncertain as to the motives which had led Chang Tso-Lin to send this circular telegram, although he seemed to have no doubt that it was inspired by his message. He asked the Secretary whether the Secretary thought that he was taking the right track. The Secretary said that he could not tell just what must be done in the Chinese situation, but that he did feel that any step in the direction of peace was a right one and that if he failed, his failure would be no discredit to him. The Chinese Minister said that he had been thinking for some time of what might be done in the present situation and that it occurred to him that if the United States could call a conference of the powers for the purpose of negotiating with the Chinese on the several questions, such a conference to take place next fall, that it would be a very valuable thing to do. He referred to the fact that the Chinese had been promised tariff autonomy on January 1, 1929, and he thought that if this conference could work out something in connection with that, it would be very valuable and would avoid confusion of negotiations next January. The Secretary said he did not know what attitude the powers would take toward such a proposal. He asked the Minister what matters he thought the conference would take up; that after all there were a multitude of matters in which there was no common interest for all powers at the same time and in the same way. The Minister stated that this of course was true, but that questions concerning concessions, leased territories, et cetera, could

be left to be settled outside of the conference. He likened the situation in China today to the situation in Turkey prior to the Lausanne Conference³⁹ when Turkey was facing a conflict between the Nationalist Government and the Government in Constantinople over questions between herself and the powers and the Greek army that then occupied portions of Turkish territory. Apparently he had in mind a conference along the lines of the Lausanne Conference for the purpose of dealing with Chinese matters.

The Secretary referred to his statement of January, 1927, and stated that that set forth the position of the United States on these matters then and now. He stated that it seemed to him it might be wiser and better to have a conference in China and he asked the Chinese Minister whether he did not think this would be the case. The Chinese Minister stated that he differed with the Secretary on this point as there are two factions in China, one the Shanghai faction, and that it would be very difficult to have a successful conference there. The Minister was asked whether the existence of two factions in China would not make it equally difficult to have a successful conference in Washington as both factions would quarrel over the results of such a conference, both during its sitting and after it had completed its labors. The Minister stated that he did not think that this would be a difficult matter, although he admitted that such a faction would cause some difficulty perhaps at the beginning, but he thought that once the conference had settled on a thing the faction would accept it.

The Minister said his idea would be that the Secretary should sound out the powers ahead of time on the proposition of a conference. The Secretary said that of course he hadn't given any consideration to such a proposition as that and he would naturally like to think it over, but he believed that before anything could be accomplished, there must be a stabilization in China and that the Minister should labor to that end first.

The Chinese Minister expressed some doubt as to Japanese plans in Tsinan. The Secretary stated that in the course of a conversation which he had had with the Japanese Ambassador, the Ambassador having come in to state that further reinforcements were being sent to join the forces already despatched to Shantung to protect Japanese life and property, had said that the sending of these troops did not in any way indicate any change in the previously announced policy of the Japanese Government, which was to withdraw all of these troops as soon as the safety of Japanese citizens was assured.

N[ELSON] T. J[OHNSON]

³⁹ See *Foreign Relations*, 1923, vol. II, pp. 879 ff.

893.00 P.R./6

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1503

PEKING, May 15, 1928.

[Received June 25.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁴⁰ I have the honor to submit the following summary, with index, of events and conditions in China during April, 1928:

Although tension and uncertainty persisted, the first three months of 1928 were characterized by a relative freedom from military operations. During April hostilities were so vigorously resumed that all significant occurrences of the period under review were either secondary to or associated with the Nationalist drive northward.

MILITARY ACTIVITY

According to reports by the Legation's Military Attaché, from which this section, in the main, is derived, the date of the opening of the long predicted spring campaign may be set down as April 1st. Since that time military operations, at first not of great magnitude but of constantly increasing intensity as the month wore on, gradually spread to all the fronts. Hostilities began with Fengtien pressure against Feng Yü-hsiang on the Kin-Han Railway in the vicinity of Tzechow and against Shansi on the Chengting-T'aiyüan Railway. Up to the middle of the month no serious fighting had developed in Shantung. Rumors of fighting around Hsuechowfu during the first fortnight of April could not be confirmed, indications having been rather that Chiang Kai-shek would delay until Fengtien became committed to the Honan drive. It remained doubtful, furthermore, whether the Shansi, Hankow, Nanking and Feng Yü-hsiang groups were effectively cooperating. It seemed evident at that time that it was the desire of the Peking régime to defeat and drive out Feng but to come to some compromise with Shansi and Nanking.

By the 18th of April a Nationalist offensive in southern Shantung became general and this development gave evidence of the fact that Feng Yü-hsiang and Chiang Kai-shek at any rate were supporting one another. This drive was successful, due in part to lack of both discipline and a desire to fight on the part of Chang Tsung-ch'ang's soldiers and in part to impulsive and ill-considered maneuvering by Sun Ch'uan-fang. The Nationalist armies in Shantung made steady progress to the vicinity of Tsinanfu so that by April 30th that city was being evacuated by disorganized Shantung soldiery and its early

⁴⁰ Not printed.

fall was expected. Sun Ch'uan-fang had suffered a *débâcle*. He moved north of the Yellow River with what remained of his former army, the Shantung forces suffering complete disintegration. Chang Tsung-ch'ang appeared to have been definitely abandoned by Chang Tso-lin.

Feng Yü-hsiang, at the end of the month, was held by Fengtien in the vicinity of Changte on the Kin-Han Railway. He had to recall the forces of General Lu Chung-lin, which had been operating in the direction of Tsinanfu, to maintain his position. Shansi remained bottled up.

DESPATCH OF JAPANESE TROOPS TO SHANTUNG

The Department will recall that following the Southern advance into Shantung in May, 1927, the Japanese Government sent some 2,000 troops into the province for the protection of its nationals resident there and also expressed the intention to despatch a further contingent of 2,000 to the Peking-Tientsin area should the situation seem to require it.⁴¹ The troops were withdrawn again during September, the object for which they had been sent having been accomplished, and the scene of hostilities having shifted to the Yangtze. This indication of the determination of the Japanese Government to provide for the protection of its nationals was felt at the time to have done much to lessen the potential hazards then faced by foreigners in North China. The very success of the expedition as a stabilizing force, however, evoked the charge in Chinese circles that the real object in the minds of the Japanese authorities was not the protection of Japanese nationals in Shantung but the prevention of any further progress northward on the part of the Nationalists.

It was not clear, during the period under review, to what extent these developments would be repeated in 1928, although a certain similarity already existed between the occurrences of April and those of May and June of last year. It was not long after the Southern offensive in Shantung had become general when, on the 19th, according to information received from the American Embassy in Tokyo, the Japanese Emperor sanctioned an order for the despatch of troops to that province to be stationed on the railroad between Tsingtao and Tsinan, with the mission of protecting the life and property of Japanese nationals. The elements involved were reported to be the greater part of the 6th Division stationed in Kyushu, consisting of eight battalions of infantry, one battalion of field artil-

⁴¹ See telegram No. 236, May 28, 1927, to the Minister in China, and the Minister's telegram No. 601, May 31, 1927, in reply, *Foreign Relations*, 1927, vol. II, pp. 123, 124.

lery, and a small number of auxiliaries, totaling approximately 5,000 men. Furthermore three companies of infantry stationed in Tientsin were to be sent immediately to Tsinan by rail, to be relieved later if circumstances permitted, or if not, to be replaced in Tientsin by other troops.

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HANKOW'S ATTITUDE TOWARD ITS ASSOCIATES

As suggested above, Hankow's relations with Nanking and with Marshal Feng Yü-hsiang during April remained delicately responsive to the fluctuations in the fortunes of the other Nationalist groups.

In a confidential telegram of the 26th of the month the American Consul General at Hankow informed the Legation that, in spite of repeated declarations of cooperation with Feng Yü-hsiang and Chiang Kai-shek, Wuhan was still lukewarm in its support of the northern campaign if indeed it could be said that any actual support had been given beyond the despatch of troops up the Peking-Hankow Railway, a measure which would be more likely to be one of defense of that area than of offense against the North. It seemed, as suggested by Mr. Lockhart, that the Hankow faction desired to prolong its semi-independent existence as long as possible and that some new political alignment with which it would appear to its advantage to affiliate would have to arise before those in control would render any material aid to General Chiang or Marshal Feng.

On April 28th, however, the Consul General telegraphed that Hankow troops had then been moved up the railway to Chengchow, in northern Honan. Marshal Li Tsung-jen informed Mr. Lockhart, in this relation, that there were no Hankow soldiers at the front, but that the Marshal was proceeding to Chengchow to be close at hand should his forces be needed. Mr. Lockhart thus concluded that the interest of the Hankow faction in the northern campaign was increasing in the same degree that the prospect of the success of the Nationalist drive heightened.

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REPERCUSSION FROM NANKING SETTLEMENT

In a telegram of April 6th the American Consul General at Shanghai informed the Legation that Quo T'ai-chi had been relieved of his duties as Commissioner for Foreign Affairs at Shanghai and that Mr. W. W. [S.] King had been appointed in his place, the change indicating that General Hwang Fu's position had been strengthened by the Sino-American settlement of the Nanking incident. . . .

RETURN OF LI CHAI-SUM TO CANTON

Reference was made in the Legation's monthly report for March to the interest and apprehension aroused by the Governor of Kwang-tung's sudden and secret departure from Canton for Shanghai on March 15th, to consult with General Chiang Kai-shek. It was wrongly feared that during his absence unruly elements would gain the upper hand.

The American Consul General at Canton telegraphed the Legation on April 18th ⁴² that General Li Chai-sum had returned there the day before and that in general the situation was quiet.

I have [etc.]

J. V. A. MACMURRAY

893.00 Tsinan/69 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 18, 1928—6 p. m.

[Received May 18—10:45 a. m.]

368. Referring to Department's telegram No. 153, May 9, 6 p. m. Following from Tsinanfu under date of May 14, 5 p. m.:

"General Chiang Kai-shek on May 4th personally assured the American and British consuls he was prepared to meet and negotiate with the Japanese commander in chief at any neutral consulate. This message was delivered immediately to Japanese consul general for transmission to Japanese commander in chief but latter did not reply. When fighting was resumed May 8th Chiang had left Tsinanfu leaving no information as to responsible officer in charge in addition to which Chinese troops in the city absolutely refused to consider the only terms on which the Japanese were prepared to desist operations, namely, surrender of their arms."

MACMURRAY

893.00/10104

The Minister in China (MacMurray) to the Secretary of State

No. 1511

PEKING, May 22, 1928.

[Received June 25.]

SIR: In my radiogram No. 330, of May 10, 1 a. m., I had the honor to forward a translation of a circular telegram to the country at large from Generalissimo Chang Tso-lin adroitly appealing for peace and indicating that the main object of the Peking régime in engaging in hostilities was the extermination of bolshevism.

⁴² Not printed.

I now have the honor to enclose, for the information of the Department, a copy of a confidential letter addressed to me on May 12, 1928, by Mr. Telly Koo, of the Peking Ministry of Foreign Affairs,⁴³ in which my mediation is requested in the endeavor to persuade the Southern authorities to respond to the appeal of the Generalissimo. There is likewise enclosed a copy of the Legation's reply indicating my inability to act upon this request.

Mr. Koo, who is a translator attached to the staff of the Generalissimo as well as to the Foreign Office, sent a similar communication to the Senior (Netherlands) Minister and to the British Minister, and took the matter up orally with the Japanese Minister, in each case giving the impression that each of the foreign representatives concerned was being approached first. Treating the matter as not being serious (as it obviously is not), my Netherlands colleague made no reply. The British reply, which was signed by the Second Secretary of the Legation, was of the same tenor as the one I caused to be made.

I have [etc.]

J. V. A. MACMURRAY

[Enclosure]

The American Second Secretary of Legation (Chapman) to a Secretary of the Chinese Ministry of Foreign Affairs (Telly Koo)

MY DEAR MR. KOO: The Minister directs me to acknowledge to you the personal letter of May 12th in which you confidentially conveyed in behalf of Vice-Minister Ou Tsing an expression of the hope that it might be possible for the American Minister to get the South to respond to the Generalissimo's appeal for peace.

Mr. MacMurray appreciates the confidence implied in this suggestion, and is happy to feel that Mr. Ou is aware, as your letter states, of the delicacy of the position of a diplomatic representative charged with the responsibility for his national interests during a period of civil conflict in the country to which he is accredited.

He therefore feels sure that Mr. Ou will understand that, warmly as the Minister (in common with other friends of China) would welcome the termination of such conflicts, he could not well espouse under the circumstances the particular proposals to that end offered by one of the parties involved, without at least the appearance of partisanship.

Yours sincerely,

F. J. CHAPMAN, III.

⁴³ Not printed.

893.00 P.R./7

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1545

PEKING, June 15, 1928.

[Received July 23.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁴⁴ I have the honor to submit the following summary, with index, of events and conditions in China during May, 1928:

It will be recalled that after some months of quiescence hostilities incident to the Northern Expedition were vigorously resumed early in April and that all significant occurrences of the period were either secondary to or associated with military operations. During May also interest and attention remained focused on the advance toward the Peking-Tientsin area made by the associated forces of Generals Yen Hsi-shan, Feng Yü-hsiang, and Chiang Kai-shek, their continuing progress being due to success in the field of battle in a Western sense; to the adroit use of brains and money in the opportunist manipulation of factional alignments after the Eastern fashion; and, in a general and intangible way, to the moral effect on the more enlightened among the members of the Southern forces of having an aim to their striving, namely, that of endeavoring to put into practice throughout the whole country the supposedly adequate and satisfying Nationalist theory of government.

A clash at Tsinanfu on May 3rd, and the days immediately following, between the on-coming Nationalists and the Japanese expeditionary forces which had been despatched to that city to protect the numerous Japanese nationals resident there, while of considerable consequence from the point of view of China's foreign relations, delayed only temporarily the Nationalist advance. At the end of May, after persistent retirements on the part of Fengtien units hardly warranted in a strictly military sense, it was evident that the Mukden party was preparing to yield to what was coming to be the inevitable. The withdrawal of Generalissimo Chang Tso-lin into Manchuria and the occupation of Peking by the Nationalists was momentarily expected. Japan's reaction to the disturbances in China, as expressed in a note, virtually an ultimatum, of May 18th,⁴⁵ was not without influence in shaping the course of the events of the period under review, but the situation was so fluid at the end of May that it was impossible to predict what results cooperation or

⁴⁴ Not printed.

⁴⁵ See telegram No. 63, May 17, 1928, from the Ambassador in Japan, p. 224.

compromise among the Kuominchun, Kuomintang, Kwangsi, and Shansi groups and between those factions and certain elements in the Fengtien party not unsympathetic to the Nationalists, would bring forth.

SINO-JAPANESE CLASH AT TSINANFU

In May, 1927, some 2,000 Japanese troops were sent into Shantung, during the Southern advance into that province, for the protection of the Japanese nationals resident there. The troops were withdrawn in the autumn without serious consequence to Sino-Japanese relations. The renewal of the Southern offensive in Shantung in April, 1928, brought about the despatch of some 5,000 Japanese troops into the province on a similar errand. This year, in contrast to the relative absence of friction in 1927, a grave clash, resulting in considerable anti-Japanese feeling in China, occurred early in May between the Japanese expeditionary force at Tsinan and the advancing Nationalists. The situation was such that the Japanese Government found it necessary to despatch some 20,000 troops to Shantung within the space of a few weeks, many of whom presumably being destined to remain for several months.

Both sides claimed, it is felt erroneously, that the affair was premeditated by the other, and both have submitted statements of the case to the League of Nations.⁴⁶ Japan's several presentations of the facts, including recitals of acts of violence, were more restrained and credible than the Nationalist versions.

It seemed that a large number of Nationalist troops, on May 1st and 2nd, and on the heels of the retreating Northern soldiers, entered the city and those portions of the foreign settlement not inclosed within the Japanese barricades. Japanese troops, numbering at that time 3,000, had inclosed two areas within the foreign settlement with sand bags, barbed wire, and other defensive materials. The physical congestion of the settlement, within which Nationalist troops at one time numbered 10,000, quickly became somewhat of a menace and rendered more or less inevitable the occurrence on May 3rd of the isolated and not definitely determined incident which resulted in the firing of the first shot. The Japanese and the Nationalist troops soon became seriously engaged, the Japanese being under an initial handicap of inadequate protection when the firing started, as a result of having removed a large portion of the barricades on the assumption that an amicable arrangement in regard to their presence had been arrived at with the Chinese authorities. Efforts were at once initiated by the Japanese and the Chinese authorities to bring

⁴⁶ For texts of statements, see *The China Year Book*, 1929-1930, pp. 886, 887.

about a cessation of the fighting and attempts at mediation were made by the American Consul, who, throughout the trouble, was active also in the protection of American interests. Things apparently became somewhat quieter by the 5th of May, on which date General Chiang Kai-shek left Tsinan after stating, in a note of farewell, that he had ordered his troops, "with the exception of those charged with the duty of preserving peace and order", to withdraw from the city, in order to avoid further trouble.

On May 7th, General Fukuda, the Japanese Commander-in-Chief, considering that the presence and tactics, in erecting gun emplacements and digging trenches, of those of the Nationalist troops which had not left was a source of danger, sent a twelve hour ultimatum to General Chiang Kai-shek. The ultimatum called for the punishment of the officers in charge of the Nationalist troops involved in the clash; the disarming of the latter; the cessation of anti-Japanese propaganda; and the withdrawal of Nationalist troops from a 20 li zone on either side of the Kiaochow-Tsinan Railway. When the short time limit expired the Japanese commenced military operations designed to clear the area on either side of the railroad of Chinese troops. Mr. Price stated that they encountered little resistance except at the walled city of Tsinanfu, where approximately 5,000 Nationalist troops held out until the morning of the 11th. . . .

JAPANESE STATEMENT OF MAY 18TH

The Japanese Minister for Foreign Affairs, in an interview on May 17th with the representatives of the United States, Great Britain, France, and Italy, indicated that the Japanese Government was prepared to fulfill its obligations in any joint measures which might be taken, should that area be involved in hostilities, for the protection of foreign lives and property in Peking and Tientsin. The Japanese Government, however, was particularly interested in Manchuria, in which region it was determined to prevent hostilities. The Foreign Minister indicated that his Government accordingly had decided to despatch an identic communication both to the Peking and to the Nanking régimes setting forth Japan's present policy in regard to the civil war in China.⁴⁷

This note aroused considerable comment and protest in Chinese circles, the generally prevailing impression being that Japan was seizing the opportunity offered by the dissensions in China to further

⁴⁷ See telegram No. 63, May 17, 1928, from the Ambassador in Japan, p. 224.

her alleged aim of making a protectorate of the Three Eastern Provinces and later perhaps of Mongolia as well.

LEGATION'S ATTITUDE RESPECTING PROTECTION

The Legation's views in the matter of the protection of American citizens in China, as expressed during the Period under review to those concerned, were briefly the following:

It was not contemplated that a general withdrawal of American nationals from the interior of the country would prove necessary. The necessity was envisaged for such action only in certain limited areas in, or in proximity to, the zone of hostilities. Executive officers of the Government have no legal authority to instruct American citizens to withdraw. In cases of emergency the advice to do so ordinarily is communicated to them by the Consular officers on the ground, acting either at their own discretion or by direction of the Legation. Consular officers cannot specify definitely the ports to which American nationals must withdraw but leave to the latter the choice of places in which they may best seek refuge. Consideration is given to the practical aspect of evacuation in cooperation with the Commander-in-Chief and the officers of the United States Asiatic Fleet, American citizens being informed at what places they can be protected and from which points they can be evacuated.

Since the course of military events threatened, during May, to involve the Peking-Tientsin area, I addressed informal communications setting forth the American viewpoint in that regard to the Peking Minister for Foreign Affairs, and, through the American Consul General at Shanghai, to the Nanking Foreign Minister, respectively, on May 18th.⁴⁸ . . .

DEVELOPMENTS AT HANKOW

The Hankow faction had given evidence during April, as well as previously, of being lukewarm in its support of the northern campaign. This indeterminate attitude was maintained until the last few days of May. It was due to the fact that the success of the northern expedition was not yet assured and to the uncertain loyalties in the Wuhan area arising from that circumstance.

The following occurrence is illustrative of the instability of political alignments at Hankow, and, in a general way, is illustrative also of prevailing conditions throughout the country:

On May 22nd, according to information received from the American Consul General at Hankow, Marshal Li Tsung-jen issued a cir-

⁴⁸ See telegram No. 359, May 17, 1928, from the Minister in China, p. 222.

cular telegram strongly denouncing General Ch'eng Ch'ien, who controlled Hunan for some time but was then under surveillance at his residence in the ex-Russian Concession at Hankow. General Ch'eng was charged with obstructing the policies of the Hupeh-Hunan Political Affairs Committee and with refusing to give an accounting for monies. Mr. Lockhart reported subsequently that General Li Tsung-jen's drastic step was doubtless taken at the instigation of General Chiang Kai-shek with whom Ch'eng Ch'ien had not been on good terms for some time. It seemed that General Ch'eng Ch'ien had been a particularly disturbing factor and a persistent obstructionist since coming to Hankow from Changsha a short time before to attend the Hupeh-Hunan Political Affairs Council. The action against him was taken immediately after a conference at Chengchow on May 21st between Generals Pei Chung-chi (Pai Ch'ung-hsi) and Chiang Kai-shek.

A rumor was current in Peking, in this regard, that Marshal Feng Yü-hsiang had received a proposal from General Ch'eng Ch'ien that the two should make an attack on Hankow and Wuchang, Feng descending from the north and Ch'eng advancing from Hunan. However that may be, Mr. Lockhart felt that the removal of Ch'eng Ch'ien as the dominant factor in Hunan should lead to improved conditions in that province. On May 25th the Legation was informed that the Nanking Government had officially authorized the appointment of General Lu Ti-ping to succeed Ch'eng Ch'ien as the Commander of the Fourth Route Army, and that Ho Chien and other generals attached to Ch'eng Ch'ien's army had announced their allegiance to Li Tsung-jen.

Respecting Hankow's participation in the northern drive, the Department will recall that Wuhan troops had been moved up the Peking-Hankow Railway to Chengchow, in northern Honan, at the end of April, but that there were no Hankow troops then at the front. On May 21st Mr. Lockhart telegraphed that General Pei Chung-chi had been given command of the Hunan and Hupeh armies then in Honan and that he had left on the 19th for Chengchow.

On the 31st the Consul General reported that passenger and freight service had been suspended on the Peking-Hankow line to facilitate the northward movement of troops from Hankow. He added that there was much military activity in evidence in the city and that officials freely admitted that the time had come when it was scarcely possible longer to avoid active participation by Hankow troops in the northern expedition.

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CONDITIONS IN CANTON

The Legation was informed by the American Consul General at Canton that good order was maintained there during the month, although some uneasiness was occasioned by rumors of communist activities. Some of the members of General Li Chai-sum's body-guard were found to be in communication with communists, resulting in the arrest and execution of a number of alleged communists. There was evidence at the end of the month that the anti-Japanese boycott, brought into being by the events in Shantung, was losing force.

I have [etc.]

J. V. A. MACMURRAY

893.00/10104

The Secretary of State to the Minister in China (MacMurray)

No. 914

WASHINGTON, July 13, 1928.

SIR: The Department has received your despatch No. 1511, dated May 22, 1928, regarding a request made to you through an official of the Ministry of Foreign Affairs that you use your efforts with the Southern authorities to persuade them to respond to the appeal for peace of Chang Tso-lin. The reply which you caused to be sent to this request meets with the approval of the Department.

I am [etc.]

FRANK B. KELLOGG

893.00 P.R./8

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1572

PEKING, July 16, 1928.

[Received August 20.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁵⁰ I have the honor to submit the following summary, with index, of events and conditions in China during June, 1928:

The Northern Expedition, actively resumed in April after a period of quiescence during the winter, was brought to a virtual completion early in June with the withdrawal of Marshal Chang Tso-lin to Manchuria and with the occupation of Peking by the forces of General Yen Hsi-shan. The Shansi troops had advanced under the

⁵⁰ Not printed.

aegis of the Kuomintang and the dream cherished by Dr. Sun Yat-sen of a Nationalist occupation of the ancient capital was realized.

As the month drew to a close, however, the suspicion previously entertained that Fengtien's collapse would not of itself solve the Nanking Government's gravest problems was given added force. It became apparent that the cessation of large-scale military operations, while viewed in all quarters with relief and hope for the future, emphasized rather than diminished the essential instability of equilibrium among the various elements associated under the Nationalist banner, but looking to Nanking in theory only as the source of ultimate authority. Marshal Feng Yü-hsiang, the chief individualist, balked of his desired objectives by the strength of the potential combinations against him, was believed to be merely biding his time and, although precluded by the strength of public opinion from forcibly relieving Yen Hsi-shan from his post of Garrison Commander of the Peking-Tientsin area, was felt to be doing all he could to create difficulties sufficient to cause Yen's voluntary withdrawal. The quasi-independent Kwangsi Generals were determined to render permanent their possessions in the South and in the Yangtze Valley and, only mildly tolerant of the Nanking Government, were actually hostile to General Chiang Kai-shek. Chiang Kai-shek, on his part, was embarrassed by having under his command thirteen army corps only four of which had territories to which they could return and in which they would be supported. An apparently imminent acceptance of the Fengtien Generals into the Kuomintang fold, a development that would have strengthened Chiang Kai-shek's position, had not taken place at the end of June.

The month closed on the eve of a contemplated meeting in Peking between Chiang Kai-shek, Yen Hsi-shan, Feng Yü-hsiang, Li Tsung-jen, Pai Ch'ung-hsi, Li Chai-sum, and other Nationalist leaders.

Respecting the mooted transfer of the capital of the country to Nanking, I was informally told on June 13th that the Foreign Office here would be closed as such from that date, a representative of the Nanking Government having arrived to take charge of the archives. It was reported in the press that at a meeting of the Nanking Political Committee on June 30th the decision was reached to rename Peking, Peiping, or Northern Peace.

ELIMINATION OF CHANG TSO-LIN

Marshal Chang Tso-lin's position in Peking became increasingly untenable with the continuing advance during May of the associated forces of General Yen Hsi-shan, Marshal Feng Yü-hsiang, and General Chiang Kai-shek, an advance due in part to betrayals by Chang's subordinates, and a withdrawal into Manchuria was determined

upon. The Ex-Dictator boarded his special train at the Chien Men station early in the morning of June 3rd bound for Mukden, his departure, with full honors and to the accompaniment of music from two military bands, being not without dignity.

It is stated that the Marshal's original plan had been to leave by automobile secretly and unostentatiously and that it was with some misgivings that he undertook to return to his stronghold in the Three Eastern Provinces in the open manner adopted. If that was the case his premonition of disaster was substantiated since a bomb explosion, mysteriously engineered by agencies as yet not determined, severely damaged his train as it was passing under a South Manchuria Railway bridge in the outskirts of Mukden on the morning of June 4th. Among the casualties resulting from this outrage was the death of General Wu Chun-sheng, *Tupan* of Heilungkiang, and one of Chang Tso-lin's most trusted advisers. The Marshal himself was said at the time to have been only slightly wounded but there is reason to believe that he succumbed the same day. His death was not officially announced until June 21st, two days after the inauguration of his son, Chang Hsueh-liang, a much less able man, but from the Nationalist point of view a more amenable one, as the Acting Military Director (*Tupan*) of Fengtien. The delay in making known the Generalissimo's demise was reported to have been due to the unsubstantiated fear, prevalent during several days of tension, that the Japanese thereupon would seize control of Mukden.

Negotiations between the Fengtien Party and the Nanking Nationalist Government, doubtless facilitated by the elimination of Marshal Chang Tso-lin, were going on in Mukden at the end of the month and it was felt that a union of some sort would eventuate from them.

DEVELOPMENTS IN PEKING

In Tientsin a show of resistance was made by Generals Chang Tsung-chang and Chu Yu-pu, but Peking fell into Nationalist hands without the firing of a shot. There was little evidence of regret or enthusiasm at the result of the change on the part of the populace.

On June 4th General Chang Hsueh-liang and Yang Yu-ting together with the principal remaining officials of the Fengtien régime withdrew from Peking, and the task of administering the city during a transient interregnum devolved upon a Committee of Elder Statesmen.

The Committee's duties were facilitated by the presence of a part of a Fengtien brigade, under the command of Pao Yü-lin, which remained behind, in accordance with a plan acceded to by the Nanking authorities, until the arrival of the Nationalists when it was to be

permitted peacefully to depart. The Diplomatic Body supported the Committee in its endeavor to ensure the maintenance of peace and order in the city during the interim period by addressing identic telegrams to the Southern leaders⁵¹ in which expression was given to the gratification which would be felt were the arrangements in regard to General Pao's force duly carried out.

On June 8th General Pao and his protective force left Peking with full honors under a safe-conduct from a Kuominchun commander outside of the city and immediately afterwards the first Shansi troops came in under General Sun Chu, whose Chief of Staff at once called upon the Senior Minister to inform him that, under the authority of Marshal Yen Hsi-shan, General Sun had taken over the responsibility of maintaining peace and order. The incoming troops were well disciplined and the turn-over was a quiet one but confidence in the good faith of the Nationalist Government was somewhat shaken when it was discovered on the following day that, in spite of the promise made by that régime, General Pao's men had not been able to proceed more than sixteen miles from the city before being disarmed by the Kuominchun commander in the vicinity of Tunghsien and forced to return to the suburbs of Peking. It was not until July 1st, after protracted representations in which the foreign representatives took part, that these troops, minus a certain number who elected to remain within the Wall, were allowed to depart for Manchuria. The greater part of their arms was likewise eventually returned to them.

Communication with the outside world, other than by radio, was cut at this time and remained so for several days. Kuominchun forces were then to the south, east and north of Peking and a disposition existed to believe that Feng Yü-hsiang was preparing to force out Yen Hsi-shan. General Yen, however, arrived on the 11th and took up his headquarters at the Ministry of War as the Garrison Commander of the Peking-Tientsin area which post he still held at the end of June. This peaceful revolutionary, as he has been called, succeeded in maintaining order in the area although his administration was embarrassed by the numerous conflicting and overlapping appointments to office made by the Nationalist authorities. He was embarrassed also by General Pai Ch'ung-hsi who accompanied him to Peking and who lost no opportunity of forcing himself into the lime-light. General Pai apparently brought several divisions of Wuhan troops into Chihli, and, in view of their arrival at a time when their assistance would seem no longer to have been needed, it was a matter of surmise whether or not they had been despatched

⁵¹ See telegram No. 425, June 4, 1928, from the Minister in China, p. 235.

with the approval of Nanking for the purpose of exercising a restraining and neutralizing effect upon the possible activities of Feng Yü-hsiang.

C. T. WANG APPOINTED MINISTER FOR FOREIGN AFFAIRS

Since the resignation of General Hwang Fu on May 22nd, as the Nationalist Minister for Foreign Affairs, Mr. Tong Yueh-liang, the Vice Minister, had been acting Foreign Minister. On June 6th the Political Council at Nanking appointed Mr. C. T. Wang as Minister for Foreign Affairs, and, in telegrams dated Nanking, June 14th, the Ministry of Foreign Affairs of the Nationalist Government informed the various diplomatic representatives in Peking that Mr. Wang had assumed office on that day. The manner in which these telegrams were to be answered was discussed in a Diplomatic Body meeting of the following day. It was decided to send individual but not identic acknowledgments in the third person addressed to the "Ministry of Foreign Affairs, Nanking". Contact with the *de facto* Chinese governmental authorities on the now familiar informal basis was thus maintained.

Mr. C. T. Wang was Acting Minister for Foreign Affairs at Peking under President Li Yuan-hung, and Minister for Foreign Affairs for brief periods under President Ts'ao K'un and Chief Executive Tuan Ch'i-jui, and has occupied a number of other important posts under the Republic.

NATIONALIST POLICIES AND AIMS

A few days after Mr. Wang's appointment the Nationalist Government issued, in characteristic language, a declaration of its policies and aims "now that the unification of China is being accomplished".⁵² . . .

It may be of interest to the Department, in this relation, to quote again, in translation, Dr. Sun Yat-sen's will, as written in March, 1925, which has been defined as the "Koran of the Kuomintang":

"I have been engaged in the work of the national revolution for some forty years with the object of securing freedom and equality for China. As a result of the accumulated experience of these forty years I have come to realize that in order to attain this object it is imperative that we should awaken the masses of our people and unite with all the peoples of the world, who can treat us as equals, to fight jointly.

"As the revolution is not yet completed, all of my comrades should continue to struggle for the realization of the principles embodied in my two works, *Plans for National Reconstruction*, and *General*

⁵² See telegram No. 471, June 17, 1928, from the Minister in China, p. 413.

Outlines of National Reconstruction, and also the Three People's Principles and the declaration of the first Plenary Kuomintang Congress. It is particularly important that the two planks which I recently advocated—the calling of a people's conference and abolition of China's unequal treaties,—should be realized within the shortest time possible.”

CONSULATES AT CHANGSHA, CHUNGKING, AND YUNNANFU

1. While there were no well defined signs of stability in Hunan during June, certain favorable trends such as the recent dismissal of General Ch'eng Ch'ien; the consequent reorganization of the military establishment in that province; and the appointment of better disposed civil officials, led the American Consul General at Hankow to look for still further improvement in the general situation and to believe that the Changsha Consulate soon might be reopened. The city of Changsha was relatively quiet and while there was evidence of communistic activity in certain interior sections of the province Mr. Lockhart stated, in a telegram of June 18th,⁵³ that a campaign to suppress communism was vigorously to be prosecuted.

2. Hostilities between Generals Liu Hsiang and Yang Sen, resulting in military operations along the Upper Yangtze together with the general instability of conditions in the province of Szechuan caused Mr. Lockhart to report during the month that the question of reopening of the Chungking Consulate should be held in abeyance for the time being.

I have [etc.]

J. V. A. MACMURRAY

893.00 Tsinan/112

*The Japanese Embassy to the Department of State*⁵⁴

The Japanese Government deeply regrets the unfortunate incident at Tsinan on May 3rd last, but as it was perpetrated by the undisciplined soldiers belonging to the Southern Army, the whole responsibility for it must be said to rest with the Chinese.

However, the Japanese Government, prompted by the desire to preserve the cordial relations between Japan and China, has decided to proceed toward the solution of the Tsinan incident on the following conditions: (1) apology by the Nationalist Government, (2) punishment of those responsible for the incident, (3) compensation for the damages inflicted upon the lives and property of the

⁵³ Not printed.

⁵⁴ This paper bears the penciled notation: "Handed to me by Japanese Charge July 21, 1928, noon—file among memoes of conversation—N[elson] T. J[ohnson]."

Japanese residents, and (4) guarantee for future security. Acting upon this decision, the Government instructed Consul General Yada at Shanghai on July 18th to acquaint the Nationalist Government that it is ready to enter into negotiations with China for the speedy settlement of the matter and that the Consul General at Tsingtao and the Acting Consul General at Tsinan will be appointed to carry on such negotiations. Yada was charged at the same time to ask that a representative of the Nationalist Government with full powers be named and sent to Tsinan immediately.

As regards the Japanese troops dispatched to Shantung, it goes without saying that they were sent there for the sole purpose of protecting Japanese residents, and that the entire troops will be withdrawn from the region as soon as it becomes clear that their presence is no longer necessary. Unfortunately, however, feelings of unrest caused by the Tsinan incident are yet prevalent while wanton acts are still being committed by un-uniformed soldiers in that region, and the total evacuation of Japanese troops is made difficult for the present. Yet it is the belief of the Japanese Government that the speedy solution of the Tsinan incident will greatly mitigate the feelings of unrest and will facilitate such evacuation. Notwithstanding the disturbances above alluded to, the Japanese Government is happy to note that the general situation in Shantung has so improved that the presence of so large a force as originally sent there is no longer required. The Government therefore has withdrawn a part of this force and still intends to reduce the number by degrees. At the same time the warships which were dispatched to several places along the Chinese coast and the Yangtze are being recalled, since the middle of last month, to the stations to which they originally belonged and in fact most of them have already been withdrawn from Chinese waters. Of the troops in Shantung, the first and second reserves of the Third Division have been recalled, and about seven thousand are to be demobilized in the near future, while the remainder will be withdrawn gradually in accordance with the development of the situation.

893.00 P.R./9

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1602

PEKING, August 6, 1928.

[Received September 15.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁵⁵ I have the honor to submit the following summary,

⁵⁵ Not printed.

with index, of events and conditions in China during July, 1928:

There were no important military movements during the month; some engagements of local importance are understood to have occurred in Szechuan, but in general such movements as took place were merely in the nature of a realignment of forces.

Towards the end of the month a group of the Nationalist army, composed in part from the 1st, 2nd, and 3rd armies, was advanced along the Peking-Shanhaikuan motor road and the Peking-Mukden Railway, in order adequately to cover the Chihli-Shantung remnants and to watch the newly incorporated units which had been taken into the Nationalist army on the fall of the Peking-Tientsin area. No serious fighting occurred.

Conditions on the upper Yangtze continued chaotic, the Szechuan militarists stopping and commandeering foreign vessels without convoy, and firing on ships under convoy. The Wuhan cities attempted to retain their autonomy in taxation matters, alleging that their expenditures exceeded their tax receipts. Many cases of illegal taxation were reported.

The occupation of American and other foreign mission property in the Yangtze River Valley and in Honan continued throughout July. On July 24th [28th?], in accordance with instructions from the Department of State, I addressed a note to the Nationalist Government,⁵⁶ calling attention to the fact that not only property which was formerly occupied by Nationalist troops was still being held, but in many places mission property which had so far been left untouched was being demanded by the local military.

Politically, with the exception of the denouncement of various Sino-foreign treaties, and the conclusion of the Sino-American tariff treaty,⁵⁷ the month may be termed one of stock-taking and preparation, all eyes being turned toward the coming plenary conference of the Kuomintang early in August. It is anticipated that the real test of the party will then occur, as it has been announced that the program prepared by Ch'en Kung-po,⁵⁸ Ku Meng-yü,⁵⁹ and others of the radical wing is to be given special consideration. The hope is widely expressed that the conclusion of the Sino-American treaty will strengthen the hands of the moderate element of the Kuomintang and aid them in recovering full ascendancy in the party struggles.

⁵⁶ See telegram No. 580, July 28, 1928, from the Minister in China, p. 251.

⁵⁷ See pp. 449 ff.

⁵⁸ Editor of *The Revolutionary Critic*, a Chinese weekly newspaper.

⁵⁹ Formerly Minister of Education in the Hankow Nationalist Government.

MEETING OF THE NATIONALIST MILITARY LEADERS IN PEKING

When the month opened three of the Nationalist Army Group Commanders, Chiang Kai-shek, Yen Hsi-shan, and Li Tsung-jen were already in Peking. It was reported and denied on several occasions that Marshal Feng Yü-hsiang would also arrive, but on July 5th there was no indication as to what course he intended to pursue. On the morning of July 6th, just in time for the memorial services, Feng Yü-hsiang arrived by special train and motored immediately out to the temple at Pi Yün Szu in the Western Hills near Peking and joined the three other commanders there in offering sacrifices to the spirit of Dr. Sun Yat-sen. General Chiang read a report of the steps leading to the successful conclusion of the northern expedition, which was followed by three minutes' silent prayer for those killed in the revolution. General Chiang was so overcome with emotion during the ceremony that he collapsed before the coffin of Sun Yat-sen sobbing, whereupon Marshal Feng lifted him up and supported him away.

The ceremony was followed by an informal conference of the four leaders. Meetings of this nature continued throughout the stay in Peking of various leaders. It was understood that the chief subjects under consideration were the course to be pursued with regard to Manchuria, and demobilization of the Nationalist forces.

DISBANDMENT OF TROOPS

For years the cherished dream of Chinese of all classes, with the exception of the militarists themselves, has been the ultimate disbandment of the hordes of soldiery which over-run the country. Therefore, it is only natural that immediately upon the fall of Peking to the Nationalists, agitation should recrudescence for drastic reductions in the armed forces. A memorandum on the subject, alleged to have been prepared by General Chiang Kai-shek himself, was presented by General Ho Ying-ch'ing, the Nationalist Chief of Staff, at the weekly Sun Yat-sen meeting in Nanking, on July 2nd. In the memorandum were four specific suggestions:

- (1) All appointments and transfers of officers to be made by the Nationalist Government;
- (2) No interference in administrative affairs to be allowed by military officers;
- (3) The establishment of guarantees for the payment of the armed forces;
- (4) The Nationalist Government to be in complete control over all phases of military education, which should be uniform for all units;

(5) The actual disbandment to start with the First Army Group, i. e., that of General Chiang Kai-shek.

This publication resulted in similar memoranda from all of the prominent Nationalist military leaders. Marshal Feng Yü-hsiang on July 5th, in a telegram to the Nationalist Government, suggested that all posts above the rank of division commander be abolished and that a disbandment commission be formed immediately, but held out for the disbandment of all the weak and badly trained units of the army irrespective of their commanders first. Generals Yen Hsi-shan and Li Tsung-jen also gave out their views on disbandment.

Marshal Feng's plan, if carried out, would be highly advantageous to himself, since, as is well known, the Kuominchun is by far the best disciplined Chinese military force in China, and would then form the largest and most influential part of the reorganized army.

This all-important subject undoubtedly was one of the principal topics discussed at the alleged conference of the "Big Four". No report has been issued officially, but it is noted that a further statement on disarmament was given out by Marshal Feng, in which his first claims were somewhat modified. In any case no positive action can be looked for on this question until after the next Plenary Session of the Central Executive Committee of the Nationalist Party in August. It is pertinent, however, to remark that from all reports, far from there being any attempt at disbandment, efforts for recruitment are still under way in the North and Yangtze provinces.

CONDITIONS IN MANCHURIA

On July 3rd General Chang Hsueh-liang was formally chosen as Commander-in-Chief for Manchuria at a meeting of the Fengtien Party. He announced his intention to establish a form of popular government in Manchuria, and stated his readiness to negotiate with the Nationalist authorities. Peace delegates actually appeared in Peking, and it was reported that, while desiring to retain a somewhat autonomous position with regard to the rest of China, many of the Fengtien leaders were quite prepared to hoist the Nationalist flag and render lip service to the three principles. These peace negotiations were broken off as a result of the Japanese warning elsewhere referred to in this report.

The report of the Sino-Japanese committee for investigating the bombing of Marshal Chang Tso-lin's train was submitted, but left unsigned by the Chinese members, and both sides are apparently trying to hush the affair.

CONDITIONS IN SHANTUNG

On July 16th, in accordance with the previously announced decision of the Japanese Government, the withdrawal of Japanese troops from Shantung began. This movement was completed by July 28th, and included 5,700 men, leaving approximately 13,200 troops in Tsingtao, Tsinan, and the railway zone. During July several incidents occurred showing the antipathy of the Chinese to the Japanese troops. One rather serious affair took place in which alone there were thirty Japanese casualties. However, the Japanese official attitude with regard to these incidents has been one of calm.

I have [etc.]

J. V. A. MACMURRAY

893.00 P.R./10

The Chargé in China (Perkins) to the Secretary of State

[Extracts]

No. 1673

PEKING, *September 14, 1928.*

[Received November 12.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁶¹ I have the honor to submit the following summary, with index, of events and conditions in China during August, 1928:

The revolution having successfully brought most of China under the Kuomintang banner, a reintegration of the country along Nationalist lines theoretically has begun, although little progress in that direction was evident during the month under review. Expressed in a general way, the trend during August was toward the left, with Marshal Feng Yü-hsiang the cynosure of apprehensive interest on the part of the more conservative elements. By reason of his military strength and of his cynical attitude toward the hesitant functioning of the Nationalist Government, he remained, during the month, as he had been for some time, the great enigma of the future. As before, the possibility of an impending centralization of authority in his hands was envisaged, a step in that direction being seen in his mooted succession to the post of Garrison Commander of the Peking-Tientsin area, in place of General Yen Hsi-shan, who was absent in Taiyuanfu during August on the ground of illness.

The most noteworthy event of the period, from the point of view of internal politics, was the holding at Nanking of the Fifth Plenary Session of the Central Executive Committee of the Kuomintang. In the possibilities for definite achievement presented to the country's

⁶¹ Not printed.

leaders, this meeting constituted, as General Chiang Kai-shek expressed it, an opportunity of a thousand years. The opportunity, however, was allowed to pass. The conference assembled in discord and ended without having achieved concrete results, almost the only source of gratification involved being that it should have been possible, thanks to the mediation of General Chiang Kai-shek between the left and right wings, to hold the conference at all. No serious effort appears to have been made to arrive at a solution of the vexing problems of China. Reorganization of the transportation, educational, and judicial systems; readjustment of the moribund Salt Gabelle and of other public services; financial reforms involving a public accounting of monies, were left for a future time; nor was it found possible to devise ways and means of curbing the authority of the militarists. Evidence, in this latter relation, of the cost of military operations, was contained in the fact that of a total of disbursements of the Nationalist Government of some Mexican \$150,000,000. and Taels 2,000,000. for the period June 1, 1927, to May 31, 1928, over Mexican \$132,000,000. were spent for the army and navy.

Rail communications between Peking and Mukden were not resumed during August, nor was northeastern Chihli cleared of certain remnants of the Shantung-Chihli armies under Generals Chang Tsung-ch'ang and Chu Yu-pu, estimated to number 30,000 men. Minor skirmishes occurred between units of these forces and advance elements of a Nationalist expedition under General Pai Chung-hsi organized to free Chihli of these troops.

Trade and commerce in North China continued to be seriously affected by the lack of transportation facilities resulting from the seizure of rolling stock by the Fengtien Party at the time of its withdrawal into Manchuria, in June.

KUOMINTANG CONFERENCE

After a number of preliminary meetings held for the consideration of measures to be submitted to it, the Fifth Plenary Conference of the Central Executive Committee was formally opened at Nanking on August 10th. The opening was somewhat delayed by the lack of a quorum, certain radical members at first being unwilling to participate. Five of these seven members at length were won over, presumably through the personal intervention of General Chiang Kai-shek.

Serious friction developed, during its sessions, over the question of the abolition of the branch political councils. The radical or "Canton" group, composed of those holding no important local positions, strongly favored centralization, while the moderates and those locally influential, such as Li Chi-shen and Li Tsung-jen, favored the

maintenance of the local branches. It was decided to close the branch political councils at the end of this year. A second important difference arose over the question of the "youth movement", the moderates advocating the curbing of student activities and the inculcation of better discipline. It soon became apparent that these and other dissensions within the Kuomintang were sufficiently serious to jeopardize the carrying out of any genuine program of reconstruction and that General Chiang Kai-shek was being only partially successful in his attempts to maintain harmony.

The Conference closed on August 15th, the following being among the principal measures adopted:

1. A resolution for the Third National Congress of the Kuomintang to meet on January 1, 1929. The Law Codification Bureau recommended the formation of a committee to draft a provisional constitution for the Republic to be submitted to the Congress.

2. A resolution that the Central Political Council consist of 46 members to be appointed by the standing committee of the Central Executive Committee.

3. A resolution to proceed at once with the organization of the major branches of the Government. Under the executive branch will be established the Ministries of Foreign Affairs, Interior, Military Affairs, Finance, Education, Communications, Trade & Commerce, Agriculture & Mines. There will also be separate committees of reconstruction, emigration matters, Mongolian and Tibetan Affairs, a General Staff, a Board of Military Training, and a Military Council.

4. A resolution favoring unification of the military administration; adoption of a system of conscription; and reduction of the armies, so that the military expenditures will not exceed fifty percent of the annual receipts of the government; and conversion of all disbanded troops into laborers.

It is also reported that Mr. T. V. Soong's bill for the unification of national finances was adopted. The main features of the bill are as follows:

1. All taxes hitherto collected by the Provincial Governments to be administered by the Central Government, the latter being responsible for the payment of all military and other expenditures belonging to it. The employment of personnel, and the regulation, administration, collection and expenditure of the revenue to be centralized.

2. Adoption of a national budget and the organization of a strong budget committee.

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MANCHURIA

Negotiations undertaken with the object of bringing about a reconciliation between the Fengtien Party and the Nationalists were sus-

pended during the middle of July, when on the verge of completion, as a result of Japanese representations, presumably arising from the fear that a Nationalist ascendancy would jeopardize Japan's position in the Three Eastern Provinces.

An indication of the official Japanese view-point in the premises may be obtained from a statement by the Japanese Prime Minister at a general meeting of the Seiyukai, on the 9th of August. Baron Tanaka stated that, while the Japanese Government did not entertain, nor had it entertained in the past, an ambition to interfere in the domestic affairs of China, his Government, nevertheless, found itself compelled to give the most careful attention to the protection of acquired rights in Manchuria and to the maintenance of peace and order there. It followed, according to the Prime Minister's statement, that the Japanese Government was not opposed in principle to the compromise between the Northerners and the Southerners, but that it looked with disfavor upon the extension over Manchuria of a régime incapable of exercising international good faith.

On August 13th, the Legation was informed that a compromise had been reached between the Japanese Government and the Mukden faction, whereby the latter had agreed not to fly the Nationalist flag for three months, on the understanding that there would be no objection thereto at the end of that period. It was reported that the Mukden-Nationalist accord was an accomplished fact at that time.

It is the Legation's understanding, gained from reports emanating from Mukden, that the delays involved in the reconciliation negotiations between the Nationalists and the Fengtien Party were, in part at least, the result of an attempt to force General Chang Hsueh-liang to establish an autonomous Manchuria, in which position he would have been obliged to rely upon Japanese armed support to suppress opposition.

MONGOL UPRISING

During the middle of the month a series of raids took place in the Barga district of Inner Mongolia, organized by "Young Mongols" with communistic leanings. A small body of Outer Mongolian troops officered by Russians crossed the Barga frontier and clashed with Chinese troops near Arshan, and Mongol cavalry cut the western line of the Chinese Eastern Railway as far south as Barim. It is possible that there was here involved a movement instigated by Soviet agents for reasons not clear at this time, forcibly to bring about the union of Barga and Halha, or, in other words, an attempt to bring about the unification of the various Mongol tribes under the aegis of the red Mongolian Republic whose capital is at Urga.

In a telegram of August 20th, the American Consul at Harbin informed the Legation⁶² that the movement apparently had been temporarily suppressed and that railway traffic had been resumed.

I have [etc.]

MAHLON F. PERKINS

893.00 P.R./11

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1708

PEKING, October 9, 1928.

[Received November 24.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁶³ I have the honor to submit the following summary, with index, of events and conditions in China during September, 1928:

The period under review was a relatively quiet one, characterised by some increase in the influence of the moderates, but it would be somewhat too optimistic to feel that any great advance was made in it toward the achievement of that state of affairs, desired by Chinese and foreigners alike, in which not only are the privileges of complete territorial sovereignty enjoyed but its obligations respected.

During the month, the Central Political Council of the Kuomintang was largely occupied in working out, for subsequent reference to the Central Executive Committee, a form of governmental organization to be instituted for the purpose of carrying on the government of the country, under the supervision of the Kuomintang party, on the basis of a government council and five "Yuan" or principal branches of the Government, namely, executive, legislative, judicial, examination, and control or supervisory.

Operations undertaken to clear northeastern Chihli of the last remnants of the Shantung-Chihli armies were initiated and brought to virtual completion during the period under review. At the end of the month, as reported by the Legation's Military Attaché, it appeared that the principal organizations of these forces either were disbanded or incorporated among Nationalist or Fengtien troops. The question still remained unsettled, however, as to whether Fengtien or Nationalist forces were to occupy the territory between the Luan River and the Great Wall. . . .

⁶² Telegram not printed.

⁶³ Not printed.

General Yen Hsi-shan returned to Peking on September 25th to resume his duties as Garrison Commander of the Peking-Tientsin area, after an absence of some two months in Taiyuanfu.

SURVEY OF CONDITIONS IN CHINA UNDER THE NATIONALIST GOVERNMENT

With the assistance of the American Consular officers in China, the Legation made an estimate of prevailing conditions in this country, during the period under review, similar to, but somewhat more extensive than, that outlined in the monthly summary for August:

As constituted during September, the Nationalist Government consisted of: First, a central organization made up of (a) the executives of the Kuomintang party composed of controlling committees; and (b) the heads of administrative departments or ministries, some of whom had only recently joined the party; and, Second, provincial or regional administrations in which the actual power was held by various militarists, some of whom had but lately allied themselves with the party for reasons of expediency, and among whom wide divergences of policy existed.

The Nationalist Government was unstable owing to: First, the extremely divergent elements of which it was composed and the consequent inability to attain sufficient cohesion to make possible any constructive work; Second, the scarcity of men actuated by unselfish patriotism, and the almost complete lack of men of outstanding ability; Third, the inclusion of many of the same vicious elements which proved a source of weakness to its Peking predecessors; Fourth, the failure to fulfill all but a modicum of its wide-sweeping promises for the betterment of the people, and the improbability of its being able subsequently to carry out these promises which, together with the endeavor to rule the country to the selfish advantages of the old Kuomintang, were resulting in popular disillusionment and disappointment; Fifth, the failure to put into effect Mr. T. V. Soong's sound economic and fiscal policy which, or some equivalent of which, was essential if China's economic plight was to be alleviated; Sixth, the failure to assure support to any effective administration of the salt and customs services which constituted the only machinery for effectively producing revenue regularly and on a large scale, and the consequent injury of China's credit abroad; Seventh, the inability to induce or compel the provinces, other than Kiangsu and possibly Chekiang, to contribute to the financial support of the central government; Eighth, the failure to remove or to mitigate the incubus of undisciplined coolie armies and the improbability of any real progress along this line; Ninth, the possibility that the increasing

dissatisfaction, particularly in the north, might be seized upon by some leader, such as Marshal Feng Yu-Hsiang, to set up a separate government; Tenth, the continued activities of the communists under Soviet direction, which might take advantage of the economic breakdown to create disorders; Eleventh, the committee system of organization which both per se and owing to its unsuitability to the Chinese temperament, prevented the effective functioning of such government as had been organized; and Twelfth, the moral instability resulting from the lack of all sense of responsibility for obligations or even national interests as weighed against the possibility of "making face" by meretricious postures.

On the other hand, the greatest asset of the government was the fact that it personified and served as a focal point for the still vague nationalist aspirations of the people. Its future prospects depended directly upon its ability to remove or materially to mitigate the factors of instability indicated above and thus to continue to hold the popular imagination. This popular approval had until then protected it from outside attacks and from serious internal defections.

The Nationalist movement thrived upon the people's resentment against their unhappy condition which its leaders had succeeded in directing against the former militarists and foreign "imperialists."

Consular reports unanimously indicated the continued subservience of the courts to the military, the break-down in some instances of the modern courts from lack of funds, and a general absence of reform or improvement. . . .

Judging from Consular reports and from the Legation's observation, effective civil control was virtually non-existent in the provinces, all ultimate authority being in the hands of the militarists. . . .

Consular reports and general information both indicated that there had been no improvement in the matter of taxes, which in many instances were heavier than before, were controlled by the militarists, and were collected through tax farmers. . . .

The generally unsatisfactory economic conditions obtaining, and the growing disillusionment as to the Government's ability to fulfill its promises, both combined to present a fertile field in which communist agitators were constantly active. The communists, moreover, constituted the most compact and single minded and best organized of all Chinese parties, and enjoyed the advantages of Russian guidance and money. It was believed, during September, however, that, while local outbreaks might at times occur, a general return to power of the communists was not likely, unless some prominent leader, such as Marshal Feng Yu-hsiang, should desire to make use of them. . . . It was not believed that Marshal Feng and Gen-

eral Chiang were converts to Marxian principles, but that they were opportunists who would not scruple to utilize the communists' strength to further their own ends.

Civil warfare was being waged at the end of September in northern Chihli, Szechwan, Kwangtung, Hunan, Hupeh, and Honan. These "wars" were not of a major character, but as long as the million and more men under arms throughout China were not disbanded and placed in gainful occupations, the danger of war on a larger scale would remain.

The relationship between the more important military leaders in the Nationalist party during the period under review, as formerly, was one of unstable equilibrium. Probably none of them desired war, provided their objects could be attained by other means. The danger lay in their possession of swollen armies, which each desired to retain to ensure his own position, and the support of which each was finding difficult without enlarging his own sphere of power at the expense of the others. The fear of public opinion served as a deterrent, but it was difficult to say for how long public opinion would prove effective in this regard. Hankow stated, "as long as large armies are necessary and money is available, there is always the possibility of new conflicts."

The general situation throughout China, while discouraging, was not hopeless. The more important Chinese classes largely had been shaken out of their lethargy and while their energies were too often misdirected, it was felt that these might in time be diverted into genuinely progressive channels. The small leaven of clear-headed and patriotic civilian leaders, who, although in a hopeless minority, remained undiscouraged by the conditions here described, deserved the greatest sympathy: unfortunately, however, they were not in control of either the government or the situation.

I have [etc.]

J. V. A. MACMURRAY

893.00 P.R./12

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1750

PEKING, November 12, 1928.

[Received December 27.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁶⁴ I have the honor to submit the following summary, with index, of events and conditions in China during October, 1928:

⁶⁴ Not printed.

The outstanding events of the month were the promulgation on October 3rd [4th?], by the Central Executive Committee of the Kuomintang, of the "Organic Law for the Nationalist Government of the Republic of China"⁶⁵ and the inauguration at Nanking, on October 10th, of the new State Council and the five *Yuan* or branches of the Government which were created by the law, and which under the general direction and control of the Kuomintang, are to handle the affairs of the country.

The period was marked by no military operations.

THE ORGANIC LAW FOR THE NATIONALIST GOVERNMENT OF THE REPUBLIC OF CHINA

The preamble of the law states that the Kuomintang of China, pursuant to the three people's principles and the five power constitution, establishes the Republic of China. According to the preamble, it is likewise the Kuomintang which has formulated and promulgated the "law governing the organization of the Nationalist Government." There is no question of a yielding up, on the part of the Kuomintang, of its preponderant influence in the country's affairs by the readjustment here involved. This is made clear by the fact that at the time of the adoption of the Organic Law the party resolved, *inter alia*, (1) that the Central Executive Committee and the Central Political Council should direct and supervise the State Council in the execution of important affairs, and (2) that the revision and interpretation of the law governing the reorganization of the Nationalist Government should be decided and carried out by the Central Executive Committee and the Central Political Council.

It may be stated, parenthetically, that there has been no meeting of the National Congress of the Kuomintang, from which the Central Executive Committee, the Central Supervisory Committee, and the Central Political Council derive their authority, since 1924. The next or third National Congress, or, as it is more literally translated, the third National Convention of Kuomintang Representatives, is to be held at Nanking on January 1, 1929. One half of the representatives at this Congress are to be appointed by the central Kuomintang authorities and the other half by the various local branches of the party.

The State Council is the highest unit under the system of government provided for by the Organic Law and the chairman of this body is the formal head of the state. He officiates at state functions, receives the representatives of foreign countries, and is concurrently

⁶⁵ *Treaties and Agreements With and Concerning China, 1919-1929* (Washington, Carnegie Endowment for International Peace, 1929), p. 233.

commander-in-chief of the army and navy. All laws promulgated and all mandates issued by virtue of a decision of the State Council are signed by him and countersigned by the directors of the five *Yuan*, which are dependent from the State Council.

The most arresting feature of the Law is the five power principle by which an endeavor appears to have been made to combine the essential features of Chinese and Western governmental systems. The five *Yuan* or branches of the government, are the executive, legislative, and judicial departments, as is customary in Western theory, in addition to two branches which are revivals of old Chinese governmental agencies, namely an examination department, which will in effect have charge of the civil service, and a control or supervisory department, which is to exercise powers of impeachment and auditing.

The Executive *Yuan* is composed of ten ministries, including those of Foreign Affairs and of the Interior, headed, respectively, by Dr. C. T. Wang and General Yen Hsi-shan, and five boards including those of national reconstruction and of Mongolian and Tibetan affairs. While the Executive *Yuan*, *inter alia*, handles such questions as "budgets, amnesties, declarations of war, peace negotiations, and the conclusion of treaties and other important international matters," its decisions in regard to them are to be reviewed by the Legislative *Yuan*. The Judicial *Yuan*, in general, deals with such questions as its name implies.

The Organic Law went into force, on the date of promulgation, for an undefined period, tentatively estimated to be five years. It is a period of political tutelage to last, according to Kuomintang pronouncements, until the people shall have been trained to exercise their four political rights of election, recall, initiative, and referendum.

INAUGURATION OF THE NEW GOVERNMENT

The Government was inaugurated at Nanking on October 10th with General Chiang Kai-shek as Chairman of the State Council. This body is composed of sixteen members including, in addition to the chairmen of the five *Yuan*, such important military leaders as Marshal Feng Yu-hsiang and General Chang Hsueh-liang. The last named is reported to have telegraphed to General Chiang Kai-shek from Mukden expressing appreciation in his appointment and indicating that he was prepared to accept the responsibilities of the office. Marshal Feng Yu-hsiang, probably the most powerful figure in China today and one whose views carry corresponding weight, was at first reported to be opposed to the inclusion of the "Young Marshal" in the State Council, but was later stated to welcome it.

As set forth in local editorial comment on the subject, the appointment would appear to be essential to the reputed new order of cooperation and compromise.

Messrs. Tan Yen-kai, Hu Han-min, Wang Chung-hui, Tai Chi-tao, and Tsai Yuan-pei were appointed chairmen respectively of the executive, legislative, judicial, examination, and control *Yuan*. Feng Yu-hsiang, incidentally, has been appointed Vice Chairman of the Executive *Yuan* and Minister of Military Affairs.

In the matter of nomenclature, and as significant of the changed situation in China, it is of interest to record that it was decided at a meeting, on October 11th, of the standing committee of the Central Executive Committee of the Kuomintang to change the English name of the new régime from the "Nationalist" to the "National" Government of the Republic of China. The reason given for this modification was that while the term "Nationalist" was an appropriate designation for the Southern faction while the Northern Government was still in existence, "National" was more suitable at this time, when virtually the whole country was under the control of Nanking.

The Legation was not officially apprised of the new name or asked by the Chinese Government to adopt it, during the period under review.

SINO-JAPANESE RELATIONS

A change of feeling between the two countries facilitating the conduct of negotiations looking to a settlement of the differences between them was notic[e]able during October. Nothing very definite was accomplished, however.

After a number of meetings at Nanking between the Nationalist Minister for Foreign Affairs and the Japanese Consul General at Shanghai, who had gone to Nanking on October 18th, the following announcement, of October 25th, was made:

"C. T. Wang and Yada have minutely exchanged views regarding the Sino-Japanese issues, in connection with the Sino-Japanese treaty question, the Tsinan, Nanking and Hankow cases, and have agreed to tentative measures for their solution, with the result that both sides have reported to their respective governments for instructions."

Manchurian questions do not appear to have been discussed. The Legation is informed, in this relation, that Japan does not wish to establish a protectorate over that region and that there are only two aspects of the situation with which that country is really concerned, namely, the question of the extension of railroads in Manchuria and the question of the lease of land.

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CONDITIONS IN CHEFOO

Eastern Shantung, in common with other sections of North China, was occupied by Nationalist forces during the first part of June. At the end of July and during August, however, the five-barred Northern flag again was flying in that district, as the result of a *coup d'état* on the part of an adherent of General Chang Tsung-ch'ang. The Nationalist Government nominally regained control, through the agency of General Liu Chen-nien, on September 3rd.

Early in October, it became apparent that the relationship between the Nationalist Government and the régime set up for himself by the semi-independent Liu Chen-nien was far from being a cordial one, notwithstanding the fact that the General had sworn allegiance to Nanking. As suggested in reports from the American Consul at Chefoo,⁶⁶ it appeared to be the General's intention to ignore the central authorities and by the most ruthless methods to retain command of the area. To that end he did not hesitate to resort to a series of cold-blooded murders of representatives of Marshal Feng Yu-hsiang, who had come to urge him to leave Chefoo quietly, and of a number of emissaries of the Nationalist Government who had come to discuss taxation questions and other administrative matters. More than forty such political murders took place.

Mr. Webber reported that at the end of the month General Liu still controlled the area, that assassinations had ceased, that order was being maintained, and that the character of the General's relationship to the Nationalist Government remained in doubt.

I have [etc.]

J. V. A. MACMURRAY

893.00 P.R./13

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1804

PEKING, December 12, 1928.

[Received January 21, 1929.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁶⁷ I have the honor to submit the following summary, with index, of events and conditions in China during November, 1928:

In the field of Sino-foreign relations the month was characterized by actively pursued negotiations with a view to the conclusion of

⁶⁶ Teroy Webber.

⁶⁷ Not printed.

new treaties. In respect to China's domestic affairs during the period there would appear to have been growing among her citizens, to judge from reports reaching the Legation, a feeling that dissension among the several factions in the Kuomintang was serious enough to foreshadow recourse to further military activity. Such an eventuality would be the more to be regretted as six months have not yet elapsed since there was set up at Nanking a centralized and allegedly stable and responsible government.

The standing committee of the Central Executive Committee of the Kuomintang determined, at a special meeting held in Nanking on November 16th, to postpone the Third National Convention of Kuomintang Representatives from January 1st to March 15, 1929, on the ground that time was lacking to complete the necessary preparations and to select delegates before the first of the new year. The reason also was advanced that, since the formal interment of Dr. Sun Yat Sen is to take place in Nanking on March 12th, delegates thus would be spared the necessity of a second displacement from their homes within three months. The real cause of the delay in holding the congress would seem to be that the inner group of the Kuomintang in control of the government apprehended dispossession. Among those resenting the postponement was the influential left wing leader, Dr. Wang Ching-wei, who contended, on somewhat barren constitutional grounds, that the Central Executive Committee, which has arrogated unto itself virtually dictatorial prerogatives, had no power to alter a decision reached at a plenary session of the party. The decision to hold the congress on January 1st, next, was arrived at during the fifth plenary meeting of the Kuomintang of last August.

SINO-FOREIGN RELATIONS

Three treaties were concluded by the Nationalist Government during the month: (1) a Sino-Norwegian tariff treaty⁶⁸ similar to ours of July 25th; (2) a Sino-Belgian "Preliminary Treaty of Amity and Commerce,"⁶⁹ less unfavorable to Belgium, chiefly in the matter of extraterritorial privileges, than had been anticipated, and of interest also as providing for the ultimate acquisition by Belgian subjects of the right to live, trade, and acquire property anywhere in China; and, (3), a Sino-Italian treaty⁷⁰ generally similar to the Belgian treaty.

⁶⁸ For text of treaty, signed November 12, see League of Nations Treaty Series, vol. LXXXVII, p. 381.

⁶⁹ For text of treaty, signed November 22, see *ibid.*, p. 287.

⁷⁰ For text of treaty, signed November 27, see *ibid.*, vol. XCIII, p. 173.

SINO-JAPANESE TREATY RELATIONS

The conversations between Dr. C. T. Wang and the Japanese Consul General at Shanghai relative to treaty revision and the settlement of the Tsinan, Nanking, and Hankow incidents, which were interrupted at the end of October pending the receipt of further instructions from their respective Governments, were to have been resumed at Shanghai on November 22nd. Prior to that date, however, the members of the State Council insisted that before any further meetings were held the date of the evacuation of Japanese troops from Shantung should be fixed. As Consul General Yada was unable to make any definite agreement on that point the conversations remained temporarily suspended.

It is the Legation's understanding that the Japanese nationals in Shantung protested to their home Government because of the great number of bandits outside of the walls of Tsinan who threatened Japanese lives and property. Japan nevertheless was reported to be anxious to evacuate Shantung as soon as proper guarantees are given.

An intensification of the anti-Japanese boycott, due to the suspension of Sino-Japanese negotiations, took place during November.

I have [etc.]

J. V. A. MACMURRAY

893.00 P.R./14

The Minister in China (MacMurray) to the Secretary of State

[Extracts]

No. 1867

PEKING, *January 11, 1929.*

[Received February 16.]

SIR: In accordance with the Department's instruction No. 78, of October 9, 1925,⁷¹ I have the honor to submit the following summary, with index, of events and conditions in China during December, 1928:

The period under review was a relatively uneventful one in respect to domestic affairs. It was characterized in the field of foreign relations by the conclusion of seven of the twelve treaties with foreign Powers which the Nationalist Government has negotiated since the unification of the country in June last. Of the countries diplomatically represented in China in December, only two had not entered into new treaty relations with that country,—Japan, whose treaty negotiations remained at a standstill during the month, and Brazil,

⁷¹ Not printed.

whose Chargé d'Affaires ad interim had not yet received instructions from his government in the matter. Tariff autonomy is conceded to China in all the treaties; and in five of them it is provided that extraterritorial rights are to be relinquished as of January 1, 1930, under certain specified conditions.

On December 20th, the date on which the Sino-British treaty was signed, the British Minister (who had arrived in China at a time when there was no recognized government) formally presented his credentials to General Chiang Kai-shek. Simultaneously, a British cruiser fired a national salute to the Chinese flag, which was returned by a Chinese warship. An exchange of admirals' and ministers' salutes followed, one hundred and two guns being fired in the three ceremonies.

Unsubstantiated rumors were current, during December, of the return of the capital to Peking. The negotiation of the several treaties involving an ultimate radical modification of China's relationship to foreign Powers was reported to have made the thought of residence in the old "northern capital" less distasteful to the representatives of a new order in China. It is possible that the question of the removal from Nanking will be brought up at the Third National Congress of the Kuomintang, in March, 1929, when such advantages as the economy involved, and the proximity of Peking to Manchuria and Mongolia, again will be emphasized.

The question arose during the month of the Government's supporting an appeal to the charitably-minded people of America to assuage what were described as famine conditions in certain parts of China. The Legation made an examination of the matter, and, from information derived from consular reports, from investigations conducted in Charhar, Suiyuan, and Honan, by two of the Language Officers attached to the office of the Military Attaché, and from other reports, concluded that, whereas the conditions of destitution which are chronic in China were in many places more severe than usual, such conditions in the main (outside of the Chihli-Shantung area) were due primarily to political and military causes rather than to natural disasters. It appeared, therefore, that they did not in general constitute a famine within the definition of famine (formulated in 1924 in connection with the administration of previous international relief funds) as starvation due to natural calamities as distinguished from destitution created by the wastage of civil war and brigandage and by the exactions and inquisitions of the tax collectors.

SINO-FOREIGN TREATY RELATIONS

The following treaties were concluded during the month:

- (1) A Sino-Danish treaty on December 12th⁷² *mutatis mutandis* substantially identical with the Sino-Italian treaty of November 27th;⁷³
- (2) a Sino-Dutch treaty on December 19th;⁷⁴
- (3) a Sino-Portuguese treaty on December 19th;⁷⁵
- (4) a Sino-British treaty on December 20th;⁷⁶
- (5) a Sino-Swedish treaty on December 20th;⁷⁷
- (6) a Sino-French treaty on December 22nd;⁷⁸ and finally
- (7) a Sino-Spanish treaty on December 27th,⁷⁹ *mutatis mutandis*, practically identical with the Italian treaty of November 27th.

CONDITIONS IN MANCHURIA

In a despatch of December 24th the American Consul in charge at Mukden⁸⁰ informed the Legation in part as follows respecting the governmental policy put forward in the name of General Chang Hsueh-liang:

The trend of events in Manchuria may be described as "the gradual adoption of the Nationalist type of governmental machinery without any change of personnel and at the same time the keeping of this jurisdiction free from Kuomintang organizations and office seekers. . . .⁸¹ This policy seems to imply a desire for close co-operation with Nationalist China together with the maintenance of the autonomy of the Three Eastern Provinces."

The Nationalist flag was hoisted at Mukden on December 29th.

I have [etc.]

J. V. A. MACMURRAY

⁷² League of Nations Treaty Series, vol. xci, p. 207.

⁷³ *Ibid.*, vol. xciii, p. 173.

⁷⁴ *Ibid.*, vol. cxi, p. 161.

⁷⁵ *Ibid.*, vol. cvii, p. 93.

⁷⁶ *Ibid.*, vol. xc, p. 337.

⁷⁷ *Ibid.*, p. 81.

⁷⁸ *Ibid.*, vol. xcii, p. 267.

⁷⁹ *Treaties and Agreements With and Concerning China, 1919-1929*, p. 270; also *The China Year Book, 1929-30*, p. 855.

⁸⁰ Not printed.

⁸¹ Omission indicated in the original summary.

RECOGNITION BY THE UNITED STATES OF THE NATIONALIST
GOVERNMENT IN CHINA

393.1154 Am 33/4 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 13, 1928—11 a. m.

[Received April 13—4:30 a. m.]

266. Department's mail instruction No. 794, March 3, 1928.⁸²

1. Legation has received a letter, dated Shanghai, March 30th, from H. D. Rodger, requesting from the Legation "Certificate stating when the United States Government ceased to recognize the Chinese Government—either the present so-called Peking Government or the Nationalist Government at Nanking." Rodger indicates that as attorney for the Nationalist authorities he desires to use information as evidence in proceedings in the United States Court for China against Merchants Fire Assurance Corporation of New York and the Great American Insurance Company.

2. Subject to the Department's approval I intend to make following statements in reply:

"Marshal Tuan Chi-jui took office as the Chief Executive of the Provisional Government of the Chinese Republic on November 24, 1924.⁸³ December of that year the American Government entered into *de facto* relations with the Provisional Government pending the establishment of a formal government representing all the provinces and parties.⁸⁴ Marshal Tuan resigned on April 20, 1926,⁸⁵ and the American Government has never recognized any succeeding regime as the Government of the Republic of China. Although it has continued to have dealings in particular matters as occasion has arisen with the various regimes at Peking and elsewhere in China as political entities exercising regional authority, the Legation is not in a position to furnish the above information substantiated by a certificate as requested by you."

MACMURRAY

393.1154 Am 33/5 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, April 14, 1928—4 p. m.

120. Legation's 226, April 13, 11 a. m. Having carefully considered the request made by Rodger as quoted, and having examined

⁸² Not printed.

⁸³ See telegrams No. 455, Nov. 24, 1924, and No. 456, Nov. 25, from the Chargé in China, *Foreign Relations*, 1924, vol. I, pp. 398-399.

⁸⁴ *Ibid.*, pp. 416 ff.

⁸⁵ See telegram No. 190, Apr. 21, 1926, from the Minister in China, *ibid.*, 1926, vol. I, p. 614.

previous communications, it is the Department's opinion that any attempted specifications are inadvisable. With reference to your contemplated reply, the first two sentences are approved by the Department. Substitute the following for the last two sentences:⁸⁶

"Since the collapse of Tuan's Administration, the American Government has not dealt with any succeeding regime as the Government of the Republic of China. The Legation has continued to have dealings in particular matters with the various regimes at Peking and has dealt with certain authorities elsewhere in China on the basis of regional jurisdiction. The Legation is not in position to make a statement substantiated by certificate of the character requested by you."

KELLOGG

893.00/9998

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] May 24, 1928.

The Spanish Ambassador called this morning upon me and asked me about C. C. Wu. He referred to an item in the newspaper to the effect that C. C. Wu, claiming to be a representative of the Nationalist Government, had arrived in Washington to present the views of the Nationalist Government of China to the United States and to the American people. The Ambassador asked me whether I had seen Wu. I told him I had not, but that I expected to see him in the course of the next few days. I explained to him that we had not recognized the Nationalist Government of China and that we would not recognize C. C. Wu as having any official status, but that we would receive him unofficially and informally and listen to anything he had to say.

The Ambassador referred to Mr. MacMurray's notes to the Northern and Southern factions⁸⁷ warning them of the intention of the American Government to protect American citizens at Peking and Tientsin and asked me whether this had any relation to the Japanese memorandum handed to the Northern and Southern factions on May 18.⁸⁸ I explained to him that it had no relation whatever to the action of the Japanese Government.

The Ambassador referred to the report in the *Washington Post* this morning to the effect that the Japanese press was much disturbed over statements accredited to the Secretary of State concerning Japan's policy in China and asked me whether any such statements had been made by the Secretary. I told him that the alleged

⁸⁶ Quotation not paraphrased.

⁸⁷ See telegram No. 359, May 17, from the Minister in China, p. 222.

⁸⁸ See telegram No. 63, May 17, from the Ambassador in Japan, p. 224.

reports in the Japanese press regarding statements made by the Secretary were based entirely upon misinformation, that the Secretary had not commented upon the Japanese memorandum to the Northern and Southern factions in China, nor had he commented upon Japan's policy.

N[ELSON] T. J[OHNSON]

701.9311/322 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, June 15, 1928—noon.

188. During diplomatic hours yesterday the Chinese Minister, Alfred Sze, called on me without appointment and informed me of the receipt by him of a cable from the Nationalist Government inquiring as to his willingness to continue as "China's representative" in Washington. I was informed by Sze that his reply was in the affirmative. I merely thanked him for the information and made no comment. There was no further conversation beyond this.

KELLOGG

893.01/284a : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, June 15, 1928—1 p. m.

189. Although it may be that the time has not arrived for the taking of definite action toward recognition of the existing Nationalist Government as the Government of China, it is felt that if the internal warfare should appear to be actually at an end it will be necessary soon for us to deal with that Government, as the *de facto* Government of China at least, and that we be prepared to fulfill the promises set forth in my statement of January 27, 1927.⁸⁹ That statement, I believe, had much influence in averting hostility toward the United States because it was an offer of a liberal, broad, fair nature to any government of China or to a body of delegates fairly representative of China. An indication of the readiness of the United States to enter into negotiations on the basis of that statement, with or without recognition of the existing government, would, I now believe, have considerable influence toward making the situation more stable.

⁸⁹ See telegram No. 28, Jan. 25, 1927, to the Chargé in China, *Foreign Relations*, 1927, vol. II, p. 350.

That statement, fairly interpreted, places us under an obligation to proceed, either with the other powers or alone, to negotiate on tariff matters. I should like to be prepared also to negotiate at the same time in regard to extraterritoriality, not necessarily with a view to the immediate abandonment of rights of an extraterritorial nature, but with the idea of their relinquishment gradually, with certain provisions for protection, in the interim, of American citizens and their interests.

Your views in regard to the following points as soon as possible would be appreciated:

1. The probability of establishment of a responsible government by the Nationalists.

2. The steps which should be taken by us with a view to recognition, on a *de facto* basis at least.

3. Is the American Government prepared to indicate its willingness to proceed with negotiations with the Nationalists as soon as they are able to designate authorized representatives?

The other governments have not been consulted by me in this matter. I shall, of course, inform them if we decide to proceed with the negotiations. Before final action is taken by us, I should consult with them on the subject or at least inform them of that which we propose to do, even if they should not be willing to proceed with us.

KELLOGG

893.01/288

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] *June 16, 1928.*

During the course of a conversation this morning the Japanese Chargé said that reports in the press, which he supposed were issued by Chinese, indicated that we were giving serious consideration to the question of recognition of the Nationalist Government. I told the Chargé that no decisions had been made with regard to this matter, but naturally, in view of the fact that the Nationalist troops and authorities had extended their sway over a good part of China, and in view of the retreat of the forces of Chang Tso-lin⁹⁰ from the field, the question of the recognition of this Government was coming nearer to the point where it would have to be taken into consideration. I said we felt, however, that we must consider the stability of this Government before any decision could be properly made.

The Chargé asked whether we contemplated taking up the ques-

⁹⁰ Formerly generalissimo of military and naval forces under the Peking Government; died June 4, 1928, as the result of injuries sustained when an explosion wrecked his special train in Manchuria.

tion of treaty revision before the Government had been recognized. I stated that we naturally felt that negotiation concerning certain phases of the treaty situation would not necessarily have to await the question of recognition as we felt that some of these matters should be considered if for no other purpose than to prepare the way for some agreement which could be entered into when a government was recognized. I pointed out that the Japanese Government had apparently felt the same on this subject, in view of their negotiations at Peking concerning treaty matters. It was also apparent that the British Government had at one time or another taken a similar attitude on the subject. The Chargé acknowledged that this was so, particularly with reference to the question of tariffs, which the Nationalists were very much interested in having settled.

The Chargé asked whether we had made any decision with regard to moving our legation from Peking. I said that we had not and naturally we could not attempt to decide where the Chinese should have their capital; that of course if they shifted their capital from Peking to Nanking, we would have to meet that situation as we had to meet it in Turkey.

The Chargé asked me about the statement which had appeared in the press concerning the appointment of Alfred Sze as the representative of the Nationalist Government. I told him what had happened was this: that Alfred Sze had called upon the Secretary during diplomatic hours on Thursday and had informed the Secretary that he had received a telegram from the Nationalist Government asking whether he would be willing to remain in Washington as Chinese representative and that he had accepted this appointment. I said that the Secretary thanked the Minister for the information and that the conversation had not gone beyond this point.

The Chargé asked that we be so good as to give him any decisions we might make with regard to the questions of recognition and treaty negotiations and I promised him we would. I asked him whether his own Government had made any decisions in the matter and he said he had no information.

N[ELSON] T. J[OHNSON]

893.01/287

Memorandum by the Secretary of State

[WASHINGTON,] June 18, 1928.

The British Chargé called and asked me what the Chinese Minister said about representing the Nationalists. I told him that he called and simply said that he had received a cable from the Nationalist Government or authorities asking him to continue to represent China

in the United States. I thanked him for the information. He did not present credentials. He did not discuss recognition.

I said that if the Nationalist authorities settle down now to establish a reasonably stable government, we would have to meet the question of either *de facto* or *de jure* recognition as the government of China and if they did succeed in establishing such a government, I saw no reason why we should not extend at least *de facto* recognition and perhaps take up the question of negotiations again. I asked him what was the attitude of the British Government. He said that he did not know. He wanted to know what the status of Sze was and I said he had the same status that he had always had; that he did at one time represent the Tuan Chi Jui provisional government which we had all recognized as a *de facto* government making certain reservations at the time. He continued after that government disappeared to some time discuss matters pertaining to Chang Tso Lin and matters pertaining to the Nanking Government and any matters which he or any of the others seemed to be interested in. That is the substance of the conversation. The British Chargé promised to inquire of his Government as to its attitude on the subject of recognition.

893.01/289 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, June 20, 1928—11 p. m.

[Received June 20—3 p. m.]

487. Department's 189, June 15, 1 p. m.

1. In response to the request for views set forth in paragraph 3 of your telegram, I submit the following:

1st. As to the probability of establishment by the Nationalists of a responsible government, in the sense of having a serious capability of fulfilling its responsibilities, domestic and international, it is my opinion that this is extremely problematical, nor do I expect it within any predictable future.

2d. Considering that, as a result of the anomalous situation existing heretofore we are in *de facto* relationship already with the Nanking regime, which has now greatly extended the area under its control, it would appear to be unnecessary to take any steps toward *de facto* recognition. The question of *de jure* recognition, it is assumed, does not arise under present circumstances.

3d. Even in the absence of any substantial governmental entity in China, I believe that it would be possible and advisable for us to

reach an agreement with what is for the present, at any rate, the dominant party, in relation to the matter of customs duties, this arrangement to be along the lines of the suggestions (see my memorandum of October 21, 1927⁹¹) which were approved by you during my consultations with you last autumn. We could proceed thus far with reasonable assurance, for the Chinese would be asked by us to undertake no obligations whatsoever in this matter other than the negative obligation of refraining from discrimination against our trade. Our commitments could not be construed, in my opinion, as placing us under any obligation to proceed with negotiations in regard to such fundamental questions as extraterritoriality with a mere shadow of a government incapable of carrying out its part of any arrangement which might be concluded.

2. It is recommended, therefore, that you renew the authorization which you gave me last October for entering into discussions with the Nanking authorities, whenever in my opinion circumstances make such discussions opportune, with a view to the relinquishment by us of present treaty restrictions affecting the Chinese customs tariffs, even though decided Japanese opposition in this connection may be expected. I recommend also that you authorize me further, in case I am pressed by the Nanking regime for revision of the treaties in other respects, to reply along the lines of the reply which I made on March 30 last⁹² to a similar request from the former Nationalist Minister for Foreign Affairs, giving expression to your announced policy in this regard as I understood it.

3. I am unable to avoid the feeling that it is premature to rest any further plans on the supposition that internal warfare is actually at an end. The situation as affecting the present conflict of forces among the military leaders who actually comprise the Nationalist movement is entirely precarious (see my 213, April 7, 3 p. m.).⁹³ Unity and peace in China are not actualities as yet, but are still a very doubtful hope, however much we may desire to believe the contrary.

MACMURRAY

893.01/295

*Memorandum by the Assistant Secretary of State (Johnson)*⁹⁴

[WASHINGTON,] June 23, 1928.

Conversation

Dr. C. C. Wu, Special Representative of the Nationalist Government of China;

⁹¹ *Foreign Relations*, 1927, vol. II, p. 363.

⁹² See telegram of March 30, from the Minister in China, sent from Shanghai, p. 331.

⁹³ Not printed.

⁹⁴ Prepared by Mr. Peck, but initialed by Mr. Johnson.

Mr. Frank W. Lee, a Representative of the Nationalist Government of China;

Mr. Nelson T. Johnson, Assistant Secretary of State;

Mr. Stanley K. Hornbeck, Chief of the Far Eastern Division;

Mr. Willys R. Peck, Assistant Chief of the Far Eastern Division.

Subject: Method of Organization of the Nationalist Government of China.

An informal dinner party was given by Dr. C. C. Wu on the night of June 22 at the Wardman Park Hotel, the persons named being present.

After dinner Dr. Wu asked Mr. Johnson when he would be prepared to begin discussions regarding treaty revision. Mr. Johnson did not reply to this question but instead asked "Where is the seat of the Government of China?". Dr. Wu replied that the seat of the Government of China was at Nanking.

Following this Messrs. Johnson, Hornbeck and Peck asked Dr. Wu and Mr. Lee a number of questions designed to elicit specific information in regard to the constitution and mode of operation of the Nationalist Government. The replies made by Dr. Wu were often hesitant and vague, conveying the impression that he was not entirely clear in his own mind on these matters.

Dr. Wu was asked of what the Nationalist Government was composed. He replied that the Government Council was the Government of China. Asked who composed the Government Council he replied that Mr. Tan Yen-kai was its chairman, its members being Feng Yu-hsiang, Chiang Kai-shek, himself and others. He rather thought Mr. T. V. Soong, at present Minister for Finance, had recently been appointed to the Council. He did not know exactly how many members of the Council there were.

Being asked the source from which the Government Council derived its authority, Dr. Wu replied that it was appointed by the Central Executive Committee of the Kuomintang (Nationalist Party). All of Dr. Wu's statements were made in response to insistent questions by his American guests. He said that the Central Executive Committee of the Kuomintang numbered about 36 and that it was elected by the members of the Kuomintang in annual convention assembled. The last annual convention was held in the spring of 1926 at Canton. Although the convention should be held annually it could be postponed in case of necessity for one year. It was not held in the spring of the present year. In February of the present year the Fourth Plenary Session of the Central Executive Committee of the Kuomintang was held at Nanking, at which time the present Government Council was appointed.

In regard to a suppositious case proposed for purposes of discussion Dr. Wu said if the Nationalist Government desired to undertake treaty negotiations the authority responsible for this would devolve upon the Minister for Foreign Affairs or someone appointed by him for the purpose. Closely questioned Dr. Wu said that the document conferring this power would be signed by the Government Council but obviously not by all of the members, since they were too numerous. He thought that the document would bear the signature of the Chairman of the Council and maybe one or two more on behalf of the others. Final ratification would be by the Government Council itself.

At the present time the Government Council of the Nationalist Government is vested with all the powers of government, including that of appointing national and provincial officials. Dr. Wu thought that in the final organization of the Nationalist Government the plan proposed by Sun Yat Sen would be followed, i. e., the "five powers" would be recognized.⁹⁵ The "five powers" are legislative, executive, the judiciary, examining and censorate.

Dr. Wu was asked particularly what source might be consulted in order to ascertain the specific granting of power to conduct treaty negotiations. In the course of somewhat vague replies it developed that the Kuomintang has a written constitution and the Nationalist Government, likewise, has a written constitution, but neither of these documents appeared to be available. Dr. Wu intimated, on the other hand, that the military period had ended and the period of tutelage had begun, as set down by Sun Yat Sen. He said that a Peoples' Convention would be held to decide upon the form of Government. It thus appeared that the Nationalist Government as it is now constituted has not assumed its final form. Dr. Wu insisted, nevertheless, that this point should be of no concern to a foreign government willing to conduct treaty negotiations with the Nationalist Government. He pointed out that the essential fact was that obligations assumed by the present Nationalist Government, i. e., the Government Council, would be accepted by its successor, no matter what its form.

This discussion consumed some time and at its close Dr. Wu was informed that his American guests had derived benefit from it, since it cleared up some of the uncertainty they had felt in regard to the organization and mode of functioning of the Nationalist Government of China.

Dr. Wu was especially persistent in trying to discover whether the American Government intended shortly to transfer the American

⁹⁵ See *Foreign Relations*, 1922, vol. I, pp. 723 ff.

Legation from Peking to Nanking. He strongly urged that this step should be taken. No reply was given to his question.

Mr. Johnson took his departure first. Both when he was leaving and after he left, Dr. Wu returned to the question he had asked at the beginning, that is, when the American Government would be prepared to begin treaty revision negotiations. Mr. Johnson replied that he did not know when this would be. Mr. Hornbeck, when again urged to make some sort of a statement, referred to the statement which he had made to Dr. Wu some two weeks ago to the effect that the logical thing would be first to begin with "conversations". He thought that progress had been made in the conversation of this evening, in bringing out facts with regard to the organization and functioning of the Nationalist Government. Dr. Wu suggested that it would be well for the first "conversations" to concern themselves with the question of the manner in which negotiations should be conducted.

N[ELSON] T. J[OHNSON]

893.00/10119

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] June 27, 1928.

The French Ambassador during a call on the Secretary this morning asked whether there was [*were*] any new reports concerning China. The Secretary asked Mr. Johnson to furnish any information which had been received recently and Mr. Johnson said that nothing new had come in except a telegram ⁹⁶ indicating that there had developed a certain amount of friction in Peking over appointments between Yen Hsi Shan ⁹⁷ and Nanking.

The Ambassador asked whether the United States¹ Government was contemplating any steps with regard to recognition of the Nationalists in China and stated that it was his understanding that the United States Government desired to await developments before taking any steps in this regard. The Secretary stated that this was quite true, that he had been hoping all along that signs would develop of ability on the part of the Nationalists to stabilize the situation in China, demobilize their troops and cease the fighting among the Chinese. He felt that if it should appear that the Nationalist Government was setting about this work in good earnest the United States Government would of course have to take this fact into consideration and doubtless would at least have to consider negotiations

⁹⁶ Not printed.

⁹⁷ Commander in chief of the Peking and Tientsin Garrison.

with such a government giving evidence of stability. He pointed out that the United States Government, in view of his statement of January, 1927, was in a position to commence negotiations at an appropriate time on the subject of the tariff and that we might find it advisable to start some discussions with the government along this line. He could see that this would amount at the most to a *de facto* recognition.

The Ambassador said that of course what everyone desired was the re-establishment of some security in China. The Secretary said of course this was true but that he did not feel confident that security could be established throughout China in any foreseeable future.

N[ELSON] T. J[OHNSON]

893.01/292 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 27, 1928—7 p. m.

[Received June 27—3:15 p. m.]

499. Department's 120, April 14, 4 p. m., and previous, and Shanghai's despatch No. 5491 of May 5 to the Legation,⁹⁸ copy of which was sent to Department.

1. I have received the following letter, dated Shanghai June 20, from H. D. Rodger:

"I have the honor to inquire whether the United States Government is now prepared to recognize the Nationalist Government as having capacity to sue in the United States Court for China as a *de facto* government for the purpose only of filing a suit in said court.

Inasmuch as the Nationalist Government is assuming full control in the civil administration in Peking and practically all of China, it would seem that the Nationalist Government has capacity to sue in the United States Court for China for and on behalf of Republic of China. I request that you transmit to me an early communication in answer to the above enquiry", which,

2. Subject to the Department's approval I propose to make the following answer:

"In reply to your letter of June 20th I beg leave to inform you that the American Government has been for sometime and now is in *de facto* relationship with the Nationalist regime established at Nanking. With reference to your specific enquiry whether the Nationalist Government have the capacity to sue in the United States Court for China for and on behalf of the Republic of China, I must advise you that this question appears to be one for judicial determination."

MACMURRAY

⁹⁸ Latter not printed.

893.01/292 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 28, 1928—3 p. m.

208. Your 499, June 27, 7 p. m., Paragraph 2. Department approves your proposed reply.

KELLOGG

893.01/298 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 6, 1928—1 p. m.

[Received 10 p. m.]

516. 1. The French Chargé d'Affaires some days ago referred in general terms to an exchange of views which his Government had recently initiated with the American and certain of the other more interested Governments as to the attitude to be adopted towards the Nanking regime in the event that it should seek formal recognition as the Government of China.

2. It would be of assistance to me to have any information on this subject which you can give me.

MACMURRAY

893.01/298 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 9, 1928—noon.

215. Your 516, July 6, 1 p. m. Such conversations as I have had with diplomatic missions here concerning China have been informal. The French Ambassador called on me on June 27 and in the course of a conversation concerning the general situation in China he asked me whether this Government was contemplating any steps with regard to the recognition of the Nationalist Government, stating that it was his understanding that the United States desired to await developments before taking any steps in this regard. I said to the Ambassador that this was quite true, that we had hoped that signs would develop of ability on the part of the Nationalists to stabilize the situation in China, demobilize their troops and cease the fighting among the Chinese, that I felt if it should appear that the Nationalist Government was setting about this work in good earnest the United States Government would, of course, have to take the fact into consideration and doubtless would at least have to consider negotiations

with such a government giving evidence of stability. I pointed out that the United States Government in view of my statement of January, 1927, was in position to commence negotiations at an appropriate time on the subject of the tariff and that we might find it advisable to start some discussion with the Government along this line, and that this would amount to a *de facto* recognition.

The newspapers having carried report regarding the visit of Sze to the Department, reported to you in my No. 188, June 15, noon, the British Chargé on June 18, during a call mentioned that and I told him that if the Nationalist authorities settled down and established a reasonably stable government, we would have to meet the question of either *de facto* or *de jure* recognition of that government as the government of China, that I saw no reason why we should not extend at least *de facto* recognition and perhaps take up the question of negotiations again. In reply to my question he stated that he was not informed of his own Government's attitude on this subject but would inquire.

On June 16, the Japanese Chargé, during a conversation with Mr. Johnson, asked whether we had made any decision with regard to recognition and he was told that we had not. He was told that naturally the elimination of Chang Tso-lin and the probable establishment of stability under Nationalist rule brought the question of recognition nearer. In reply to a question as to whether we would enter upon negotiations concerning treaty revision before recognition had been granted, the Chargé was told that there were certain phases of the treaty situation which would not necessarily have to await the question of recognition as we felt that some of these matters should be considered if for no other reason than to prepare the way for some other agreement to be entered into when a government was recognized.

The above is the substance of what has been said on this subject in conversations with the representatives of the Powers here. Memoranda of all these conversations have been sent to you by mail.

[Paraphrase.] It is my opinion that if the question should arise in discussions with your colleagues in Peking, the time has arrived when it should be announced by us that the recognition of the Nationalist Government is regarded by us favorably. Recognition would not, I am impelled to believe, cause us any special risks. On the contrary, it would be helpful not only to us in our relations with the Chinese but also to the Chinese in their efforts to bring about a stabilized condition. [End paraphrase.]

KELLOGG

893.01/317 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, August 2, 1928—3 p. m.

[Received 9:30 p. m.]

592. In view of the recognition implied by our negotiations of the treaty with the Nationalist regime,⁹⁹ I request the Department's instructions whether we should deal with it as a fully recognized government. This question has arisen in connection with certain routine relations such as are listed below, most of which have been suspended since the disestablishment of the Peking Ministry of Foreign Affairs early in June, and some for even longer.

1st. Requests for recognition of consuls (my telegram No. 571, July 28 [25], 8 p. m.¹).

2d. Extension of invitations to international congresses.

3d. Notices to the Foreign Office of lost passports.

4th. Requests for Chinese visas and arms permits.

5th. Filing and prosecution of diplomatic claims.

6th. Exchange of naval honors and ceremonies (see my mail despatch No. 1394, February 18¹).

7th. Miscellaneous relations.

MACMURRAY

893.01/317 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, August 10, 1928—noon.

265. Your 592, August 2, 3 p. m. Department considers that the signing of the treaty on July 25 with representative of the Nationalist Government constitutes technically recognition of that Government and that ratification by the Senate is not necessary to give effect to the recognition.

However, I am considering ways and means and proper occasion for making public affirmation in the near future, as a diplomatic act and for diplomatic effect, that this Government has recognized the Nationalist Government.

In the interval, I am declining here to discuss for publication or to reply to inquiries on the subject of recognition and, pending my decision with regard to action to be taken in the above connection, I desire that you avoid answering inquiries with regard to the legal effect of the action taken hitherto.

In view of first paragraph above, I see no reason why we should not as occasion requires deal with the Nationalist Government in all mat-

⁹⁹ *Post*, pp. 449 ff.

¹ Not printed.

ters embraced within your points 1 to 4 inclusive and point 7. With regard to fifth point, claims hitherto filed are now automatically claims against the Nationalist Government. Whether old claims should be re-presented and new claims filed is a question of policy upon which the Department will instruct you as occasion demands.

With regard to point 6, naval honors and ceremonies, I think it advisable for the moment to make no change.

KELLOGG

611.9331/93½

The Secretary of State to President Coolidge

WASHINGTON, August 10, 1928.

MY DEAR MR. PRESIDENT: There is no doubt in my mind that the signing of the treaty on July twenty-fifth with the representatives of the Nationalist Government constitutes technically a recognition of that Government and that ratification by the Senate is not necessary to give effect to the recognition. In other words, you have the exclusive right to recognize a foreign government. It is true the provisions of the treaty are not binding until they are ratified by the Senate but the ratification is not necessary to give effect to your act of recognition. This we have understood all of the time.

Most of the press seem to assume that we have recognized the Nationalist Government of China. However, some are in doubt about it and some of the business men of China and missionaries here are not clear on the subject. I think we should plan to make this perfectly clear either by an announcement in China or here or in conversations with Alfred Sze, the Chinese Minister. He is coming in to see me on Monday and I am going to talk the matter over with him. I should, however, like your authority by wire, if you approve, to acknowledge that this is a recognition. The more influence we can give to the Nationalist Government the better just now.

Faithfully yours,

FRANK B. KELLOGG

611.9331/94½ : Telegram

President Coolidge to the Secretary of State

SUPERIOR, WISCONSIN, August 11, 1928.

[Received August 11--9: 50 p. m.]

Letter 10th regarding Chinese treaty received. You may acknowledge that signing of treaty is a recognition of the Nationalist Government.

CALVIN COOLIDGE

893.01/325

Memorandum by the Secretary of State

[WASHINGTON,] August 13, 1928.

The French Chargé d'Affaires called to see me this morning and said he had a cable from Foreign Minister Briand asking him to see me and to suggest that the question of the *de jure* recognition of the Nationalist Government should be considered by all the nine powers at the Washington Conference² and asking if I would let them know before we took separate action.

I explained to him in great detail that we had promised to negotiate in 1927 and had renewed that promise at the time we settled the Nanking Affair in March 1928;³ that thereafter I had received a direct communication from the Nationalist Government through C. C. Wu⁴ asking me specifically if I was prepared to carry out the promise of January 1927 and to appoint delegates for such negotiations. I informed Mr. MacMurray that we were prepared to do so and authorized him to send a communication to the Nationalist Government to that effect.⁵ In the meantime, Mr. MacMurray had indicated to them his willingness to negotiate and the Nationalist Government, through T. V. Soong,⁶ had immediately taken up the negotiations and had arrived at a conclusion of the treaty only a day after I had made public the notice to the various governments; that under our form of Government the President had the sole power to recognize a foreign government and that he could do it in various ways—by appointment of ministers or ambassadors, by sending a special mission, by giving formal notice, by entering into a treaty, etc.; that we considered we had already recognized the Chinese Government; that I had not, however given any formal notice to the effect that we considered this a *de jure* recognition; that we were considering that subject and I should be very glad to notify him before any such action was taken; that I might consider it advisable to inquire of the nine powers (at least the principal ones) what their attitude would be and told him I would be very glad to receive that information from France.

² Conference on the Limitation of Armament, Washington, November 12, 1921–February 6, 1922; *Foreign Relations*, 1922, vol. I, pp. 1 ff.

³ *Post*, pp. 323 ff.

⁴ *Post*, p. 415.

⁵ See telegram No. 230, July 20, to the Minister in China, p. 464.

⁶ Minister of Finance in the Nationalist Government.

711.93/211

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] August 14, 1928.

The Chinese Minister called on the Secretary, by appointment at ten o'clock, and reminded the Secretary that he had mentioned the question of new treaties to him and that the Secretary had asked him to come back this morning. Sze went on to say that the American Minister's note to C. T. Wang⁷ subsequent to the negotiation of the tariff treaty left them in some doubt as to our attitude on the whole question of treaties. The Secretary stated that he did not wish them to be of the opinion that the door was closed to further discussions of this matter; that if the Chinese Minister cared to make inquiry of the Nationalist Government as to any suggestions which they might have with regard to the question of treaty revision, the Secretary had an open mind on the subject and would be very glad to hear what suggestions they had. The Chinese Minister said that he would telegraph to this end to the Nationalist Government.

The Chinese Minister mentioned the question of recognition. He said that he did not know just exactly what status the Department of State accorded him. He said that in his own opinion the signing of the treaty amounted to a formal recognition, but that of course he had not expressed himself publicly on that subject.

The Secretary stated that the press seemed to fail to understand him on this subject, that all he had ever said to the press on it was that the Chinese Minister had called upon him and stated that he had been requested by the Nationalist authorities to remain in Washington as the representative of China, and that was that. The Secretary said he did not know what further steps might be necessary, that it was the opinion of the Department that the signing of the treaty with representatives of the Nationalist Government constituted a recognition of that government (a recognition of a government being one of the functions of the Executive and not a function of the legislative branch of the Government). The Secretary stated that he did not know just what the Chinese might wish in regard to this matter, but as far as he was concerned, he would be prepared to make such a statement.

Subsequently in a conversation with Mr. Sze, Mr. Johnson stated that we were uncertain as to just what the Chinese might desire in regard to formal confirmation of the act of recognition which had undoubtedly taken place when we signed the treaty with the Chinese. Mr. Johnson suggested to Mr. Sze that he find out from the Nation-

⁷ See telegram No. 230, to the Minister in China, p. 464.

alist Government, confidentially, whether they desired to issue new credentials or have some formal procedure undertaken. This Mr. Sze said he would do.

N[ELSON] T. J[OHNSON]

711.93/214

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] September 1, 1928.

Dr. C. C. Wu called at my request and I referred to our conversation on Friday when he had asked me about the effect of adherence to the multilateral treaty renouncing war.⁸ I handed to him a copy of the treaty⁹ and a copy of the note which we had addressed to China¹⁰ and to the other powers inviting adherence and pointed out to him that both in the treaty and in the note it was made quite clear that the multilateral treaty would go into effect at the same time both as regards signatory and adhering powers.

After some further conversation, during which Dr. Wu stated that he did not see why some of the powers were in such a hurry to adhere to the treaty, Dr. Wu asked me whether we had anything in mind with regard to some formal act of recognition. I told him we considered that the treaty which we had made with the Nationalist Government constituted *de facto* as well as *de jure* recognition, but that the Secretary had mentioned the matter to Alfred Sze and the suggestion had been made to Alfred Sze that if the Nationalist Government had any suggestions to make with regard to some formal act of recognition confirming what had already taken place through the signing of the treaty, that we would be very glad to entertain them. I told Dr. Wu that in reply C. T. Wang had said to Sze by telegraph that this matter of recognition did not need any further attention inasmuch as it had been taken care of by the treaty and therefore recognition was a fact accomplished and there was no need for Mr. Sze to trouble himself further about that. I said to Dr. Wu that this seemed to be the end of that. Dr. Wu said he had telegraphed to Nanking and had advised that they were not interested in the question of formal acts of recognition as signature to the treaty constituted recognition, that they should leave such matters or such confirmatory act until the complete revision of the treaty had taken place. I asked Dr. Wu whether Nanking had asked his advice on the subject and he said no, but as a member of the Government he had a right to volunteer advice and he had done so.

⁸ Memorandum of conversation of August 31, not printed.

⁹ For text of treaty, see vol. I, p. 153.

¹⁰ Note not printed. It was similar in substance to note communicated to the French Government; see telegram No. 247, Aug. 8, to the Ambassador in France, vol. I, p. 136.

Dr. Wu then stated that he understood that we had asked Sze to find out from Nanking whether it had any suggestions to offer as to treaties. I asked Dr. Wu whether Mr. Sze had told him about the conversation which he had with the Secretary and Dr. Wu said that he had not talked with Mr. Sze but that he had heard through a friend of this conversation. I told Dr. Wu that we had had a conversation with Mr. Sze during which the Secretary had said to Mr. Sze that he had an open mind on the subject of treaty revision and would be prepared to consider any suggestions which the Nationalist Government might care to offer. I said that Mr. Sze had come to me on August 20 and had reported that he had telegraphed this to the Nationalist Government and had received a reply which he had some difficulty in understanding but which was generally to the effect that in view of the fact that he was about to go to Geneva and would be very busy and much occupied, and in view of the fact that C. C. Wu was here authorized to discuss treaties, he did not need to bother about that situation. Dr. Wu said he hoped we had not interpreted this as meaning that the Nanking Government was not interested in the treaties, as his remaining here every day was an indication of its interest. I said to him that I had certainly interpreted the reply as meaning that it was not immediately interested.

I asked Dr. Wu to explain to me the status of Mr. Sze. Dr. Wu said he would be frank with me and say that of course Mr. Sze had represented the Northern Government. I stopped him at this point to say that we did not recognize Sze as representing any faction in China, but as representing China and Wu continued by saying that Sze's original credentials had been issued by a government to which they were opposed and that the new Nanking Government had offered him the post of Minister. He said that after the taking of Peiping the Nanking Government had sent a circular telegram to all of the legations and consulates ordering them to carry on as before and that, of course, was what Mr. Sze was doing at the Legation. He said he had been offered the post of Minister but had refused it, communicating his refusal first to C. T. Wang. He said that later when the offer was repeated by other members of the Government he had again refused and that the last communication which he had received was one which fell in with his point of view and stated that Sze would carry on here as Minister.

I asked then if Sze's status was that of Chinese Minister. Dr. Wu said it was. I said that was what we had assumed and that we were prepared to discuss matters with him as Chinese Minister.

Dr. Wu asked me whether I had given any further thought to treaty revision and I said that I had not. He then said that he

understood that full powers were on their way to him empowering him to negotiate for revision of treaties and he asked me what I was going to do when they arrived. I said that we would await that time, but I supposed that they would be presented in the usual diplomatic channels through Mr. Sze as Minister and he said that this was right. Dr. Wu asked me when the Secretary would be back and I told him some time between the tenth and the fifteenth, but I was not certain when. The conversation here ended.

September 4, 1928.

Dr. Wu called me up today by telephone to say that he was informed that the Nationalist Government of China intended to adhere to the multilateral treaty renouncing war.

N[ELSON] T. J[OHNSON]

893.01/334 : Telegram

The Chargé in China (Perkins) to the Secretary of State

[Paraphrase]

PEKING, *September 4, 1928—5 p. m.*

[Received 7:38 p. m.]

684. Department's telegram 300, August 29 [31], 7 p. m.¹¹ Written and oral inquiries have been received by me in regard to the question of recognition of the Nationalist Government by the United States. I have complied with the instructions in the third paragraph of Department's 265, August 10, noon, and have avoided answering any such inquiries. Is it desired that this course be continued, or is the Legation now free to say that the conclusion of a treaty constitutes a full recognition by us of the Nationalist Government and that we are dealing with that Government on such basis?

PERKINS

893.01/339a : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, *September 11, 1928—5 p. m.*

310. Your 684, September 4, 5 p. m. In reply to inquiries you should invite attention to the fact that the Governments of the United States of America and the Republic of China, through their duly accredited representatives, on July 25 signed a formal treaty modifying certain provisions in the treaties in force between the two nations and establishing a new arrangement in substitution

¹¹ *Post*, p. 354.

therefor. You may also state that the Legation has been authorized to conduct its relations with the Nationalist Government of China on a basis of full recognition.

KELLOGG

CHINESE PROPOSAL FOR RAISING THE LEGATIONS IN CHINA AND
CHINESE LEGATIONS TO THE STATUS OF EMBASSIES ¹²

701.9311/361

*The Chief of the Division of Far Eastern Affairs (Hornbeck)
to the Secretary of State*

[WASHINGTON,] October 12, 1928.

MR. SECRETARY: Dr. Sze ¹³ states that his Government is proposing that the Chinese Legation in Washington and in several other capitals be made an Embassy.

This proposal involves technically, I think, two questions: the status of the Chinese mission here and the status of the American diplomatic mission in China. If we were to receive the Chinese representative as an Ambassador, it would presumably be necessary that we make our representative to China an Ambassador.

Action to make our representative an Ambassador would require, as I believe you have stated to Dr. Sze, action by Congress.

It is my understanding that Dr. Sze has requested an expression of this Government's opinion at an early date and that you intend to mention the matter at the meeting of the Cabinet this morning.

The consummation of the proposal to exchange Ambassadors would constitute on the part of the United States the making gratuitously of a political gift to China. Several times during the past twenty years the question has been considered and the conclusion has been reached that circumstances and conditions would not warrant the action; that China had not reached such a degree of political organization and had not so conducted herself in the performance of her international obligations as to warrant this conspicuous endorsement of her claim to the rank as one of the greater powers.

At this time the question should have, I would suggest, not less careful consideration than it was given on previous occasions. Among other things, the Legation in Peking should, I suggest, be consulted.

If Dr. Sze must have an early reply, this Division *suggests* that he be informed that:

1. The Department is conferring with the Legation;

¹² For previous correspondence concerning raising of diplomatic rank of representatives in China, see *Foreign Relations*, 1924, vol. I, pp. 463 ff.

¹³ Sao-Ke Alfred Sze, Chinese Minister at Washington.

2. The Department feels that a number of questions in China's relations with the Powers, especially with the United States, should be cleared up before any attempt is made seriously to consider this proposal. Among other questions which might be mentioned by way of illustration are such as (a) the delay in opening the Nanking Consulate,¹⁴ (b) the delay in evacuating American premises unlawfully held by Chinese persons both officially and unofficially,¹⁵ (c) controversy over the Chinese demand for re-registration of trademarks and (d) the difficulty over the China Foundation.¹⁶

S[TANLEY] K. H[ORNBECK]

701.9311/358b : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, October 12, 1928—noon.

346. I am informed by the Chinese Minister that the proposal is made by his Government that the Chinese Legation here and the American Legation and several others in Peking be made embassies. A statement of your views by cable would be welcomed by me.

KELLOGG

701.9311/359 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, October 15, 1928—6 p. m.

[Received October 15—9:05 a. m.]

771. Secretary's No. 346 of October 12. Considering the situation in China, as reported to you hitherto, and fully realizing the possibility that the regime which had been given such marked evidence of our confidence might be revealed as nothing more than a transitional phase in the political evolution of China, it seems to me that the matter is resolved into a question whether it is the desire of our Government to make such a gesture in order to demonstrate its sympathy and its confidence in regard to the political ideals towards which the people of China are striving.

MACMURRAY ~

¹⁴ See pp. 323 ff.

¹⁵ See pp. 213 ff.

¹⁶ China Foundation for the Promotion of Education and Culture; see pp. 538 ff.

701.0093/116

Memorandum by the Secretary of State[WASHINGTON,] *October 24, 1928.*

When the British Ambassador called on me today, I told him that I wished to talk with him informally about the subject of raising the legations in China to embassies; that the Chinese Minister, Mr. Sze, had informally approached me and suggested that China would like to have the legations raised to embassies; that I had understood from him that like suggestions had been made to Japan, Great Britain, Germany, France and Italy—possibly others but these were the ones that he especially mentioned; that we had not taken any action on the subject but that the President had suggested that I communicate with the other governments and obtain their views on the subject; that the only government that had communicated with the Department was the French; that the French Chargé d’Affaires, M. Sartiges, had called and stated that France’s disposition was to leave the matter where it was but would like to know the views of the United States and if the United States intended to act independently they would like to be informed; that Mr. Castle who interviewed him had referred him to me and I expected to see the French Ambassador tomorrow. I told the Ambassador that as he probably knew this subject had been up before; that about the time I came into office, perhaps before, the Soviet Government had raised its legation in China to an embassy; that as some of the countries did not recognize the Soviet Government this had raised some embarrassing questions as to who should be the Dean of the Diplomatic Corps in Peking; that undoubtedly this had been done by Russia with a view to embarrassing the other countries and to obtain all the benefits and influence in China which Russia could by such action; that at that [time] it did not seem advisable to the other countries to follow the action of Russia and nothing had been done; that Russian influence had since then largely disappeared in China and the question now was whether raising the legations to embassies would not give moral support of the principal powers to the aspirations of China and tend to strengthen the present government; that in my opinion there was more hope today for a unified and somewhat stable government than there had been for many years; that as long as the animosities existed between the north and the south, between Chang Tso Lin¹⁷ and Chiang Kai Shek¹⁸ and others who were dominant from time to time, it was

¹⁷ Formerly generalissimo of military and naval forces under the Peking Government; died June 4, 1928.

¹⁸ Commander in chief of the Chinese Nationalist armies.

impossible for there to be united action but the Nationalist Government had now practically the control of all of China and I think have some fairly good prospects of a successful regime; that no one, of course, could tell but it seemed to me wise for the powers to render any assistance and encouragement possible in the hope of working out a stable government in China. I told him we had not come to any conclusion about this matter; that in any event the President would have to present it to Congress as we would have to have an appropriation before we could take any action. I told him that we had entered into a tariff treaty¹⁹ as we had promised several times and had settled the Nanking affair. He remarked that Great Britain had also settled the Nanking affair and undoubtedly the failure to make these settlements had delayed the negotiations of the treaty. I told him that the subject of the extraterritoriality and commercial treaties would necessarily come up but I was not prepared to discuss them at present but I might in the near future communicate with the British Government and the other governments to obtain their views on the subject. He wanted to know if I thought that China would demand immediate abolition of extraterritoriality. I told him I did not think so but that they probably would demand a progressive release fixing a date for the entire abolition; that I would be glad to have his Government's views on the question of the embassy at any time he saw fit. He said he had not kept track of the matters in relation to China since he had been away; that he had a vast amount of correspondence on the subject; that he would look it up and also confer with his Government.

701.9311/361

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] *October 25, 1928.*

During a conversation with the Japanese Ambassador this morning the Secretary stated that some time ago the Chinese Minister stated that the Nationalist Government was very anxious to raise its legation here in Washington to the status of an embassy and desired to know whether we would be willing to reciprocate. The Secretary stated he understood that similar representations were being made to the Governments of Japan, Great Britain, France, Germany, and Italy. He said he had discussed the matter in Cabinet and that he desired to discuss it with the interested powers before making any decision. He said that so far as he could recollect the matter had

¹⁹ See pp. 449 ff.

come up once before, about five years ago, at the time when the Soviet Government had raised its legation to the status of an embassy, he believed for the purpose of increasing Russian influence in China and of making a friendly gesture to the Chinese. He recalled that at the time the question was somewhat embarrassing to the other governments but that all had decided in the negative. The Secretary recalled that the Japanese had it in mind at one time to raise their legation to the status of an embassy.

The Secretary said he had not made up his mind with regard to the matter, although he felt that it was possible such a step would be helpful to the Chinese. He felt that the present Nationalist Government offered more promise in the way of permanency and stability than any government that had appeared in China during the last four or five years and that any step which the powers could take which would aid this Government in its work of stabilizing the country was worth taking.

The Secretary said he realized that there were objections, one on the ground that the present government was not necessarily permanent. He realized that this objection was a serious one but felt that the powers would hardly be worse off if they raised their legations to embassies and the government went to pieces than they would be if they made no movement of the sort.

There was the other objection that there were many countries pressing at this country for the establishment of embassies, such as Poland and some of the Balkan States and perhaps South America; that he did not think that this was a serious objection as China in a sense stood by itself. It was a large country of great interest to the powers and could very well be treated as a case separate and by itself.

The Secretary said he desired the Japanese Ambassador to make inquiry of his government as to what attitude it would take on this question in order that he might know what their thought was, as he did not desire to act alone in the matter without consultation.

The Japanese Ambassador said he was very pleased that the Secretary was willing to consult with them in this matter, that they believed that mutual discussion would help a great deal in dealing with China. He said he would telegraph his Government and ask for their reaction. He called to the Secretary that some years ago when Mr. Shidehara was Minister for Foreign Affairs, the Japanese Government had taken the initiative in approaching the powers with a view to raising their legations to the status of embassies, but that they had met with negative answers on the part of all of them. He said they had gone so far as to arrange for the

necessary appropriation in their budget and that subsequently the government then in power in China had crumbled and the matter had been left in abeyance ever since and the appropriation for an embassy in Peking continued to be carried in their budget from year to year. He added on his own part that he did not think his government would take kindly to raising their legation to the status of an embassy. The conversation here ended.

N[ELSON] T. J[OHNSON]

701.9311/361

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] *October 25, 1928.*

The French Ambassador came in and during the conversation the Secretary informed him that the Chinese Minister several days ago had stated that the Nationalist Government of China desired to raise its legation in Washington to the status of an embassy and asked whether we would be willing to reciprocate. The Secretary stated that he understood that a similar proposition was being made to the Japanese, British, German, Italian and French Governments and that he was anxious to consult with them and obtain their views before reaching any decision in the matter. He did not know just what should be done, although he could not see any grave objection to the proposal. The Secretary went over the same ground that he went over this morning with the Japanese Ambassador.

The French Ambassador stated that he recalled when he was Ambassador to Japan that the Japanese raised this question, some three or four years ago, and at that time he had had numerous conversations with the Japanese and the reaction of his Government at that time was in the negative. He stated that recently he had received a letter from his Government discussing this matter and saying that they did not believe it was the proper time to take this step, inasmuch as the Nationalist Government of China was very new and gave no promise of permanency. He stated it was the feeling of his Government that it was a serious matter to raise their legation to the status of an embassy under these circumstances. By postponing action in this affair the governments could influence the new Nationalist Government to renew its efforts to stabilize its government. The Ambassador stated, however, that he would be glad to communicate this matter to his Government and report the reply he received. The conversation here ended.

N[ELSON] T. J[OHNSON]

701.9311/361

Memorandum by the Assistant Secretary of State (Johnson)[WASHINGTON,] *October 25, 1928.*

Conversation—The Secretary and the German Ambassador. (Mr. Johnson present.)

The Secretary stated to the German Ambassador that some days ago the Chinese Minister had informed him that the Nationalist Government of China desired to raise its legation here in Washington to the status of an embassy and asked if we would reciprocate. The Secretary stated that the Chinese Minister had said that his government was making similar proposals to the governments of Great Britain, Japan, Germany, Italy and France. The Secretary said he did not wish to act in the matter without consulting the other governments, that he had talked with the Japanese and French Ambassadors and he desired to know what reaction the German Government would have toward this proposal. He went over the same ground with the German Ambassador that he went over with the Japanese Ambassador previously, adding that he had not heard any positive view from any of the governments excepting the French, who had stated in regard to this matter that the French Government was disposed to leave present arrangements alone for the time being.

The German Ambassador said he would make inquiry of his Government and communicate to the Secretary his Government's views shortly. The conversation ended here.

N[ELSON] T. J[OHNSON]

701.9311/359 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, *October 27, 1928—5 p. m.*

362. My No. 346 of October 12, noon, and Legation's No. 771 of October 15, 6 p. m. This matter is being discussed by me with the diplomatic representatives of other powers to which the same proposals were addressed by the Chinese.

KELLOGG

124.93/139

Memorandum by the Assistant Secretary of State (Johnson)[WASHINGTON,] *October 30, 1928.*

The Chinese Minister told me that he had had a conversation with the Chief of the Far Eastern Division regarding the raising of our

legation to the status of an embassy and that the Chief of the Far Eastern Division had told him the Secretary was discussing this matter. He said he had hesitated to report to the Nationalist Government at Nanking that we were discussing the matter with the other governments as they would feel somewhat disturbed as they are quite certain that the different powers would not be disposed to take the proposed action and it was their hope that we would not wait upon them. The Minister went on to say that in the history of this question it had come as a proposal to Wellington Koo, then Chinese Minister at Washington,²⁰ directly from President Wilson at a time when the question of the raising of legations to status of embassies was up in this country, President Wilson having told Wellington Koo that if China desired this to be done, he was quite prepared to do it.²¹ The Minister stated that at that time he was in London and had been one of the chief objectors to the proposal on the ground that it would merely add a financial burden to the chief of mission and would not accomplish anything of value.

The Minister stated that some time later when he came to Washington Congressman Burton²² had asked him his reasons for objecting as he, Congressman Burton, proposed to introduce the bill into the Congress raising the status of our legation at Peking to that of embassy. The Minister stated he had furnished Congressman Burton with a memorandum of the pros and cons on the subject.

The Minister stated that subsequently when the Chinese Government had conveyed the opinion that they desired to raise the legation to the status of embassy he had taken the matter up with Secretary Hughes who had discussed it with Mr. MacMurray who had proposed that the matter be discussed with the powers and that, of course, the matter fell through at that time because there were objections on the part of Great Britain.

I told the Minister that the Secretary felt he should communicate the matter to the powers for the purpose of ascertaining their views on the subject; that the Secretary had not decided in his own mind what to do in the matter and that in communicating with the powers he was not binding himself to be guided by what they might or might not do in the matter. The conversation here ended.

N[ELSON] T. J[OHNSON]

²⁰ Vi Kyuin Wellington Koo was Chinese Minister at Washington from December 1915 to March 1921.

²¹ No record of this statement has been found in Department files.

²² Representative Theodore E. Burton of Ohio.

124.93/140

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] November 2, 1928.

The German Ambassador called upon me this morning when the Secretary was absent at Cabinet. He stated that he had a reply from his Government to the question which the Secretary had asked him the other day regarding the proposal of the Chinese that legations in China be raised to the status of embassies. He stated that his Government was in a peculiar position with regard to this matter in that it had not been approached by the Chinese Government on the subject. He said that his Government desired to follow the policy outlined by this Government in the matter, and his Government felt as it understood we felt, that the Nationalist Government deserved encouragement and assistance and it would be glad to do anything possible toward that end. He said it was his Government's understanding that the Japanese Government carried a provision in its current budget for elevating its legation in China to the status of an embassy but that the Japanese Government at the present time was not disposed to take any action in this matter because of certain pending questions between the Japanese Government and the Nationalist Government of China and the Japanese Government thought the Nationalist Government might wish to use the desire of the Chinese Government to raise its legation to the status of an embassy in connection with the settlement of such questions. He said it was his understanding that the British Government also had outstanding questions and that the British, Japanese and French Governments not having recognized the Nationalist Government of China would not be prepared at this time to consider raising their legations to the status of embassies.

The Ambassador said that his Government would desire to reconsider this matter, however, should the United States Government decide to raise the American Legation to the rank of an embassy. He asked me to convey this message to the Secretary, which I promised to do.

N[ELSON] T. J[OHNSON]

701.9311/364

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] November 2, 1928.

The Japanese Ambassador called upon the Secretary today to say that he had been instructed by his Government to convey to the Secretary a reply to the question which he had asked the Ambassador

some days ago regarding the raising of legations in China to the status of embassies. The Ambassador stated that his Government had instructed him to say that it agreed in principle with the idea of raising the rank of the legations to embassies, but that there were several outstanding questions at the present time between the Japanese Government and the Chinese Government which prevented the consideration of this question at this time. The Ambassador confirmed the Secretary's suggestion that these questions consisted of pending negotiations for a commercial treaty, and the settlement of the Nanking and the Tsinan incidents. He added also that his Government felt that they should wait until the Nationalist Government was fairly stable before taking such action.

The Japanese Ambassador then said to the Secretary that he understood the Chinese Government had approached the American Government on the subject of extraterritoriality. The Secretary said that such an approach had been made and that he was considering a communication which he intended to make to the several interested powers on the subject for the purpose of learning their views. The Secretary stated he hoped to communicate this to the Japanese Ambassador shortly.

The Japanese Ambassador ended the conversation by saying that the Japanese Government desired him to express the appreciation of the Japanese Government to the fact that the American Government desired to cooperate with the other powers in regard to these matters. The Japanese Government felt that only through cooperation could progress be made.

The Japanese Ambassador later came to the office of Mr. Johnson and repeated what he had said to the Secretary, which is reported above. He then said he wanted to ask Mr. Johnson informally certain questions. He said that he had understood from the press and from the Secretary that we had been approached by the Chinese on the subject of extraterritoriality. He wondered whether the Chinese had in mind a general treaty. Mr. Johnson told the Ambassador that the Chinese had approached us orally on the subject through their Minister here and that as the Secretary had told him, we were studying the matter somewhat carefully and that we were contemplating a communication to the powers on the subject. The Ambassador asked whether this might be expected shortly and Mr. Johnson stated that he could not tell, that from what the Secretary had told him this morning Mr. Johnson thought the Ambassador might have reason to expect a communication very shortly. The Ambassador suggested that it would take some time to discuss a general treaty, to which Mr. Johnson assented.

The Ambassador asked Mr. Johnson where Dr. C. C. Wu was. Mr. Johnson told the Ambassador that he was here in Washington. The Ambassador asked whether we recognized him as having any particular status. Mr. Johnson stated we did not, but we knew him to be a representative of the Nationalist Government at Nanking and that he called on us frequently.

The Ambassador asked about the status of the Minister and Mr. Johnson told him that we understood that Mr. Sze was the Minister of Nationalist China in the United States and we accepted him as such.

The Ambassador asked Mr. Johnson about the status of Mr. Frank Lee. Mr. Johnson told him he knew very little about the status of Mr. Frank Lee except that he was a personal representative of the Nationalist Government and that he lived in New York. The Ambassador stated that he had seen in the papers that Mr. Frank Lee had approached Mr. Owen Young and Mr. Ford and others to ask them to serve as advisers to the Chinese Government. Mr. Johnson told him all the information we had on this subject was contained in the press. Mr. Johnson knew that Mr. Young had been approached as Mr. Young had asked the Department if it had any objection to his serving, if he served, and the Department had expressed itself as having no objection. The Ambassador stated that there could be no question on the part of Japan if the United States desired to send advisers to China, that Japan without question had sent advisers there and the Chinese had not even taken their advice or paid their salaries.

The Ambassador stated that he understood representatives in Peking were discussing the question of China's unpaid indebtedness and he was certain that undoubtedly we were interested in this matter as we had unpaid debts and claims. Mr. Johnson said we were very much interested in this. The Ambassador stated that in his own opinion the Chinese Government should set aside portions of the increased revenue which they received under the new treaty for the purpose of defraying China's debts and claims. Mr. Johnson stated that we had not made our tariff treaty conditional in this matter, but naturally we would expect the Chinese Government to make provision out of any revenues which might come to the Government for unpaid American claims and debts.

The Japanese Ambassador stated that he had seen in the papers that the Nationalist Government intended to protest against the loan to be made to the Oriental Development Company. Mr. Johnson told the Ambassador that he had also seen this statement in the

press; that the Chinese Minister had called upon him on the instruction of his Government and had asked him about this loan and he had told him that the bankers had communicated the fact of the loan to the Department and that we had made no objection to it. So far as Mr. Johnson knew, the matter was closed. The Ambassador stated that the Japanese Government was very much interested in increased financial relations between Japan and the United States; that New York offered a very favorable market for Japanese bonds and he hoped there would be an increase in these activities and he felt that the Chinese had no right to make objections to financial relations between the United States and Japan. The Ambassador said of course it could not be guaranteed that some of this money might not be used in Chinese business, but after all, it was for the good of all concerned.

The conversation here ended.

N[ELSON] T. J[OHNSON]

124.93/144

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] November 13, 1928.

The Counselor of the Japanese Embassy during his conversation with me this afternoon stated that he had seen in the press that we had decided to raise our legation at Peking to the rank of an embassy. I told the Counselor of the Japanese Embassy that I had not seen the item in the paper but I understood the Secretary had made some statement to the press yesterday, but the exact statement I did not know except that I did know that we had not done so and that we had the matter under sympathetic consideration. It was my belief that the matter was in no way changed from what the situation was when the Secretary had had his conversation with the Japanese Ambassador some days ago, at which time he had told the Japanese Ambassador that we were favorably disposed towards the matter but had made no decision. The Japanese Counselor reminded me that the Secretary had said that if we made any decision in this matter or regarding the treaty on extraterritoriality he would let them know. I stated that I had no doubt the Secretary would inform him if we made any decision in the matter.

N[ELSON] T. J[OHNSON]

124.93/145

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] November 15, 1928.

Conversation—The Secretary and The Chinese Minister, Mr. Sao-Ko Alfred Sze. (Mr. Johnson present.)

The Chinese Minister stated that he had seen in the press a statement to the effect that the United States Government had decided to raise its Legation at Peking to the status of an embassy. He said this had also been telegraphed out to China and he had seen in the paper that the Chinese Government had announced that this had been done. The Secretary stated that he did not know how this idea could have originated. Mr. Johnson said the story was this: on his way back to Washington from Northampton the President had been interviewed by newspaper men and the press had reported that interview as being a general commentary upon the situation in this country and that the President had ended up by stating that he had under contemplation the raising of the Legation at Peking to the status of an embassy. Mr. Johnson stated that thereafter the press had been interested in the matter and questions had been asked of the Secretary and that as a result of the press conference at the State Department the other day, Mr. Albert Fox had gone out and written an article in the beginning of which he had stated categorically that the United States had decided this matter, namely, to raise its Legation at Peking to the status of an embassy. The Secretary stated to the Minister that Mr. Fox had misstated the facts, that he made no statement such as Mr. Fox had reported; that he had merely stated to the press conference that the matter was under consideration and that was all. The Secretary said that subsequent to the press conference Mr. Fox had waylaid him in the corridor and had asked him to announce that we had made a decision in the matter and the Secretary had categorically refused to make any such statement. The Chinese Minister said that he had never made any reply to the telegram which had come from his Government, inasmuch as he had understood that the Secretary was discussing the matter with the other countries, and he had desired to await the result before telegraphing. The Secretary said he had indeed talked with the French, British, Japanese and German Ambassadors and that he had subsequently talked with the Italian Ambassador and that he had received no comment from the British Ambassador as yet. The Secretary said he had informed the Ambassadors that we were giving sympathetic consideration to this request from the Chinese Government, but that we had made no decision in the matter. The

Secretary said he had not stated to these governments that we would not do it if they would not do it. The Secretary told the Chinese Minister that he should tell his Government that the matter was still under sympathetic consideration by this Government. The Secretary stated that he would take the matter up with the President and find out what attitude he might take on the subject.

N[ELSON] T. J[OHNSON]

701.9311/369

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] November 22, 1928.

The British Ambassador called upon the Secretary this morning and with reference to the Secretary's request of the other day for information as to the British Government's attitude toward the Chinese proposal that the Legations be raised to the status of embassies, he stated that he had been instructed by his Government to inform the Secretary that the British Government were looking upon the whole Chinese question from a constructive point of view and were trying to take the matter up in the order in which the various questions grouped themselves from the point of view of importance, and that to their view the most important question was the question of tariff autonomy. It was their feeling that merely to make a treaty granting tariff autonomy on a most-favored-nation basis would amount to very little in so far as progress was concerned. For the moment they were concentrating and bending every effort toward helping to bring about an agreement between the Chinese and the Japanese on this matter of the tariff, the British Government feeling that benefit could only accrue if all could agree on this matter. The Ambassador did not state what particular points in the negotiations between Japan and China the British Government were supporting. He stated that naturally when the tariff matter was settled and the treaty made it would naturally follow that *de jure* recognition would have been granted to the Chinese and that doubtless sooner or later the question of raising the legations to the status of embassies would arise. The British Government did not feel that this question was acute at the present time, although they quite agreed with us that the matter should be acted upon after consultation and the British Government for its part was quite determined that it would not take any action in the matter without first consulting with us and notifying us of what it would do.

N[ELSON] T. J[OHNSON]

124.93/145

The Secretary of State to the Minister in China (MacMurray)

No. 1061

WASHINGTON, December 10, 1928.

SIR: Referring to the Department's telegram No. 362 of October 27, 1928, and previous correspondence, regarding the proposal to raise the Chinese Legation here and the American Legation in Peking and several other Legations to the status of embassies, there is enclosed herewith for your information a copy of a memorandum of a conversation of November 15, between the Secretary of State and the Chinese Minister on this subject.²³ It may be added for your information that the Secretary has discussed informally with the representatives of the principal powers interested the proposal made by the Chinese Government that the respective diplomatic missions concerned be raised to the grade of embassy, and that the general opinion seems to be that the present time is not opportune for the taking of this measure. No decision has been arrived at by this Government in regard to the proposal.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

MEASURES TAKEN BY THE UNITED STATES AND OTHER POWERS
FOR THE PROTECTION OF LIVES AND PROPERTY IN CHINA²⁴

393.1163/244 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, February 6, 1928—3 p. m.

[Received February 6—9:15 a. m.]

73. 1. In replying to request for instructions from Vice Consul Paxton²⁵ I am quoting to him the Department's number 298, July 28, 4 p. m.,²⁶ adding the following:

"It would appear that in its practical concrete application to existing circumstances, the policy thus indicated would involve conclusions which are formulated as follows:

(a) Protection of life to be afforded by diplomatic means everywhere, although with urgent advice to remove from exposed positions to those points where force can and will be used in case of necessity.

(b) Protection of property to be afforded by diplomatic means

²³ *Ante*, p. 211.

²⁴ For previous correspondence concerning measures for the protection of lives and property in China, see *Foreign Relations*, 1927, vol. II, pp. 44 ff.

²⁵ J. Hall Paxton, vice consul in charge at Nanking, temporarily at Chinkiang.

²⁶ *Foreign Relations*, 1927, vol. II, p. 139.

everywhere (to the extent of protests and requests), but by force only as incidental to the protection of life."

2. I trust this information correctly represents your views as to the nature and degree of protection it is possible to afford under present conditions.

MACMURRAY

893.1163/244 : Telegram

*The Acting Secretary of State to the Minister in China
(MacMurray)*

[Paraphrase]

WASHINGTON, February 9, 1928—8 p. m.

41. Legation's February 6, 3 p. m., number 73.

1. Considering the conditions now prevailing in China, any decision in regard to the use of force for the purpose of protecting American life and property in a specific case must depend upon a determination by the American military authorities as to the feasibility thereof and upon numerous other considerations including possible reaction elsewhere on American interests. The formula which you set forth is, it is assumed, solely for the confidential guidance of Paxton. Anything in the nature of a public pronouncement capable of being construed as a comprehensive promise or refusal of military protection would be disapproved by the Department.

2. Whenever required or requested and whenever general interests require diplomatic representations, protection to American citizens and their interests should, of course, be afforded by diplomatic means.

OLDS

300.11/822

*The Secretary of State to Miss Margaret Hiller, National Board,
Young Women's Christian Associations, New York City*

WASHINGTON, March 3, 1928.

MADAM: The Department has received your telegram of February 22, 1928,²⁷ inquiring whether it is possible for American citizens in other countries who may desire to do so to waive their right to American military protection, or to any protection. Your telegram states that you recognize that the Department of State may not be bound by any action or statement to this effect, but you inquire whether individuals may waive such rights from their own standpoint.

²⁷ Not printed.

The Department's position is, in general, that the action of American citizens in waiving their right to the diplomatic intervention and other protection of their Government does not divest the Government of its right or obligation to take such action as may be required of it under provisions of law (including treaties), or such action as it may deem expedient subject to the restriction of such provisions. Since this question has arisen latterly particularly in regard to the status of American citizens in China, the Department assumes that your inquiry has particular reference to that country. If this assumption is correct it is appropriate to point out that the treaties concluded between China and the United States are contracts between the two governments. They expressly provide that American citizens in China shall enjoy, with respect to their persons and property, the protection of the local authorities of government, and that they shall be exempt from the process of Chinese laws. It has been repeatedly held that a citizen cannot by his independent act control the right of his government to intervene or afford protection in an appropriate case. In this connection, you may be interested to refer to Moore's *International Law Digest*, Vol. VI, page 293.

With reference to the exercise of extraterritorial rights, Congress has, furthermore, enacted legislation extending to American citizens in China the laws and jurisdiction of the United States. No American citizen in China, so long as he remains such, can waive the application to his person or property of such laws by the claim of a preference to be subject to the laws of China.

Moreover, the treaty provisions were intended to bring foreign nationals under the jurisdiction of their own governments not only with a view to protection, but with a view to the exercise by foreign governments of effective restraint upon their nationals. You will realize that, just as some citizens feel, in certain situations and for certain ends, that it is desirable that they be dissociated from the right to and the exercise of protection by their government, so others would be greatly gratified if it were possible for them to divest themselves of all possibility of restraint by their government.

You will also realize, I am sure, that under and by virtue of the treaty provisions, the American Government has obligations as well as rights, both in respect to China and to American citizens, and both in general and in particular.

The Department recognizes, however, that there are American citizens and organizations that feel an objection in principle to invoking the diplomatic intervention of this Government, and the Department's officials in China have been instructed that when such citizens or organizations become involved in circumstances necessitating, in the opinion of the Department, intervention with the Chi-

nese authorities the wording of protests should indicate that they are not filed at the instance of the injured parties, but on the initiative of the diplomatic or consular officials, acting on behalf of the general rights possessed by American citizens.²⁸ Indemnities, in general, are not asked from the Chinese authorities except at the request of the injured parties, but the Department reserves the right to enter protests against the destruction of American property and to include in such protests a further reservation of its right to file claims therefor. This is a substantive right which the Government of the United States cannot relinquish in view of the possibility that it may be necessary for it to protect the interests of American citizens generally in China at some time or other by a demand for damages.

Since each case calling for diplomatic intervention by this Government on behalf of American interests presents considerations peculiar to itself, the Department is not in a position to set forth any rigid rule applicable to all such cases, but it is hoped that the observations contained in this letter supply the information requested in your telegram under acknowledgment.

I am [etc.]

For the Secretary of State:²⁹

STANLEY K. HORNBECK

Chief, Division of Far Eastern Affairs

393.11/790

*The Consul General at Tientsin (Gauss) to the Chargé in China
(Mayer)* ³⁰

TIENTSIN, *March 13, 1928.*

SIR: I have the honor to acknowledge the receipt of the Legation's instruction of the 12th instant,³¹ on the subject of the "North China Patrol", U. S. Asiatic Fleet.

This office anticipates the resumption of hostilities between the combined Fengtien-Shantung-Chihli forces³² and the Kuomintang, Kuominchun and Shansi forces³³ in the immediate future. A particularly weak point in the Ankuochun position is the dissension amongst the Shantung-Chihli commanders. It is not unreasonable to anticipate the possible defection to the opposing forces of troops

²⁸ See telegram No. 298, July 28, 1927, to the Minister in China, *Foreign Relations*, 1927, vol. II, p. 139.

²⁹ This paper bears the notation: "Approved by the Secretary."

³⁰ Copy transmitted to the Department by the Chargé in his despatch No. 1441, March 21; received April 28.

³¹ Not found in Department files.

³² Allied with the Peking Government.

³³ Allied with the Nanking Government.

of the Shantung-Chihli commands; such a situation might readily open the way for a general southern advance and the retreat of the Fengtien forces outside the Great Wall. In any case, the indications point to the extension of the sphere of civil war to the North during the coming spring and summer. This will necessitate the evacuation of Americans from interior places. Tientsin being overcrowded and the cost of living here being beyond the means of missionaries, most Americans from the interior will proceed to Peitaiho Beach. It is quite probable that Americans from Tientsin and Peking will also proceed to the Beach, with or without the consent of their authorities.

The American authorities will undoubtedly be confronted again this year with the necessity of providing protection for the large number of American citizens who will concentrate at Peitaiho Beach.

In 1927, the permission given for Americans to proceed to the Beach undoubtedly was an important factor in encouraging evacuation from the interior in the face of the impending Nationalist advance. A similar situation will exist in 1928, if Americans are to be advised to evacuate districts likely to be included within the area of civil war.

While the civil war area may not extend as far as Peitaiho Beach, a Fengtien retreat would likely be made, in part at least, along the Peking-Mukden Railway; the railway would be entirely in the hands of the Chinese military; Americans and other foreigners would be isolated at Peitaiho; and retreating and disorganized soldiery penetrating to the Beach would be a serious danger.

The situation requiring precautions for the protection of Americans at Peitaiho was met in 1927 by the stationing of American naval vessels off Peitaiho or at Chinwangtao. The measures taken were, in my opinion, adequate and necessary. I am disposed strongly to recommend that the same measures be taken this year. How far the Commander-in-Chief, U. S. Asiatic Fleet, may be in a position to assign vessels for the protection of Americans at Peitaiho if the light cruiser division is withdrawn, I do not know.

I request to be informed what provision will be made this year for the protection of Americans at Peitaiho Beach.

I note in a copy of the printed "Operating Plan, U. S. Asiatic Fleet, Fourth Quarter—1927-1928" received at this Consulate-General on March 7th, 1928, that "Light Cruiser Division Three" is assigned from March to June to "North China Patrol". I am told that the U. S. S. *Marblehead* is still at Chinwangtao, but I have no information officially on the subject.

I have [etc.]

C. E. GAUSS

893.00/9814 : Telegram

The Chargé in China (Mayer) to the Secretary of State

[Extract]

PEKING, March 19, 1928—7 p. m.

[Received March 19—2:45 p. m.³⁵]174. My 160, March 13, 4 p. m.³⁶

1. Following is summary of mail despatch from American consul general [at] Tientsin under date of March 13th; copies of which are going forward to Department in next pouch:

[Here follows a summary of the despatch, printed *supra*.]

2. I concur in Gauss statement of probabilities of situation and recommendation for protection of Americans at Peitaiho.

3. Repeated to commander in chief for information North China Patrol.

MAYER

125.0093/311a : Telegram

The Secretary of State to the Chargé in China (Mayer)

WASHINGTON, March 19, 1928—6 p. m.

96. American business interests having business in the Yangtze Valley, and particularly in Hunan and Szechwan, are becoming somewhat disturbed over what appears to be advantageous situation of competitors due to re-establishment of consular representation by British and Japanese at Changsha and Chungking, and express the feeling that these conditions can only be ameliorated in so far as they are concerned when American consulates at those places have been re-established and business offices can count upon the local representation that such offices assure. The Department, as you know, is very anxious to have offices reopened at the earliest possible date.

Repeat to MacMurray.

KELLOGG

125.0093/312 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 13, 1928—1 p. m.

[Received 4 p. m.³⁵]

228. Your 96, March 19, 6 p. m. Following message was sent to the Legation by me from U. S. S. *Isabel*, March 24, 8 p. m., but was never received:

³⁵ Telegram in two sections.

³⁶ *Post*, p. 311.

"1. I have carefully considered with Lockhart³⁷ and Adams³⁸ the Department's telegram No. 96, March 19, 6 p. m., to the Legation, and find them both strongly in accord with my own view that it is premature to reopen Chungking and Changsha consulates.

2. As to Chungking, I received the impression that the situation in the Upper Yangtze, although for the moment quiet, is very unstable, and that either local military movements or popular reactions to any possible outside incident might precipitate a crisis. The reopening of the consulate would inevitably invite a general return of our people to interior points from which it would be impossible to withdraw them in case of a sudden necessity. Apart from the Yangtze Rapid Steamship Company the only considerable American business interests in the upper river are those of the Standard Oil Company. They are reopening immediately their Chungking office. I do not feel they will for the present suffer any disadvantage from the absence of consul. My own impressions bear out observations made by Adams on recent visit that the desire of the local authorities to regain 'face' through the return of our consul disposes them to treat our rights and interests with greater consideration than under normal circumstances. I therefor[e] recommend that the Chungking district should continue to be administered from Hankow until at any rate the situation in Szechuan has clarified, the consulate general being authorized to send a consular officer to visit Chungking upon any occasion which in his judgment requires personal representations.

3. I was unable to visit Changsha because prevalent banditry has resulted in removal of aids to navigation so that there was danger of indefinite delays through grounding in Tungting. But all I could learn of conditions in Hunan from various sources in touch with them confirmed in my mind the wisdom of the recommendation against an early reopening of the consulate made by Lockhart after recent visit there. The consulate general should also be authorized to send officer there as required.

4. Please quote to the Department."

MACMURRAY

893.00 Tsinan/5 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 3, 1928—5 p. m.

144. Your 303, May 3, 6 p. m.³⁹ Can you ascertain and inform Department by telegram present situation with regard to American Consul and other Americans at Tsinan?

KELLOGG

³⁷ Frank P. Lockhart, consul general at Hankow.

³⁸ Walter A. Adams, former consul at Chungking.

³⁹ Not printed.

893.00 Tsinan/6 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 5, 1928—1 p. m.

[Received May 5—5:23 a. m.]

311. Your 144, May 3, 5 p. m.

1. Reports from Tsinanfu indicate city quiet and consul and other Americans unmolested.

2. The Legation has endeavored through consul at Tsingtau and through Japanese Legation to ascertain present situation of consul and other Americans at Tsinanfu, but up to the present time has received no information. When this is received it will be cabled immediately to the Department.

MACMURRAY

393.11/801 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 7, 1928—5 p. m.

[Received May 7—7:26 a. m.]

318. Tsingtau reports arrival of mail from Price ⁴⁰ this morning by Japanese military train and that up to May 6, 6 a. m. it was believed that no Americans were injured or American property looted.

MACMURRAY

893.00 Tsinan/26 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 8, 1928—9 p. m.

[Received May 9—1:40 p. m.]

325. 1. On May 7th, I addressed the following telegram to General Hwang Fu, Minister for Foreign Affairs, Nanking:

"May 7, 6 p. m. Having heard of disturbances at Tsinanfu I am most anxious concerning the safety of Americans in that city. There are two American consular officers and over thirty American citizens there. I confidentially rely upon you to see to it that these Americans and their property are fully protected."

2. I have now received his answer as follows:

"May 8th. Yours 7th received. I just left Tsinanfu when disturbances occurred. I met American residents of Shantung Christian University. General Chiang Kai-Shek ⁴¹ also interviewed American consul. Both of your compatriots were eyewitnesses of the acts of Japanese troops and most jealously [*zealously?*] made efforts to smooth the differ-

⁴⁰ Ernest B. Price, consul at Tsinan.

⁴¹ Commander in chief, Chinese Nationalist armies.

ences. Now American consulate is safeguarded by 1 Chinese military officer and 10 *gendarmes*. Americans all safe, please keep me advised. Feel anxious [*No anxiety*]. Hwang Fu."

MACMURRAY

893.11/835

*The Minister in China (MacMurray) to the Consul General at Tientsin (Gauss)*⁴²

PEKING, May 12, 1928.

SIR: I beg leave to acknowledge the receipt of your despatch of May 3, 1928,⁴³ concerning protection for the Pao Cheng Cotton Mill at Tientsin. In the third paragraph of the despatch under acknowledgment you quote a letter received from Messrs. Andersen Meyer and Company, Limited, with reference to the financial situation of this mill, in which the following appears:

"Under present conditions, with practically all of the godowns in Tientsin occupied by foreign troops, it is almost an impossibility for us to bring the yarn, cotton and supplies into the concession for storage."

As you point out in the despatch under acknowledgment, it has been emphasized that the various American forces in China have been sent here for the protection of American life; and our Government's policy is that its forces are to be employed for the protection of property only in so far as such protection may be incident to the carrying out of their primary mission. It would therefore not be appropriate to request the American forces at Tientsin to extend protection to this property if, as is understood, its protection would have no relation to the protection of lives.

I am [etc.]

J. V. A. MACMURRAY

893.00/9952a : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 15, 1928—1 p. m.

158. 1. Associated Press despatches from Shanghai give the impression that defense measures under consideration at Tientsin may involve the establishment of a 20-li zone somewhat as provided in the understanding arrived at in July 1902 between China and certain powers, not including the United States. (See MacMurray's *Treaties*, page 317).⁴⁴ Please report if the above plan has been adopted.

⁴² Copy transmitted, without covering despatch, to the Department by the Minister in China; received June 27.

⁴³ Not printed.

⁴⁴ See also *Foreign Relations*, 1902, pp. 184 ff.

Also if in your opinion this is liable to bring on a conflict between the Chinese armies and the forces at Tientsin. In your opinion is it necessary to keep Chinese armed forces out of the native city any more than it was at Shanghai?

2. Of course, you understand it is the desire of the United States that its armed forces should, consistent with their duty to protect American citizens, avoid if possible conflict with Chinese soldiers and thereby prevent a recurrence of the unfortunate occurrences at Tsinanfu.

KELLOGG

393.11/808 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 17, 1928—noon.

[Received 10 p. m.⁴⁶]

359. My 325, May 8, 9 p. m. Following telegram has been sent to the American consul general at Shanghai:

"Urgent, 106, May 16, 7 p. m. Please prepare the following letter to 'His Excellency, General Hwang Fu, Minister for Foreign Affairs, Nanking,' and take the speediest available means to get it to him:

'Confidential. My dear General Hwang: The American Minister has telegraphed requesting me to place in your hands the following message as from him:

"In reply to a telegram I addressed to Your Excellency on May 7th expressing anxiety as to the protection of American citizens at Tsinanfu, you were good enough to assure me by a telegram of May 8th that I need feel no anxiety. It has, however, been the regular policy of the American Government to advise its nationals to withdraw from zones of actual hostilities where they may be exposed either to the accidents, civil warfare, or to the possibility of attack by irresponsible soldiery, and to retire to places where they may be protected.

That such advice has been warranted is evidenced by the fact that Dr. Seymour has been murdered in cold blood at Tsining under circumstances of which I have already had occasion to advise you;⁴⁷ one Mrs. Hobart has been killed at Taian by rifle fire under circumstances not thus far known;⁴⁸ and one Dr. Osborn was abducted and for several weeks held under arrest for no known reason.⁴⁹

At the present juncture, the course of military events threatens to involve this part of China, and I take this occasion to invite your attention to the fact that the central point of refuge for several thousand American citizens is at Tientsin, where the American Government has stationed defensive forces charged with the responsibility of protecting its citizens.

As you no doubt realize the commingling of all nationalities within the safety zone established at Tientsin creates a situation in which any threat to the security of that area involves a threat to all within it, indiscriminately. American interests and the American forces have, as a matter of practical necessity, to share with the forces of other powers the responsibilities of assuring the inviolability of the protected area.

⁴⁶ Telegram in four sections.

⁴⁷ See pp. 281 ff.

⁴⁸ See despatches L. No. 13, May 11 and L. No. 19, May 23, from the consul at Tsinan to the Minister in China, pp. 266 and 268.

⁴⁹ See telegrams No. 266, April 25, and No. 362, May 17, from the Minister in China, pp. 260 and 267.

You may of course rely upon it that the American forces will seek scrupulously to avoid embarrassing any Chinese military operations, and that the earnest hope of our military commander is to insure the complete safety of our nationals without resort to arms. I should, however, be less frank than I believe the occasion demands, if I were not to make clear that lawless, uncontrolled elements, or armed forces cannot be permitted to come into dangerous contact with our nationals in certain prescribed areas.

It is with a view to obviating the possibility of any collision, that I am impelled, out of abundance of caution, to present for your consideration the delicacy of the situation in this instance in the hope that you may find it possible to insure that only trusted troops and commanders of unquestioned loyalty to China's welfare may be employed in the event of any operations in the neighborhood of Tientsin; and further that all commanders be fully informed as to the real nature and object of such protective military measures as it has been deemed necessary for the American forces to adopt in that area."

I remain, my dear General Hwang, Yours very sincerely.'

Advise by cable immediately when letter has been delivered.

With a view to maintaining an attitude of strict impartiality, I am likewise sending a similar letter to the Minister of Foreign Affairs here; in this letter, however, the first two paragraphs of the one to General Hwang have been omitted as inapplicable in the case of the North, the letter to Mr. Lo,⁵⁰ therefore, beginning with the phrase 'at the present juncture.'"

MACMURRAY

893.00/9964 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 17, 1928—4 p. m.

[Received May 18—10:20 a. m.]

360. Your telegram No. 158, May 15, 1 p. m., received this morning.

1. The proposal to revive the exclusion of Chinese troops from the 20-li zone has not been adopted. It was urged at a meeting of the Tientsin commandants on May 11th by the Japanese general who further proposed that this zone should be cleared prior to the arrival of the Nationalists of Northern troops now within it to the number of at least 8,000. General Castner⁵¹ who had consulted me, on learning the proposal would be made, declined to associate himself with it. In behalf of General Butler⁵² (who takes the position that our marine brigade is not part of the protocol⁵³ forces and who is represented at commandant's meetings only by his chief of staff for the purpose of liaison) there was read a statement of his position embodying the following:

"Our defined mission is the protection of American lives and the lives of any other foreigners who are within the area prescribed as

⁵⁰ Lo Wen-kan, Minister of Foreign Affairs in the Peking Government.

⁵¹ Brig. Gen. Joseph C. Castner, U. S. Army, commanding the Fifteenth Infantry at Tientsin.

⁵² Brig. Gen. Smedley D. Butler, U. S. Marine Corps, commanding the Third Brigade.

⁵³ *Foreign Relations*, 1901, appendix (Affairs in China), p. 312.

a safety zone for Americans. The area of that safety zone is now specified in plans known to the foreign commandants. Circumstances and conditions might call for an extension or change of that area but the brigade commander will not, at this time, be a party to extension of our lines beyond the area now prescribed for our troops."

2. Although the British commandant favored the proposal as creating a more favorable military position in the ultimate eventuality of an attack in force, the British Minister considers that the driving out of the Northerners now there (which would be necessary in order to maintain an impartial attitude if the Southerners are later to be forbidden entry) would be needlessly provocative.

3. Having in view such contingencies as it is within reason to anticipate, I do not feel that it is necessary to keep Chinese armed forces out of the native city.

4. I believe the officers in command of the various American forces in China are fully aware of our Government's desire to avoid if possible any clash and may be relied upon to avoid any provocative act or association with others in hasty action which might involve us in any conflict not forced upon us by the necessity for the protection of American lives.

MACMURRAY

893.00/9958 : Telegram

The Ambassador in Japan (MacVeagh) to the Secretary of State

TOKYO, May 17, 1928—7 p. m.

[Received May 17—12:55 p. m.]

63. At interview this afternoon with representatives of the United States, Great Britain, France and Italy, the Minister for Foreign Affairs said that the Japanese Government were prepared fully to fulfill their obligations in any joint measures which may be taken for the protection of foreign lives and property in Peking and Tientsin. That, in addition to thirteen companies of Japanese troops which would be stationed there upon return to Tientsin of detachment sent to Tsinan, the Government was prepared to divert to Tientsin several companies now en route from Japan to Tsingtau. The Japanese Government were convinced that if general hostilities should commence near Peking it would directly affect Manchuria and in view of the necessity of maintaining peace and order in Manchuria the Japanese Government was determined to prevent hostilities from extending to that region. With this in mind the Japanese Minister at Peking and the consul general at Shanghai had been instructed to deliver the following note to Chang Tso-lin⁵⁴ and Nationalist Government, respectively, on the 18th at 2 p. m., until

⁵⁴ Generalissimo of military and naval forces under the Peking Government.

which time the Minister for Foreign Affairs requested that it be kept secret.

"The life of the population in China is characterized by extreme unrest and distress owing to the constant disturbances there which have now extended over many years; and foreign residents enjoy there no assurance of safety in the pursuit of their occupations. It is accordingly the earnest desire of the Chinese and foreigners alike that the disturbances should terminate as soon as possible in such a manner as may lead to the emergence of a united and peaceful China. Especially is this keenly hoped for by Japan whose interests are specially and deeply involved on account of her being China's nearest neighbor.

The disturbances, however, now threaten to spread to the Peking and Tientsin districts, and it is feared that Manchuria may also be affected.

The Japanese Government attach the utmost importance to the maintenance of peace and order in Manchuria and are prepared to do all they can in order to prevent the occurrence of any such state of affairs as may disturb that peace and order or constitute a probable cause of such disturbance.

In these circumstances should the disturbances develop further in the direction of Peking and Tientsin and the situation become so menacing as to threaten the peace and order of Manchuria the Japanese Government on their part may possibly be constrained to take appropriate and effective steps for the maintenance of peace and order in Manchuria. It must be noted, however, that the policy of the Japanese Government which consists in maintaining an attitude of strict neutrality towards the contending forces, remains unchanged in every respect and that, should the course of events be such as to render the above-mentioned measure imperative, the Japanese Government will, in respect of the time and method of its adoption, exercise due care to provide against any unfair consequences arising to either of the two opposed parties."

The Minister for Foreign Affairs stated that the Japanese Government with a view to preventing hostilities extending to Manchuria was anxious that no fighting should take place near Peking; that it has therefore decided to fix a point either at Shanhaikwan, or some other place as may be made advisable by subsequent military developments beyond which hostilities will not be allowed; that if Mukden army retreats in order it will be permitted to enter Manchuria; but that if it is defeated at Peking and retreats fighting with Southern army, the Japanese Government will prevent Mukden army, as well as Southern army, from passing. He believed that the foregoing policy would encourage Mukden army to withdraw from Peking, thus allowing Peking to be transferred peacefully to Nationalists.

Repeated to Peking.

MACVEAGH

893.00/9958 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, May 18, 1928—1 p. m.

162. Referring to Tokyo's telegram No. 63, May 17, 7 p. m., as repeated to the Legation:

1. I am not aware of any obligations under the protocol to participate in any joint measures for the protection of foreign lives in Peking or Tientsin. Cooperation in a joint disposal of forces for defensive purposes at Peking and Tientsin may become necessary, but the admiral responsible for defense measures must decide the necessity for and the extent of such cooperation.

2. There will be no participation by the United States in joint action with the Japanese Government or any other power to prevent the extension of Chinese hostilities to Manchuria or to interfere with the controlled military operation of Chinese armies, but solely for the protection of American citizens.

3. I am in agreement with the instructions as outlined in telegram 0016-1615 from Admiral Bristol to the Navy and telegram 0017-1200 from Butler to the admiral.

4. Considering the policy which Japan apparently intends to pursue in North China, as indicated in telegram No. 63 from Tokyo, it is desired that, as I am sure it will be, the greatest caution be exercised by you in conference with your colleagues to prevent the United States from becoming involved in any way in the aims or policies evidently intended, namely, intervention in China with the object of determining the extent of hostilities between Chinese armies, as well as for the purpose of preventing disturbances from extending to Manchuria or to any other portion of China.

5. The letters quoted in the Legation's telegram 359, May 17, noon, are approved. It is assumed that the words "in certain prescribed areas," contained in last paragraph of telegram, refer to the Legation Quarter at Peking and the foreign residential areas at Tientsin; I have no knowledge of any prescribed areas other than those places.

KELLOGG

893.00/9964 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, May 18, 1928—3 p. m.

163. Your telegram 360, May 17, 4 p. m., has arrived since the sending of my telegram 162, May 18, 1 p. m. I am in entire agree-

ment with you and Generals Butler and Castner. Your view of the situation is, in my opinion, correct.

KELLOGG

893.00/9983

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] *May 22, 1928.*

The Japanese Ambassador called on the Secretary today and stated that he had received a telegram from his government saying that it was reported in the Japanese press that the advice which had been addressed by the Japanese Government to the Nationalist and Northern authorities in China⁵⁵ had been looked upon with suspicion in the United States where it was interpreted as indicating a desire on the part of the Japanese to declare Manchuria as being a protectorate of Japan and it was reported that the Secretary of State during press conferences had indicated by the tone of his replies to questions that he was somewhat disturbed by this action on the part of Japan.

The Ambassador stated that he had been instructed to say that there was no ground for any misinterpretation on the Japanese position as set forth in this advice, which was that Japan was forced to take this step for the purpose of preventing disturbances in Manchuria where nearly 200,000 Japanese residents lived and where nearly 500,000 Koreans possessing Japanese nationality also lived. The Ambassador stated that this action on the part of the Japanese did not represent any change in Japan's policy with regard to China, that Japan still adhered to the policy of respecting the administrative and territorial integrity of China and equality of opportunity and the open door in Manchuria and Mongolia.

The Secretary stated that he was at some loss to understand how reports of this character should have gotten to Japan as he had consistently refused to comment upon Japan's intentions in Manchuria. The Secretary said that he had been asked questions in the course of press conferences and it was quite true that he had stated that he had not been consulted in so far as this matter was concerned and also that in reply to the question as to the terms of the Nine Power Treaty regarding the principles and policies concerning China he had furnished the correspondents with copies of the Treaty, but beyond this he had not gone.

Later the Ambassador came with Mr. Johnson to his room where he reiterated the statements made above from a copy of a telegram which he had in his hand. The Ambassador said that he himself

⁵⁵ See telegram No. 63, May 17, from the Ambassador in Japan, p. 224.

had seen the various statements in the papers and had seen nothing to indicate that the Secretary had said anything that might show that he was suspicious of Japan's motives but of course the press had been pretty free in its comments and that doubtless these comments had been telegraphed to Japan. The Ambassador stated that he had been told that the Prime Minister had read to the British, American, French and Italian Ambassadors at Tokyo the text of the communications which was to be addressed to the Nationalists and the Northerners and that he himself had not come around to speak to the Secretary at the time because there seemed to be no necessity for his doing so and that he only came on this occasion because of these instructions. He said that if the press should ask the reason for his visit he would say it was for the purpose of registering a denial that Japan intended in any way to establish a protectorate over Manchuria or that Japan's policy of respecting the political and administrative integrity of China and respecting the open door policy of equal opportunity in Manchuria and Mongolia had in no way been changed nor abandoned.

N[ELSON] T. J[OHNSON]

393.11/816 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 22, 1928—10 p. m.

[Received 11:30 p. m.]

383. Referring to the second and third paragraphs of my 380, May 22, 4 p. m.⁵⁶

1. Dr. Lo Wen-kan, Minister for Foreign Affairs here, authorized publication of my confidential letter to him of May 18⁵⁷ and of his reply dated 19, but just received, of the substance of which the following is a translation:

We have the honor to observe that the Chinese Government will not shirk its responsibility for protecting the safety of foreign residents, and its troops have been repeatedly and strictly enjoined to that effect and uniformly understand this. It is hoped that the various nations will comprehend this idea.

We have the honor, Mr. Minister, to declare that there will be no activity of any nature at variance with international usage."

2. I am instructing Shanghai to communicate to you directly in the event that General Hwang, now at Nanking, similarly assents to publication.

MACMURRAY

⁵⁶ Not printed.

⁵⁷ See last paragraph of telegram No. 359, May 17, from the Minister in China, p. 222. Texts of letters to Lo Wen-kan and Huang Fu were released to the press by the Department on May 23.

893.00/10075

The Ambassador in Japan (MacVeagh) to the Secretary of State

[Extracts]

No. 860

Tokyo, May 22, 1928.

[Received June 12.]

SIR: I have the honor to state, with reference to my telegram No. 63 of May 17th, 7 p. m., that on May 17th, I received a message from the Minister for Foreign Affairs, requesting me to call on him that afternoon, as he wished to hand to the representatives of the United States, Great Britain, France and Italy, a statement on the situation in North China. As I had an engagement which could not be broken, I instructed the first secretary to call in my stead.

Baron Tanaka began by saying that he wished fully to explain to the representatives of the Powers principally interested in China, the steps which the Japanese Government intended to take with respect to the situation now developing in North China. He described the disposition of the opposing forces about Peking, and said that, owing to the topography of the country west of Peking, the fighting there would develop very slowly, and that the Mukden general staff was confident that the Mukden forces could hold off the combined armies of Generals Yen Shi-shan and Feng Yu Hsiang in the region south of Peking. He added, however, that the 70,000 troops under General Chang Tsung Chang, now collected near Tientsin, were completely demoralized and could be considered worthless as a military unit. Baron Tanaka did not believe that they would be able to stand against the advancing troops of General Feng Yu Hsiang.

Baron Tanaka did not believe that the Chinese soldiers would indulge in Peking and Tientsin in the excesses that they were guilty of at Tsinan, but that the Japanese Government was prepared fully to carry out its obligations respecting any joint measures which might be taken by the Powers to protect their nationals in and near Peking and Tientsin. He said that there were now five companies of Japanese troops at Tientsin which would be increased to thirteen companies as soon as the detachment recently sent to Tsinan returned to Tientsin, but that if the situation made any further increase advisable, the Japanese Government were ready to send to Peking another reinforcement. Replying to a question put to him by the British Chargé d'Affaires, Baron Tanaka said that the latter would be sent from the Division now en route to Tsingtao, and that, if the circumstances made it necessary, one or two vessels now proceeding to Tsingtao would be instructed to proceed to Tientsin.

Baron Tanaka said that the Japanese Government were deeply concerned by the effect which the impending hostilities near Peking would have on conditions in Manchuria; that the Japanese Government intended to make Manchuria a safe field for the commercial activities of persons of all nationalities; that there were one million Koreans living in Manchuria, and that the Japanese Government could not view with indifference the prevalence of disorder in the regions contiguous to their colony, Chosen. With these circumstances in mind, the Japanese Government had instructed their Minister at Peking and Consul General at Shanghai to present an identic note to Chang Tso-lin and the Nationalist Government, respectively, on Friday, the 18th, at 2 p.m., until which time he asked that the text of the note be kept secret. Baron Tanaka added that this note was intended to serve warning upon the warring factions in China; that the Japanese Government was determined to keep hostilities out of Manchuria.

The vernacular papers reported yesterday that the Prime Minister, Baron Tanaka, stated that Japan was fully mindful of its obligations to act with the other foreign powers to protect foreign nationals residing in North China. He is reported to have added: "Japan is in a favorable geographical position to take the necessary measures and it will, therefore, endeavor in the event of danger to remove the causes of anxiety. If, however, Peking and Tientsin should become the scene of disturbances, the situation in Manchuria will become immediately affected; the economic position of several hundred thousand Japanese will be destroyed, and as a result of the uneasiness created among one million Koreans residing in Manchuria, peace and order in Chosen will be menaced. In the sense, therefore, that measures to guard against disturbances arising in Manchuria may be regarded as defensive measures, a warning was addressed to both the Northern and Southern Factions. Japan also expressed the hope, which is equally entertained by all the foreign powers, that these factions would compose their differences and thus give peace to the Chinese people. The declarations Japan has issued were, from the standpoint of our safety, unavoidable and necessary; but this distinction must be borne in mind: the giving by Japan of advice to the two factions to establish peace because Japan wished to see peace established, and the hope that peace might be established, are two absolutely different things."

I have [etc.]

CHARLES MACVEAGH

893.00/9997

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] May 24, 1928.

During the conversation which the Japanese Ambassador had with the Secretary this morning the Secretary mentioned to the Ambassador his inability to understand why the Japanese press should have become so disturbed over America's position with regard to the Japanese memorandum in connection with the situation in China. (Reference was to the memorandum handed to the Northern and Southern factions in China on May 18, warning them that Japan would not permit disturbances to arise in Manchuria.) The Secretary stated that in the press this morning it was reported that the Japanese press stated that the Secretary had distorted the facts and had placed a wrong interpretation upon the Japanese position. The Secretary said that, as a matter of fact, he had in no way commented upon the Japanese memorandum, that he had merely replied to press inquiries first as to whether the United States considered Manchuria a part of China, and second to give them a copy of the Nine Power Treaty regarding principles and policies in connection with China. The Secretary said that in reply to a question about the Japanese memorandum, he had stated he had no comments to make.

The Ambassador said he understood the matter quite clearly and that he had telegraphed to his Government explaining that there must have been some misunderstanding as no statements such as those reported in the Japanese press had been made here.

N[ELSON] T. J[OHNSON]

893.00/9992 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 25, 1928—6 p. m.

[Received May 25—10:40 a. m.⁵⁸]393. My telegram number 378, May 21, 6 p. m.⁵⁹

1. The Peking Government has today issued a formal declaration in the following terms:

"On May 18, 1928, His Excellency, the Japanese Minister, Mr. Yoshizawa, expressed certain views to Marshal Chang Tso-lin which in brief were as follows: [Here follows quotation of the Japanese note.]⁶⁰

⁵⁸ Telegram in two sections.⁵⁹ Not printed.⁶⁰ Brackets appear in the original telegram. For text of Japanese note, see telegram No. 63, May 17, from the Ambassador in Japan, p. 224.

Japan's desire to see an early termination to the civil strife in this country is, in the opinion of the Chinese Government, exactly in harmony with Marshal Chang's circular telegram of May 19 [9?], 1928,^{60a} advocating the cessation of hostilities, and inasmuch as such desire is motivated by friendly sentiments it is deeply appreciated by the Chinese Government. On the other hand, the Chinese Government can never agree to the proposition that, should the disturbances develop further in the direction of Peking and Tientsin so as to affect Manchuria, the Japanese Government may be constrained to adopt appropriate and effective measures to cope with the situation.

The Chinese Government hereby emphatically declares that inasmuch as Manchuria and the Peking and Tientsin area are Chinese territory and any violation of the integrity thereof would involve China's sovereignty it cannot maintain an attitude of indifference. Whether the localities in question are peaceful or otherwise the Chinese Government will be responsible for the safety of foreign nationals resident therein. It is therefore earnestly hoped that the Japanese Government will, in the light of the regrettable incidents in Tsinanfu, be dissuaded from further acts in violation of international law and usage so that the traditional friendly relations between the two countries may be preserved. A declaration to this effect was communicated to His Excellency, the Japanese Minister, in the Waichiaopu's note of May 25, 1928.

Moreover, the action contemplated by the Japanese Government is obviously at variance with the two principles enunciated by the nine-power treaty concerning policies in China, signed at Washington on February 6, 1922, namely, that the powers should respect China's independence and 'sovereignty as well as its territorial and administrative integrity and refrain from taking advantage of conditions of China in order to seek special rights or privileges, and as such it can only be deplored by the Chinese people.'

2. Repeated to Tokyo.

MACMURRAY

893.00/10004 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 26, 1928—9 p. m.

[Received May 27—9:25 a. m.⁶¹]

399. My 360, May 17, 4 p. m.

1. Senior commandant at Tientsin presented to Generals Butler and Castner a draft notification to the various Chinese authorities both Northern and Southern extending beyond the agreed defense areas the lines within which the Chinese armed forces would [not?] be allowed. Both Butler and Castner declined to approve of or to join in the notification.

2. On May 22nd Gauss⁶² telephoned me that the notification in question had actually been issued by the Japanese commandant acting

^{60a} See telegram No. 330, May 10, from the Minister in China, p. 140.

⁶¹ Telegram in three sections.

⁶² Clarence E. Gauss, consul general at Tientsin.

in behalf of the "commandants of the international forces protecting the foreign concession at Tientsin." I at once explained the situation to the British and Italian Ministers who happened to be dining with me and who had no knowledge of the action taken by their commandants at Tientsin. I later called on the Japanese consul general [*Minister?*] and told him of the embarrassment created for us by the action which his commandant had taken. I recalled that we had definitely taken a position against extending the defense lines and that, although the notification issued by General Arai was in behalf of "the commandants of the international forces protecting the foreign concessions at Tientsin"—a phrase which perhaps literally excluded the commandant of the American protocol forces—it was a phrase which would be generally understood as referring to the whole body of protocol forces. The effect of this was to put us in a false position, making it appear that we were parties to an action which we in fact considered unwise and in which we had refused to join. I said that I must reserve in behalf of my Government the right to take any action which it might see fit for the purpose of dissociating ourselves from such action. The Japanese Minister said that he really knew very little about the matter and that a copy of the proclamation had been presented to him a few days before in the light of a routine matter involving nothing new to which he had given consent without particular scrutiny. He said however that the copy of the notification brought to Peking had not yet been delivered and that he would take whatever steps might prove possible to withhold the issuance of the notice until the matter had been thrashed out.

3. On May 23rd, Gauss again telephoned me to the effect that the notification had not in fact been issued in any way, Japanese Minister had at my instance requested General Arai to hold the measure in abeyance for the time being; but that there was to be a meeting of the commandants the next day at which an effort would be made to have them agree to the issuance of the notification as a matter of military necessity. I requested him to convey to General Castner that our attitude toward an extension of the lines was not merely one of aloofness but one of definite opposition. The French military attaché later intimated to me that his Legation would instruct the French commandant to oppose the suggested extension of the defense lines, and the British Minister also informed me that he would warn his commandant.

4. At the meeting on May 24th the commandants decided to abandon the proposed notification and to continue to cooperate along the general lines laid down in the existing plan of combined action; and that should it later be thought advisable to issue any notification as

to the area to be defended, that should be done only upon consultation with the interested Ministers at Peking.

MACMURRAY

893.00/10004 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 29, 1928—2 p. m.

174. Your 399, May 26, 9 p. m. Department approves your action and is gratified over the results.

KELLOGG

893.00/10018 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 1, 1928—6 p. m.

[Received June 1—10:40 a. m.]

412. In response to an invitation extended through the Senior Minister, representatives of the powers met with Chang Tso-lin this afternoon. Chang said that, while in Manchuria, he had had no political ambitions outside the Wall. Latterly however the Communists had become a destructive influence in China and he had felt compelled to take measures against them. He might have followed a course of denouncing the treaties and of refusing to assume any obligations toward other nations as Russia had done but he did not approve of any such policy of radicalism. He went on to say that his defense lines had been drawn up at Liuliho and much would depend upon the outcome of the fighting there. He himself felt very uncertain of the future, but he wishes to assure the foreign representatives that they need have no concern over the safety of their nationals as he would guarantee their protection in both the Peking and Tientsin areas. He said that all knew that his troops had never been defeated, but that he was greatly concerned over the sufferings of the people through the continuance [of] civil warfare.

The Senior Minister made a few remarks in reply, expressing thanks for the protection which had been afforded foreigners during the period which Chang had been in Peking.

Although Chang made no mention of any definite intention to withdraw from Peking, his remarks were generally received as being of the nature of a valedictory and as indicating that he may leave at any time for Manchuria.

MACMURRAY

893.00/10025 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 4, 1928—6 p. m.

[Received June 4—10:50 a. m.] ⁶³

425. 1. At a meeting of the interested chiefs of mission this afternoon it was decided to send the following telegram to Marshals Chiang Kai-shek, Feng Yu-hsiang ⁶⁴ and Yen Hsi-shan ⁶⁵ and also for information to Tan Yen-kai ⁶⁶ of the Nationalist committee at Nanking:

"The diplomatic representatives of the foreign powers have the honor to draw the attention of the commanders of the Chinese armies which are approaching Peking to the fact that an interim period may occur during which the population of this city may remain without protection. They have learned that General Pao ⁶⁷ of the Fengtien army is staying at present in Peking with the sole object of maintaining peace and order, at the request of the committee of elder statesmen.

Without desiring to interfere in the least with any military movements in China the representatives of the powers, having in mind only the safety [of] foreign residents as well as of the population in general, would feel exceedingly gratified if the armies, commanded by Your Excellency, would leave the force of General Pao in Peking until the protection of the city can be taken over by the incoming troops, under some arrangement whereby provision could be made for General Pao's men peacefully to withdraw."

2. Release to press to be made locally at noon tomorrow, equivalent to June 4, 11 p. m. in Washington.

MACMURRAY

893.00/10033 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 5, 1928—4 p. m.

[Received June 5—10:40 a. m.]

426. 1. Upon the departure last night of Chang Hsueh-liang, ⁶⁸ Yang Yu-ting ⁶⁹ and the principal remaining officials connected with the Fengtien regime, the control of Peking is in the hands of the committee of elder statesmen headed by Wang Shih-tseng, ⁷⁰ mentioned

⁶³ Text printed from corrected copy received June 5.

⁶⁴ Military leader recently joining forces with the Nationalists.

⁶⁵ Commander in chief of Nationalist Revolutionary army in North China.

⁶⁶ Chairman, Nationalist Government Council, Nanking.

⁶⁷ Gen. Pao Yu-lin, commanding Forty-seventh Brigade under the Peking Government.

⁶⁸ Son of Chang Tso-lin, and commander of Fengtien Third Army, under the Peking Government.

⁶⁹ Chief of Staff in Chang Tso-lin's forces.

⁷⁰ Refers apparently to Gen. Wang Chih-chen, chairman of the Committee of Safety.

in paragraph 4 of my number 409, May 31, 10 p. m. [*a. m.*].⁷¹ One reliable Fengtien brigade of about five thousand men remains to preserve order in the city. Plans are under negotiation for the peaceful withdrawal of this force upon the arrival of the incoming Nationalist troops. Forces of Yen⁷² and Feng⁷³ are reported within day's march of city and question of which will first arrive is purely speculative.

2. All Manchurian troops are clearing this area without disorder. Heavy troop traffic has prevented operation of passenger trains between here and Tientsin since June 3rd. Both Tientsin and Peking remain quiet and there are apparent[ly] no signs of agitation.

MACMURRAY

893.11/823 : Telegram

The Minister in China (MacMurray) to the Secretary of State.

PEKING, June 5, 1928—5 p. m.

[Received June 5—9:40 a. m.]

427. 1. Following telegram has been received from Shanghai:

"The following communication dated June 2nd has been received from local Commissioner General [of] Foreign Affairs:

"The Ministry of Foreign Affairs of the Nationalist Government has instructed me to acknowledge the receipt of your letter of May 18th transmitting a message from the American Minister to Minister Hwang Fu, and to request you to forward to the American Minister the following reply:

"The American Government has advised American citizens to withdraw from the theatre of hostilities and take refuge in a place of safety during the present period of military operations in China. The Nationalist Government deeply appreciates such friendly intention and satisfactory attitude on the part of the American Government, and, as Your Excellency is well aware, has done all in its power to extend adequate protection to the lives and property of foreigners residing within the territory under control of the Nationalist Government.

The Chinese people are exceedingly pleased to hear of the fair attitude adopted by the American Government and people subsequent to the recent despatch of troops by Japan to Shantung which suffices to indicate the inherent sense of justice of the American people which is worthy of the greatest admiration. The Nationalist Government is confident that there is not the least possibility of American residents of Tientsin being exposed to (un-toward) incident and the commanders of the Nationalist revolutionary forces will necessarily enforce the most rigid discipline and extend full protection to the lives and property of American residents there. It is the hope of the Nationalist Government that, in accordance with the principle of international law and in keeping with the sincerity with which the American Government has hitherto respected the territorial rights of China, Your Excellency will devise means within the shortest space of time to expedite the evacuation of Tientsin by American troops since, in consummating the Northern expedition and the reunification of China as a whole, the Chinese people have long had the sympathy of the American people and the withdrawal of American troops is certainly a most important step towards the realization of such aspirations on

⁷¹ Not printed.

⁷² Marshal Yen Hsi-shan.

⁷³ Marshal Feng Yu-hsiang.

our part and an evidence of the fulfillment of the traditional friendly policy of the United States Government towards China."

It is hoped that you will kindly transmit the above. Signed, Wuntz King.'

King requests that arrangements be made for simultaneous release of text in Peking, Shanghai and Washington and I suggest that release in China be made at 12 noon on Wednesday, June 6th. Garbled résumé of note was published in Sinwanpao on June 2nd and translation of same in foreign press on same day."

2. I am telegraphing Cunningham that release in China Wednesday, noon, June 6th, is satisfactory. This corresponds with 12 p. m., June 5th, in Washington.

MACMURRAY

393.11/823 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 8, 1928—5 p. m.

184. Your 427, June 5, 5 p. m. Dr. Wu⁷⁴ in informal conversation with Chief of Far Eastern Division inquired what reply American Government intends to make and was informed that the note obviously requires no reply and that Department will probably make none. However it is suggested that you acknowledge through Cunningham the receipt of the note and express gratification over the cognizance which the Nationalist Government takes of the friendly intention and satisfactory attitude of the American Government and the American people and the assurance given that American residents of Tientsin will not be exposed to any untoward incident, take note of the hope expressed that means will be devised to expedite the evacuation of Tientsin by American troops and express your confidence that the Chinese people understand that American armed forces have been and are in China only because of conditions in China of insecurity and uncertainty which have long prevailed and which the American Government hopes will soon be succeeded by conditions such that their presence will no longer be required. Phrase this as you may deem appropriate.

KELLOGG

893.00/10051 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 9, 1928—7 p. m.

[Received June 9—8:30 p. m.⁷⁵]

442. My number 425, June 4th, 6 p. m. Following reply, dated June 6, was received by the dean of Foreign Affairs [*diplomatic body?*]:

⁷⁴ C. C. Wu, Special Representative of Chinese Nationalist Government.

⁷⁵ Telegram in four sections.

"I have the honor to acknowledge the receipt of your telegram of June 4th addressed to Chairman Tan Yen-kai. Its contents have been transmitted to the Nationalist commanders at the front. In reply I wish to state that the Nationalist Government have always been concerned with the safety of foreigners in China and to assure you that proper measure[s] for maintaining order in Peking-Tientsin region have already been taken. Some arrangement will therefore be made for the peaceful withdrawal from Peking of General Pao's men. (Signed) Y. L. Tong".⁷⁶

Following telegram[s] sent today by the dean to Tan Yen-kai, president of the Executive Council in Nanking, and also to Commission[er] of Foreign Affairs at Shanghai.

Message number A:

"On 5th June I had the honor to express on behalf of myself and our colleagues of the diplomatic body the wish to Your Excellency that General Pao's force, after having accomplished its mission to protect the safety of Peking, would be enabled to withdraw peacefully.

On 6th June I was happy to receive the telegram communication from Mr. Y. L. Tong to the effect that some arrangements would be made for the peaceful withdrawal of said force.

The force left Peking yesterday, June 8th, but could not proceed further than Tunghsien, 16 miles from here, where the commander of the Kuominchun troops informed them that no further guarantee could be assured.

They returned to the eastern suburb of Peking, where we understand that they are at the moment being subjected to pressure to disarm by local commander of Kuominchun army.

As the good faith of the Nationalist regime is involved in the fulfillment of the promise made, I have the honor to request most urgently that instructions be issued at once that safe conduct be assured to General Pao Yu-lin and his men as solemnly promised by the Nanking Government."

Number B:

"Referring to my telegram of this morning June 9th, the apprehensions therein expressed have unfortunately been justified, as Pao's men have since been disarmed and made prisoners on the direct orders and responsibility of General Han Fu-chu⁷⁷ in disregard of the solemn assurance of the Nationalist Government.

Accompanied by my American, British and Japanese colleagues, after consultation with the Committee of Safety, I visited General Han at his headquarters this afternoon.

Despite the statement in your telegram of June 6th that the contents of my message to you had been transmitted to the commanders at the front, General [Han] denied having received any orders whatsoever with regard to the peaceful withdrawal of General Pao and his troops; and despite the fact that yesterday he had sent one of his staff officers to accompany and assure safe conduct to General

⁷⁶ Vice Minister of Foreign Affairs in the Nationalist Government at Nanking.

⁷⁷ Commanding Nationalist Third Army.

Pao and his men, he further denied having sanctioned any arrangements to that end.

We read him the words of your assurance regarding peaceful withdrawal as contained in your telegram and endeavor[ed] to impress upon him that it was his plain duty to do nothing incompatible with the carrying out in good faith of the pledge of the Nationalist Government.

The Nationalist Government will wish to know the above faction [*facts?*], the right of which we do not doubt, that [*and?*] they will be anxious to expedite the necessary orders to insure the fulfillment of their pledge.

The issue at stake is [a] very grave one and we are loath to believe that the Nationalist Government will be slow to rectify an act that impugns their honor in the eyes of the whole world. (Signed) Oudendijk, Netherlands Minister and Dean of the Diplomatic Body."

MACMURRAY

893.00/10053 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 10, 1928—1 p. m.

[Received June 10—11 a. m.]

444. My telegram No. 442, June 9, 11 [?] p. m.

1. Committee of Safety wound up its affairs today, announcing as its reason that Yen Hsi-shan has been appointed by Nationalist Government as commander in chief of Peking-Tientsin area and has deputed representatives "To come to Peking and consult regarding the taking over of affairs." This abrupt relinquishment of responsibilities by the committee is understood to have been induced by apprehensions resulting from violation by Kuominchun of safe conduct promised by the Nationalist Government to General Pao and his protective forces.

2. Kuominchun forces are now southeast and north of Peking and there is increasing disposition among both Chinese and foreigners to believe that Feng is preparing to force Yen out and assume control.

MACMURRAY

893.00/10062 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 11, 1928—4 p. m.

[Received June 11—12:45 p. m.]

446. Following from Tientsin:

"June 9, 6 p. m. Northern forces still holding their positions in and around Tientsin. Reported Feng forces have fired on Japanese airplanes with [*at?*] Taku. Also reported Japanese destroyers

escorting steamers to Tientsin has [*have*] heavily returned fire from river banks.

In view of sniping at American airplanes at Hsinho, several Marine and Army officers are proceeding with Feng's agents from Tientsin to confer with Feng's commander for the purpose of informing him of presence American forces at Hsinho and of avoiding any repetition of such incidents. No publicity being given to firing on American airplanes. Probably due to ignorance of their identity. Feng agents very anxious to cooperate to avoid any incidents."

MACMURRAY

893.00/10056 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 11, 1928—6 p. m.

[Received June 11—10:50 a. m.]

448. My 442, June 9, 11 [7] p. m., paragraph two, A. Following telegram dated June 10 has been received by the Senior Minister from Y. L. Tong of the Nationalist Ministry of Foreign Affairs:

"I have the honor to acknowledge receipt of Your Excellency's telegram of June 9th to Chairman Tan Yen-kai of Nationalist Government and to inform you that we have taken note of this [*its?*] contents. We are deeply concerned over your report on the sudden return General Pao's force to eastern suburb of Peking after they had already effected their peaceful withdrawal from that city. The Nationalist Government has telegraphed to the commanders at the front instructing them to investigate the situation and to devise means for affording safety to the said force."

MACMURRAY

393.11/828 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 12, 1928—7 p. m.

[Received June 12—10:44 a. m.]

457. Your telegram number 184, June 8, 8 [5] p. m. I strongly advise against making any reply to the Nanking Foreign Office note of June 2nd,⁷⁸ which, by sufficiently clear implication, acquiesces in the necessity of our armed forces at this date for the safeguarding of our nationals there under the prevailing conditions of insecurity and uncertainty. Any attempt to set forth the point more explicitly would seem certain to elicit from the new Nanking Minister for Foreign Affairs, C. T. Wang, rejoinder confusing the whole issue and seeking to put us in the wrong.

MACMURRAY

⁷⁸ See telegram No. 427, June 5, from the Minister in China, p. 236.

393.11/828 : Telegram

The Acting Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 12, 1928—5 p. m.

186. Your telegram 457, June 12, 7 p. m. Department adopts your view.

OLDS

893.00/10077 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Extract]

PEKING, June 12, 1928—8 p. m.

[Received June 13—9:55 a. m.]

458. My No. 404 [444], June 10, 1 a. m. [p. m.] General Yen Hsi-shan arrived here yesterday and took up his headquarters at the Ministry of War as garrison commander of the Peking-Tientsin area. Proclamation issued by Yen states that he assumes full responsibility for the maintenance of law and order, and for the protection of both Chinese and foreign lives and property. . . .

MACMURRAY

893.00/10096 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 19, 1928—6 p. m.

[Received 6:17 p. m.⁷⁹]

477. Referring to my telegram 442, June 9, 7 p. m., paragraph two, B.

1. The following reply to the second telegram of June 9th [by the Senior Minister]⁸⁰:

"Your Excellency's telegram of June 10th [9th?] on the subject of General Pao's troops which was addressed to Mr. Tan Yen-kai, chairman of the Nationalist Government and transmitted to this Ministry by the American consul general at Shanghai has been noted. To whose wireless message of June 9th a reply was sent by this Ministry on the 10th stating that 'We are deeply concerned in your report on the sudden return of General Pao's force to the eastern suburb of Peking after they had already effected their peaceful withdrawal from that city.' In reply to your present telegram this Ministry with a view to relieving your anxiety has the honor to inform you that the Nationalist Government have telegraphed to the commanders at the front instructing them to investigate the

⁷⁹ Telegram in two sections.

⁸⁰ Brackets appear in the original telegram.

situation; and that proper measures will be taken. (Signed) Nationalist Ministry of Foreign Affairs, June 13th."

The delivery of the message through the Commissioner for Foreign Affairs to the senior consul at Shanghai was accompanied with a request from the Ministry that the note should not be released to the press for the time being.

2. Senior Minister is today telegraphing as follows to Dr. Wang, Minister for Foreign Affairs:

"The dean of the diplomatic body and his colleagues acknowledge with thanks the receipt of the telegram of June 13th in which the Nationalist Ministry of Foreign Affairs states in reply to the second telegram from the diplomatic body of June 9th, that it has instructed the commanders at the front to investigate the matter of the violation of the safe conduct of General Pao's brigade and gives the assurance that the proper measures will be taken. The dean and his colleagues have now received information that General Han has left Nanyuan for Kuan with General Pao's men and arms. They regret this further apparent indication that the instructions of this Nationalist Government have been ignored and that the assurance given by that Government for the safe conduct of General Pao and his men continued to remain unfulfilled. They can only hope that the measures promised by your latest telegram will speedily result in action fully vindicating the faith of the Nationalist Government.

The diplomatic body have taken note of the request made through the Commissioner of Foreign Affairs at Shanghai that the Government's telegram of June 13th shall not be released to the press but they are reluctantly impelled to state that the course of events may yet compel them to hand the full correspondence to the press in order that world-wide opinion may be put in possession of all facts of the case."

MACMURRAY

393.11/844

The Minister in China (MacMurray) to the Secretary of State

No. 1557

PEKING, July 2, 1928.

[Received August 4.]

SIR: I have the honor to enclose, as of possible interest to the Department, copies of a self-explanatory exchange of correspondence with the Consul General at Tientsin and with the Commander-in-Chief of the United States Asiatic Fleet, concerning the protection of American citizens at Peitaiho.

In spite of the warnings issued to Americans against going to that resort, a number of families are already there. It is also ascertained that the Kailan Mining Administration has been operating, and will continue to operate, steamers between Tientsin and Chinwangtao, as well as a special tender service across the bay to Peitaiho, by which

means more Americans are constantly proceeding. Further, the Fu Shing Steamship Company (Japanese) advertises a semi-weekly steamer service each way between Tientsin and Peitaiho direct, and that it will augment this service as the traffic warrants. Since Americans already at the Beach are writing to their friends that the resort is quiet and well protected by a police force, which asserts that it will be able to maintain order under any circumstances, it is reasonable to anticipate that as the weather becomes increasingly hot the number of Americans at Peitaiho will rapidly increase, and by the middle of July will amount to several hundred persons.

I have [etc.]

J. V. A. MACMURRAY

[Enclosure 1]

The Minister in China (MacMurray) to the Commander in Chief of the Asiatic Fleet (Bristol)

PEKING, June 13, 1928—4 p. m.

Following is being sent to the American Consul at Tientsin:

"June 13, 3 p. m. The Legation understands that there are a considerable number of Americans at Peitaiho who have proceeded there in spite of advices to the contrary. In view of the likelihood of their being molested by retreating disorganized soldiery, some of whom may be unable [to] proceed beyond Shanhaikuan, do you consider that Americans should be advised to evacuate? Unless you consider it unnecessary, it is suggested that you communicate with Commander-in-Chief, stating that presence of a naval vessel either at Chinwangtao or off Peitaiho might have a restraining effect. Legation is informed that British gunboat *Foxglove* is proceeding to Peitaiho. Are you in communication with Peitaiho?"

MACMURRAY

[Enclosure 2]

The Commander in Chief of the Asiatic Fleet (Bristol) to the Minister in China (MacMurray)

[June 15, 1928—4:15 p. m.]

0015. Referring to the American Minister's 1913-1600 and Third Brigade's 8613-2037. In spite of advices to the contrary it is noted that a considerable number of Americans have proceeded to Peitaiho. As they have thus acted against advices I request that they be informed that the Commander-in-Chief can assume no responsibility for their protection. As Peitaiho is not a port, naval vessel cannot lie off there and excepting in calm weather it is improbable that a landing party could be made in case of necessity. The presence of a naval vessel at Chinwangtao is not any proper protection for our nationals at Peitaiho especially against plundering bands and dis-

organized retreating soldiers. As the situation is entirely different from that of last summer the same measures as were then adopted are not at all appropriate now. When visiting Chinwangtao the Commander of the Light Cruiser Division will convey this same information to Americans at Peitaiho while informing them that if the situation demands it they will be given protection if they proceed to Chinwangtao or will be evacuated from that port if necessary. Keep me advised as to the situation. If you consider it a necessity will keep one naval vessel at Chinwangtao. 1615.

BRISTOL

[Enclosure 3]

The Minister in China (MacMurray) to the Commander in Chief of the Asiatic Fleet (Bristol)

[PEKING,] June 19, 1928—3:15 p. m.

Your 0015-1615. Consul General at Tientsin reports that he has no communication with Peitaiho, and that he does not know the conditions there or the number of Americans there. He believes that any urgent advice to abandon Peitaiho should be given only after conditions in that area have been ascertained by the Naval Commander in that vicinity. In the circumstances, I should appreciate your cooperation in having the Naval Commander at Chinwangtao make an investigation of conditions at Peitaiho, and recommend what, if any, measures are feasible with a view to minimizing the danger to Americans and to American property there in the light of the fact that you cannot assume any responsibility for their protection at that place.

With reference to your inquiry, it seems to me necessary to keep a naval vessel at Chinwangtao at the present time.

MACMURRAY

[Enclosure 4]

The Commander in Chief of the Asiatic Fleet (Bristol) to the Minister in China (MacMurray)

[June 20, 1928—7:10 p. m.]

Referring to your June 19, 3 [3:15] p. m. With the understanding that you and I arrived at in our personal conference at Peking, I am pleased to keep a naval vessel at Chinwangtao. I am at a loss to understand the statement of the Consul General at Tientsin that he is not in communication with Peitaiho. It is requested that he be informed that any naval vessel which may be at Chinwangtao and the 3rd Brigade are always at his disposal for radio communication and further if it is at all possible our people will to the best

of their ability undertake to deliver any of his messages to Peitaiho from Chinwangtao.

In my 0015-1615 it was not recommended that Americans be advised to abandon Peitaiho but [I] did request that as they had proceed[ed] there contrary to the advices of both yourself and of the Consul General at Tientsin, I could not assume any responsibility for their protection at Peitaiho. It is very important, in my mind, that our Americans be made to understand, as I explained to you, that the location of Peitaiho is such that this fleet cannot guarantee protection to their lives at that place and that under no circumstances will attempt to safeguard property at that place. I recommend strongly that our nationals should not be allowed to have any mistaken ideas on this point. Furthermore, if they are under the impression that a ship lying at anchor two or three miles off Chinwangtao or Peitaiho is going to protect them against marauding bands or deserters or against bandits their minds should be disabused of such ideas immediately. Orders have been issued for the necessary investigation of the Peitaiho-Chinwangtao area and I will of course inform you continually of developments.

BRISTOL

793.94/1672 : Telegram

The Chargé in Japan (Neville) to the Secretary of State

TOKYO, July 9, 1928—3 p. m.

[Received July 9—9:40 a. m.]

84. Recent press reports to the effect that Japan was increasing its troops in Manchuria and was about to take drastic steps in that region and was moreover about to occupy Shantung permanently led me to discuss the situation at the Foreign Office.

The Vice Minister for Foreign Affairs told me today that there were no new developments in Japanese policy in Manchuria; that Japan had no intention of seeking new or special privileges in that region beyond the rights already guaranteed to them by treaty; that of course the situation was somewhat uncertain at the moment but that there was no truth in rumors in regard to increased Japanese governmental activity there.

In regard to Shantung he stated that the Japanese attitude had not changed; that there was nobody with whom to negotiate and that meanwhile the Japanese felt that they had to maintain a sufficient force there to prevent disturbances; but Japan have [*has*] no intention whatever of attempting to alter the status of Shantung and the railway as fixed by agreement reached at Washington at the time of the Conference.

NEVILLE

393.11/846 : Telegram

*The Minister in China (MacMurray) to the Commander in Chief,
Asiatic Fleet (Bristol)*⁸¹

PEKING, July 14, 1928—2 p. m.

Your 0010-1600. In my opinion there is no necessity of retaining a vessel at Taku Bar, but the presence of one at Chinwangtao is highly advisable. The number of Americans at Peitaiho is constantly increasing and the Chihli-Shantung troops are a continuing threat to their safety. Should any emergency arise it would be impossible to communicate the news with sufficient promptness to make possible the arrival of a vessel in time to deal with it. Moreover, the constant presence of one or more American vessels would certainly exert a strong restraining influence.

MACMURRAY

793.94/1675 : Telegram

The Chargé in Japan (Neville) to the Secretary of State

Tokyo, July 18, 1928—7 p. m.

[Received July 18—1:50 p. m.]

87. The Foreign Minister today gave an interview to the diplomatic representatives in Tokyo of Great Britain, France, Italy and the United States. He said that he had asked us to come because he wished to explain the position of Japan in China with particular reference to the situation in Shantung and Tientsin. He said that he wished to preface his statement by stating that Japan emphatically had no intention of occupying Shantung or maintaining troops there for any period longer than that absolutely required by disturbed conditions in North China. He said that Japan had originally sent troops into Shantung for the sole purpose of protecting the lives and property of several thousand Japanese who were domiciled there; that the attack on Tsinanfu had been precipitated by undisciplined Southern troops and that numerous atrocities had been committed; that the Japanese had only protected their people and had no intention or desire to interfere in any way in the political affairs of China; that they were reducing their forces and withdrawing their reserves and that for the present the total forces to be kept in Tsingtao, Tsinanfu, and along the railway line amount to about sixteen thousand.

⁸¹ Copy transmitted to the Department by the Minister in China in his despatch No. 1574, July 18; received August 20.

He then said the Japanese Government proposed to enter into negotiations with the Nationalist Government for the purpose of settling the Tsinanfu incident. The Japanese will ask:

First, an apology for the unwarranted attack by Nationalist troops;

Second, the punishment of persons responsible;

Third, an indemnity for the damage done to the lives and property of Japanese subjects;

Fourth, an assurance that incidents of a similar character will not occur in the future.

The preliminary negotiations will be taken up with the Nationalist Government by the Japanese consul general at Shanghai with a view to making a joint investigation and settlement at Tsinan between the representatives of the Nanking Government and the Japanese consul general at Tsingtao. Baron Tanaka stated emphatically that there was no question involved of *de jure* recognition of the Nanking Government.

He said that the Japanese had about two thousand three hundred troops at Tsinan; that they had no intention of adding to or decreasing this number for the moment, because there were sufficient foreign troops at Tientsin to prevent any outbreaks there. He added that it was imperative to keep troops at Tsinan and Tientsin because in addition to the Nationalist troops who were now more or less under control there were about forty thousand Shantung troops who were completely out of hand, who had formerly been part of the Mukden army but who since the withdrawal of the Manchurian forces represented an independent element not allied with anybody and who would undoubtedly be the source of further trouble if there was any opportunity for it.

He said that he was not hopeful that peaceful conditions would be established in China for some time to come; that it would be difficult to disband the armies and that jealousy among the military commanders would continue to cause trouble.

Copy to Peking.

NEVILLE

893.00/10198

The Minister in China (MacMurray) to the Secretary of State

No. 1581

PEKING, July 18, 1928.

[Received September 4.]

SIR: I have the honor to enclose copy of Decanat Circular No. 142, of July 13, 1928, describing a call made by the Dean upon Mr. Y. L. Tong, Vice Minister of Foreign Affairs, for the purpose of calling attention to and protesting against the large number of anti-foreign

posters which have recently been put up all over the city of Peking.⁸² I also enclose copies in translation of a number of the propaganda posters and handbills including some of an anti-foreign character.⁸²

Attention is invited to the fifth translation enclosed which is that of the Shakee poster that Mr. Huangson Young (Yang), Mr. Tong's secretary, characterized as one of the best his party had produced and which he stated had done excellent service at Nanking. It will be noted that this poster—entitled "The Shakee Blood Stains"—conveys but one message, that of hatred for the British and French, and that as a means towards this end the facts of the Shameen incident⁸³ are grossly misstated.

There are probably three factors which have given rise to the sudden flooding of Peking with propaganda literature. First, the large number of men to whom the continuation of the Kuomintang propaganda work represents a means of livelihood and who, together with their friends, are urging its necessity; second, the apathy of the Chinese population in the north to the benefits of coming under Kuomintang rule and the entire absence of any enthusiasm, which has so disappointed the Kuomintang leaders that they have determined to stir up an artificial interest by propaganda; and third, the desire on the part of certain groups, which are mutually striving for advantage, to bring themselves more prominently to public attention.

In general the propaganda as it is being conducted in Peking, though in the main rather meaningless and even puerile, is calculated to stir up a certain amount of anti-foreign feeling.

I have [etc.]

J. V. A. MACMURRAY

393.116/376 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 24, 1928—noon.

[Received July 24—6:26 a. m.]

563. Following from Paxton:

"July 23, 9 a. m. Yesterday evening I was informed that Ginling College had been three times demanded as headquarters for Yen Hsi-shan during the Fifth Plenary Conference."⁸⁴

MACMURRAY

⁸² Not printed.

⁸³ See *Foreign Relations*, 1925, vol. I, p. 749.

⁸⁴ Fifth plenary session of Central Executive Committee of the Kuomintang, Nationalist Government.

393.116/377: Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 25, 1928—7 p. m.

[Received July 25—10:50 a. m.]

570. 1. Following message from Paxton:

"July 22, 3 p. m. The former consular premises at Nanking are still reported to be occupied by troops; yesterday morning a telegram was received from Brown, Southern Presbyterian Mission at Hsuehchowfu, reading as follows: 'Military and government agents occupying more and more property.'[""]

2. Following also from Paxton:

"July 23, 7 p. m. Supplementing my July 22, 3 p. m., and July 23, 9 a. m.

Am informed that provincial authorities are proposing seizure of Southern Presbyterian Mission boys' school and hospital at Chinkiang for provincial capital headquarters; local [?] headquarters still in full possession of St. Paul's American church mission, at Nanking with no signs of leaving; King has given no reply to my three protests regarding occupation of American property sent since June 27th."

MACMURRAY

393.116/376: Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 26, 1928—2 p. m.

242. Your 563, July 24, noon, and 570, July 25, 7 p. m. Unless you consider it inadvisable, you are instructed to make strong representations telling Nationalist authorities that you expect as demonstration of their good faith and political competency that no more American properties be occupied and that those still occupied be restored to persons rightfully entitled to occupancy. You should emphasize bad impression which retention of properties, especially consular property, makes upon whole world. For your information, the subject of the occupation of American premises in Nanking area has been discussed repeatedly with C. C. Wu and Frank Lee. Latter recently telegraphed Nanking and received reply that two American premises only remained occupied there. When informed of substance of your telegrams, with emphatic representations, yesterday, Lee intimated he would telegraph again regarding the matter.

KELLOGG

393.11/850

*The American Consul at Chefoo (Webber) to the Commander of the
Tunghai Defense Forces (Chung Chen-kuo)*⁸⁵

CHEFOO, July 26, 1928.

SIR: Relative to my call on you, early on the morning of July 23rd last, following the recent disturbances in this city, I now beg to direct your attention in writing to the indiscriminate firing by your troops which took place in and around this Consulate (rifle bullets falling in this Consulate's compound steadily for at least two hours); also in the immediate vicinity of Temple Hill (American Presbyterian Mission and Hospital); in various parts of that part of the city known as Section 1, wherein are located such places as the American Southern Baptist Mission, American Presbyterian Deaf and Dumb Institute, the Strand, Bay View, and Astor House Hotels (occupied by at least 180 Americans, chiefly the wives and children of American naval officers), and other places of importance wherein many Americans are residing. It was only good fortune, largely due to the hour at which the disturbances took place, that there were not any serious consequences. As it was, one American sailor, a member of the naval patrol force, had his finger blown away, while inside this Consulate's compound. The exact spot at which this took place has already been pointed out to you by me. Permit me to suggest, that it appears to this Consulate that acts like this with their possible attendant serious consequences to Americans could be easily avoided by the Chinese military leaders confining their activities to a zone outside of the areas above mentioned, which are of no importance from a military point of view; especially Section 1, where the streets of which are well used not only by the permanent American residents of this port but also by the officers and men and their wives and families, belonging to the United States Asiatic Fleet, which as you know bases at Chefoo during the summer months.

In conclusion, I beg to state that in view of your voluntary offer of compensation to the American sailor wounded and your inquiry as to what amount would be satisfactory, I have to inform you that the Senior American Naval Officer acting on behalf of the wounded sailor has fixed the sum of \$1,000 gold as a fair amount of compensation.

I have [etc.]

LEROY WEBBER

⁸⁵ Copy transmitted to the Department by the consul in his despatch No. 163, July 26; received August 28.

393.1153/20 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 28, 1928—5 p.m.

[Received 5:45 p.m.]

580. Your telegram 242, July 26th. Following is being sent to the consulate general, Shanghai, for transmission to the Nationalist Minister of Foreign Affairs:

"His Excellency Dr. C. T. Wang, Minister of Foreign Affairs, Nationalist Government of China, Nanking:

Excellency: I have the honor to invite your attention to the failure of the Nationalist Government to fulfill the promises made by it on several occasions to evacuate all American property which has been occupied by soldiers or others and to take steps effectively to prevent any further cases of this kind. In spite of these assurances only a portion of properties have been evacuated and in numerous instances even additional property has been seized. For example the cathedral of the American Church Mission and other American properties in Nanking itself are all according to my last information in the possession of various military or administrative bodies of your Government. While on July 6th an American consular officer when passing through Nanking and visiting the American consular premises found them occupied by approximately one hundred soldiers. Among other instances the American Southern Presbyterian Mission at Hsuehowfu reports that more and more of its property is being taken; at Tsining where Dr. Seymour was murdered the mission buildings after being once evacuated were reoccupied and at Shuntetu the American Presbyterian mission buildings were seized in May and according to last information have not been returned. It has also been reported to me that the occupation of additional properties at Nanking and Chinkiang is contemplated. In these which are only a few among many instances and in virtually all other cases of this nature American property has been treated as though it were that of an enemy country at war with China rather than as the private property of the national of a friendly country, the full protection of which is elements of [elementary] responsibility of the governmental authorities of China.

The American Government has throughout displayed the greatest forbearance in these matters, not desiring by overinsistence upon its rights to hinder the efforts at reunification of China and constantly hoping that a change would soon occur and that the several assurances already referred to would be made good.

The continued retention of American property in many places and fresh occupation in others—especially the continued occupation and misuse of the American consulate at Nanking has created a very unfavorable impression throughout the world and has painfully disappointed the American Government. As a consequence of this situation I have been directed by the Secretary of State to make strong representations in this connection and to inform Your Excellency that it is expected that in evidence of the good faith and political competency of the Nationalist Government no more Ameri-

can properties will be occupied and [that] such [as are] already occupied will be restored to those rightfully entitled to possession and free use.

I avail myself of this opportunity to extend to Your Excellency the renewed assurance of my highest consideration."

MACMURRAY

893.00/10196: Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 1, 1928—1 p. m.

[Received September 1—12:15 p. m.]

674. General Pai Tsung-hsi⁸⁶ called today on diplomatic representatives and stated that he had received orders from General Chiang to proceed against the Chihli-Shantung remnant troops in north-eastern Chihli. He expects to conclude his operations within the month and to be neither assisted nor opposed by Mukden. He assured me that every protection would be given to American lives and property. I am informing the commander in chief.

PERKINS

393.1153/32

*The Chinese Minister of Foreign Affairs (Chengting T. Wang) to the American Minister in China (MacMurray)*⁸⁷

NANKING, November 14, 1928.

EXCELLENCY: Under date of July 30, 1928, the United States Consul General in Shanghai, Mr. Edwin S. Cunningham, transmitted to the Commissioner for Foreign Affairs of Kiangsu, in Shanghai, Your Excellency's communication addressed to me and dated two days earlier,⁸⁸ with respect to the occupation of American property by National soldiers and other persons under the jurisdiction of the National Government.

Your Excellency cited instances of continued occupation in Nanking, Hsuechow, Shunteh and Tsining, and expressed the opinion that in such cases "American property has been treated as if it were that of an enemy country at war with China, rather than as the private property of the nationals of a friendly country, the full protection of which is an elementary responsibility of the governmental authorities of China." Your Excellency added:

"The continued retention of American property in many places and its fresh occupation in others, especially the continued occupation

⁸⁶ Military leader of Kwangsi troops, allied with Nationalist forces.

⁸⁷ Copy transmitted to the Secretary of State by the Minister in China in his despatch No. 1768, November 23; received Jan. 7, 1929.

⁸⁸ See No. 580, July 28, from the Minister in China, p. 251.

and abuse of the American Consulate at Nanking, has created a very unfavorable impression throughout the world and has painfully disappointed the American Government. As a consequence of this situation, I have been directed by the Secretary of State to make strong representations in this connection and to inform Your Excellency that it is expected that, in evidence of the good faith and political competence of the Nationalist Government, no more American properties will be occupied and that such as are already occupied will be restored to those rightfully entitled to possession and free use."

In reply I am happy to inform Your Excellency that, as regards American properties situated in Nanking, all were, without exception, prior to the National Holiday on October 10, 1928, evacuated and returned to their owners.

As regards those in Shunteh, Tsining, and Hsuchow, the same have likewise long before this date all been evacuated and returned. In addition, all cases of occupation reported from other sources have been similarly dealt with, and in the possible event of any properties being still retained, due measures have been devised to ensure their prompt evacuation. At the same time, inquiries have been instituted to ascertain whether any other property had been occupied and not been reported, so that steps might be adopted to have the same evacuated and returned promptly.

While rejoicing with Your Excellency in the fact that the occupied American properties, mentioned in your communication under reply, have been practically evacuated and returned in their entirety, I cannot refrain from observing the lack of complete sympathy which had urged Your Excellency to question the good faith and political competence of the National Government. The American properties under discussion, as Your Excellency is fully aware, had been occupied either at the time of military operations undertaken for the unification of the country or after the close of such operations but before conditions could conveniently return to anything like normalcy—that is, when the facilities for the accommodation of government offices were not other[wise] available. In brief, the situation was abnormal, and such occupation of American properties, though deeply regrettable in itself, deserves to be viewed with the utmost sympathy. The National Government is gratified, as Your Excellency has pointed out, that "the American Government has throughout displayed the greatest forbearance in these matters, not desiring by over-insistence upon its rights to hinder the efforts at reunification of China". In the circumstances, it is the expectation of the National Government that the American Government will further forbear and trust to the good faith and political competence of the National Government to discharge its obligations as soon as the situation becomes stabilized. Fortunately, however, the

former state of confusion is being gradually replaced by normalcy, and the occupied American properties have now been almost entirely evacuated and returned.

I avail myself [etc.]

CHENGTING T. WANG

**EVACUATION OF AMERICAN CITIZENS FROM PLACES OF DANGER
IN CHINA ⁸⁰**

893.00/9743

The Minister in China (MacMurray) to the Secretary of State

No. 1328

PEKING, January 3, 1928.

[Received February 4.]

SIR: With reference to the reopening of the British Consulate at Chungking, as reported in my No. 988, dated November 12, 6 p. m.,⁸⁰ I have the honor to inform the Department that the Commander-in-Chief of the Asiatic Fleet has notified the Legation that he has received reliable information to the effect that the wife of a British naval officer had gone to Chungking to join her husband, having recently received permission to do so from the British Consul at Chungking.

As soon as the Legation was so informed, inquiries were made at the British Legation and it was learned that that Legation had no information with regard to the return of the wife of a naval officer at Chungking. The Chinese Secretary, Mr. Teichman, stated that while he knew nothing of the matter personally, it was possible that the report was correct, since the British Consul in Chungking had been given full discretion in permitting the return of his nationals to that city. He added, however, that the British authorities were strongly opposing the return of women to the interior of Szechuan, and were having an extremely difficult time in keeping them away from that area. When questioned as to present conditions in Chungking he stated that they were "superficially quiet".

Mr. Teichman's observations concerning the difficulty that the British authorities had experienced in keeping women out of the interior of Szechuan leads me to refer most respectfully to my No. 1132, of December 29, 6 p. m.,⁹¹ concerning the reopening of consulates, in which I ventured the observation that the reopening of consular offices in the affected districts would immediately precipitate a flood of missionaries desiring to return to their posts.

I have [etc.]

J. V. A. MACMURRAY

⁸⁰ Continued from *Foreign Relations*, 1927, vol II, pp. 236-316.

⁹⁰ Not printed.

⁹¹ *Foreign Relations*, 1927, vol. II, p. 315.

393.11/787

*The Minister in China (MacMurray) to the Consul at Tsinan
(Stanton)*⁹²

PEKING, January 7, 1928.

SIR: I beg leave to acknowledge receipt of your despatch of December 28, 1927,⁹³ regarding the problem created by the return of certain American missionaries to interior stations in Shantung without the approval of your office, and the danger in which these Americans will be placed in the event of a further advance by the southern armies. You suggest three possible courses of action: first, the urging of all such Americans to withdraw to either Tientsin or Tsingtao; second, their concentration at Tsinan, where they might be protected by Japanese military contingents which you anticipate will be sent there in the event of the situation becoming acute; and, third, the arriving at some understanding with the so-called nationalist leaders in Shanghai, regarding the protection of American citizens and property in the territories which they may conquer.

In as much as your office has already advised the withdrawal of American citizens from interior points, and has seemingly never subsequently canceled this request, it would appear that the wisest course for you to follow would be to remind the secretaries of each mission having workers in the interior, that the Tsinan Consulate has requested Americans not to remain in remote places and has never revoked its request, and that, therefore, those Americans who, disregarding your office's instructions, still remain in such places, do so entirely at their own risk and upon their own responsibility.

In view of the fact that virtually all American properties in interior places in the Nanking Consular District have been and still are occupied by southern soldiers, and since several proclamations issued by their authorities ordering the evacuation of foreign property have been utterly disregarded, your suggestion as to the effecting of some understanding with the southern leaders appears to be entirely impractical.

I am [etc.]

[File copy not signed]

⁹² Copy transmitted, without covering despatch, to the Department by the Minister; received April 18.

⁹³ Not printed.

893.00/9869 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 17, 1928—3 p. m.

[Received April 17—11 a. m.]

235. Following from Tsinanfu:

"April 16, 4 p. m. American missionaries just come from Tenghsien by automobile and report that Southern troops were within 10 miles of Tenghsien at noon on the 14th. From their reports it appears Southern troops opened offensive on Taierhchwang on 10th which was fairly successful, but Northern retreat from Taierhchwang was due largely to the sudden attack on the Shantung troops by several thousand bandits. Southern attack on Hanchwang launched on the 12th and was being successfully withstood, but, due to the retreat from Taierhchwang, Marshal Chang⁹⁴ withdrew troops from Hanchwang to Chiehho 20 miles north of Tenghsien at which place Northern troops are preparing to make a stand. Four or five thousand Shantung troops remain in Tenghsien to delay Southern advance. Missionaries drove through miles of retreating troops between Tenghsien and Chiehho and state retreat was orderly.

Five American missionaries have elected to remain at Tenghsien."

MACMURRAY

893.00/9975

*The Consul at Tsinan (Stanton) to the Minister in China
(MacMurray)*⁹⁵

[Extract]

No. 222

TSINAN, April 17, 1928.

SIR:

As regards the five American missionaries, who as reported in my telegram of the 16th, elected to remain in Tenghsien, the Consulate can do nothing with them. The two missionaries who left Tenghsien report that the Chinese Christians desired them all to leave but that these five decided to remain partly because they believe the southern troops are no longer anti foreign and partly because they think the property of the Mission will suffer less if found by troops to be occupied by foreigners.

In regard to the evacuation of American citizens, the Legation is already aware that it is my belief that a good many American missionaries will decide to remain even if advised to leave because of their belief that there has been a radical change of heart amongst

⁹⁴ Chang Tsung-chang, military governor of Shantung Province.

⁹⁵ Copy transmitted to the Department by the consul in his despatch No. 130, April 18; received May 21.

the Nationalists. It had been my intention to advise all Americans south of Tsinan to withdraw to Tsingtao or elsewhere should the northerners be unable to hold the Chiehho line, and to advise Americans in Tsinan and elsewhere in this district to withdraw when the southerners reach Taian. However, in view of the assurances given by the Nationalist Government regarding the protection of American life and property in connection with the settlement of the Nanking incident, it is requested that the Legation definitely instruct me whether American citizens should be advised to withdraw to Tientsin or Tsingtao in the event of a successful southern advance into this province.

I have [etc.]

E. F. STANTON

893.00/9882 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 19, 1928—5 p.m.

[Received April 19—2:45 p. m.]

246. My 235, April 17, 3 p.m. Following from Tsinanfu:

"April 18, 7 p.m. Very difficult to obtain any reliable information but all the latest news indicates situation is serious. It appears that because the main portion of Marshal Sun's⁹⁶ forces were south of Tsining and advancing towards Lung hai Railway, the Kuominchun were able to advance on Tsining and have surrounded Northern troops in that city. Due to the situation at Tsining, Northern troops reported falling back from Chiehho to Yenchow. Kuominchun cavalry [*cavalry*] reported to have attempted to cut railway north of Yenchow but said to have been driven off. Marshal Chang is at Taian while Marshal Sun is reported to be somewhere south of Yü tai."

MACMURRAY

393.11/788 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 19, 1928—9 p.m.

[Received 9:20 p. m.]

250. My 246, April 19, 5 p.m. Following has been sent to the American consul at Tsinanfu:

"April 19, 6 p.m. Your telegram April 18, 7 p.m., and despatch No. 222, April 17th.

1. With reference to the protection of American citizens mentioned, consult Legation's March 24, 10 a.m., and March 25, 3 p.m., 1927,⁹⁷

⁹⁶ Sun Ch'uan-fang, nominal overlord of Kiangsu, Kiangsi, Chekiang, Fukien, and Anhwei Provinces.

⁹⁷ Former apparently not transmitted to the Department. For text of the latter, see telegram No. 253, Mar. 25, 1927, from the Minister in China, *Foreign Relations*, 1927, vol. II, p. 264.

the principles of which should guide you at the present juncture.

2. With reference to your request for instructions whether American citizens should be advised to withdraw in the event of a Southern advance into Shantung, you should advise the withdrawal of all American citizens from the zones of hostilities and you are authorized in your discretion to advise withdrawal from any areas in which it may seem likely that our nationals may be exposed to danger in the immediate future.

3. It is the Legation's understanding that those Americans residing in the areas above described are doing so either contrary to the advice of your office or without having sought such advice. Please report approximate number of Americans now in southern Shantung and at what places such persons are residing.

4. Repeated to Tsingtau and copies to Tientsin and Chefoo by mail."

MACMURRAY

893.00/9885 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 20, 1928—11 a. m.

[Received 2:25 p. m.]

252. My 246, April 19, 5 p. m. Following from Tsinanfu:

"April 19, 4 p. m. Reliably reported Yenchow evacuated by Northern troops and Kuominchun advancing on Taian. Large number of Chang's troops believed cut off at Yenchow while Marshal Sun's reported surrounded south of Tsining but Marshal Sun has managed to reach Taian safely. Due to the critical situation all Americans in Tsinanfu and elsewhere have been advised to leave at once and return when situation clears up. My British colleague has issued similar advices."

MACMURRAY

893.00/9886 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 20, 1928—5 p. m.

[Received April 21—9:25 a. m.]

253. Following from consul at Tsingtau:

"April 19, 9 p. m. All of Marshal Sun's troops have been withdrawn from Tsingtau and all but about three hundred of local garrison and sent to Tsingpu front. Japanese cruisers *Kotaka*, *Kuma*, *Tsushima* and one destroyer here. Reliably reported that about seven hundred sailors will land tomorrow morning from these ships. Five American destroyers here until 23rd. American consul at Tsinanfu telegraphs that Americans in his district have been advised to leave at once. Most will doubtless come to Tsingtau. Nearly two hundred Americans now here. It is requested that American destroyers in port be detailed Tsingtau until they can be replaced by others with better facilities for evacuation purposes in case of necessity. Reports from southern Shantung coastal area indicate that

Nationalist drive from Haichow towards Kiaochow Railway is making rapid headway."

Foregoing has been repeated to commander in chief with the recommendation that Dorsey's request be granted.

MACMURRAY

893.00/9977

*The Consul at Tsingtao (Dorsey) to the Minister in China (MacMurray)*⁹⁸

[Extract]

No. 228

TSINGTAO, April 22, 1928.

SIR:

A telegram received from the American Consul at Tsinan on the evening of the 19th indicated that conditions along the Tientsin-Pukow Railway were rapidly shaping most unfavorably for the Shantung and Allied troops. It also informed the Consulate that all Americans in Tsinan and elsewhere had been advised to leave at once and return when the situation had cleared up.

The certainty of an exodus of Americans to this port and regard for conditions that might develop here out of the approach of southern forces towards this area, made it desirable that American war ships should be detailed here for the time being to care for any emergency that might arise. The American destroyers *Preble*, *Hurlburt*, *Pruitt*, *Sicard*, and *Noa* were then in port but their period of stay uncertain. Consequently, in the Consulate's telegram of April 19, 1928, to the Legation,⁹⁹ it was requested that the American destroyers then here be detailed to Tsingtao until they could be replaced by other ships better adapted for evacuating a considerable number of people in case of necessity. There are about 200 Americans in Tsingtao at present and a similar number may be added by arrivals from the interior.

Following upon this the Senior American Naval Officer present informed me that he had been instructed to keep the Destroyer Division here until further orders, and he now advises that the U. S. S. *Beaver* and six submarines are under orders to proceed to this port and should arrive about the 25th or 26th when the destroyers will leave, probably for Chefoo.

I have [etc.]

W. RODERICK DORSEY

⁹⁸ Copy transmitted to the Department by the consul in his despatch No. 313, April 24; received May 21.

⁹⁹ See telegram 253, April 20, from the Minister in China, *supra*.

893.00/9889 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 23, 1928—4 p. m.

[Received April 23—9:30 a. m.]

259. 1. Following telegram has been received from Chefoo:

"April 22, 10 a. m. Situation outwardly quiet but in view of possibility of imminent collapse of Shantung government authorities fear seizure of Chefoo by bandits. Recommend despatch of naval vessel at once. All Americans in interior advised last Friday come to Chefoo. Japanese warship standing by. British consul has also requested naval protection."

MACMURRAY

893.00/9892 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 24, 1928—3 p. m.

[Received April 24—12:55 p. m.]

261. My 252, April 20, 11 a. m. Following from Tsinanfu:

"April 23, 4 p. m. Reports believed reliable indicate Kuominchun have commenced advance on Taian, their cavalry being reported to have appeared near Taian. Generally believed Taian will be evacuated within a few days. Marshal Chang now at Chiehshow 15 miles north of Taian. Reported recapture of Tsining unconfirmed. Kuominchun advancing towards Yellow River from Yuncheng and Wenshang north of Tsining and missionary from Tungchang reports Northern troops from there and from Taming despatched to keep back Chinese on north bank of Yellow River to oppose advance. Three Americans evacuated from Taian by boat and it is hoped to bring out two more tomorrow evening. Evacuation of American women and children from Tsinanfu and elsewhere proceeding but majority left show no disposition to leave. Have received the following telegram via Shanghai from Americans who remained in Tengersien 'persons, property unharmed, relations cordial,' indicating that Southern troops did not molest them. Tientsin, Tsingtau, Chefoo kept informed."

MACMURRAY

393.11/789 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 25, 1928—10 a. m.

[Received 2:50 p. m.]

266. 1. Consul at Tsinanfu reports approximate number and location of Americans in southern Shantung as follows: Ichowfu 2, Tengersien 5, Tsining 3, Yenchowfu 1 and Taian 15. First four of

these places now in hands of Southern forces. No word from Americans in them save those at Tengersien who report persons and buildings safe and relations good. Some Americans evacuated from Taian. Majority of American women and children leaving Tsinanfu but majority of men seem determined to remain.

2. Reverend L. C. Osborn of the Church of the Nazarene Mission captured by Kuominchun forces in southern Chihli. Acting under Legation's instructions, Hankow consul general has made representations to appropriate officers requesting his release and adequate protection.

MACMURRAY

393.1163/255 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 25, 1928—(?) p. m.

[Received April 25—11 p. m.]

271. A report dated April 16th from Vice Consul Paxton quotes from letters from a considerable number of missionaries in Kiangsu and Anhwei indicating that, in general, missionaries who have returned to their stations have found diminution in antiforeign attitude on the part of both civilians and troops but that in spite of this and assurances given by Nanking government the greater part of American buildings are still occupied by the military.

MACMURRAY

393.11/825

*The Consul at Tsinan (Price) to the Minister in China (MacMurray)*¹

L. No. 3

TSINAN, April 26, 1928.

SIR: With further reference to this Consulate's telegram of 3 P. M., today,² I have the honor to state that, immediately upon the receipt of the report of the murder of Dr. Walter F. Seymour,³ I circularized such of the Americans still remaining in the Tsinan consular district as it was possible to communicate with, reiterating, most strongly, the previous advice given by this office that they withdraw either to Tsingtao or to Tientsin. Through the Commissioner for Foreign Affairs I have obtained the promise of a special military pass, to be sent me early tomorrow morning, for a Chinese pastor who has agreed to go by motor-car to the partially beleaguered city of Taian, where there are thirteen Americans. Although these Americans only three days ago refused to leave when

¹ Copy transmitted to the Department by the consul in his despatch No. 3, April 27; received June 11.

² Not printed.

³ See pp. 281 ff.

transportation was made available, it is hoped that, in view of the tragic case of Dr. Seymour, some of them may be yet persuaded to leave.

As to the other Americans enumerated in Consul Stanton's despatch of April 22nd [20th?]^{3a} as still within Southern controlled territory, nothing has been heard from them and it is impossible to get word through to them.

According to the best information at the disposal of this office at present, Americans remaining in the Tsinan consular district as of April 26, 1928, numbered 40 men, 55 women, 7 children, a total of 102, of whom 15 men, 12 women, 2 children, are in Tsinan, and the rest scattered in 18 different cities. Of these 18 cities, exclusive of Tsinan, 10 are in Northern, and 8 in Southern, control.

It is too early to say whether any more will leave upon the advice of the Consulate just reiterated, but it seems likely that the numbers will be somewhat reduced soon, if the Southern forces continue to advance.

As soon as possible I shall send the Legation, with copies for the Department, not only revised lists of citizens remaining in the district, but also of American properties in the district. These lists are being prepared primarily, of course, for presentation to the local authorities, both those now in control and those that may take control here.

I have [etc.]

ERNEST B. PRICE

393.11/826

*The Consul at Tsinan (Price) to the Minister in China
(MacMurray) ⁴*

L. No. 5

TSINAN, April 28, 1928.

SIR: I have the honor to refer to my despatch No. 3 of April 26, 1928 regarding the protection of American lives and property and to transmit herewith a revised list of all Americans, who so far as is known, are still in this consular district.⁵

From the list in question it will be noted that there are thirty-eight men, fifty women and three children in this district at the present time, or a total of ninety-one. Of this number eighteen are residing in territory now controlled by Nationalist or Kuominchun troops.

The Consulate is making every effort to induce the seventy-three American citizens residing in territory under northern control to withdraw as quickly and as quietly as possible to Tientsin, Tsingtao

^{3a} Not printed.

⁴ Copy transmitted to the Department by the consul in his despatch No. 5, April 28; received June 11.

⁵ List not printed.

or other points of safety. The American missionaries at Nankwantao and Tungchang have assured the Consulate that they can and will withdraw by motor car should the southern advance continue.

As reported in my despatch No. 3 of April 26, 1928 efforts were being made to secure a special military pass in order that a motor car might be again sent down to Taian to effect the withdrawal of such American citizens as might wish to leave that city. It gives me pleasure to report that three additional American missionaries arrived in Tsinan safely this morning. These missionaries report that the remaining eight American citizens in Taian have more or less definitely decided to stay on.

American citizens residing in Tsinan and at various points along the Kiaochi Railway are gradually withdrawing and I shall not fail to notify the Legation of such withdrawals as occur subsequent to this despatch.

I have [etc.]

ERNEST B. PRICE

893.00/9904 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 30, 1928—noon.

[Received April 30—10:45 a. m.]

286. My 276, April 27, 10 a. m.⁶ Following from Tsinanfu:

"April 29, 8 p. m. It is confirmed that the Nationalist forces have been successful in their double-flanking movement. They have cut Kiaochow-Tsinanfu Railroad at Mingshue and are evidently making for the Yellow River Bridge. Tsinanfu is being hastily evacuated. The Japanese are enclosing and fortifying two areas composing part of the foreign settlement."

Repeated to Tokyo and to commander in chief.

MACMURRAY

893.00/9904 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, April 30, 1928—[7 p. m.]

139. Your 286, April 30, Noon. The Department relies upon the Legation to decide whether it is advisable to instruct the staff of the American Consulate at Tsinan to retire from that city.

KELLOGG

893.00/9910 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 2, 1928—11 a. m.

[Received 12:45 p. m.]

295. Consulate Chefoo reports that:

1st. There is an exodus of wealthy Chinese and families of Chinese officials;

2d. Chamber of Commerce is taking steps to prevent fighting at Chefoo and to reduce danger of looting by guerrilla forces;

3d. There are now present in Chefoo 251 Americans, including 10 Navy wives;

4th. Japanese consul states that his nationals who number some three hundred will not be evacuated but that steps will be taken to protect their persons and property.

Webber also suggests that the Department approach the American Southern Baptist Mission Board at Richmond, Virginia, with a view to having that board instruct its missionaries at Laichowfu to withdraw to Chefoo. Those concerned are Dr. and Mrs. [James McF.] Gaston and Miss Cynthia A. Miller. I concur in the consul's recommendation.

MACMURRAY

893.00/9911 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 2, 1928—noon.

[Received 1:40 p. m.]

296. Your telegram No. 139, April 30, 7 p. m., received this morning. Following was sent yesterday afternoon to consul at Tsinanfu:

"May 1, 3 p. m. Whereas I feel that during the present campaign there is no reason to anticipate such organized or authorized attacks upon foreigners as characterized last year's campaign, I nevertheless apprehend the possibility of sudden acts of outrage by irresponsible individuals or groups such as the Seymour murder seems to exemplify. I consider that it is not in accordance with the general feeling of our Government that the consular staff should be exposed to undue risks of this sort. The degree of risk involved is so far a matter of local appreciation that it must be left to your judgment to determine whether under the particular circumstances existing you should close the consulate and proceed either to Tientsin or to Tsingtau, taking with you the code and seal and confidential archives."

MACMURRAY

393.11/793 : Telegram

The Secretary of State to the American Southern Baptist Mission Board

WASHINGTON, May 2, 1928.

Department urges that you telegraph Dr. and Mrs. Gaston and Miss Cynthia A. Miller at Laichowfu, Shantung Province, China, to withdraw as advised by the American Consul at Chefoo from their station to Chefoo.

FRANK B. KELLOGG

393.11/794 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 3, 1928—8 p. m.

[Received May 3—10:40 a. m.]

302. My 228, April 13, 1 p. m.⁷ Following from American consul general at Hankow:

"Several Navy wives proceeding to Chungking indicating *Guam* will remain there. Naval vessel shortly proceeding to Changsha. Considerable increase in number of Americans, especially missionaries, proceeding to Szechuan, Hunan and Honan and inquiries being received as to possible reopening Chungking and Changsha consulates. I have been unable to discover however any change in the situation on the upper river which would seem to warrant you in modifying recommendations made in your March 24, 8 p. m., from Shanghai.⁸ The same is true as regards China's [apparent omission] so long as Chien Chen [*Cheng Chien* ?] and his troops remain there."

MACMURRAY

393.11/792 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 4, 1928—5 p. m.

146. Your 295, May 2, 11 a. m., last paragraph. Mission Board states it has telegraphed Doctor Gaston, Laichowfu, to follow Consul's advice and withdraw.

KELLOGG

893.00 Tsinan/40 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 10, 1928—4 p. m.

[Received 11 p. m.]

332. 1. Following from consul at Tsingtau:

"May 9, 8 p. m. Train with foreigners from Tsinanfu arrived here last night with 15 Americans on board. Americans now remain-

⁷ *Ante*, p. 218.

⁸ Apparently not transmitted to the Department.

ing at Tsinanfu are 7 missionaries including 1 woman, 2 businessmen, and Consuls Price and Stanton. According to a Standard Oil Company representative from Tsinanfu, as soon as the Japanese sent the ultimatum to Chiang [Kai-shek],⁹ British and German consuls saw the Japanese consul and insisted upon a train to take foreigners away, and this was readily granted."

Dorsey, May 9, 1 p. m., states that on May 5th Japanese vice consul called to inform him of cutting of the railway in 10 [places] and "left me with the impression that upon the arrival of the Japanese railway regiment, the Japanese would seriously consider the operation of the road temporarily in agreement with the Chinese authorities and without establishing a neutral zone."

2. American consul general at Canton reports that on May 8th while agitation for anti-Japanese boycott continued there was no disorder and the situation seemed easier.

MACMURRAY

393.1123 Hobart, Mrs./21

*The Consul at Tsinan (Price) to the Minister in China
(MacMurray)*¹⁰

L. No. 13

TSINAN, May 11, 1928.

SIR: Confirming my telegram of 9 A. M. today, sent over Japanese military wireless, I have the honor to enclose a copy of the diary written by Mr. Wellington, a British missionary at Taian, Shantung,¹¹ which forms the basis of the report concerning the death of Mrs. W. T. Hobart.¹² This Consulate has had no word whatsoever from Taian or any place in southern Shantung within Nationalist occupied territory since April 27th.

The Legation will recall that, on learning of the murder of Dr. Seymour at Tsining, this Consulate not only sent out further urgent advice to Americans in the Consular District to leave for Tsingtao or Tientsin, but likewise sent a special automobile to Taian, on April 26th, to enable Americans there to leave. Mr. and Mrs. [Thomas L.] Blalock and Miss [Kathryn] Felt accepted the invitation, but Dr. and Mrs. Hobart and the Misses Lillian Greer, Elsie L. Knapp, Frances S. Meader, and Ellen M. Studley, of the Methodist Mission, and the Misses Ava P. Anglin and Grace R. Nicholson, of the Assemblies of God Mission, declined to leave.

⁹ On May 7, 1928; see *ante*, p. 150, par. 1.

¹⁰ Copy transmitted to the Department by the consul in his despatch D. No. 12, May 11; received June 19.

¹¹ Not printed.

¹² Wife of Dr. William T. Hobart, of the American Methodist Episcopal Mission, North.

The Legation is asked to note that the diary makes mention of this Consulate's urgent appeal to Americans to leave Taian.

I do not understand how the diary and the letter received by the British Consul came through, as apparently they did, by mail, as this Consulate has received nothing, and the postoffice here has been closed since May 3rd, only just being opened for mails eastward to Tsingtao, solely.

I am, therefore, despatching a special messenger with letters addressed both to Dr. Hobart and to the Commanding Officer of the Nationalist Armies in Taian, the latter to request an immediate investigation into the facts to determine responsibility for the death of Mrs. Hobart, if found to be true. I shall report at once upon the return of the messenger, which may not be for some days, in view of conditions now existing.

I am greatly distressed over this report, following so closely upon the murder of Dr. Seymour, but I feel that the Consulate had done everything possible not only to persuade all Americans to leave, but, in the case of the Americans at Taian, to assist them to leave.

I have [etc.]

ERNEST B. PRICE

393.11/806 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 12, 1928—11 p. m.

[Received May 12—9:25 a. m.]

343. Your 146, May 4 10 [5] p. m. Consul at Chefoo reports Dr. Gaston categorically refuses to comply with instructions of mission board. Webber suggests that board be requested to cable Gaston direct ordering withdrawal.

MACMURRAY

393.1121 Osborn, L. C./2 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 17, 1928—6 p. m.

[Received 6:30 p. m.]

362. My 266 April 25, 10 a. m. Osborn has telegraphed his wife from Kaifengfu that he is "with Ashcraft."¹³ It is presumed therefore that he is released and safe.

MACMURRAY

¹³ Rev. E. P. Ashcraft, superintendent of the American Free Methodist Mission, Jungtseh, Honan.

393.1123 Hobart, Mrs./26

*The Consul at Tsinan (Price) to the Minister in China (MacMurray)*¹⁴

L. No. 19

TSINAN, May 23, 1928.

SIR: With reference to this Consulate's telegram of May 11th, 9 A. M., and despatch L. No. 13, of May 11th, 1928, relative to the reported killing of Mrs. W. T. Hobart at Taian, Shantung, on April 29th, 1928, I have the honor to transmit herewith copies of a letter sent by Dr. W. T. Hobart through the local Nationalist Commanding Officer, and of the translation of a letter from the Commanding Officer,¹⁵ in which both put the blame for the shot which killed Mrs. Hobart, upon the side of the Northern troops. It will be noted that neither letter makes mention of the fact that, although the shot which hit and killed Mrs. Hobart may have come from the Northern side, its firing was occasioned by the Nationalist attack upon the city of Taian. There appears to be no question but what Mrs. Hobart's death was due to her being in a zone of military operations, from which zone she had been repeatedly urged by this Consulate to depart.

The originals of the two enclosures came by special messenger in response to my representations.

I have [etc.]

ERNEST B. PRICE

393.11/806

The Secretary of State to the Minister in China (MacMurray)

No. 874

WASHINGTON, May 25, 1928.

SIR: Reference is made to the Legation's telegram No. 343, May 12, 11 p. m.

The Department has informed the Secretary of the American Southern Baptist Mission Board that the Consul at Chefoo reports that Doctor Gaston has refused to comply with the instructions of the Board wherein he was urged to follow the advice of the Consul and withdraw. The Department has, however, not acted on Consul Webber's suggestion that the Board be requested to cable Doctor Gaston direct ordering his withdrawal. In withholding this suggestion, the Department is moved by two considerations. In the first place, inasmuch as it has no authority either to instruct the Board or to instruct the individual missionary, and inasmuch as it has already urged that the Board instruct the missionary in question to withdraw, it would seem that no useful purpose is to be served

¹⁴ Copy transmitted to the Department by the consul in his despatch D. No. 18, May 23; received July 18.

¹⁵ Neither printed.

by repeating its request to the Board. In the second place, the Department is inclined to believe that, the individual having been asked both by the Consul and by his Board to withdraw, and he not having seen fit to do so, and that fact having been reported to the Board, any further action which the Board may see fit to take may best be left to its initiative. The possible consequences of further representations by the Department will be envisaged readily by the Legation. Under the circumstances, and at this stage, the Department feels that it has done everything that is advisable to do in the premises.

The Department suggests that the Legation and the consular officers act and report, if similar cases arise in future, just as they have done in this case; and the Department on its part will expect in each case to take such action as seems at the moment and under the circumstances appropriate and feasible.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

893.00/10001 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 26, 1928—7 p. m.

[Received May 26—12:55 p. m.]

398. Following from American consul at Hankow:

"Admiral Stirling,¹⁶ who returned to Hankow yesterday afternoon with the *Tutuila*, confirms reports regarding disorder in upper river and states that merchant vessels are being fired upon and that he considers conditions above Ichang worse than upon the occasion of his former visits.

"Hopkins of Standard Oil Company has also returned and views present situation on upper river and future with great pessimism."

MACMURRAY

393.11/821

The Secretary of State to the Minister in China (MacMurray)

No. 890

WASHINGTON, June 11, 1928.

SIR: The Department has received despatch No. 98 of April 23, 1928, from the American Consul at Foochow,¹⁷ requesting a reconsideration of certain phases of the Department's instruction to the Legation No. 684 of November 16, 1927,¹⁸ which directed that, under

¹⁶ Rear Admiral Yates Stirling, U. S. Navy, commander of the Yangtze Patrol.

¹⁷ Not printed.

¹⁸ *Foreign Relations*, 1927, vol. II, p. 312.

the conditions then obtaining in China, travel certificates for use in the interior should be issued for certain purposes only and that they should not be given to individuals likely to remain indefinitely in regions from which Americans generally had been advised to withdraw. Copies of the despatch from Foochow in reference were sent by the Consul to the Legation.

The Department's instruction of November 16, 1927, in so far as it related to a permanent policy, was designed to correct the inconsistency in procedure involved in the issuing of travel certificates to American citizens for extended use in regions from which American citizens had been advised to withdraw. The Department suggests that the Legation take into consideration the situation in the Foochow consular district, as described by Mr. Sokobin in his despatch of April 23 and in later reports, and inform the Consulate at Foochow whether, in the Legation's opinion, it is now safe for American citizens to reside and travel in that district. Mr. Sokobin should be informed, also, that when the Department's instruction of November 16, 1927, was written conditions throughout the interior of China seemed to render residence and travel there by American citizens unsafe, but that the Department recognizes the fact that there are times when some regions in the interior may be safe for American citizens, even though others may not be, and that the advice given to American citizens should necessarily be based upon the circumstances in each case.

The Legation is requested to supply the Department with a copy of its instruction to the American Consul at Foochow.¹⁹

I am [etc.]

For the Secretary of State:
NELSON TRUSLER JOHNSON

393.11/836

The Secretary of State to the Consul at Tsinan (Price)

WASHINGTON, July 14, 1928.

SIR: The Department has received your despatch No. 23, dated May 31, 1928,²⁰ transmitting copies of the notices sent by you and Consul Stanton to American citizens in the Tsinan consular district, informing them of the threatened danger as a result of military disturbances and urging them to leave for places of safety. You also transmitted summaries of the replies received and a list of the Americans who had elected to remain at their several stations.

¹⁹ Not printed; a copy of the instruction, dated Aug. 30, 1928, was received in the Department Oct. 1, 1928 (393.11/821).

²⁰ Not printed.

The Department takes this opportunity to commend the energetic and thorough manner in which you and Consul Stanton acted in the matter of the evacuation of Americans. It also approves the form of the various notices and letters sent by the Consulate on this subject.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

393.1163/269

The Secretary of State to the Reverend O. J. Johnson, President of the Board of Foreign Missions of the Augustana Synod

WASHINGTON, July 23, 1928.

SIR: The Department has received your letter of July 12, 1928,²¹ inquiring with regard to the attitude of this Government with respect to the return of missionaries to China, and stating that you are planning to send four missionaries to Honan Province.

In reply you are informed that this Department has advised mission boards that, when missionaries return to China, the representatives of their organizations there should first consult with and follow the advice of the nearest American diplomatic or consular officer before the missionaries are sent to stations in the interior, and that missions should defer sending representatives to those places in the interior at which they cannot be afforded protection or from which they cannot be evacuated in case of necessity with safety and expedition.

With respect to the return of missionaries to Honan Province, the American Consul General at Hankow informed the Department under date of May 21, 1928²¹ that he did not consider conditions in that province had become sufficiently stabilized to warrant a general return of Americans at that time.

In view of the fact that your mission is proposing to send missionaries to Honan Province during the coming autumn, the Department is communicating with the Consul General with a view to ascertaining whether or not conditions have changed since his despatch above mentioned was written. As soon as a reply is received, the Department will again communicate with you.

I am [etc.]

For the Secretary of State:

STANLEY K. HORNBECK

Chief, Division of Far Eastern Affairs

²¹ Not printed.

393.1163/269

The Secretary of State to the Consul General at Hankow (Lockhart)

WASHINGTON, July 23, 1928.

SIR: The Department refers to your despatch No. 778 of May 21, 1928,²² transmitting a copy of your despatch of May 16, 1928, to the Legation at Peking,²³ containing excerpts from letters from American citizens in the interior. Particular reference is made to your statements on pages 3 and 4 regarding the return of Americans to interior points in your district. The Department transmits herewith a copy of a letter from the Board of Foreign Missions of the Augustana Synod,²⁴ together with a copy of the Department's reply of today's date regarding the return of missionaries to Honan Province. In view of your statement in the despatch to the Legation that the situation might improve within the next two or three months to an extent which would warrant a return of Americans to the interior, it is desired that you telegraph the Department briefly on receipt of this instruction whether you consider that an improvement has taken place in conditions in Honan Province to an extent which would permit a return of the missionaries of the Augustana Synod with a reasonable assurance of safety.

I am [etc.]

For the Secretary of State.

NELSON TRUSLER JOHNSON

393.11/851

*The Vice Consul at Nanking (Paxton) to the Minister in China (MacMurray)*²³

[Extract]

No. 807

NANKING (now at Shanghai), August 9, 1928.

SIR:

Frequent requests have been received by this office for its sanction to a return of American citizens to the Nanking Consular District. To each of these, acting under the Legation's instructions, a reply in the sense of the following letter to Rev. William F. Junkin has been sent:

"Sir:

"The receipt is acknowledged of your letter of January 16, 1928,²⁴ in which you express your desire to return to your station at Sutsien and request the sanction of this office for such return.

²² Not printed.²³ Copy transmitted to the Department by the vice consul in his despatch No. 656, August 10; received September 4.²⁴ Not found in the Department files.

"In reply you are informed that this office, acting under the Legation's instructions, has been continuously doing all in its power to discourage the return of Americans into the interior, at the present time, as it is considered that the Nanking regime has, as yet, offered no guarantee for the safety of foreigners, and, hence, it appears unwise to venture beyond the protection which can be afforded by the American Government. In no single instance has this office given anything that might legitimately be construed as sanction for the return of any Americans to the interior.

"As a result of this attitude, this office, most regretfully, finds itself unable to change its advice not to return, as such a sanction would afford you a sense of security in no way warranted by the general conditions of the area under control of the present Nanking regime. And further, conditions may, as they have in the past, change decidedly for the worse overnight.

"If, in spite of this advice, you decide that your mission interests absolutely necessitate your presence at your stations, i. e. that they can not be handled through your Chinese from Shanghai, or your visit delayed temporarily, then you are strongly urged not to stay away from places where you can be protected longer than absolutely essential. Please, under no circumstances, take your family back without the consent of this office, and if you must return, at your own risk and responsibility, it would be greatly appreciated, would you be so good as to keep this office constantly informed of your whereabouts, movements, and plans. A weekly letter, if only informing this Consulate of your safety, would greatly assist in its difficult task of protection of Americans.

"This office is always eager to be of all possible assistance, but you must recognize that a sanction to return, under present conditions, would prove ultimately to be a great disservice to you.

"Very respectfully yours,"

Most of the missionaries have been extremely faithful about letting this office have a weekly report concerning their safety and general conditions at their station. From these it would appear that those Americans returning are receiving, on the whole, very friendly treatment from the inhabitants of the towns and cities where they are living; some even report kind treatment at the hands of the soldiers though most are significantly silent on this point. The failure to evacuate American-owned property, still occupied by them, speaks for itself of their effective attitude towards American citizens and interests.

In order to secure a monthly statement, which would be fairly accurate, this Consulate addressed to the heads of all American missionary organizations the following letter:

"American Consular Service,
 "American Consulate, Nanking (now at Shanghai), China,
 "June 18, 1928.

"To the Heads of All American Missionary Organizations operating in the Nanking Consular District.

"Sir/Madam:

"It has come to the knowledge of this Consulate, that in spite of its continued warning against so doing, a certain number of American citizens have returned to the Nanking Consular District.

"In this connection you are respectfully but urgently requested to inform all members of your organization who are proposing to return or have already done so, that their action is against this office's strong protest, acting under instructions received from the Department of State and the American Legation, which direct it to discourage, so far as possible, and to lend no sanction, in any way, to the return of American citizens to places where they can not be protected or from which they can not be easily evacuated.

"You are further requested to give this Consulate a list of the names of all members of your organization who have returned to the Nanking Consular District together with the places where they are now; it would also greatly assist this office, if you would be so kind as to give a supplementary statement, on the first of each month, showing any additional Americans who have returned since your last report, or any who have come out of the Nanking Consular District.

"As a complement to this information a statement from you as to the members of your organization who are in Shanghai or elsewhere, only awaiting the necessary improvement in conditions to justify their return, would be helpful. . . ."

I have [etc.]

J. HALL PAXTON

393.1163/275 : Telegram

The Consul General at Hankow (Lockhart) to the Secretary of State

HANKOW, August 22, 1928—1 p. m.

[Received 3:20 p. m.]

54. Department's mail instruction July 23 concerning return Americans to Honan. Since Honan Provincial Government last May officially requested that "foreigners be notified to suspend travel to Honan as a precautionary measure against untoward occurrences" prima facie request has not been withdrawn and since travel facilities Honan are inadequate and uncertain and the general situation has not shown any marked improvement supported by any fundamental background of security, I am not disposed [to] recommend any general return [of] Americans to that Province. In addition

failure Nanking plenary powers and further to establish any cohesiveness among different factions and the action of conference ²⁵ in inviting and encouraging return of old radical group to participation in affairs of government are circumstances covering a period of further doubt as to wisdom of advising general return to interior inaccessible points. However I do not consider that those desiring return should be prevented from doing so provided they understand return is at their own risk and that in case of trouble only assistance that can be rendered is that obtainable from Chinese authorities.

Repeated to Legation.

LOCKHART

393.11/861

*The Chargé in China (Perkins) to the Consul at Tsinan (Price)*²⁶

[Extract]

PEKING, August 27, 1928.

SIR: I beg leave to acknowledge the receipt of your despatch No. L-40 of August 18, 1928,²⁷ and to advert to your despatch No. L-37 of August 13, 1928,²⁷ both concerning the question of giving official sanction for the return of Americans to interior places.

As you will remember, the Legation in its circular telegram of August 19, 5.00 p. m. (1927), provided that Americans might return to those points where they could be afforded protection or from which they could readily be evacuated in case of serious danger arising.

In a recent despatch to the Legation, Consul General Gauss suggested that Americans requesting official sanction for their return to points in the interior might safely be advised:

"1. That the Consulate General does not yet consider the political situation sufficiently settled to justify it in withdrawing its general advice to Americans not to proceed to interior places for purposes of residence;

2. That while there is no serious objection to Americans returning to mission stations in quiet areas on lines of communication over which they can (and will) evacuate in event of the outbreak of further civil war in North China, the Consulate General must point out that the present unsettled political situation holds the possibility of the recrudescence of civil war and the decision to return must be made on the responsibility of the citizen and not that of the Consulate General (although in such cases travel passes might be granted if the Chinese authorities are willing to visa them)."

The Legation, in its instruction, sent in reply, stated:

²⁵ Fifth plenary session of the Central Executive Committee of the Kuomintang, Nationalist Government.

²⁶ Copy transmitted to the Department without covering despatch; received October 13.

²⁷ Not printed.

"The Legation approves the suggestion quoted above and, while it believes that considerable discretion should be given to the Consulate General in Tientsin, it is suggested that the granting of travel passes should continue to be made the exception rather than the rule. It is also requested that a monthly list be supplied this Mission showing the names and places of residence of any American citizens who are known to have returned to their stations in the interior during the particular month under review."

This exchange of correspondence sets forth the general policy which the Legation desires to have followed at the present time, and is quoted for your guidance. Should any specific questions arise in connection with the foregoing, in which you are in doubt, the Legation will be glad to be consulted.

I am [etc.]

MAHLON F. PERKINS

893.00/10248

*The Consul at Shanghai (Spiker) to the Minister in China
(MacMurray)*²⁸

SHANGHAI, October 9, 1928.

SIR: In reference to my unnumbered despatch of September 29, 1928,²⁹ in which certain observations were made as to the safety of foreigners in Nanking at the time of my visit on September 26th, I have the honor to enclose a self-explanatory news article,²⁹ "The Assault upon Mr. Johnston," and an editorial,²⁹ "The Attack on Mr. Johnston" from the *North China Daily News* (British) of October 9, 1928, both dealing with a brutal assault made upon Mr. C. F. Johnston, a British subject, who is Commissioner of Customs at Nanking.

Personal investigation of the incident substantiates the newspaper account of the assault, as well as the very evident efforts of the Nanking Government to hush the matter up. So successful were they in their efforts to suppress this damaging piece of news from the capital of the Nationalist Government, that no intimation of the attack reached Shanghai until five days later, while confirmation of the account was not received until yesterday, October 8th. Inquiries addressed by the undersigned to responsible parties yesterday indicated that up to the present no serious efforts have been made by the Nanking authorities to search out and punish the soldiers responsible for this outrage, although, according to the same reliable source of information, there is every reason to believe that the Na-

²⁸ Copy transmitted to the Department by the consul in his unnumbered despatch, October 9; received November 13.

²⁹ Not printed.

tionalist authorities are in a position to ascertain the names of the soldiers responsible.

In the memorandum²⁰ enclosed with my despatch of September 29th, the general situation at Nanking was stated in just as favorable a light as was possible under the circumstances, although certain incidents were cited as an evidence of the unwillingness or the inability of the Nationalist authorities to control the troops at Nanking. The attack on Mr. Johnston only serves to accentuate this fact, and the failure of the Chinese authorities to take prompt action in the matter of the punishment of those responsible for this murderous assault has created a considerable feeling of apprehension among the foreigners of Nanking. At least two American missionaries, who at the time of my visit on September 26th, viewed the situation with a considerable feeling of optimism and stated their determination to bring their wives and children to Nanking, have, since the attack on Mr. Johnston, abandoned such plans and have arranged for their families to remain in Shanghai until there is more satisfactory evidence of the ability of the Nationalist authorities to control the troops which swarm both in Nanking, and in the immediate surrounding area where bandit activities continue with apparently little, if any, abatement.

I am further reliably informed that at least one British resident of Nanking has abandoned his home in the more remote part of the city and has moved with his family to the Yangtze Hotel (British), which is on one of the well-policed main roads of the riverine suburb, Hsiakwan, and within a few dozen yards of the "official guest house" of the Ministry of Foreign Affairs. A British resident of Nanking has informed me that foreigners in that city are now exercising much care in the matter of leaving their premises during other than day-light hours, or in proceeding alone at any time to points off main well-policed highways, since there is no reason to believe that foreigners will not be molested further, especially if alone and unprotected by the police.

There is no evidence to show that the attack on Mr. Johnston was part of any prearranged plan for attacks on foreigners in general, but the incident has proven sufficient as a warning to those foreigners who were inclined to believe that residence in Nanking at the present time is attended by little risk.

As stated in my memorandum of September 29th, the Chief of Police at Nanking has shown every friendliness toward foreigners and has been most solicitous of their welfare. In this regard, it is interesting to note that according to reports made by reliable parties it was the result of the boasting of the assailants of Mr. Johnston in a

²⁰ Not printed.

nearby village, to the effect that they had killed a foreigner on the city wall, that led to immediate police investigation of the matter. This report is apparently confirmed by the fact that the police sent a party to search for the body of Mr. Johnston prior to any report made by him. This boasting on the part of the soldiers is further sinister evidence of the dangerous attitude on the part of certain of these men, who, knowing of the brutal excesses committed by Chen Chien's troops at the time of the Nanking outrage on March 24, 1927,³¹ and knowing that no punishment was meted out to them, now feel little restraint in attacking foreigners, whose authorities unfortunately have no recourse other than the filing of protests with a Government which cannot or will not attempt to punish the guilty parties.

That part of the enclosed news article telling of the murder of a Nationalist officer on the streets of Nanking by his own troops has been the subject of inquiries by the undersigned, but no information has been available locally, nor has any mention of the matter been found in the vernacular press of Nanking or Shanghai. This, however, is not surprising, since the Nanking authorities obviously would see to it that no newspaper account of such evidence of lack of discipline on the part of its troops would appear in the native press.

Opposed to the above evidence of the present unfriendly attitude on the part of certain of the soldiery towards foreigners in Nanking, evidence has been received by the undersigned, no later than yesterday, to show that the attitude of the populace in Nanking continues to be one of general indifference towards foreigners but with a tendency towards friendliness on the part of the merchants and other responsible classes resident in the city.

The police continue in their highly courteous attitude, and the Chief of Police appears to be very genuinely concerned in according to foreigners every protection. It is unfortunate, however, that the police are apparently quite helpless once the military become involved in any situation, the Nationalist authorities, as stated above, apparently being unwilling or unable to control the soldiers in most matters, although it is quite true that they have been successful in bringing about the evacuation of American mission property which had been occupied by Nationalist military and party organizations since the Nanking outrage in March of last year. On the other hand, at Tsingkiangpu, Hwaiianfu, and other points within a short distance of Nanking, the soldiers continue in their insolent and highhanded occupation and spoliation of American and other foreign property, while Nanking apparently does nothing to remedy the situation.

³¹ *Foreign Relations*, 1927, vol. II, pp. 146 ff.

In summing up, the civil authorities at Nanking, with the earnest support of the police, are apparently exerting every effort to protect foreigners in that city, but so long as the military are permitted to commit outrages such as the one upon Mr. Johnston, without prompt and condign punishment being meted out, foreigners in Nanking are not safe, and until there is definite evidence of a greater control over the troops in that city, and especially over the disbanded troops who, to use the words of the editor of the *North China Daily News*, are "unpaid, uncared for, under-nourished, unhealthy, sullen creatures," the undersigned would strongly recommend that the American Government's policy in reference to the return of women and children to the interior continue in full force in so far as Nanking is concerned, quite irrespective of any reestablishment of the Consulate in that city.

This latter point is raised because of the fact that a number of missionaries—apparently lulled into a false sense of security attaching to the presence of Consulates, which have been proven far from inviolable—have made the statement that they plan to bring their wives and children back to Nanking just as soon as the American Consulate is opened, and such action, in my considered opinion, would be most unwise until there is a marked change in the situation vis-à-vis active and disbanded military units now in and about the Nationalist capital.

It is earnestly hoped that the Legation and the Department fully concur in the views expressed.

I have [etc.]

C. J. SPIKER

893.00/10253

The Minister in China (MacMurray) to the Secretary of State

No. 1724

PEKING, October 25, 1928.

[Received December 10.]

SIR: I have the honor to invite the Department's attention to Consul Spiker's despatch of October 9, 1928, concerning the brutal attack on the Commissioner of Customs at Nanking by Chinese soldiers, copies of which were sent to the Department direct.

It is believed that this incident, and the comments which Mr. Spiker makes concerning it, furnish a true picture of the degree of safety with which Americans may return to and reside in Nanking. It is also striking evidence of the fact that, although the Nationalist Government claims it has passed the "military phase"

and is now in the phase of "tutelage of the people to prepare them for self-government," the truth is that as yet it is not master with its military organizations functioning as its servants, but the reverse is still largely true. A further case in point is the high-handed invasion of the Nanking home of a prominent Nationalist official and the annoyance of his women folk by convalescent soldiers, which was reported by Consul Spiker in the memorandum enclosed in his despatch of September 29th.³² Consul Price, in his despatch to the Legation, No. 61 of October 19 [18], 1928,³² concerning his visit at Taian, copies of which were sent to the Department direct, also points out the continuing hostility towards foreigners on the part of Chiang Kai-shek's 4th Army soldiers. It is believed that these and similar reports from Consular officers tend to show that, with the exception of a few better disciplined units such as those constituting the cream of Feng Yü-hsiang's army, the mass of the Nationalist soldiers have been so thoroughly indoctrinated with unreasoning hatred of all foreigners as to constitute a danger—and one which is likely to remain for some time—to all foreigners residing in the interior districts in which such soldiers are stationed.

As is brought out on page six of Consul Spiker's despatch under comment, there is a serious danger that American missionaries, lulled into a sense of false security by the presence of Consular officers at interior posts, will be inclined to return prematurely, and that such action on their part may well give rise to another series of unfortunate incidents in which American women and children may be the victims.

It is respectfully suggested that, when conversing with the Nationalist leaders in Washington concerning their desire for further treaty revision, these actualities of the situation be frankly brought to their attention by the Department, since, while American sentiment is rightly in sympathy with Chinese aspirations for the rehabilitation of China's sovereignty, it is believed that the premature removal of existing safe-guards for lives and property of Americans in China would result, not only in further suffering and loss by Americans, but the recurrence of a series of incidents which could not but seriously discredit China in the eyes of the world and tend to retard the very rehabilitation which these leaders ostensibly desire above all things.

I have [etc.]

J. V. A. MacMURRAY

³² Not printed.

393.4163/a

*The Secretary of State to the Reverend A. L. Warnshuis, Secretary
of the Foreign Mission Conference of North America*

[Extract]

WASHINGTON, December 29, 1928.

SIR:

It may interest you to know that in June, last, the Department authorized the Legation at Peking and the American consular officers to use their discretion in the matter of advising and of issuing travel passes to American citizens desiring to travel or reside in the interior of China.³³ The Department continues to regard it as generally inadvisable for American citizens, especially women and children, to reside in the interior, but it recognizes the fact that some regions may be safe, even though others may not be, and it desires that the advice given by its officials in China shall be based upon the circumstances in each case.

I am [etc.]

For the Secretary of State:

STANLEY K. HORNBECK

Chief, Division of Far Eastern Affairs

**EFFORTS OF THE UNITED STATES TO OBTAIN AMENDS FROM THE
CHINESE GOVERNMENT FOR THE KILLING OF DR. WALTER F.
SEYMOUR**

393.1123 Seymour, Walter F./1: Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 25, 1928—7 p.m.

[Received April 26—9:45 a.m.]

274. 1. Following from consul at Tsinanfu:

"April 25, noon. Mrs. Charles Eames at Tsingtau, wife of Presbyterian missionary at Tsining, has received a telegram from Hsuechowfu signed by Hayes of the same mission at Tenghsien stating that: 'Charles writes soldiers 16th shot Dr. Seymour through heart. Others, including Baltzer party, safe. All leaving Tsining when possible. Tenghsien quiet.' No further details available. Seymour is head of Presbyterian Hospital, Tsining."

2. The Legation is endeavoring to secure confirmation and details.

MACMURRAY

³³ See instruction No. 890, June 11, 1928, to the Minister in China, p. 269.

393.1123 Seymour, Walter F./2

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] April 26, 1928.

The Chinese Minister called this morning and finding the Secretary absent came to me to say that he had called especially this morning to see the Secretary for the purpose of expressing his regret over the news published in the morning papers to the effect that an American citizen, one Doctor Seymour, had been reported killed by a Chinese soldier. The Minister said that he had not received any official confirmation of the matter; that the only information he possessed was that which he had received from the press and he was very anxious that the Secretary know the news had shocked him very much.

N[ELSON] T. J[OHNSON]

393.1123 Seymour, Walter F./11

The Consul at Tsinan (Price) to the Minister in China
*(MacMurray)*³⁴

L. No. 2

TSINAN, April 26, 1928.

SIR: With reference to my telegram to the Legation dated 3 P. M. today,³⁵ I have the honor to state that immediately on receiving Consul Dorsey's telegram³⁶ relative to the reported murder by soldiers at Tsinning, Shantung, on April 16, 1928, of Dr. Walter F. Seymour, of the American Presbyterian Mission, I called upon the local Commissioner for Foreign Affairs, informing him of the report and requesting that he take immediate steps to conduct an investigation—so far as that were possible—to ascertain the circumstances, and, if it were found that the perpetrators of the outrage were Northern soldiers, that they be punished. I also requested that he arrange for interviews for me, at the earliest possible moment, with Marshals Chang Tsung-ch'ang³⁷ and Sun Ch'uan-fang.³⁸ The Commissioner promptly agreed to do everything possible. During the course of the day I sought to get in touch with the Commissioner again, but it has been only just now, at midnight, that he called me up by telephone to say that he had reported the matter to Marshal Chang, who promised to make an immediate and thorough investi-

³⁴ Copy transmitted to the Department by the consul in his despatch No. 2, April 27; received June 11.

³⁵ Not printed.

³⁶ Not printed; W. Roderick Dorsey was consul at Tsingtao.

³⁷ Military Governor of Shantung Province.

³⁸ Nationalist military leader, formerly nominal overlord of Kiangsu, Kiangsi, Chekiang, Fukien, and Anhwei Provinces.

gation. The Commissioner further stated that at present it was impossible to say, precisely, what soldiers were in Tsining on the 16th, since the exact time the city was lost is not yet certain. This can be explained by the fact that most, if not all, the defending Northern army was captured or so thoroughly routed, in that fighting, that reports are not yet complete.

I would mention, however, as a possibly significant fact, the absence of any specific details—even of the name of the army to which the soldier belonged—in the reports from Mr. Eames. Since, at the time the reports from Mr. Eames were sent, the city was undoubtedly in the possession of the Southern armies, this curious vagueness might readily be due to censorship or the fear of censorship. With the thought that any attempt on my part to obtain from Mr. Eames further particulars by telegraph might only result in placing him in personal jeopardy, greater than that in which he might now be in, I am attempting to reach him by letter, only. Both telegrams and mail, however, have to go a round-about way to reach Southern controlled territory, even if they succeed in passing the double censorship of the opposing armies.

The Legation may rest assured that this Consulate will do everything possible to obtain information and also to ascertain the whereabouts and welfare of the other Americans in Southern controlled territory, and will report as promptly as possible.

The attention of the Legation is respectfully invited to this Consulate's despatch No. 3, of this same date.³⁹

I have [etc.]

ERNEST B. PRICE

393.1123 Seymour, Walter F./3 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 28, 1928—noon.

[Received April 28—9:30 a. m.]

279. Following from consul at Tsinanfu:

"April 26, 3 p. m. 1. On the receipt of the report concerning Seymour shooting I have again communicated with all Americans with whom it is possible to communicate who are still in Tsinanfu consular district reiterating the advice previously given to withdraw to Tsingtau or Tientsin.

2. I am making efforts through the local authorities to obtain further information concerning Seymour incident and the whereabouts and welfare of others in Southern territory."

MACMURRAY

³⁹ *Ante*, p. 261.

393.1123 Seymour, Walter F./10

The Consul at Tsinan (Price) to the Minister in China
(MacMurray) ⁴⁰

L. No. 7

TSINAN, April 30, 1928.

SIR: I have the honor to report further on the matter of the murder of Dr. Walter F. Seymour at Tsining, Shantung, on or about April 16, 1928, making reference to this Consulate's telegram of April 26th, 3 P. M., despatch L. No. 2, of April 26th, and telegram of April 27th, 8 P. M.⁴¹

Today we received a telephone call from Dr. Thornton Stearns, an American missionary physician attached to the hospital of Shantung Christian University, stating that the Northern officer who had given the first report described in the Consulate's second telegram was at his home and prepared to tell us the story of the murder.

The account as given Mr. Stanton⁴² and me in person is substantially as follows:

The officer, who gave his name as Li Chan-yuan ([Chinese characters]), was attached to the munition transport department of the Chihli-Shantung Army, evidently—though the point was not clear—as some sort of petty officer, at the city of Tsining. He was not clear as to dates, but we gathered that it was early in the forenoon of either April 15th, 16th, or 17th, that, in company with two or three other Northern soldiers, he took refuge in the American Presbyterian Mission Hospital at Tsining, upon the occupation of that city by Southern troops. He was quite positive that the Southerners were all Feng Yu-hsiang's⁴³ so-called "Mongolian cavalry", for he described them as mounted; wearing slouch caps; and speaking a dialect almost unintelligible.

At this point it is necessary to record his statement that the place where he and his companions took refuge,—discarding their uniforms and putting on civilian clothes with Red Cross bands on their sleeves to make it appear that they were members of the Hospital staff,—was the Hospital proper, while the events connected with the shooting of Dr. Seymour took place in Dr. Seymour's residence compound adjoining. Hence, the officer did not himself see what happened, but only heard it from Dr. Seymour's gateman.

Some hours after these men had taken refuge in the Hospital,—not, as previously supposed, immediately thereafter,—a group of

⁴⁰ Copy transmitted to the Department by the consul in his despatch No. 9, April 30; received June 11.

⁴¹ Telegram of April 27 not printed.

⁴² Edwin F. Stanton, consul at Canton.

⁴³ Independent military leader who joined the Nationalist forces in 1928.

Southern soldiers came along, marking up the houses for the billeting of troops. Arriving at Dr. Seymour's residence compound, they were told that this was a foreign hospital. They asked to see the foreign doctor, and Dr. Seymour came out and talked with them. This conversation was friendly and evidently satisfied this first group of soldiers, who left on good terms.

They were followed, however, by another group of soldiers who likewise demanded admittance. Again Dr. Seymour came to the gate and explained the position. The soldiers became insistent and angry; called Dr. Seymour a "Laomaotzu" (a new term of contempt for foreigner); and one of them shot him dead. They then left.

The gateman rushed immediately to the Hospital and described what had transpired, to the Chinese members of the Hospital staff, including the officer.

Asked whether he knew the unit of command to which the Southern soldiers belonged, the officer stated that all he was sure of was that they were Feng Yu-hsiang's Kuominchun cavalry, but that he thought the second group of soldiers wrote on the gate of the Hospital and residence compounds the name of the unit which was to be quartered there, and to which they presumably belonged.

Asked as to the behavior of the Kuominchun troops in Tsining he said that, in seeking billets, they would simply go in and take possession of a place which opened its doors freely to them, but that, if a gate were locked, they would break it in, shoot the inmates, and loot the place.

Asked whether he saw any other foreigners about the Mission premises, he said he noticed a foreign woman and another man at Dr. Seymour's funeral. He said he saw Dr. Seymour's body at the funeral.

We tried to get the officer to write a deposition, but he appeared to be almost illiterate. He dictated a brief statement, however, which was read to him, and which he signed, giving the brief outline of the facts as known or reported to him.

The officer escaped through the Southern lines by posing as a messenger sent by the Hospital to fetch medical supplies.

I hope that further details may eventually be obtained from the gateman, the only person attached to the Mission who actually saw and heard what transpired.

I have [etc.]

ERNEST B. PRICE

393.1123 Seymour, Walter F./4 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 2, 1928—4 p. m.

[Received 8:58 p. m.]

298. My 274, April 25, 7 p. m.

1. Following from Shanghai:

"May 1, noon. With reference to the Legation's April 28, 8 p. m. The following report received from a missionary at Tengkhsien through the Presbyterian mission is considered important: 'Advices from the North state that Dr. W. F. Seymour of Tsining, Shantung, was shot by soldiers, presumably of Feng Yu-hsiang's army, on April 16th; that army had surrounded the city, the mission premises being in the eastern suburb, and the soldiers were about to enter the premises of the women's or girls' school. Dr. Seymour went out to attempt to prevent their doing so, when they cut the parley short by shooting him through the heart. The fact that the soldiers did not molest the other foreigners in the mission would indicate that their hasty action was not due to any rabid feeling against the foreigners as such.' "

2. With a view of [to] avoiding any possible embarrassment, it is suggested that the Department keep confidential the source of the foregoing report.

MACMURRAY

393.1123 Seymour, Walter F./7 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 21, 1928—5 p. m.

[Received 11:50 p. m.]

377. My 274, April 25, 7 p. m.

1. Under the Legation's instructions Cunningham ⁴⁵ delivered the following note on May 15 to the Shanghai Bureau of Foreign Affairs for transmission to Hwang Fu ⁴⁶:

"On April 25th the American Legation was informed through the American consul at Tsingtau that Dr. Walter F. Seymour, an American citizen and head of the hospital of the American Presbyterian mission at Tsining, Shantung, had been shot and killed by soldiers on April 16th. The Legation is now in receipt of evidence with regard to the death of Dr. Seymour, substantiated by the statement of eyewitnesses and others having knowledge of the relevant facts. This evidence unmistakably shows that on April 16th several Nationalist soldiers under the general command of Marshal Feng Yu-hsiang seized Dr. Seymour on the street outside of the mission compound. He broke from their grasp, and entering the com-

⁴⁵ Edwin S. Cunningham, consul general at Shanghai.

⁴⁶ Minister of Foreign Affairs in the Nationalist Government at Nanking.

pound, barred the gate, whereupon the soldiers fired through the gate, one bullet passing through Dr. Seymour's heart. The soldiers then opened the gate, robbed his body, and departed. Dr. Seymour died 10 minutes thereafter. On April 24th Generals Fang Chen-wu, Sun Liang-cheng, and Ho Yao-Tsu of the Nationalist forces called at the mission and expressed regret at the shooting of Dr. Seymour. Since then, however, insofar as the Legation is informed, no effort has been made to cause the arrest and punishment of the soldiers guilty of this murder. Awaiting confirmation of earlier reports I have not hitherto addressed you with regard to this brutal murder of an American citizen. I must however express surprise that I have as yet received from you no expression of regret or word that you have caused any investigation to be made with a view to the punishment of those guilty. In view of the foregoing I have to request that the murderers be arrested and executed and that the officers who not only failed to apprehend and punish the culprits but even gave encouragement to such inhuman and uncivilized acts by subsequently permitting the occupation and looting by their soldiers of the American mission buildings be at once arrested and severely punished. I must meanwhile make in behalf of my Government reservation of the right to present such further requests as it may deem necessary especially with regard to the payment of appropriate indemnities."

2. It is suggested that the Department may deem it appropriate to make public the text of the above.

MACMURRAY

393.1123 Seymour, Walter F./14

The Chinese Commissioner of Foreign Affairs at Shanghai (Chin Wen-ssu⁴⁷) to the American Consul General at Shanghai (Cunningham)⁴⁸

SHANGHAI, May 28, 1928.

SIR: The receipt is acknowledged of your letter of May 15th⁴⁹ quoting, for transmission and under telegraphic instructions of the American Minister, a despatch addressed by him to Minister Huang in regard to the shooting and killing of Dr. Seymour, an American citizen, by troops at Tsining.

Having immediately forwarded the despatch to the Ministry of Foreign Affairs of Nationalist Government, I have now received from the Ministry an express letter dated May 19th as follows:

"Your report of the 18th quoting a despatch from the American Minister as transmitted by the American Consul General, Shanghai,

⁴⁷ Also known as W. S. King.

⁴⁸ Copy transmitted to the Department by the consul general in his despatch No. 5475, June 1; received July 7.

⁴⁹ See telegram No. 377, May 21, from the Minister in China, *supra*.

has been received. There is quoted below my reply to the American Minister's despatch:

'EXCELLENCY:

I have the honor to acknowledge the receipt of Your Excellency's despatch wherein it is stated that an investigation has been made concerning the case of Dr. Seymour, President of the American Presbyterian Mission Hospital, Tsining, Shantung, who was shot and killed by soldiers.

This case received my early attention after it arose. I have ordered an inquiry to be conducted and it was merely because of the hostilities which were going on briskly at the front that no reply was received. I proceeded personally later to the front for the purpose of devising means of inquiring about the same matter so that the truth may be brought to light. Unexpectedly, while investigations were in progress, another question of serious nature arose and rendered it impossible to obtain a detailed report.

From Your Excellency's despatch under acknowledgment, I have now learned of the death of Dr. Seymour as a result of his being shot by soldiers. I deplore (his death) and deeply regret (that such an incident has occurred). Besides communicating with the military officers at the front so that they cause an investigation to be held and action taken necessarily according to law, I have the honor to transmit this reply for Your Excellency's information.

HUANG FU, *Minister of Foreign Affairs*
of Nationalist Government.'

It is trusted that you will transmit a reply at once to the American Consul General, Shanghai, with the request that the above information be communicated to the American Minister."

Having received the above, as in duty bound, I write to request that you will be good enough to transmit the reply to the American Minister.

With my compliments,

CHIN WEN-SSU

393.1123 Seymour, Walter F./9

The Secretary of State to the Minister in China (MacMurray)

No. 880

WASHINGTON, June 5, 1928.

SIR: The Department refers to your telegram No. 377 of May 21, 1928, 5 p. m. reporting the text of a communication delivered by the American Consul General at Shanghai, under the instruction of the Legation, to the Shanghai Bureau of Foreign Affairs for transmission to the Minister for Foreign Affairs of the Nationalist Government at Nanking, demanding that certain measures be taken in consequence of the killing of Dr. Walter F. Seymour at Tsining, Shantung, on April 16, 1928.

The Department notes that this communication embodies a request "that the murderer be arrested and executed." The Department questions the advisability of specifying in cases of this sort the exact nature of the punishment which it expects to see imposed upon the criminal. It would prefer that the request or demand, as the case may be, call for arrest and trial of the criminals and the imposition of punishments commensurate with the offenses com-

mitted. This phraseology would obviously leave it open to the Department subsequently to protest against a miscarriage of justice or failure to impose the degree of punishment which the Department feels is required and which the Chinese law applicable may authorize.

In accordance with your suggestion, the text of the communication in reference was made public and was widely published. One of the results following this action was the publication in the *New York Times* of May 25, 1928, of a letter addressed to the editor by the Reverend Arthur J. Brown, General Secretary of the Presbyterian Board of Foreign Missions, New York City, pointing out that the position taken by the American Government in this communication, in the matter of punishment and indemnity, was dissimilar from that taken by the Board of Foreign Missions of the Presbyterian Church in connection with the death of its missionaries and the loss of its property. The difference of viewpoint is adequately explained and the Department does not feel disposed to criticise the statements made. The headlines and comments in several newspapers laid particular emphasis upon the fact that the execution of the murderer of Dr. Seymour had been demanded by the American Minister.

With the exception of the point in reference, the Department approves the terms of your communication to the Nationalist Minister for Foreign Affairs and commends its vigorous tone and the promptness with which it was presented. The Department awaits with interest the report of the action taken by the Nationalist authorities to apprehend, try, and punish the culprit and to carry out the other demands made.

There is transmitted herewith a clipping of the Reverend Arthur J. Brown's letter to the *New York Times*, published on May 25, 1928.⁵⁰

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

393.1123 Seymour, Walter F./15: Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 17, 1928—7 p. m.

[Received July 17—11:42 a. m.]

545. Legation's 377, May 21, 5 p. m. Following telegram has been sent to Shanghai:

⁵⁰ Not printed.

"July 16, 3 p. m. Please deliver the following message to the Commissioner of Foreign Affairs for transmission to the Minister of Foreign Affairs:

'Sir: With reference to my message of May 4 concerning the murder of Dr. Seymour, and to that of your predecessor of May 19th, stating that investigation had been ordered, I have the honor to request information as to what has been done towards the apprehension and punishment of those responsible for this crime.'

MACMURRAY

393.1123 Seymour, Walter F./16 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, August 4, 1928—10 a. m.

[Received 12 noon.]

598. My 545, July 17, 7 p. m. Following telegram has been sent to Nationalist Minister for Foreign Affairs [and] is reported for your information.

"Again referring to my despatch of May 10 [15?] ⁵¹ concerning the murder of Dr. Seymour, and to that of your predecessor of May 19th ⁵² stating that an investigation had been ordered, I have the honor once more to request information as to what has been done towards the apprehension and punishing of those responsible for this crime."

MACMURRAY

393.1123 Seymour, Walter F./20 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 5, 1928—6 p. m.

[Received December 5—1:20 p. m.⁵³]

858. Legation's No. 611, August 9, 7 p. m.⁵⁴ Having received no further communications regarding the Seymour case the Legation on October 31st again addressed the Ministry of Foreign Affairs, recapitulating protection [*sic*] and stating that further lapse of time, without any definite action by the Nationalist Government, could not but seriously impair the chances of justice being done in this case and tend in general to discredit the administration of justice by the Nationalist Government. A reply just received, dated November 27, stated that the highest military authorities had been directed to make an investi-

⁵¹ See telegram No. 377, May 21, from the Minister in China, p. 286.

⁵² See despatch of May 28 from the Chinese Commissioner of Foreign Affairs at Shanghai to the American consul general, p. 287.

⁵³ Telegram in three sections.

⁵⁴ Not printed; it quotes a communication dated August 8, from C. T. Wang, successor to Huang Fu, stating merely that further steps had been taken to secure the facts and that the results of the inquiry would be communicated to the Minister (393.1123 Seymour, Walter F./17).

gation and that Sun Liang-cheng, military leader in Shantung, had now submitted the following:

"After my army had attacked and captured all parts of Tsining I heard that there was an American, Dr. Walter F. Seymour, who had been injured and I immediately sent an officer to the said hospital to make an investigation.

According to the statement of the hospital at the time that the Nationalist army was attacking the southern gate, Dr. Seymour went out of the gate to look around, then returned within the hospital. At that time there were disorderly soldiers outside the gate running about firing in all directions. Dr. Seymour who was standing within the gate was struck by a bullet and killed. At that time the enemy was retreating and conditions were chaotic. I am afraid that Dr. Seymour was killed by a stray bullet."

After a period of over seven months since the death of Dr. Seymour the Ministry of Foreign Affairs has so far failed to meet its responsibilities in this matter as to be willing to transmit the foregoing statement which is wholly at variance in all essentials with the facts as understood by the Ministry. I regard the reply as entirely unsatisfactory but am at a loss how to proceed further when confronted with such a bold attempt at evasion on the part of the highest Chinese authorities.

In these circumstances I ask for your authority again to recapitulate to the Ministry of Foreign Affairs the facts of the case with a statement being understood as from you, that the indifference of the Chinese authorities towards the wanton murder of one of our citizens has created in the mind of the American Government a sense of insecurity and of doubt as to the good faith and the political competence of the Nationalist Government.

MACMURRAY

393.1123 Seymour, Walter F./21 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, December 28, 1928—11 a. m.

422. Your 858, December 5, 6 p. m.

1. The Department regards the reply of the Chinese Foreign Office as highly unsatisfactory but desires to modify your proposed statement on the Department's behalf.

2. After recapitulating case you may add a statement substantially as follows:

"I am instructed by my Government to state that the result of the investigation into Dr. Seymour's death as given in Your Excellency's note of November 27, 1928, is not acceptable to it. The testimony of eyewitnesses given to Chinese officers in high command, including General Sun himself, and other evidence point conclusively to the

commission of a wanton murder. My Government would be reluctant to believe that the National Government is indifferent or that its responsible officials are unable to apprehend the criminals and administer justice. Nevertheless, it must come to one of these conclusions unless there is afforded without further delay satisfactory evidence that the Nationalist Government does not condone the offense and is willing and able to take proper action in the premises."

KELLOGG

CONTINUATION OF THE EMBARGO ON SHIPMENTS OF ARMS TO
CHINA ⁵⁵

893.113/1075

The Minister in China (MacMurray) to the Secretary of State

No. 1361

PEKING, January 19, 1928.

[Received February 18.]

SIR: With reference to previous reports concerning breaches of the arms embargo agreement of 1919,⁵⁶ I have the honor to transmit herewith enclosed copy of a memorandum of a conversation the Counselor of the Legation had on January 16th with the German Minister concerning a shipment of arms to China from Czecho-Slovakia, and certain comment Dr. Boyé made thereon with particular reference to the question of the attitude of the American Government in regard to the extension of the arms embargo agreement.

The Military Attaché to the Legation has told me, in connection with this matter, that Ma Soo ⁵⁷ recently came to see him showing great concern lest the United States might be trying to stop the Czecho-Slovakian arms shipment at Manila. Ma Soo inquired of Major Magruder what if any information he had in this respect. The Military Attaché replied that he had no information whatsoever other than that appearing in the newspaper and did not see how our Government or the Philippine authorities could be concerned in the matter. On January 16th Ma Soo told the Military Attaché that everything was all right as regards the arms shipment, the Czecho-Slovakian delegate, Mr. Halla, having telegraphed to the ship at Manila to proceed at once. According to local press advices the shipment has been forwarded from Manila to Newchwang. The above seems to substantiate the statements of the German Minister recorded in the memorandum herewith enclosed.

There is also enclosed a clipping from the *North China Standard* of January 17, 1928,⁵⁸ referred to in the body of the memorandum.

⁵⁵ Continued from *Foreign Relations*, 1927, vol. II, pp. 322-327.

⁵⁶ See *ibid.*, 1919, vol. I, pp. 667 ff.

⁵⁷ Representative of the Nationalist Government at Nanking.

⁵⁸ Not printed.

Several of my colleagues have recently taken occasion to discuss with me the question of the arms embargo agreement, in each case indicating their feeling that the present situation in which we find ourselves regarding the agreement is most unsatisfactory. It appears likely that further discussion on this subject will lead to the formulation of a proposal of one sort or another which can be placed before the respective governments for their consideration.

I have [etc.]

J. V. A. MACMURRAY

[Enclosure—Extract]

Memorandum of Conversation Between the American Counselor of Legation in China (Mayer) and the German Minister in China (Boyé)

[PEKING,] January 17, 1928.

During the course of a conversation between the German Minister and myself on January 16, 1928, he asked me what I believed would be the American Government's attitude toward an extension of the arms embargo of 1919 to other European Powers not at present signatory to or adhering to this agreement. . . .

Replying to Dr. Boyé's question as to the attitude of the American Government concerning an extension of the embargo, I said that that was something the Minister would have to answer; that personally I was rather of the opinion that our government would look with favor upon any action which might make the arms embargo actually effective; that an extension of its scope would seem theoretically to this end. I expressed to the German Minister my query as to how the Chinese themselves might regard such a move; that it was not at all unlikely that they would, publicly at least, take great exception to it as being likely further to restrict their precious sovereignty. (I had in mind the violent objection by the Chinese to Germany's adherence to the Washington Conference Treaty on "principles and policies.")⁵⁹ Dr. Boyé said that he quite agreed with me as to the possibility that the Chinese would take umbrage at efforts on our part to assist them further in this question of the arms embargo so that in the long run any such attempt on our part would only redound to our discredit *vis à vis* the Chinese and not actually increase the effectiveness of the embargo.

Dr. Boyé said that he wanted to discuss this matter with the British Minister and would also confer with Mr. MacMurray.

⁵⁹ See *Foreign Relations*, 1926, vol. I, pp. 1001 ff.

893.113/1072 : Telegram

The Ambassador in Japan (MacVeagh) to the Secretary of State

Tokyo, February 13, 1928—2 p. m.

[Received February 13—6:40 a. m.]

12. My despatches Nos. 735 of January 18 and 746 of January 27th.⁶⁰ The Minister for Foreign Affairs has informed me that he has instructed the Japanese Minister of [at] Peking to confer with representatives of other foreign powers with a view to securing adhesion of nonsignatory powers to the agreement of 1919 to [for?] the embargo of arms and ammunition for China. The Minister for Foreign Affairs requested me to communicate this fact to my Government and request my Government to instruct our Minister at Peking to give active support to the Japanese Legation in this proposal.

MACVEAGH

893.113/1072 : Telegram

The Secretary of State to the Ambassador in Japan (MacVeagh)

Washington, February 18, 1928—7 p. m.

13. Your 12, February 13, 2 p. m.

1. For your information. The Department realizes that the 1919 embargo agreement has not achieved its objectives. It, therefore, welcomes the proposal of the Japanese Minister for Foreign Affairs as affording an opportunity to discuss the whole question.

2. You will please inform the Minister for Foreign Affairs that this Government is responsive to the suggestion that representatives of the Powers concerned confer, but with the feeling that it would be advantageous first for the Ministers in Peking to investigate, in the manner of an informal and preliminary tentative conference, the degree of success that has attended the efforts of the governments already parties to the agreement toward the achievement of its objectives.

KELLOGG

893.113/1072 : Telegram

The Secretary of State to the Chargé in China (Mayer)

Washington, February 18, 1928—9 p. m.

55. 1. The following is quoted from telegram No. 12 of February 13, 2 p. m., received from the American Ambassador at Tokyo.

"The Minister for Foreign Affairs has informed me that he is instructing the Japanese Minister at Peking to confer with representatives of other foreign powers with a view to securing adhesion

⁶⁰ Neither printed.

of non-signatory powers to the agreement of 1919 to [for?] the embargo of arms and ammunition for China."

The Department has replied as follows:

[Here follows telegram No. 13, February 18, to the Ambassador in Japan, printed *supra*.]

2. Reports of the importation of arms into China not only from non-participating countries but also by nationals of countries committed to the 1919 agreement indicate that that undertaking has now a comparatively slight effect in limiting the current importation of munitions into China. This is due partly to the great changes that have occurred in the international situation since 1919. In addition to being ineffective, the present limited embargo imposed on themselves by certain nations but leaving other nations free in this regard has affected the course of factional warfare without appearing to curtail it. For these reasons the Department considers that the value either of the existing agreement or of a revised or extended agreement should be carefully estimated in the light of the changed circumstances.

3. The Department would heartily support an international agreement designed to prevent the importation of arms into China if it could feel hopeful of the success of such a project. However, the lack of any effective cooperative authority in China and other obvious obstacles appear well nigh insuperable. The Department doubts whether it will be found possible so to strengthen and broaden the 1919 embargo agreement as to render advisable its continuance.

4. The Department feels that if the Japanese Minister approaches his interested colleagues as intimated in the telegram from the American Ambassador at Tokyo, an opportunity will be afforded for you to guide the discussions along the lines outlined above. You will, however, carefully avoid giving the impression that this Government has arrived at any conclusion in the premises.

KELLOGG

893.113/1076 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, February 20, 1928—11 a. m.

[Received 4 p. m.]

109. Department's 55, February 18, 9 p. m. Regarding paragraphs 1 and 4. Japanese Minister has discussed this matter with Mr. MacMurray and at the former's request a meeting of Heads of Legation is set for tomorrow to discuss the alternative [arms?] embargo. I shall telegraph to the Department result of their meeting and comment concerning Department's telegram 55.

MAYER

893.113/1077 : Telegram

The Chargé in China (Mayer) to the Secretary of State

[Paraphrase]

PEKING, February 23, 1928—8 p. m.

[Received February 23—3:50 p. m.]

119. My telegram No. 109, February 20, 11 a. m.

1. The Japanese Minister, at the meeting of the diplomatic body to which reference was made, stated that he was instructed to endeavor to bring about a joining in the embargo by the nonsignatory powers concerned. He stated that inclusion of the Soviets in this Peking discussion was not considered practical by his Government because no Soviet diplomatic representative was stationed here, but that, in the event it was agreed that the nonsignatory powers concerned should be invited, the Soviet Ambassador at Tokyo would be approached by the Japanese Foreign Office for this purpose. The Japanese suggestion, the Japanese Minister added, was based on the 1919 agreement, and it was not the desire of his Government that the scope of the embargo be increased as was sought in 1922.

2. An effort was made by me to guide the discussion in the sense of the Department's telegram of February 18, number 25 [55], 9 p. m.; but this effort was unsuccessful, particularly because of a prompt proposal by the Senior Minister, a proposal to which there was general assent, favoring the transmission of identic telegram to the following effect:⁶¹

"In view of the continued internal wars in China which have now practically spread over the whole country and with a view to making the embargo on arms of 1919 more effective, the foreign diplomatic representatives once more draw the attention of their respective Governments to the importance of the agreement and of prohibiting the exportation of arms and munitions of war from or through their territories to China.

They therefore express their conviction that those powers who have not yet taken any measure in this respect should be induced to do so as soon as possible."

3. The Heads of Legation were informed by me that it was my opinion the transmission of such an identic telegram would simply return to the respective Governments the responsibility for seeing that ways and means were devised, either through accessions to the signatories or otherwise, for bolstering up the arms embargo. I stated that it would be much preferred by my Government, and that I myself strongly felt it to be the practical course of action, that the matter should be discussed fully by the diplomatic representatives

⁶¹ Quotation not paraphrased.

in Peking, that they determine themselves what in their estimation would be the best course to pursue, and that they make recommendations accordingly to their Governments. No support was given to my suggestion. To me it appeared quite evident that the majority of the powers (especially those, I should imagine, such as France and Italy, who have been under fire for breaches of the embargo) greatly preferred a gesture of the kind embodied in the proposal of the Senior Minister, no matter how unavailing it might be in the long run, rather than concentrating on practicalities and entering into a discussion of details of a situation which might result in much embarrassment if a solution were attempted here.

4. Because to have failed to do so would have made it seem that the United States was obstructing an effort by the powers to reach some international arrangement to prevent the importation of arms into China, I agreed to join in the dispatch of identic telegram.

5. Although much pressure was brought to bear toward suggesting at once that the Japanese Minister have his Government proceed to invite the nonsignatory powers to join in the embargo, I blocked this move, limiting the decision of the meeting solely to the identic telegram as an expression of the view of the several diplomatic representatives to their respective Governments, thus leaving the Department free to take whatever course may be decided upon by it.

6. In the hope that the publicity would help to make evident the sincerity of the powers in executing the embargo, as well as being conducive toward its greater efficacy, it was the general sense of the meeting that the identic telegram should be made public at the time of its transmission. Present publicity without authority of the respective Governments was opposed by me, keeping in mind that it was desirable to retain freedom of action for the Department. It was agreed, therefore, that the matter of publicity be submitted for their decision to the respective Governments. In case there is no objection thereto by the Department it is hoped that I shall be so informed.

7. This telegram communicated to Tokyo.

MAYER

893.113/1077 : Telegram

The Secretary of State to the Chargé in China (Mayer)

[Paraphrase]

WASHINGTON, February 25, 1928—5 p. m.

67. Your telegram No. 119, February 23, 8 p. m.

1. This Government is not involved in any express commitment by the identic telegram quoted in paragraph 2 of Legation's telegram and no objection to its publication is interposed by the Department.

2. The action taken by you as explained in paragraph 5 is noted by the Department. Considering the facts detailed in Legation's telegram, the Department does not perceive any objection to the proposal that the initiative be taken by the Japanese Government with a view to inviting nonsignatory powers to participate in the embargo.

KELLOGG

893.113/1083 : Telegram

The Chargé in China (Mayer) to the Secretary of State

[Paraphrase]

PEKING, March 9, 1928—4 p. m.

[Received March 9—9:30 a. m.]

151. No. 119, February 23, 8 p. m., from the Legation and Department's No. 67, February 21 [25], 5 p. m.

1. I am informed by the Japanese Minister that a note was handed to the Soviet Ambassador at Tokyo by the Japanese Minister for Foreign Affairs on March 1 in regard to the arms embargo, urging that the Soviets refrain from permitting the importation into China of arms.

2. This morning at a diplomatic body meeting it was decided that the identic note, communicated to the Department in my telegram No. 119, should be released for publication on Saturday, March 10, at noon. At the time fixed, copies of the note will be given by me to the correspondents here.

MAYER

893.113/1091

The Ambassador in Japan (MacVeagh) to the Secretary of State

No. 787

TOKYO, March 14, 1928.

[Received April 2.]

SIR: With reference to the Department's telegraphic instruction No. 13 of February 18, 7 p. m., and previous correspondence dealing with the agreement signed by certain Powers, at Peking, on May 5, 1919, I have the honor to inform the Department that, on February 23rd last, I informed the Minister for Foreign Affairs of the contents of the Department's telegram above referred to.

While the only official communication which I have received from the Minister for Foreign Affairs has been an acknowledgment of the

receipt of my note, I have received from the Legation at Peking copies of telegrams exchanged with the Department on this subject, and I have also been kept informed of developments, informally, by the Foreign Office. In talks which the Embassy has had with the Vice-Minister for Foreign Affairs, Mr. Debuchi has pointed out that, while the Japanese Government was in hearty agreement with our Government, that the 1919 Embargo Agreement had not achieved its objectives and that an investigation of the whole matter might well be advisable, they felt that the large shipments of arms into China, recently reported, made it advisable to secure, as soon as possible, the adhesion to the Agreement of certain Powers not now parties to it. For this reason, Mr. Debuchi felt that the decision reached by the diplomatic representatives on February 21st, urging the adhesion of these Powers, was a wise one. Mr. Debuchi said that he had reason to believe that the German Government would be willing to take the necessary measures and that the Japanese Government would undertake to bring the matter to the attention of the Soviet Government, with a view to securing their agreement to refrain from exporting arms to China. (He said that of course no attempt would be made to have them adhere to the Agreement as this would, he felt, prove embarrassing to those Powers not maintaining relations with the Soviet Government.) Mr. Debuchi, at that time, seemed to feel that the approval of the remaining Powers, which had in the past been shipping arms to China, could be secured.

In a more recent conversation, Mr. Debuchi stated that the Japanese Government had, on March 1st last, in an informal note to the Soviet Ambassador, requested his Government's approval of the principles outlined above, but that since that date no reply had been received and he, Mr. Debuchi, was beginning to feel that perhaps the Soviet Government would not be willing to bind itself. He said that, so far as the Czechoslovak Government was concerned, Dr. Benes had indicated that his Government would prefer an international agreement, bringing in all the Powers, rather than the small group contemplated in the proposed agreement. Mr. Debuchi seemed to feel that it would be virtually impossible to carry out the proposal of the Czechoslovak Government. With regard to Sweden and Germany, he seemed to think that both of these Powers would agree to the restrictions, but that, up to the present, no indication had been received as to Norway's intentions.

I have [etc.]

CHARLES MACVEAGH

711.9412A/15

The Ambassador in Japan (MacVeagh) to the Secretary of State

[Extract]

No. 805

TOKYO, *March 28, 1928.*

[Received April 17.]

SIR: I have the honor to report to the Department that I had an interview, by appointment, with the Minister for Foreign Affairs on Thursday, March 22nd, at 11 A. M., at the Foreign Office, Mr. Sawada, the official interpreter of the Foreign Office, being present.

I reported to the Minister the substance of the Department's telegram No. 22 of March 14th, 6 P. M.⁶² He said he had received word from Matsudaira about the two new treaties,⁶³ but not the text of the treaties; that he agreed in principle with the propositions of my Government as he understood them, and when the treaties arrived would give them careful consideration; he thought it doubtful, however, if he could make any reply until after the next Diet session.

I then asked him what progress was being made in the direction of the embargo on arms for China, and what he thought was the prospect of getting such an agreement of the Powers as would result in the enforcement of a real embargo, which on several occasions he had told me he earnestly desired as a means of ending the desolating wars between the factions. He referred to the joint note of the diplomatic body at Peking, and said he hoped this might have a good effect, but that this would only, at the best, put an end to shipments through the Chinese ports; and in order to cut off shipments by land also he (Baron Tanaka) some time ago had made a request to the Soviet Government to aid the embargo by preventing shipments through the territory controlled by it; and that only the day before he had asked the Soviet Ambassador here to get a reply from his Government as soon as possible.

I have [etc.]

CHARLES MACVEAGH

893.113/1107

The Chargé in China (Mayer) to the Secretary of State

No. 1451

PEKING, *March 28, 1928.*

[Received April 28.]

SIR: I have the honor to invite the Department's attention to a despatch addressed to the Legation by the American Consul General at Tientsin on March 19, 1928,⁶² regarding the arms embargo, copies

⁶² Not printed.

⁶³ For correspondence regarding proposed treaties of arbitration and conciliation between the United States and Japan, see vol. III, pp. 135 ff.

of which were sent to the Department from the Consulate General. I fully concur in the conclusion reached by Mr. Gauss that it would be highly desirable to obtain early legislation dealing with the question of American participation in the arms, opium, and narcotic traffic in China, so complete and comprehensive as to make it possible for the American authorities promptly and effectively to suppress and punish any American participation therein.

I have [etc.]

FERDINAND MAYER

893.113/1090 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 29, 1928—8 p.m.

[Received 9:20 p. m.] ⁶⁴

193. My telegram 151, March 9, 4 p.m.

1. Reuter despatch, published in local press March 28 under Moscow date line March 26, reads as follows:

"The Soviet Government, replying to the Japanese proposal that the Soviet should join in the decision of the powers with regard to banning the import of arms to China, says that the import of arms to China is a matter exclusively within the competence of the Government of China. The Soviet Government has always avoided concluding an agreement with any power at the expense of a third party without the latter's participation. Hence it refuses to join the agreement, more especially as some powers enjoying rights in China can practically import arms to China undisturbed and they are to keep troops and a fleet there. The Soviet reiterates that it has no intention importing arms to China."

2. Copy to Tokyo by mail.

MAYER

893.00/9783

The Secretary of State to the Minister in China (MacMurray) ⁶⁵

No. 829

WASHINGTON, April 3, 1928.

SIR: The British Ambassador called to see me on March 1 and inquired if I did not think things were very slowly mending a little in China. I told him that I thought there was some evidence of their settling down.

In discussing the arms embargo I told Sir Esme that I thought that if all the countries would enforce strictly an embargo on the shipment of arms and ammunition to China, it would bring about the end of the fighting there in a short time. I pointed out that the

⁶⁴ Text printed from corrected copy.

⁶⁵ The same instruction was sent April 3 to the Ambassador in Great Britain (No. 1372) and to the Ambassador in Japan (No. 351).

Ministers in Peking had discussed this matter and had recommended to their Governments that the embargo should be strengthened.

I said that I thought the Ministers at Peking ought to discuss the whole embargo question and to make strong representations to their Governments in regard to it but that, unless the non-signatory Powers would join in the arrangement, I did not see how it could be made very effective.

Sir Esme brought up in this connection the matter of Russia's position. I told him that I understood that the Japanese Government had suggested that it would approach the Russian Ambassador at Tokyo in regard to this matter, but that I did not know what had been done in this regard.

I am [etc.]

FRANK B. KELLOGG

893.113/1094 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 11, 1928—6 p. m.

[Received April 11—10:50 a.m.]

223. Legation's 193, March 29, 5 [8] p. m.

1. At meeting of diplomatic body, April 2, Japanese Minister stated that on March 26 his Government had received a note from the Soviet Ambassador in Tokyo relating to the attitude of the Soviet Government towards participation in the arms embargo agreement. Tenor of the note was substance as reported in the Legation's telegram above mentioned. Japanese Minister said his Government purposed to make further representations to the Soviet Government upon the matter.

2. Copy to Tokyo by mail.

MACMURRAY

893.113/1129

The Minister in China (MacMurray) to the Secretary of State

No. 1491

PEKING, May 4, 1928.

[Received June 12.]

SIR: I have the honor to refer to a despatch, No. 1725, of April 26, 1928, addressed to the Legation by the American Consul at Harbin,⁶⁶ a copy of which was sent to the Department, regarding a possible violation of the Arms Embargo Agreement of 1919, and to enclose a copy of my reply thereto⁶⁶ in which I state that I concur in Mr. Hanson's view that G. A. Bashkiroff and Company, the American firm concerned, would not be violating the arms embargo agreement in importing a two-ton truck chassis from the United

⁶⁶ Not printed.

States, even though an armored car for that truck is to be constructed locally in order that the vehicle may be used against bandits.

I have [etc.]

J. V. A. MACMURRAY

893.113 Airplanes/8 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 20, 1928—8 p. m.

[Received June 20—2:10 p. m.]

484. Legation's 96, February 15, 5 p. m., and Canton's despatch to the Legation 687, May 7,⁶⁷ copy of which was sent to the Department.

1. Following from Canton:

"June 6, 2 p. m. Canton administration seems to be in earnest respecting establishment of commercial aircraft routes, and as previously reported, 17 French planes have already been delivered. More machines are to be imported and an importer would be preferred if obtainable under the arms embargo. I understand British Government does not consider nonmilitary aeroplanes within the embargo provisions regardless of the fact that such planes may ultimately be put to military use.

In view of the possibility of substantial business in planes I would appreciate the Legation's views as to our attitude in respect to the embargo."

2. I venture under present circumstances to request the Department's reconsideration of the question of including commercial airships under our interpretation of the arms embargo agreement. I understand aviation has been advanced to such a point that the distinction between military and commercial aircraft is very marked and as commercial planes now have no combat value it means that they should no more be banned as arms or munitions of war than commercial ships or motor trucks. Airplanes furthermore have become a commercial commodity in which a fair field of competition should be open in China since despite present obstacles to commercial flying initial steps in the development of commercial air could [craft?] already have been taken in this country.

3. This is in line with British policy as indicated in first paragraph of Legation's 370, September 3, 1926, 12 noon.⁶⁸

MACMURRAY

893.113 Airplanes/9 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 23, 1928—noon.

198. Your 484, June 20, 8 p. m. The Department will grant permits to export commercial airplanes to China.

KELLOGG

⁶⁷ Neither printed.

⁶⁸ *Foreign Relations*, 1926, vol. I. p. 736.

893.113/1107

The Secretary of State to the Minister in China (MacMurray)

No. 908

WASHINGTON, July 9, 1928.

SIR: The Department has received your Legation's despatch No. 1451, dated March 28, 1928, stating that you concur in the conclusion reached by the Consul General at Tientsin in his despatch of March 19, 1928,⁷⁰ copies of which were forwarded to the Department, that it would be highly desirable to obtain early legislation dealing with American participation in the arms, opium and narcotic traffic in China.

The desirability of curtailing the activities of citizens of the United States in connection with the arms and narcotic traffic in China is unquestioned and the Department keenly appreciates the seriousness of the present situation. In considering the initiation of remedial legislation to attain the desired ends, the Department must take cognizance of the probable effect upon Congress of such a step. Under present conditions it seems that the effect would be to precipitate a discussion of the entire Sino-American question and the revision of existing treaties. The Department would prefer that such discussion should be deferred until new treaties with China can be presented to the Senate or until it is demonstrated that conditions in China make it impossible to negotiate an adjustment of American rights in that country. It therefore seems advisable for the present to postpone the proposing of new legislation to cover American participation in the arms and narcotic traffic in China. However, the Department will have this in mind in connection with the question of treaty revision.

An extra copy of this instruction is enclosed for transmission to Mr. Gauss, whose comments and observations the Department has been very glad to receive.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

893.113/1137

The Secretary of State to the Secretary of the American Institute of Marine Underwriters ⁷¹

WASHINGTON, July 11, 1928.

SIR: The Department has received your letter of June 29, 1928,⁷⁰ stating that the member companies of your Institute are considering

⁷⁰ Not printed.

⁷¹ A similar letter was sent on July 11, 1928, to the president of the Boston Insurance Co., in reply to a letter dated June 25; neither letter printed. (893.113/1136.)

entering into an agreement not to insure shipments of arms or munitions to China and inquiring whether such action would be out of harmony with the policy of the State Department or would otherwise be objectionable.

In reply you are informed that the proposed agreement is entirely in accord with the policy of this Department which would welcome its adoption. The Government of the United States is now, and has been for some years past, opposed to the shipment of arms and munitions of war to China. In 1919 it entered into an agreement with several other Powers looking toward the restriction of such shipments. On January 31, 1922, there was approved a Joint Resolution of Congress⁷² which prohibited the exportation of arms and munitions of war from the United States to certain countries. Acting under the authority of this Resolution, the President issued a Proclamation on March 4, 1922, a copy of which is enclosed herewith,⁷³ making unlawful the export of arms and munitions of war from the United States to China, except under such limitations and exceptions as the Secretary of State may prescribe. Under this authority applications for licenses to export arms and munitions to China are made to the Secretary of State, who has granted licenses in certain cases, chiefly for shipments of small arms and ammunition in limited quantities for sporting or self-defense purposes. It is suggested that a clause might be inserted in the proposed agreement allowing insurance to be placed on shipments from the United States for which such licenses have been issued.

I am [etc.]

For the Secretary of State:

STANLEY K. HORNBECK,

Chief, Division of Far Eastern Affairs

893.113/1129

The Secretary of State to the Minister in China (MacMurray)

No. 937

WASHINGTON, July 30, 1928.

SIR: The Department has received your despatch No. 1491 of May 4, 1928, in regard to the despatch addressed to the Legation on April 26, 1928, by the American Consul at Harbin⁷⁴ and the Legation's reply thereto of May 4, 1928,⁷⁴ concerning the sale of armored motor cars by an American firm to the Chinese authorities.

In the first paragraph of the Consul's despatch to the Legation he stated that he had sent a notice to the importers "to the effect

⁷² 42 Stat. 361.

⁷³ Not printed; *ibid.*, 2264.

⁷⁴ Not printed.

that furnishing the military authorities with munitions of war, which would include armored cars, was prohibited by the American Government." Whether the Consul's action was based on his opinion that it is warranted by the Agreement of 1919, or by the President's Proclamation of 1922, is not disclosed by the record, but it seems desirable to inform the Consul that neither the agreement nor the President's Proclamation prohibits "furnishing the military authorities with munitions of war." The proclamation mentioned prohibits the exportation of arms and munitions of war from the United States to China and the agreement expresses the undertaking of the United States "effectively to restrain their . . .⁷⁵ citizens from exporting to or importing into China arms and munitions of war and material destined exclusively for their manufacture." No legislation has been enacted to give effect to the Agreement of 1919 and the only specific legal inhibition against the shipment of arms and munitions of war to China is that contained in the President's Proclamation mentioned.

Consular officers should, therefore, be careful in discussing the shipment of arms and munitions to China to refrain from expressions which are not warranted by the President's Proclamation or by the status of the Agreement of 1919. While, as above stated, legislation has not been enacted giving effect to the latter Agreement the Department feels that in view of the purpose of the Agreement and the Proclamation, consular officers should avail themselves of every opportunity to inform American citizens contemplating the importation into China of arms and munitions of war of the provisions of the Proclamation and the Agreement without attempting to discuss the legal effect of the latter. They should, of course, refrain from affording any assistance in furtherance of the importation of any equipment which may reasonably be regarded as contrary to the letter or spirit of the Proclamation of 1922 and the Agreement of 1919 and should report to the Department and to the Legation every case of which they have authoritative information indicating an intention by any person, regardless of nationality, to export arms and munitions from the United States or any territory under its control or any case indicating an intention by American citizens to import into China from any source equipment the importation of which may be regarded as contrary to the purpose of the Agreement of 1919.

In view of the purpose for which the automobile chassis is declared to be intended, that is, for protection against bandits, the Department would not be disposed to offer any objection to its exportation from the United States.

⁷⁵ Omission indicated in the original.

You are requested to communicate the substance of this instruction to all consular officers in China for their information and guidance. I am [etc.]

For the Secretary of State:
NELSON TRUSLER JOHNSON

893.113 Airplanes/12

The Secretary of State to Senator Hiram Bingham

WASHINGTON, September 24, 1928.

SIR: I have the honor to acknowledge the receipt of your letter of September 12, 1928,⁷⁰ in regard to the exportation of airplanes from the United States to China.

Neither the treaties nor the resolutions resulting from the Washington Conference embodied any general agreement to restrict the exportation of airplanes from the territories of the signatory Powers to China. The United States is party to an international understanding, generally known as the Arms Embargo of May 5, 1919, by virtue of which the nations concerned have agreed to restrain their citizens from importing into China "arms and munitions of war and material destined exclusively for their manufacture". This restraint was, by the terms of the understanding, to continue "until the establishment of a government whose authority is recognized throughout the whole country".

On March 4, 1922, the President issued a Proclamation under the terms of a Joint Resolution of Congress forbidding the exportation from the United States to China of "any arms or munitions of war", authority to prescribe exceptions and limitations being vested in the Secretary of State. Texts of the Arms Embargo Agreement of 1919 and of the President's Proclamation of March 4, 1922, are transmitted herewith. You will note that the scope of the Proclamation is more limited than that of the Agreement, since the former forbids only exportation from the United States to China, while the latter requires the effective restraint of the importation of arms from all sources. There appear to be no legislative enactments by virtue of which general control over American citizens in this manner can be exercised, but the 1919 Agreement nevertheless indicates the present policy of this Government. Since the American Government has now negotiated a treaty with the Nationalist Government of China the question may arise whether so far as this Government is concerned, the Agreement is still bind-

⁷⁰ Not printed.

ing, or whether the condition for its termination, i. e., "the establishment of a government whose authority is recognized throughout the whole country" has been fulfilled.

With specific reference to the matter of airplanes, I have the honor to state that in order to fulfill the policies and duties arising from the Arms Embargo understanding of 1919 and the President's proclamation of March 4, 1922, the Secretary of State has required that persons or firms desiring to export airplanes to China shall explain the circumstances of the transaction and shall apply for an export permit. This precaution has been rendered necessary by the fact that in the type of warfare waged of late years in China commercial airplanes are adaptable, after little or no alteration, to warlike uses.

The concern of the State Department is merely to prevent the exportation of airplanes to China for military use, in other words, when they are to be classified as "munitions of war", exportation of which is forbidden by the President's Proclamation of March 4, 1922. In the case of commercial type airplanes and in the absence of circumstances necessitating caution, permits for export are granted immediately following the submission in proper form of the required application.

I have [etc.]

FRANK B. KELLOGG

893.113/1155

The Minister in China (MacMurray) to the Secretary of State

No. 1787

PEKING, December 5, 1928.

[Received January 7, 1929.]

SIR: With reference to the Legation's despatch No. 1437, of March 19, 1928,⁷⁷ and to previous communications regarding the Arms Embargo Agreement of 1919, I have the honor to state that the French Minister, shortly after his recent return from leave of absence in France, called a meeting of the representatives of the Powers signatory to the Agreement, to consider, under existing circumstances, the desirability of maintaining, modifying, or doing away with it. The meeting, a translation of the Minutes of which is enclosed,⁷⁷ was held on November 23rd. It will be observed that it was decided to maintain the *status quo* in respect to the Arms Embargo.

I have [etc.]

J. V. A. MACMURRAY

⁷⁷ Not printed.

REDUCTION OF AMERICAN MARINE FORCES IN CHINA

893.00/9784 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 2, 1928—4 p. m.

[Received March 2—9:40 a. m.]

135. 1. With reference to the commander in chief's ⁷⁸ 0029—1600 to the Secretary of the Navy, I respectfully submit the following comment and recommendation.

2. Although I have watched the matter very carefully, I have come upon no unfavorable reaction to the presence of our marines in North China or indeed elsewhere in the country. No word, formal or otherwise, in opposition to their being here has come to my notice since the note of September 6th from the Wai Chiao Pu described in my 862, September 8, 4 p. m.⁷⁹ to which reference is made. I believe it is the real feeling with the Chinese that they are no less pleased than are our own citizens to feel stabilizing influence of presence of marine brigade.

3. Upon receipt of repetition of the commander in chief's telegram, above mentioned, I requested commanding general, Third Brigade,⁸⁰ to inform me in reference to effect of nonreplacement. He states that in such event, at present rate of depletion, marine force at Tientsin would be reduced to one regiment of infantry by July 1st. I strongly recommend that any reduction at this time in the American forces in North China in numbers or in equipment such as aviation (which as the Department realizes has in China a tremendous potential value) should not even be considered, present indications being that we must anticipate serious renewal of hostilities this spring among the forces of Chang Tso-lin, Feng Yu-hsiang, Chiang Kai-shek and Yen Hsi-shan in this region. The Department may be certain that Legation will recommend reduction of American forces in China at the earliest expedient moment.

MAYER

893.00/9789 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 5, 1928—noon.

[Received March 5—8:08 a. m.]

138. My 135, March 2, 4 p. m. Following from the Minister, relayed at his request:

⁷⁸ Admiral Mark L. Bristol (U. S. Navy), commander in chief of the U. S. Asiatic Fleet.

⁷⁹ *Foreign Relations*, 1927, vol. II, p. 141.

⁸⁰ Brig. Gen. Smedley D. Butler, U. S. Marine Corps.

"The Legation has repeated to me radio 0029-1600 from the commander in chief, the United States Asiatic Fleet, to the Secretary of the Navy, recommending in effect the reduction of our marine forces in China, as also the Legation's telegram No. 135, March 2, 4 p. m., to the Department.

2. I understand that the Admiral discussed this same proposal with Mayer in Peking during September, last, while I was in the United States, but that he was at that time convinced that it would be premature to make any substantial reduction of our forces. He has not consulted with me on this question since my return to China, nor given me any occasion to suppose that he had either military or other reasons to dissent from my original recommendation that the present marine forces be sent to China or my subsequent recommendation (as discussed with you last autumn) that it would be highly advisable to keep them here until some definitely favorable change in the situation may have taken place. It was therefore a complete surprise to me that he has made a contrary recommendation—the more so because his recommendation appears to me to be wholly based not upon naval or military grounds, but upon considerations of the local Chinese political situation and of the reactions upon it to be expected under given circumstances. I think it is clear that such an estimation of Chinese political reactions is a matter involving the functions of the diplomatic representative in China rather than of the naval commander in Far Eastern waters, and while prepared to consider with all respect any views on political matters which the Admiral might see fit to lay before me, I cannot forego my own responsibility for recommendations to you as to such as come within the scope of the authority devolving upon me as your representative. I must therefore advise you that I dissent absolutely from the commander in chief's recommendation, which I feel is based upon a mistaken assumption as to the attitude of the Chinese towards the presence of our marine forces.

3. I fully concur in the views set forth in Mayer's telegram No. 135, March 2, 4 p. m., and consider furthermore that any substantial reduction in the marines, particularly at Tientsin, would tend to bring about risks of far more serious and provocative incidents than might accidentally arise through their presence in adequate force. In their present numbers and with equipment (such as the aviation unit) the possession of which assures them a very marked, though intangible psychological superiority, their presence affords an effective safeguard not only against mob violence but against soldiery disorganized either by defeat or by victory, which past experience at Tientsin has shown to be the greatest and most probable danger in the event of any change in the military control of the area such as might well happen in the forthcoming campaign. If materially reduced either in men or in equipment, as the Admiral's recommendation contemplates, the marine force would not only cease to afford such safeguard but would lose its present independence of action and have to be assimilated to the protocol forces⁸¹ and become obligated for the protection of its own position to join in mutual arrangements with the British, French, Italian and Jap-

⁸¹ See art. ix of Final Protocol, *Foreign Relations*, 1901, appendix (*Affairs of China*), p. 316.

anese forces, in the same manner as we had very reluctantly to arrange in the case of the Fifteenth Infantry 2 years ago.⁸²

4. I therefore most strongly recommend that the marine force in China be maintained at substantially its present strength until such time as the Legation may be able to report the existence of such conditions as would enable that force to be either reduced or withdrawn without incurring undue risks to the safety of American lives and interests."

MAYER

893.00/9790a : Telegram

The Secretary of State to the Chargé in China (Mayer)

[Paraphrase]

WASHINGTON, March 5, 1928—6 p. m.

80. For Minister and Chargé: Withdrawal of the three cruisers now on China station is recommended by Navy Department.

As to advisability of withdrawing any of cruisers at this time, Department wishes your confidential opinion and, if you consider it wise, also that of the consul general at Shanghai, and any others with whom you may desire to consult.

According to our information, the forces of Great Britain in China are being reduced, but it appears that War and Navy Departments are differently informed in regard to actual number of British forces. The British forces number 4,500 men, according to Navy information, but number 7,222 according to War information. It is desired that you ascertain the correct number and inform the Department.

In order to enable us to reach a decision, the above information is necessary in addition to that contained in Legation's 135, March 2, 4 p. m.

KELLOGG

893.00/9801 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 13, 1928—4 p. m.

[Received March 13—12:45 p. m.⁸³]

160. Department's telegram No. 80, March 5, 6 p. m.

1. The following represents the Minister's views as well as mine in reply to your telegram aforementioned:

"It seems probable that the Nanking regime in cooperation with Feng Yu-hsiang and Yen Hsi-shan will commence offensive in the

⁸² Refers apparently to arrangement for the defense of Tientsin; see *ibid.*, 1926, vol. I, p. 736 ff.

⁸³ Telegram in three sections.

near future against the North. Edwardes⁸⁴ brings the opinion from Shanghai where T. V. Soong⁸⁵ told him that the Northern expedition would soon be undertaken and that Nanking regime was in complete agreement with Feng Yu-hsiang to this end; that no consideration could now be given to the question of tariff arrangements since military would not permit, being entirely concerned with question of expedition. Chiang Kai-shek's published interview in *North China Daily News* is to this effect, that all arrangements have been made for the expedition which would proceed according to the program on a date which could not now be divulged. Northern troop movements tend in this direction. In the premises and with reference to the Minister's telegram of March 4, 7 p. m.⁸⁶ and the Legation's 18 [135], March 2, 4 p. m., it is considered that with civil warfare again imminent on a large scale this is not an appropriate time for reducing our naval, marine or military forces in China or in Far Eastern waters; that if situation becomes sufficiently defined later in the year either through success or defeat of Southern attack or its failure to materialize, the Legation can be counted upon to recommend to the Department that protection of American life and property in China no longer requires presence light cruiser force if such happily is the case. It is also submitted that the withdrawal of light cruisers, instead of being a gesture which it might be expected the Chinese would construe as an evidence of friendliness, would actually be considered by them as a sign of weakness or of indulgence at a time when our standing firm might avert disastrous consequences toward which evidence of a contrary nature would contribute."

Since the receipt of Department's telegram 80 I have had the following from the commander in chief:

"007. Light cruiser division 3 by order of the Bureau of Operations will sail from Shanghai to arrive Honolulu prior to 12th April. Division will sail from Shanghai about 1st April. The question of return to Asiatic station will be decided later. 1048."

If it is impossible to reconsider withdrawal of light cruisers we believe they should at any rate be held available for immediate return to China in case of emergency.

As a result of telegraphic inquiry to Shanghai and Hong Kong, discussions with the chief of staff of British forces at Tientsin, and our military attaché's consultation with his British colleague here, correct estimate of British forces in China including Hong Kong appears to be as recently reported to the Department (see Legation's 36, January 18, 4 p. m., based upon military attaché's report to M. I. D. 7200 of January 19th)⁸⁷ less a battalion of Coldstream

⁸⁴ A. H. F. Edwardes, Officiating Inspector General of Customs, Peking.

⁸⁵ Minister of Finance in the Nanking Government.

⁸⁶ Repeated to Department in telegram No. 138, March 5, from the Chargé in China, p. 309.

⁸⁷ Not printed.

guards and some 500 men whose service has expired, the latter probably now having been replaced.

This makes total approximately 11,000, of which principal figures are Hong Kong 4,500; Shanghai between 4,000 and 4,500; Tientsin 1,600 odd.

As of interest in this general relation I submit following recapitulation furnished by naval attaché's office of British naval forces in Chinese waters to which should be added 5 of latest light cruisers (10,000 tons) to replace older light cruisers, the former by end of March: 3 light cruisers, 15 gunboats, 17 destroyers, 2 submarine depot ships, 3 sloops, 3 converted patrol boats, 3 aircraft carriers, 2 surveying vessels, 2 mine sweepers.

MAYER

893.0146/65b : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 13, 1928—5 p. m.

222. In view of the fact that conditions appear to be stabilized and that the crisis in events has passed, the expediency of reducing the American forces in China by about one thousand men is being considered by the Navy Department, and Admiral Bristol's recommendations on the subject will be requested.

This, it appears to the Department, would be a very good course of action, a plan that would not only have a good effect in China but also would impress upon them the fact that we expect American lives and property to be protected by the Chinese. It is requested that you telegraph your views on this subject.

KELLOGG

893.0146/67 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, July 22, 1928—10 a. m.

[Received July 22—4:32 a. m.]

558. Your 222, July 13, 5 p. m.

1. In regard to the expediency of withdrawing from Shanghai the regiment now stationed there, I had previously consulted Cunningham,⁸⁸ who made a very earnest recommendation against such action.

⁸⁸ Edwin S. Cunningham, consul general at Shanghai.

2. After receiving the Department's telegram, I conferred with General Butler and transmitted to Admiral Bristol a statement of my views to the following effect:

"I assume that the proposal of the Navy Department for a reduction of American forces is based on what is considered to be a greater need in some other places. While I cannot judge of the urgency elsewhere, I consider that in regard to China the emergency which requires the presence of our forces as a precautionary measure has not definitely disappeared even though it is perhaps less acute than hitherto. In my view, the military and political situation is not yet stabilized permanently, and we cannot assume that a crisis will not soon occur which will require, for the protection of our citizens, the presence of considerable forces. As I see it, the question presents itself as one of the degree of risk it may be necessary to incur, taking into consideration needs outside of China. At this time I should regret if the forces at Tientsin were reduced; for, while a reduction such as is proposed would still leave sufficient force actually to protect Americans against any reasonably foreseen contingency, I consider that a larger force would tend to minimize the danger of any Chinese action which might result in a clash with our troops in the fulfillment of their duty. If, however, there is a greater need elsewhere, we could, I believe, reduce the brigade of marines at Tientsin to less than two thousand men without undue risk. These marines would be in addition to the infantry forces at Tientsin. This would be in accord with the message from General Butler,⁸⁹ one (b). The aviation unit, which during the recent crisis gave independent information concerning Chinese troop movements in the neighborhood of Tientsin, I believe should not be reduced below two squadrons."

3. A telegraphic reply has now been received by me from the Admiral, who proposes to send to the Navy Department a telegram in substance as follows:

"General Butler's recommendations regarding the forces which are to be retained in Tientsin, the remainder to be withdrawn, are approved. At present I do not recommend that we withdraw the marines from Shanghai. I approve the reasons which General Butler gives in his recommendation. The remaining force is one which can be quickly moved to any area where probable disturbances would occur, with those vessels which are available, or, in order to avoid hostilities with Chinese troops which are organized, it could be quickly withdrawn. It is not a force of permanent occupation. I recommend that one division of 6 airplanes be retained, since the light cruisers and the fleet seaplanes will be used if necessary."

MACMURRAY

⁸⁹ Recommending (a) the immediate withdrawal of the Fourth Regiment from Shanghai; (b) a second withdrawal of 1,400 of the Third Brigade from the Tientsin area; and (c) the remaining force to total 1,500 men.

893.0146/67 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 24, 1928—2 p. m.

237. Your telegram No. 558, July 22, 10 a. m. According to the Department's information, the Navy Department will proceed, in accordance with General Butler's plan as modified by Admiral Bristol, with the reduction of forces.

KELLOGG

893.0146/84 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 5, 1928—6 p. m.

[Received October 5—11:40 a. m.]

749. Following telegram to commander in chief repeated for your information:

"October 5, 3 p. m. I have consulted the American consul general at Shanghai as to the necessity for the continued presence of the marines now at that port. Cunningham feels some apprehension concerning the possibility of disturbances arising from the observance of October 10th for which somewhat elaborate plans have apparently been made. Barring any untoward incident in this connection creating a new situation he felt that the marines might be reduced by approximately one-half their present strength.

I concur in this view and hope that conditions may continue to develop so that the balance of the marines at Shanghai may also be withdrawn in the next few months. With a view, however, to meeting any possible future emergency, I suggest that such disposition of the marine forces may be made as would permit of suitable contingents being readily available for China service if needed on short notice."

MACMURRAY

893.0146/86 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 12, 1928—6 p. m.

[Received 9:20 p. m.⁹⁰]

768. Legation's 749, October 5, 3 [6] p. m.

1. Following from commander in chief:

"0010. Reference your October 5, 3 p. m. Providing the celebration on the 10th passes without incident, I propose, in accordance

⁹⁰ Telegram in two sections.

with your recommendations and suggestions, to forward the following despatch to the Navy Department:

'In accordance with the following despatch received from the American Minister (your October 5, 3 p. m.), I propose with the approval of the Department to take two companies of marines, about one hundred and fifty men from the Fourth Regiment at Shanghai and embark them on light-cruiser division 2 for temporary transfer to Olongapo where they will be disembarked. This will give these men a change of scenery and exercise. They will also be utilized as coaches for the fleet in the coming small-arms exercises at the rifle range. If an emergency arises these companies can be returned to Shanghai or to any other part of China on very short notice and in the quickest possible time by light-cruiser division 2.'

Will you inform me if the above quittance of the marine force at Shanghai is in agreement with your views. It is also desired that commanding general of the Third Brigade comment on the above. 2020."

2. Following from Legation to commander in chief:

"October 11, 8 p. m. Your 0010-1020 [2020]. Your proposal to retire two companies from Fourth Regiment at Shanghai by light-cruiser division 8 [2?] to Olongapo is in line with the considerations which I had in mind in my despatch October 5. 3 p. m."

3. Headquarters of Third Brigade states that "General Butler approves."

MACMURRAY

893.0146/88 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, November 1, 1928—11 a. m.

[Received 3:10 p. m.]

805. My 558, July 23 [22], 10 a. m.

1. The commander in chief has sent me a telegram in which he requests my views concerning his contemplated recommendation that in his judgment the present is an opportune time for commencing to withdraw all the marines from Tientsin, the departure of the first detachment to be at the end of November and the remaining detachment to leave next January, to be followed, if conditions in China justify, by the withdrawal from Shanghai of the Fourth Regiment.

2. My reply to this is as follows:

"November 1, 11 a. m. Your communication 0025-2300. It is probably unnecessary, considering the conversations which we had last May and September, for me to discuss in detail at this time the several matters of opinion and of fact set forth in your message in regard to which we have agreed very frankly to disagree. My attitude toward this question, as you are aware, is that the maintenance of forces at Tientsin is essential because that is the only practicable place in North China at which the protection of American

citizens will be enforced in case of need, in pursuance of the policy of the administration adopted when the Third Brigade was detailed there. I have no intimation that this policy of our Government is to be reversed. Unless it is to be reversed, this policy can be enforced only by the maintenance at Tientsin of forces sufficient to cope with any peril to Americans which may be prudently and reasonably anticipated. In the present disturbed conditions, the character of the danger to be guarded against does not reasonably include any hostile action of an organized nature against foreigners. That which may be apprehended reasonably is a condition of local disturbance in which American lives and property might be endangered by unorganized soldiers or riotous mobs who are tempted to violence. The surest precaution against such a contingency is an adequate defensive force. The precautionary value of any such force is in direct relationship to the effectiveness and strength it could exercise in achieving the purpose in view. Of course, the minimum strength of the force necessary from time to time for this precautionary purpose depends upon the political situation and upon the temper of the Chinese people. It was because of an improvement in the latter respect that, somewhat doubtfully, I assented last July to the reduction at Tientsin of the marine forces. The Legation has not observed that the situation since that time has stabilized sufficiently as to justify, in my opinion, any additional reduction of those forces. As for my part, I could not acquiesce in a further reduction at present without feeling that I was gambling with the responsibilities which rest upon me in regard to the protection in North China of American citizens. Moreover, until we have observed the developments between the present time and next spring, it is my opinion that we cannot be in a position to decide whether there has been a sufficient stabilization in the political conditions in China to justify our withdrawal of the marines from Tientsin.

The situation at Shanghai, meanwhile, appears to me to be such as to justify a further reduction of the Fourth Regiment, as recommended in my telegram of October 5, 3 p. m."

MACMURRAY

S93.0146/89 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, November 5, 1928—9 p. m.

[Received November 5—6:15 p. m.]

810. Legation's 805, November 1, 11 a. m.

1. The telegram quoted below has been received from the commander in chief of the Asiatic Fleet:

"0007. The day after I sent to you my 0025-2300, the following cable was received from the Navy Department:

'Your recommendations are requested by the Department in regard to the reduction by one thousand men, more or less, of the forces on shore in China, the U. S. S. *Chaumont* to transport the troops on her return trip late in November.'

The following reply was sent by me:

'Your 1325-1446 was received by me the day after I had communicated to the American Minister by telegraph a request for his views concerning a comprehensive plan for withdrawing the troops on shore in China. In general it is contemplated by the plan that the artillery and aviation detachment and engineers will be sent home on the U. S. S. *Chaumont*. The brigade headquarters and the Sixth Regiment would be left to return home on the U. S. S. *Henderson* in January. I will submit to the Department my recommendations as soon as I receive a reply from the Minister.'

I agree with you that in the matter of maintaining at Tientsin our marine forces there is a frank disagreement between us, and following the conversations which we had last May and September there is no need for us to discuss it further. As you are aware, it is required that I keep the Navy Department constantly and fully informed as to the use of naval forces under my command for ensuring that the lives and property of American citizens will be protected. It is necessary that this be done so that our Government may be assured that its policy is being carried out by me. It is my intention, therefore, to repeat to the Navy Department the messages on the subject which we have exchanged, together with the recommendations following:

'After a final review of the entire question I recommend:

- (1) That the marines on shore in China be gradually withdrawn;
- (2) That, considering the tactical and strategic location of Shanghai as well as the section still recognized as the International Settlement, it is the best location for any forces which remain on shore in China, and that the Fourth Regiment be maintained in that city at capacity of strength of two battalions and that they be the last troops to be withdrawn;
- (3) That the Legation guard be maintained for the present at a strength of 500;
- (4) That the first withdrawal be made from Tientsin this month on the U. S. S. *Chaumont*, the remainder of the troops in Tientsin to be withdrawn in January on the U. S. S. *Henderson*.
- (5) As to the Minister's fears in regard to mobs of an unorganized soldierly and riotous nature, it may be conceded that throughout China the temptation to violence is latent. Protection of the lives and property of American citizens in China will be extended to all places accessible to landing parties of vessels of the fleet, and, if necessary, such protection will be made effective by landing parties from the Fourth Regiment.'

I will [await] your reply before transmitting my message to the Navy Department. 1700."

2. I have sent him today the following reply:

"November 5, 9 p. m. Your 0003[0007]-1700 has been received. It is quite agreeable to me that each of us proceed to communicate to our respective departments the correspondence with our several recommendations.

Considering the fifth point of your recommendations, interpreted by me in the light of statements which you made to me during our conversations that marine forces would not have been sent by you to Tientsin and that you would not do so in the future, the following comment is being submitted by me to the Department of State:

Except for Chefoo and Tsingtao, which would have a limited local utility as havens of refuge for Americans in eastern Shantung, there is not in North China any port accessible to vessels of the fleet which would be physically adequate or would be recommended

as a refuge or place of concentration for Americans forced to leave the interior. Thus, in practice, a determination not to give protection by maintaining marine forces at Tientsin would nullify, so far as the Asiatic Fleet is concerned, the aim of our Government to maintain such a place of refuge north of the Yangtze River for Americans who again might be compelled to seek protection in the event, altogether possible, of a recurrence of communistic or other antiforeign influences aggravating that inclination toward violence which is latent throughout China. It is recommended by me, therefore, that until the political situation reaches a measure of stabilization which warrants a reconsideration, the marine forces in Tientsin be retained at substantially their present strength."

MACMURRAY

893.0146/89

*Memorandum by the Assistant Secretary of State (Johnson)*⁹¹

[WASHINGTON,] November 8, 1928.

1. There is an issue here not with regard to the question of withdrawing another contingent of our armed forces from China, but with regard to the place from which the next withdrawal shall be made.

2. Both our Minister at Peking and the Commander-in-Chief of the Asiatic Fleet agree that reduction of the marine forces on land in China is at the present moment feasible. The Minister and the Commander-in-Chief differ in their views in that the Minister believes that the force located at present at Tientsin should be retained for the present, and the reduction should be made from the force at Shanghai. The Commander-in-Chief wishes to withdraw the force from Tientsin and leave a force at Shanghai.

3. The Commander-in-Chief is apparently considering his problem as a naval problem, and regards Shanghai as a better base than Tientsin. The Minister is looking at the problem from the point of view of the protection of the Legation and American citizens at Peking, the force at Tientsin being there in part for that purpose.

4. Inasmuch as the Minister has the greater responsibility, and as the problem of insuring the safety of the Legation and American citizens at Peking is necessarily, among problems of protection, of relatively greater concern to him than to the Commander-in-Chief, it is the feeling of the officers of the Department who are concerned primarily with Far Eastern affairs that, in an issue of this sort, the views of the Minister should prevail.

5. It should be especially noted that whichever way the matter is decided, an equal number of marines can be withdrawn, and from the point of view of American policy, the credit which accrues will

⁹¹ This paper bears the notation: "Memorandum for Cabinet."

be the same and the number of men made available for use elsewhere will be the same.

N[ELSON] T. J[OHNSON]

893.0146/89 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, November 9, 1928—1 p. m.

374. Your telegram No. 810, November 5, 9 p. m. It is understood by the Department that the reduction of the number of marines is to be gradual; that at the present time it is proposed to withdraw from Tientsin 300 men; and that before any further reduction is made the entire matter in regard to the place from which additional men will be taken, will be reconsidered.

KELLOGG

SATISFACTION OF THE DEPARTMENT OF STATE WITH THE SERVICES OF UNITED STATES ARMY FORCES AND AGENCIES IN CHINA

124.9318/128 : Telegram

The Secretary of State to the Chargé in China (Perkins)

[Paraphrase]

WASHINGTON, September 13, 1928—noon.

311. It is the desire of the War Department to have a report as to whether, from the point of view of the Minister, the troops and agencies of the United States Army in China have fulfilled the expectations of, and been satisfactory to, the Department of State. It is requested that the Minister prepare and transmit such a report, as soon as he returns from leave.

KELLOGG

124.9318/129

The Minister in China (MacMurray) to the Secretary of State

No. 1679

PEKING, September 27, 1928.

[Received November 12.]

SIR: Replying to the Department's confidential telegram No. 311, of September 13th, I have the honor to report that in my opinion the services of the United States Army Forces in China have been altogether satisfactory from the viewpoint of the Department of State.

Throughout the considerable period during which the 15th Infan-

try has been on duty in North China, its discipline has been admirably maintained, and the conduct of the command has been exemplary; the Regiment has not only avoided making its presence conspicuous in a way that would be undesirable in view of the circumstances, but it has kept up very friendly relations with the Chinese officials and people, and (largely through the care devoted to having the men learn to understand and speak some elementary colloquial Chinese) it has been notably successful in minimizing encounters and misunderstandings with the people of the country.

During the past year or so, the fine spirit of the Regiment has been manifested by the way in which they have behaved with regard to the coming to Tientsin of the 3rd Brigade of the United States Marine Corps. While theoretically there is no occasion for jealousy or friction between two of the forces of the United States Government, it is of course a fact of human nature that antagonisms between different military organizations are likely to occur, and indeed difficult to prevent; and in this case it would not have been hard to understand if the Infantry, which had long been the sole American force in Tientsin, had felt an aggrieved sense of being relegated to a position of inferiority by the coming of a very much larger force of Marines. I consider that great credit is reflected upon the spirit and discipline of the Army force—as also upon that of the Marine Brigade—by the almost complete absence of any friction or ill-feeling between them: both forces have done their duty, and worked heartily in cooperation, in a way in which I feel we can justifiably take great pride.

As regards the cooperation of the United States Army Forces with the Legation, I am happy to record my appreciation of the way in which both of the Generals commanding these forces during my term as Minister have lived fully and loyally up to the spirit of the War Department's communication of November 21, 1922 to the Department of State⁹² (see Department's instruction No. 268, December 1, 1922,⁹³ file No. 124.9318/95). To an extent greater than was foreseen by the correspondence cited, recent events in China have involved political or diplomatic issues with the military problems confronting our armed forces in this country: and there have been repeated occasions in which urgent considerations of policy have had to override what would have been the natural and spontaneous judgment of a commander governed solely by the desire to meet most effectively and with a minimum of risk a purely military situation; and on such occasions the Legation might have been embarrassed, if

⁹² *Foreign Relations*, 1922, vol. I, p. 873.

⁹³ Not printed.

indeed the policy of our Government were not frustrated, had there not been on the part of our military authorities a whole-hearted and ungrudging readiness to be guided by the judgment of the Minister to the fullest extent compatible with their military responsibility. . . . I have always found on the part of General Connor⁹⁴ and of General Castner⁹⁵ the most complete and sympathetic cooperation in the carrying out of the Legation's views, even under circumstances in which I fully realized that they were consciously conceding something from strict military doctrine.

I trust that this despatch adequately replies to the inquiry made, in behalf of the War Department, for reasons which I have no means of surmising; and should it not do so, I should be happy to supplement it upon receiving further indications of the nature of the opinions desired.

Although it may be inadvisable to reveal the fact that the inquiry was made, I feel so strongly and so enthusiastically appreciative of the services of the United States Army Forces in China that I venture to suggest that the War Department might see fit to communicate the substance of it to the Commanding General of the Forces. . . .

I have [etc.]

J. V. A. MACMURRAY

124.9318/129

The Secretary of State to the Secretary of War

WASHINGTON, November 20, 1928.

SIR: I have the honor to refer to your letter of September 6, 1928,⁹⁶ requesting to be informed whether the troops and agencies of the United States Army in China have been satisfactory to this Department from the point of view of the American Minister to China, and the Department's reply of September 20, 1928,⁹⁶ stating that the American Minister had been instructed to prepare a report on this subject. I now have the honor to transmit herewith a copy of the latter's confidential despatch No. 1679 dated September 27, 1928, in which he sets forth his appreciation of the cooperation rendered him by the forces of the United States Army in China. I may add that this Department shares entirely the views expressed by Mr. MacMurray, and I trust that you may see fit to communicate to the Commander of those forces the substance of the Minister's statement

⁹⁴ Brig. Gen. William D. Connor, commanding U. S. Army forces in China, April 13, 1923, to May 15, 1926.

⁹⁵ Brig. Gen. Joseph C. Castner, commanding U. S. Army forces in China, May 15, 1926, to March 17, 1929, when the status of this force as a separate command was terminated.

⁹⁶ Not printed.

of appreciation in the manner indicated in the final paragraph of his despatch.

I have [etc.]

FRANK B. KELLOGG

AGREEMENT BETWEEN THE UNITED STATES AND CHINA IN SETTLEMENT OF THE NANKING INCIDENT OF MARCH 24, 1927, AND THE REOPENING OF THE CONSULATE AT NANKING"

702.9493/55 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase—Extract]

PEKING, *January 14, 1928—11 a. m.*

[Received January 14—11:05 a. m.]

28.

7. It is my continued hope that events may shape themselves in such a way that I may find it expedient in the near future (some-time in February would be suitable) to go to Shanghai, at which time every effort will be made by me to effect a satisfactory settlement of the Nanking outrages. . . .

8. Copy sent to Tokio by mail.

MACMURRAY

898.00 Nanking/233 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

SHANGHAI, *February 29, 1928—5 p. m.*

[Received February 29—11 a. m.]

1. General Huang Fu, who assumed office on the 22nd as Minister for Foreign Affairs of the Nationalist Government at Nanking, came here, I understand, for the purpose of establishing contact with me (see Shanghai's February 28, noon,⁹⁸ in regard to his declaration of policy in the form of an interview given to the Kuo Min Agency on the occasion of his assumption of office). I called by appointment on General Huang Fu on February 26th, the day after my arrival here.

2. An invitation was immediately extended to me by him to be the guest of the Nanking authorities during my trip up the river, but I stated that for reasons which it was unnecessary to explain I regretted that it would be impossible for me to accept. When

⁹⁷ For previous correspondence concerning the Nanking incident, see *Foreign Relations*, 1927, vol. II, pp. 146 ff.

⁹⁸ *Post*, p. 406.

he pressed me for an explanation of my reasons, I reminded him that the Nanking outrages remain unsettled; that nothing has been done as yet by the Nationalist authorities to change the underlying conditions brought about by the Nanking outrages, since, even to the present day, the consulate and its archives were being despoiled gradually by the soldiers who were nominally commissioned to guard it; and that the properties of our citizens are subjected constantly to depredations, and those of our citizens who have returned are not free to live their normal lives in safety or to do their normal work.

3. There was no dissent on his part from this statement of conditions nor from the implication that under such circumstances I could not be expected to call at Nanking, but the Nationalist regime, he insisted, had altered completely since then and was now in a position and was anxious to assume entire responsibility and to reach a just settlement for the outrages. He was informed by me that I should be glad to consider any wholehearted proposals for a settlement which he might have to present to me, either now or when I returned from upriver. The sympathy of our Government toward the Chinese, as shown at the Paris,⁹⁹ Washington,¹ and Peking² conferences, was recalled by him, and he requested that the same spirit be shown by us in the present case in the negotiations for a settlement. He was assured by me that our Government would be actuated by equal good will, but that it should be borne in mind, in order to avoid any possible misunderstanding, that it had been the policy of our Government in the conferences referred to by him to champion the rights of China, whereas the vindication of the offended rights and interests of the American Government and its nationals was the necessary purpose in any negotiations regarding the Nanking outrages; it was added by me that although we did not desire to be either harsh or vindictive we would expect to be met not in a quibbling spirit but with a sincerity and spontaneity such as would warrant a belief in their good faith and would give us confidence that the outrages were wholly repudiated by them and that reliance could be placed in them to protect us from any recurrence of the events of last March. Acquiescing in what I had said, he voiced the hope that it would be possible for him to offer terms of settlement satisfactory to us.

4. He professed an anxiety to proceed as soon as possible to a settlement of the matter and he inquired whether, pending my re-

⁹⁹ Paris Peace Conference, 1919.

¹ Conference on the Limitation of Armament, Washington, Nov. 12, 1921, to Feb. 6, 1922. See *Foreign Relations*, 1922, vol. i, pp. 1 ff.

² The Special Conference on the Chinese Customs Tariff, Peking, Oct. 26, 1925, to July 3, 1926. See *ibid.*, 1926, vol. i, pp. 743 ff.

turn from upriver, a representative would not be appointed by me to deal with the preliminary stages of the negotiations. I told him that Consul General Cunningham³ was authorized, of course, to speak for me and that Cunningham would be almost continuously in the meanwhile in communication with me. On the following day when returning my call, Huang stated that for the purpose of preliminary negotiations here he would appoint a representative. Indirectly he gave me to understand that this representative would not be Quo Tai-chi, the Commissioner of Foreign Affairs who had acted in behalf of Huang[']s predecessor. The hope was expressed by him that he would be in a position, upon my return to Shanghai, to reach a settlement with me as a result of such preliminary discussions. Meanwhile, through an intermediary, he communicated to me his intention of carrying on negotiations simultaneously, but separately, with the Japanese and British consuls general here.

5. Cunningham, who has been in attendance during these interviews with Huang, has been requested to represent me in the preliminary discussions and to communicate at once both to me and to the Legation for comment and for repetition to the Department any proposals offered in behalf of Huang. It is recommended that Cunningham be given authorization, whenever any proposals shall have been offered, to call Paxton⁴ to Shanghai for consultation (with customary allowances for per diem and expenses).

6. A most satisfactory disposition toward prompt settlement on terms both fair and honorable was demonstrated by Huang, but I have no desire to give you an overoptimistic idea as to the possibilities for a settlement along the lines desired. Any such possibilities are dependent, for the present, upon Huang, a newcomer and, as far as the Kuomintang organization is concerned, an outsider. Huang's appointment is resented bitterly by a number of the most influential and the ablest members of the regime at Nanking. There is intense personal jealousy toward him and he is regarded with what appears to be a definite suspicion that a reactionary role is being played by him in the hope that an alliance between Chiang Kai-shek⁵ and the Northerners may be effected against Feng Yushiang,⁶ his former chief, with whom he has since become estranged. Aside from any question concerning the precarious situation of the Nanking regime itself there is very serious cause for doubt as to whether Huang can last more than momentarily, or whether any

³ Edwin S. Cunningham, consul general at Shanghai.

⁴ J. Hall Paxton, vice consul in charge at Nanking, temporarily at Chinkiang.

⁵ Commander in chief of the Chinese Nationalist armies; member, Kuomintang Central Executive Committee.

⁶ Formerly defense commissioner of Northwest Territory, retired in 1926 to sojourn in Moscow, returned to China in 1927, and in 1928 joined forces with the Nationalists.

settlement he may negotiate while he does hold office can meet with Nanking's approval, or whether he will be permitted even to reach any such arrangement with us as that which he seems to have in mind. My only hope is that the steps which I have taken up to this time and those which I propose to take are those most reasonably probable to result in the desired satisfactory settlement.

7. This telegram communicated to Peking.

MACMURRAY

893.00 Nanking/234 : Telegram

The Consul General at Shanghai (Cunningham) to the Secretary of State

SHANGHAI, March 13, 1928—2 p. m.

[Received 8:10 p. m.]

Following telegram has been received from the Minister:

"March 12, 8 p. m. Your telegram of March 9, 5 p. m.

1. I am deeply disappointed that although, in our conversation in Shanghai, Huang gave assurances of his intention to offer terms wholeheartedly making atonement for the wrongs done at Nanking to the American Government and its citizens (in substitution for the inadequate and [niggling] proposals hitherto made in behalf of the Nationalist Government), what he now proposes not only is actually less satisfactory [in substance] than previous proposals, but demonstrates even less disposition to make honorable amends. The [particularity] with which the expressions of regret are limited to [the] material damages and personal injuries inflicted seems conspicuously to imply an unwillingness to acknowledge or to reprobate the [fundamental] fact that acts of hostility were committed against the [flag and against the] person of the official representative of the United States and against its citizens. But an even more vital objection to the present relations [*proposal*] is its [unwarranted] assertion of a grievance against the American Government for the action taken by its war vessels under stress of dire necessity to save our consul and others from imminent massacre. The making of a claim so base[less] and so preposterous under the known circumstances cannot but impugn the good faith with which the present propositions [*proposals*] are submitted.

2. You will please express to Huang (preferably in conversation with him, but if necessary through Wood⁷) my disappointment that he has submitted a proposal which I cannot be expected even to discuss, in a form that embodies the wholly unwarranted attempt to charge us with a share of the blame for the outrages at Nanking, in such terms as would make it appear that we had more to regret and be ashamed of than the Nationalist regime [whose forces] committed the outrages.

3. I should appreciate any light you may be able to throw upon Huang's *volte-face* and his apparently deliberate insistence upon a

⁷ G. Zay Wood, who represented Huang Fu in conversations.

point which he well knew we could not consider. Has he, in the fear [face] of factional opposition, found himself unable to carry out his own policy of conciliation in this matter [and] therefore tried to [save face] by bringing the discussion to a close with a gesture of defiance?

4. Please repeat to Department and to the Legation.

MacMurray"

CUNNINGHAM

893.00 Nanking/236 : Telegram

The Secretary of State to the Chargé in China (Mayer)

[Paraphrase]

WASHINGTON, March 20, 1928—5 p.m.

99. The following is for the Minister: Paragraph 2 of the Minister's February 29, 5 p.m.

1. Your decision not to land at Nanking is approved by the Department but it is suggested that, without prior announcement, you might find it advisable to delay at Nanking long enough for Paxton and Bucknell⁸ or some other qualified person to make a cursory investigation as to the condition of American property, the consulate included, thus affording official information for later use by you. You may follow your own discretion in this regard.

2. Bulletins in regard to your observations and your movements would be appreciated by the Department if radio connections make this practicable.

KELLOGG

493.11 N 15/122 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 23, 1928—6 p.m.

[Received March 23—1 p.m.⁹]

183. 1. Following from American consul general at Shanghai:

"March 13, 4 p. m. Nanking Minister of Foreign Affairs urges that he be informed of the approximate total amount of reparations to be demanded on behalf of the United States Government and citizens who suffered in the Nanking outrages. Paxton states that only Department can supply full information. Please telegraph total with authority to furnish it to Minister during conversations.

(2) Nanking authorities are prepared to recognize consular claims as preferred and pay soon after signing agreement. Please instruct what attitude should be taken in the conversations. The British do not consider consular claims as preferred. In the tentative agreement they have divided the claims into personal and property losses, consular claims falling in the second class."

⁸ Howard Bucknell, Jr., third secretary of Legation in China.

⁹ Telegram in two sections.

2. In my reply of March 15, 3 p. m., I stated in part as follows:

"I suppose that unless he has already done so, Paxton should suggest to the Minister that he, Paxton, ascertain and inform the Department amount of losses suffered by consular Chinese staff at consulate and request its authorization to include such claims."

3. Cunningham's telegram was also repeated to Minister March 15, 3 p. m., with *inter alia* the following comments:

(a) Lampson¹⁰ has told Davis¹¹ that British Government reimbursed its consular officers many months ago;

(b) I suggest that Department be asked to ascertain from each missionary board affected total approximate claims which it desires presented for mission-owned property, since some may not wish to ask for compensation, and that Department be requested to place the valuation upon officially owned furniture and equipment lost at consulate;

(c) Exclusive of consular claims, claims of American individuals and organizations of which Legation has record, amount approximately to Mexican dollars 580,000 and gold dollars 146,000.

4. The Department's instructions are respectfully requested in regard to second paragraph of Cunningham's telegram.

MAYER

893.00 Nanking/235 : Telegram

The Minister in China (MacMurray) to the Secretary of State

U. S. S. "GUAM", via Naval Radio (PEKING),

March 23, 1928—5 p. m.

[Received March 23—1 p. m.]

Your telegram No. 99, March 20, 5 p. m.

1. In pursuance of the discretion accorded me, I propose not to have any officers visit Nanking at this time lest by so doing I should compromise the aloofness which has proved a definite asset in the negotiations for a settlement of the case.

2. My telegram No. 40, February 27, 10 a. m.¹² I am directing Paxton to proceed with me to Shanghai. I request for him same per diem.

3. I am proceeding down river by naval vessel due at Shanghai, March 26th, and unless detained longer by the Nanking negotiations shall sail from there on or about the 31st by destroyer to Tangku.

4. I beg to withhold comment upon the situation in the Yangtze Valley until I shall have completed my observations at Shanghai.

MACMURRAY

¹⁰ Sir Miles W. Lampson, British Minister in China.

¹¹ John K. Davis, first secretary of Legation in China.

¹² Not printed.

893.00 Nanking/237 : Telegram

The Acting Secretary of State to the Chargé in China (Mayer)

WASHINGTON, March 24, 1928—6 p. m.

106. Following for Minister. Your March 23, 5 p. m.

1. Department's information regarding possibility of effecting a settlement of Nanking incident includes

(a) Reported announcement by Huang Fu of willingness to settle outstanding issues (Cunningham's telegram 42, February 28, Noon¹⁸) and similar declaration to you. (Your telegram February 29, 5 p. m.)

(b) Press telegram from Shanghai March 19 referring to declaration by Huang Fu that the Nationalist Government is anxious to make reparation for Nanking losses and that discussions are in progress with British Minister for the purpose of establishing precedent for settlement of American and other claims.

(c) Telegram March 13, 4 p. m., Cunningham to Legation reported to the Department in the Legation's telegram 183, March 23, 6 p. m., in part confirms (b) by referring to "tentative agreement" between British and the Nanking authorities regarding claims for reparations and also to inquiries made by Huang Fu as to amounts of American official and unofficial losses.

2. Your telegram March 12, 8 p. m., to Cunningham repeated to Department in the latter's March 13, 2 p. m., gives no clue to acceptable features in the proposals made by Nanking authorities. Is it to be assumed that there was no item which might be made a starting point for profitable discussion?

3. You will bear in mind the Department's hope that the issues involved may be disposed of and its desire that the negotiations proceed as rapidly as circumstances warrant.

4. Department requests information concerning alleged tentative agreement between British and Nanking authorities.

5. Paxton may proceed with you and per diem authorized.

OLDS

893.00 Nanking/238 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 27, 1928—1 p. m.

[Received March 27—9:30 a. m.]

187. Following from Shanghai:

"March 26, 11 a. m. Sir Miles Lampson left for Peking, March 25th, without going to Nanking and without reaching an agreement regarding settlement of the Nanking outrage."

MAYER

¹⁸ *Post*, p. 406.

893.00 Nanking/242 : Telegram

The Minister in China (MacMurray) to the Secretary of State

SHANGHAI, March 28, 1928—11 a. m.

[Received March 28—1:10 a. m.]

Your telegram of March 24, 6 p. m., through the Legation.

1. Tentative agreement between British Minister and General Huang referred to in 1 (c) of your telegram was rejected by the British Government; and, after attempting for some days to find new basis of agreement, British Minister abandoned negotiations and left for Peking March 25th.

2. Although considerable very useful preliminary work has been done by Cunningham and Paxton, the whole matter of a settlement still remains nebulous. Huang is now in Nanking, but I have reason to hope he will return shortly for the purpose of direct discussion with me.

3. I shall continue to be guided by the Department's desires in this matter as discussed with you last autumn and as referred to in your fourth [*third?*] paragraph.

4. Repeated to Peking.

MACMURRAY

893.00 Nanking/243 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

SHANGHAI, March 30, 1928—3 p. m.

[Received March 30—6:50 a. m.]

Referring to my cables of February 29, 5 p. m. and March 28, 11 a. m.

1. An agreement for the settlement of the Nanking incident has been reached by me with Huang Fu in accordance with the terms authorized by your memorandum of November 4 [3]¹⁴ and oral instructions. As soon as possible the texts and comments will be cabled. Until the details in regard to publicity can be arranged, the fact of agreement is to remain secret at Huang's request.

2. This cable communicated to Legation.

MACMURRAY

¹⁴ *Foreign Relations*, 1927, vol. II, p. 232.

893.00 Nanking/244 : Telegram

The Minister in China (MacMurray) to the Secretary of State

SHANGHAI, March 30, 1928—8 p. m.

[Received March 30—7:57 p. m.]

Supplementing my telegram March 30, 3 p. m.

1. The documents constituting the settlement of the Nanking incident consist of three third-person notes addressed to me as "American Minister to China" by Hwang and my replies thereto in the same form addressed to him as "Minister for Foreign Affairs, Nanking." Each is to be signed and sealed by the sender.¹⁵ The following are the texts of my replies which sufficiently indicate texts or tenor of his notes:

(a) "The American Minister has the honor to acknowledge the receipt of the note of this day's date from the Minister for Foreign Affairs, which reads as follows:

"With reference to the Nanking incident which took place on the 24th of March last year, the Minister for Foreign Affairs of the Nationalist Government has the honor to inform the American Minister that, animated by a desire to promote the most friendly feelings happily subsisting between the American and Chinese peoples, the Nationalist Government are prepared to bring about an immediate settlement of the case, along the lines already agreed upon as a result of the discussions between us beginning from the 26th February this year.

In the name of the Nationalist Government, the Minister for Foreign Affairs has the honor to convey in the sincerest manner to the Government of the United States of America their profound regret at the indignities to the American flag and to official representatives of that Government, the loss of property sustained by the American consulate, and the personal injuries and material damages done to the American residents. Although it has been found, after investigation of the incident, that it was entirely instigated by the Communists prior to the establishment of the Nationalist Government at Nanking, the Nationalist Government nevertheless accepts the responsibility therefor.

The Nationalist Government have in pursuance of their established policy, repeatedly issued orders to the civil and military authorities for the continuous and effective protection of the lives and property of American residents in China. With the extermination of the Communists and their evil influences which tended to impair the friendly relations between the Chinese and American peoples, the Nationalist Government feel confident that the task of protecting foreigners will henceforth be rendered easier; and the Nationalist Government undertake specifically that there will be no similar violence or agitation against American lives or legitimate interests.

In this connection, the Minister for Foreign Affairs has the pleasure to add that the troops of the particular division which took part in the unfortunate incident, at the instigation of the Communists, have been disbanded. The Nationalist Government have in addition taken effective steps for the punishment of the soldiers and other persons implicated.

In accordance with the well-accepted principles of international law, the Nationalist Government undertake to make compensation in full for all personal injuries and material damages done to the American consulate and to its officials and to American residents and their property at Nanking.

The Nationalist Government propose that for this purpose there be a Sino-American Joint Commission to verify the actual injuries and damages suffered by the American residents at the hands of the Chinese concerned, and to assess the amount of compensation due in each case."

¹⁵ The notes were signed and sealed Mar. 30, 1928.

In the full realization of the inherent justice and honor of the Chinese people when not affected by the incitations of subversive influences, and with a deep appreciation of the sorrow and humiliation caused to all elements of that people by the Nanking incident, and believing that the earnest given as to the punishment of those guilty of the incident will be completely fulfilled at the earliest opportunity—particularly as regards Lin Tsu-han, who was personally responsible for the incident—the American Minister accepts in behalf of his Government the terms set forth in the note from the Minister for Foreign Affairs in definite settlement of the questions arising out of that incident.

Confident of the spirit of sincerity in which the present settlement has been made, the American Government looks to the loyal fulfillment of the said terms of settlement, as affording a measure of the good faith and good will with which it may anticipate being met, by the Nanking authorities, in other phases of the relationships between the American and the Chinese peoples.”

(b) “The American Minister has the honor to acknowledge the receipt of a note of today’s date from the Minister for Foreign Affairs,^{15a} in which reference was made to the fact that on March 24, 1927, the American war vessels, *Noa* and *Preston*, then lying in port, opened fire upon Standard Oil Company hill at Nanking, and in which the hope was expressed that the American Government would indicate their regret at this action. In reply, the American Minister has to point out that the [act] referred to was in fact a protective barrage, strictly confined to the immediate neighborhood of the house in which the American consul and his family and staff, together with many others, had been driven to seek refuge from the assaults of an unrestrained soldiery; and not only did it provide the only conceivable means by which the lives of this party were saved from the danger that immediately threatened them, but it also made possible the evacuation of the other Americans residing at Nanking, who were in actual peril of their lives. The American Government therefore feels that its naval vessels had no alternative to the action taken, however deeply it deplores that circumstances beyond its control should have necessitated the adoption of such measures for the protection of the lives of its citizens at Nanking.”]

(c) “The American Minister has the honor to acknowledge the receipt of a note of today’s date^{15a} in which the Minister for Foreign Affairs expressed the hope that a new epoch would begin in the diplomatic relations between the United States and China and that further steps might be taken for the revision of the existing treaties and the readjustment of outstanding questions on the basis of equality and mutual respect for territorial sovereignty.

Although the questions of treaty revision can scarcely be considered germane to that of amends to the American Government and its nationals for the Nanking incident, the American Minister is not averse [to] setting forth at this time what he has already made known in that regard to the Minister for Foreign Affairs in conversations with him last month.

It is unnecessary to recall the traditional friendship existing between the United States and China. As is manifest alike from the

^{15a} See telegram of April 3, 1928, from the consul general at Shanghai, p. 337.

course of action consistently pursued by the American Government and from the statement of policy made by the Secretary of State on January 27, 1927, the Government and the people of the United States are in full sympathy with the desire of the Chinese people to develop a sound national life of their own and to realize their aspirations for a sovereignty so far as possible unrestricted by obligations of an exceptional character. With that in view, the American Government entertains the hope that the remedying of the conditions which necessitated the incorporation of such provisions in the earlier treaties may from time to time afford opportunities for the revision, in due form and by mutual consent, of such treaty stipulations as may have become unnecessary or inappropriate.

To that end, the American Government looks forward to the hope that there may be developed an administration so far representative of the Chinese people, and so far exercising real authority, as to be capable of assuring the actual fulfillment in good faith of any obligations such as China would of necessity have for its part to undertake incidentally to the desired readjustment of treaty relations."

2. There is in addition a memorandum being prepared with regard to functioning of the joint commission to be instituted, in pursuance of concluding paragraph of his final note. Text will be forwarded when formulated.¹⁶ While orally promising that a sum Mexican dollars one hundred thousand will be made available within one month as a first installment towards compensation for American losses, Hwang declares himself utterly unable for the present to make any promise as to the amounts or the frequency of subsequent installments, giving only the general assurance that Nanking regime will exert itself to the utmost to pay off the claims. In pursuance of your instructions I took the attitude that we were not in a position to exact particular terms of payment but must look to the good faith and honor of the "Nationalist Government" for the loyal fulfillment of the obligations assumed.

3. Repeated to the Legation.

MACMURRAY

893.00 Nanking/246 : Telegram

*The Secretary of State to the Consul General at Shanghai
(Cunningham)*

[Paraphrase]

WASHINGTON, March 31, 1928—1 p. m.

For the Minister: Minister's telegrams March 30, 3 p. m. and 8 p. m.

1. Very much gratified, the Department extends to you congratulations upon successful outcome of your efforts.

¹⁶ See telegram No. 260, April 23, from the Minister in China, p. 340.

2. It is assumed that you will remain temporarily in Shanghai.
3. There will be sent to you shortly the Department's comments in regard to the proposed notes and replies.

KELLOGG

893.00 Nanking/248 : Telegram

The Minister in China (McMurray) to the Secretary of State

[Paraphrase]

SHANGHAI, March 31, 1928—8 p. m.

[Received March 31—10:55 a. m.]

Supplemental to my March 30, 3 p. m., and my March 30, 8 p. m.

1. During my absence from Shanghai, preliminary discussions were carried on by Cunningham and Paxton with G. Zay Wood, who represented General Huang Fu (see my telegram February 29, 5 p. m., paragraphs 4 and 5). In the course of these preliminary discussions Wood not only attempted to pursue the bargaining procedure and brought into the discussions matters of concession made by the British and Japanese during their respective negotiations in regard to this matter, but also he confused the discussions further by presenting or suggesting points of an alternative nature as to which there was doubt regarding the degree of his authority. Therefore, I found upon my return to Shanghai, March 25, that the entire basis for negotiations with Huang was quite indefinite, despite the effective and very able work done on our behalf.

2. Huang's prestige, meanwhile, had been impaired by the British Government's rejection of the arrangement which the British Minister had already initialed, and in order to make amends for this impairment of his influence Huang had gone to Nanking. Clearly he feared to take the risk of coming to Shanghai for negotiations with me unless he was convinced of my readiness to reach with him an agreement which, from a political viewpoint, would be possible for him to accept. He came to Shanghai, arriving the morning of the 29th, after several days of dealing through intermediaries. I met with him, by arrangement, immediately after his arrival. With the assistance of Cunningham and Bucknell I negotiated with Huang until after midnight, when agreement on all points of the settlement itself had been reached.

3. Although manifestly rather fearful lest the Nationalist sensibilities should be antagonized by him and, above all, frightened lest, as had happened in the case of the British, I should fail in the end to carry the matter to a conclusion, Huang was in a settling mood, through the force of his own political exigencies. Therefore, on the condition that the negotiations could be pressed to a conclusion prac-

tically at one sitting, there was presented the most favorable opportunity for a satisfactory settlement.

4. Yesterday evening the several notes were signed and the duplicate copies of each were actually exchanged, bearing the date Shanghai, March 30. However, both [Huang] and I hope that he may be able to make arrangements that will make it possible for me to proceed to Nanking for participation with the Chinese authorities in ceremonies incident to the raising of our flag with full honors and for a technical reopening of the consulate. He does not yet have assurance, however, that it will be possible for him to make arrangements which would be considered adequate by me or the acceptance of which he himself would advise. In case Huang is successful, I shall leave tomorrow for Nanking, with appropriate naval escort, on the flagship of the Yangtze Patrol commander. Huang is most anxious, in that event, and I have acceded to his request, that the original documents which are to be exchanged between us at that time should be dated (probably April 2) as having been concluded at Nanking.

5. As to release, there has not been as yet any arrangement.

6. This telegram communicated to Legation.

MACMURRAY

893.00 Nanking/247 : Telegram

*The Secretary of State to the Consul General at Shanghai
(Cunningham)*

WASHINGTON, March 31, 1928—6 p. m.

For the Minister. Department's March 31, 1 p. m., your March 31, 8 p. m. Notes which you have signed are satisfactory. Department has no further comments to make.

KELLOGG

893.00 Nanking/249 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

SHANGHAI, April 1, 1928—8 p. m.

[Received April 1—10:50 a. m.]

Fourth paragraph of my March 31, 8 p. m.

1. According to word received from Huang Fu, Chiang Kai-shek has departed from Nanking for the Northern front, and in his absence he has not found it possible to have the desired arrangements made

for my proposed visit to Nanking. I am compelled, therefore, with much regret, to forego that visit. I am returning to Peking, sailing on the U. S. S. *Marblehead* this afternoon for Taku.

2. Exchange of the originals of documents signed March 30 will be arranged by me before leaving, the exchange to be made through Cunningham.

3. This cable communicated to Legation.

MACMURRAY

893.00 Nanking/250 : Telegram

The Consul General at Shanghai (Cunningham) to the Secretary of State

SHANGHAI, April 2, 1928—6 p. m.

[Received April 2—9:30 a. m.]

Referring to the Minister's March 30, 3 p. m. Wood handed me from Hwang Fu signed copies of agreement; and, after verification of the accuracy of the text of the three notes, I handed him MacMurray's signed copies for delivery at 5:30 p. m. today. Publication of the agreement in China will be made April 4, after 8 a. m., and thereafter may be released for publication in the United States at 8 p. m. on April 3d.

Repeated to Legation.

CUNNINGHAM

893.00 Nanking/251 : Telegram

The Secretary of State to the Consul General at Shanghai (Cunningham)

WASHINGTON, April 2, 1928—noon.

Your April 2, 6 p. m. American press today carries complete summary of notes exchanged between MacMurray and Hwang Fu concerning Nanking incident, evidently given out by Nationalist authorities at Nanking. Department is therefore giving to the press a summary based on MacMurray's telegram of March 30, 8 p. m. Rush texts Chinese notes so that they can be given to press here. Only texts now in possession Department are those of MacMurray's notes to Hwang Fu.

KELLOGG

893.00 Nanking/252 : Telegram

The Consul General at Shanghai (Cunningham) to the Secretary of State

SHANGHAI, April 3, 1928—10 a. m.

[Received April 3—1:17 a. m.]

Referring to Department's April 2, noon.

1. Hwang's first note quoted in full in MacMurray's first reply.
2. Hwang's second note reads:

"Referring to the notes exchanged this day on the subject of the settlement of the questions arising out of the Nanking incident of March 24th, 1927, the Minister for Foreign Affairs of the Nationalist Government has the honor to invite the attention of the American Minister to the fact that on that date fire was opened upon Socony Hill, at Nanking, by the American war vessels, *Noa* and *Preston*, then lying in port. In view of this fact, the Nationalist Government earnestly hope that the American Government will express regret at this action."

3. Hwang's third note reads:

"Referring to the notes exchanged this day on the subject of the settlement of the questions arising out of the Nanking incident of March 24th, 1927, the Minister for Foreign Affairs of the Nationalist Government has the honor to express the hope that a new epoch will begin in the diplomatic relations between China and the United States, and to suggest that further steps may be taken for the revision of the existing treaties and the readjustment of outstanding questions on the basis of equality and mutual respect for territorial sovereignty."

4. All notes bear date, Shanghai, March 30th, 1928.

Repeated to Legation.

CUNNINGHAM

493.11N15/123 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, April 4, 1928—5 p. m.

112. Your 183, March 23, 6 p. m.¹⁷

Section 1. Department estimates at 8,321.97 gold dollars as value of property of American Government lost at Nanking on and after March 24, 1927. Losses of American employees as estimated by them are 39,367.87 gold dollars. These amounts should be combined with the actual property losses of the American Government's Chinese employees and should appear simply as one sum designated

¹⁷ See telegram from the Chargé in China, p. 327.

as property losses of American Government and its employees. No preferred status should be given reparations listed in this paragraph.

Section 2. Department's records show claims of American organizations and citizens arising out of Nanking disturbances amount to 216,042.01 gold dollars and 673,911.28 Mexican dollars. No estimate furnished Department by Protestant Episcopal Church which states that estimates have been given Cunningham at Shanghai. In discussions reserve right to include such additional claims as may come to light.

KELLOGG

893.00 Nanking/254 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, April 8, 1928—9 a. m.

[Received April 8—6:40 a. m.]

215. My March 31, 8 p. m., sent from Shanghai, and my April 7, number 213, 3 p. m.¹⁸

1. It had been my intention, despite the obviously unsatisfactory situation in regard to personal security of foreigners at Nanking, to take Paxton with me, and, in case there could be arranged, as foreseen in paragraph 4 of my telegram of March 31, 8 p. m., a ceremonious and public welcome back to Nanking, to reinstall him in the consulate. Although the danger incident to a resumption of residence by a consular representative is unquestioned and although there would be, as an inevitable consequence, a return of many of our citizens, it seemed to me that these factors would be minimized sufficiently by such a gesture of restored mutual good will and of reconciliation, which would serve to impress upon the local bad characters and the soldiers the fact that the Nationalist authorities have an interest and concern in good relations with us. However, I am strongly of the opinion that, in the absence of such a gesture and under the existing circumstances, the reestablishment of the consulate and the consequent encouragement of the return of our citizens would be inviting trouble. I make no definite recommendation against reestablishing the consulate.

2. For the time being, in view of the fact that commercial activity is at a standstill and considering that relations with the Nanking authorities can be maintained practically as well at Shanghai where the principal officials spend a large part of their time, and probably are even more accessible in the French Concession or the Interna-

¹⁸ Latter not printed.

tional Settlement than in their own capital, the lack of consular representation at Nanking is of less consequence.

3. However, it is most important, in my opinion, that this matter should be so dealt with as to avoid giving offense or causing prejudice to the possibility of close relations with the Nationalist regime by emphasizing in too pointed a manner the lack of confidence which we have as to their maintenance in Nanking of conditions of security. It is suggested, accordingly, that there be no immediate alteration in the arrangements whereby the Nanking consulate is maintained by Paxton at Chinkiang, but that steps should be taken in the very near future to arrange (and I believe this can be done easily) to have General Huang, at some opportune moment, suggest a visit by Consul General Cunningham and Vice Consul Paxton to Nanking for a few days in order to inspect the consular premises and to make the acquaintance of the officials at Nanking. To a considerable extent this would, there is reason to believe, assuage any sense of disappointment as a result of our failure at this time to reestablish the consulate.

4. Paxton has had a most difficult time and is fully deserving of relief; leave of absence with authorization to visit the United States should be granted to him in the near future (say the middle of May) when certain work he has in hand will have been completed by him. It is recommended earnestly that at that time, and as inconspicuously as possible, Paxton should be appointed consul at Nanking, with the understanding, however, that he would remain in Shanghai where it would be possible for him to cultivate the acquaintance of the majority of the Nanking leaders until the time when it might be possible for him to assume his post. Of course, he should have authorization to visit Nanking whenever and for whatever periods the situation may, in his judgment, dictate.

MACMURRAY

893.00 Nanking/260 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, April 11, 1928—6 p. m.

117. Your 215, April 8, 9 a. m. I have carefully considered your recommendations about opening the Nanking Consulate. I have been of the opinion for a long time that as soon as an opportunity occurred the Consulate should be opened. It seems to me that the settlement you made of the Nanking affair affords a reasonable opportunity for doing so. I should hesitate if it really would endanger the lives of Americans who would be induced thereby to return. I do not feel, however, that we ought to lose the advantage of your settle-

ment. I suggest that at as early a date as possible you follow the suggestion you make that it be arranged for General Hwang to invite Cunningham and Paxton to visit Nanking, become acquainted with the officials, and inspect the Consular premises. I suggest that at that time the question of reoccupying Consulate be made a subject of discussion between the officials and Cunningham and Paxton. My thought would be that Paxton should reopen the Consulate and that shortly afterwards Spiker¹⁹ should be commissioned as Consul at Nanking and be sent there, it being desirable that the post be in charge of a senior officer. Paxton might then either be continued at Nanking or be assigned to Shanghai. I feel that he should remain available in China during the next few months.

KELLOGG

493.11 N 15/131 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 23, 1928—5 p. m.

[Received 7:25 p. m.²⁰]

260. Second paragraph [of my telegram] of March 30, 8 p. m. from Shanghai:

1. Cunningham has advised me formulation of memorandum [regarding] functioning [of the] Joint Commission to assess Nanking damages has been delayed through insufficiency of powers [on the part of] G. Zay Wood representing General Huang. He now telegraphs:

"April 22, 5 p. m. Wood conferred with Paxton and me yesterday regarding Nanking reparation when he gave oral undertaking to place in my hand by April 28 (1) letter to the American Minister from Huang Fu, enclosing copy of proposed instruction as handed to the Minister March 30th (see paragraph 2 below) changing 'set aside' to [']pay to the consul at Nanking initial and subsequent payment[s']; (2) names of Chinese Commission; (3) letter to me from Wood that Huang accepts in principle my (a) and (b) (see paragraph 3 below); (4) check for \$100,000 [as] initial payment. He stated that Huang absolutely refused to use my draft for instructions. I am by no means pleased since it is believed this is merely a quibble as my information is that Huang has authority from the Council²¹ to issue instruction as drafted by me. However, we are sufficiently impressed with the good faith to recommend that your Commissioners be designated to be announced in Shanghai upon fulfillment of (1) to (3) above. The written letters will be evidence to his successor of infinitely more value than oral statement.

Further instructions are requested."

¹⁹ Clarence J. Spiker, consul at Shanghai.

²⁰ Telegram in two sections.

²¹ Central Political Council, under the Central Executive Committee, Nationalist Government.

2. Draft instructions to Commissioners as handed to me by Huang March 30th are as follows:

"(1) Instructions in identical terms concerning the question of compensation to be issued by the Chinese and American Governments to their Commissioners, respectively;

(2) Quote textually paragraph in note providing for compensation and Sino-American Joint Commission. Appoint Messrs. (blank) to be Chinese (American) commissioners in conjunction with the American (Chinese) Commissioners.

(3) Two Commissioners to be appointed by the American and the Chinese Governments, respectively. In the case of disagreement the dispute shall be referred to an arbitrator of a nation[ality] not concerned with the Nanking incident to be selected by mutual agreement between the commissioners.

(4) Claims shall be divided into two categories: (a) Individual claims; (b) group claims.

(5) To meet the assessed claims the Government will set aside an initial sum of \$100,000 Mexican within one month after exchange of notes.

(6) Upon the verification and assessment of the individual claims the group claims will then be verified and assessed.

(7) Commission to start to function within one month after exchange of notes and to complete their work within three months upon their organization but to be extended in the case of necessity and upon agreement between the Minister for Foreign Affairs of the Nationalist Government and the American Minister."

3. Items (a) and (b) of Cunningham's counterdraft are as follows:

"(a) All government claims, those of Consul J. K. Davis and Vice Consul J. Hall Paxton and the Chinese staff of the consulate shall be accepted and approved as presented.

(b) Sworn statements shall be accepted as prima facie evidence of claims presented and only upon proof of errors shall same be questioned."

4. I concur in Cunningham's recommendation as to announcement of designation of American Commissioners. I recommend that I be authorized to designate, without delay, as Commissioners Spiker and either Charles E. Patton or J. Walter Lowrie, both residents of Shanghai and both connected with the Presbyterian Mission (North), since under the agreement the Commission should be constituted by April 30.

MACMURRAY

493.11 N 15/135 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, April 24, 1928—7 p. m.

135. Your telegram 260, April 23, 5 p. m., Section 2, paragraph 4. Department approves your recommendation.

KELLOGG

493.11 N 15/143 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 30, 1928—4 p. m.

[Received April 30—2:40 p. m.]

290. My 260, April 23, 5 p. m. Following from Cunningham:

"April 28, 1 p. m. Referring to Legation's 85, April 26, 1 p. m.²² Patton with concurrence of his local associates glad to accept designation but upon reference to Presbyterian Board [of] Foreign Missions, 156 Fifth Avenue, New York, it refuses to decide prior to May 14th and inclined to disapprove missionaries' serving on 'Political Indemnity Commissions'. The same objection would apply [to] Lowrie, being of the same mission.

2. Patton confidentially expresses belief that board misunderstands functions of Commission and may believe that he will be called upon a yet unsettled question of imposition of indemnity possibly of punitive nature.^{22a} Accordingly, venture to suggest that the Department take up matter with board, making it perfectly clear that Patton is merely to participate in adjudication of a settlement offered by the Chinese Government and accepted by American Government. Since names of Commissioners should be announced by April 30th, prompt action by the Department is obviously necessary."

I beg to recommend that the Department take action suggested.

MACMURRAY

493.11 N 15/136 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 2, 1928—6 p. m.

141. Your 290, April 30, 4 p. m. Secretaries of Presbyterian Board decline to act before Board meeting May 14. Department believes Board might then be persuaded to assent but recommends that under the circumstances you endeavor to find and appoint some one else. Department suggests for your consideration Frank S. Williams, Registrar of China Trade Act,²³ but leaves choice to you.

KELLOGG

493.11 N 15/132 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 2, 1928—7 p. m.

[Received May 3—10:40 a. m.]

301. 1. I have been informed by Cunningham that on April 26 he received from the Minister of Foreign Affairs at Nanking an order

²² Not printed.^{22a} Latter part of this sentence is apparently garbled.²³ Act approved Sept. 19, 1922 (42 Stat. 849).

for \$100,000 Mexican as the initial payment of the reparations specified in my number 260, April 23, 5 p. m., paragraph 2 (5). He further stated that this money had been deposited in the National City Bank.

2. Nationalist authorities have announced their designations to Sino-American Commission and invited us to do the same. Although no definite arrangement has yet been reached as to the functions of that Commission, the Chinese, wholly ignoring at the last moment the undertakings (see my telegram cited above) given by word in behalf of Hwang Fu during discussion with Cunningham throughout April, I am still hopeful this unexpected hitch may be straightened out shortly.

MACMURRAY

493.11 N 15/137 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 5, 1928—3 p. m.

[Received May 5—2:40 p. m.]

313. Your telegram number 141, May 2, 6 p. m. Owing to absence of General Hwang Fu from Shanghai and his preoccupation with Tsinanfu incident, it seems likely that settlement of hitch in constituting Joint Commission as reported in my number 301, May 2, 7 p. m., will be somewhat delayed. I should therefore recommend proceeding with the effort to obtain favorable action by Presbyterian Board upon Patton's appointment, though I am taking steps to make other arrangements if necessary. I think it highly advisable that second American member of Commission should be some one having no connection with the Government service.

MACMURRAY

123.P 282/73 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Extract]

PEKING, May 11, 1928—7 p. m.

[Received May 12—9:25 a. m.²⁴]

339. . . .

2. I have received your telegram No. 117, April 11, 6 p. m., and fully appreciate and share your desire to reopen the Nanking consulate as soon as can be done without creating conditions of actual danger. But as the result of personal contact with those to whom we should have to look for protection, I have the very strong con-

²⁴ Telegram in three sections.

viction that such a condition does not yet exist. I have, however, taken preliminary steps towards carrying out the suggestion made in the third paragraph of my No. 215, April 8, 5 [9] a. m. and approved in your telegram cited above, with a view to arrangements whereby Cunningham and Paxton would be invited to visit Nanking: and I have instructed Cunningham in that event to satisfy himself on the spot and candidly advise me whether or not I have exaggerated in my own mind the danger involved in reestablishment of the Nanking consulate at this time.

3. Since as indicated in my telegrams 301, May 2, 7 p. m. and 313, May 5, 3 p. m., the Nationalist authorities have failed to live up to their definite assurances with respect to the establishment of the Joint Commission provided for by the Nanking settlement of March 30th and have tried to force [us?] into acquiescing in arrangement which would leave it open for the Commission to resolve itself into a debating society to reconsider the whole settlement. To protect the position already gained I have had to take the ground that we cannot go further with the Nanking regime until they demonstrate the good faith with which they professed to settle with us. It has therefore been necessary to hold in abeyance the preliminaries looking towards the consular visit to Nanking.

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MACMURRAY

493.11 N 15/144 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 14, 1928—5 p. m.

[Received May 14—2:40 p. m.]

348. Your number 141, May 2, 6 p. m. Should Presbyterian Board not authorize Patton to serve, I propose to designate as second American member of Joint Commission, V. G. Lyman, retired from Standard Oil Company, notwithstanding a member of Shanghai Municipal Council.

MACMURRAY

493.11 N 15/145 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 17, 1928—noon.

161. Your 348, May 14, 5 p. m. Presbyterian Mission Board meeting May 14 has declined to approve. Department approves your nomination of Lyman.

KELLOGG

493.11 N 15/153 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 22, 1928—6 p. m.

[Received 9:30 p. m.]

382. My number 348, May 14, 5 p. m.

1. The following from Shanghai:

"May 21, 5 p. m. Referring to the Legation's telegram May 15, 5 p. m.²⁵ In accordance with paragraph 3 of the Legation's telegram of May 11, 11 a. m.,²⁵ Hoyt [*Wood?*] was duly informed by despatch on May 14th²⁵ and expressed willingness to settle the matter by exchange of informal notes with American Minister. In accordance with such plan and at Hwang's express request, following draft has been prepared by me and agreed to by Hwang subject to your approval:

'My dear General Hwang: With a view to obviating mutual misunderstanding on the part of the members of the Sino-American Joint Commission which is to verify the actual injuries and damages suffered by American citizens and assess the amount of compensation due in each case, in accordance with paragraphs 5 and 6 of your note of March 30, 1928,²⁶ I desire to bring to your attention my understanding that the Commission is to be instructed: (a) that all American Government claims including those of the consular officials and staff of the consulate should be accepted and approved as presented; (b) that the sworn statements of American citizens should be accepted as prima facie evidence of claims presented and that only upon proof of error should the same be questioned.

In reference to the first group of claims referred to, it will be remembered that Consul General Cunningham in a letter dated April 23, 1928,²⁵ informed Dr. G. Z. Wood, your personal representative of the Minister for Foreign Affairs, that the American Government claim amounted to United States currency \$55,089.84.

I should be pleased to have you confirm my understanding in reference to the two categories of claims referred to under (a) and (b) above and instruct the Chinese Commissioners in this sense in order that the claims may be expeditiously handled by the Commission. I remain, my dear General Hwang, yours very sincerely, J. V. A. MacMurray.'

2. Hwang desires your signed note, and, if above draft is acceptable to you, I shall at once so inform Hwang. With a view to expediting matters it is suggested that your note be mailed at once to be held here pending your telegraphic acceptance of a satisfactory draft reply thereto from Hwang, which it is hoped will shortly be [forwarded?]. Wood's original draft reply was evasive and equivocal, text along lines suggested today by this office.

3. In view of Hwang's precarious hold on office and with desire to conclude harmonious arrangements at earliest possible moment it is hoped that above draft meets with your approval and that note will be mailed at once."

2. To this I am replying as follows:

"May 25, 5 p. m. Your May 21, 5 p. m. I am expecting to approve the suggestion offered by you. I am mailing to you immedi-

²⁵ Not printed.

²⁶ See telegram of Mar. 30, 1928, from the Minister in China, p. 331.

ately note addressed to General Hwang Fu in the terms suggested. Please telegraph as soon as possible text of his draft reply."

3. Cunningham is being instructed by mail despatch that the informal note to Hwang Fu and a note designating the American Commissioners, and enclosing my instructions to them, are to be delivered as integral parts of the whole agreement with regard to Commission of Inquiry upon receipt of satisfactory reply from Hwang.

MACMURRAY

493.11 N 15/154 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 24, 1928—7 p. m.

[Received May 24—10:40 a. m.]

390. My 382, May 22, 6 p. m. Following from Shanghai:

"May 23, 8 p. m. Referring to my telegram of May 21, 6 [5] p. m. The following is a translation of Hwang Fu's draft reply to your note now in preparation:

'I have the honor to acknowledge the receipt on May 19th, 1928 of your note of May 11, 1928, reading as follows: "(American Minister's note)."

With reference to institution of the Sino-American Joint Commission I have appointed Yang Kuang-sheng²⁸ and Wu Chin²⁹ as Chinese Commissioners, as you were notified in writing on the 28th ultimo. With a view to consolidating the friendly relation between China and the United States and expediting the institution of the Commission, I have instructed the Chinese Commissioners in accordance with the provisions contained in your letter.'

"Owing to Hwang's resignation on May 22nd he requests that your note be dated May 11th, his reply being dated 19th in order that matter may not be left pending by his administration."

To which I have replied as follows:

"May 24, 6 p. m. Your May 23, 8 p. m. Note from Hwang Fu is acceptable. My notes to him will be dated May 11th and despatched to you immediately."

MACMURRAY

493.11 N 15/160 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 3, 1928—11 a. m.

[Received June 4—9:40 a. m.³⁰]

418. 1. Following from consul general at Shanghai:

"June 1, 5 p. m. Reference to the Legation's written instructions of May 16th.³¹ Local missionary interests have pointed out futility

²⁸ Also known as C. Kuangson Young.

²⁹ Vice Minister of Foreign Affairs in the Nationalist Government.

³⁰ Telegram in two sections.

³¹ Not printed.

of any consideration of Nanking claims for loss and/or damage of real property while property is still in occupation of Nationalist troops or organizations with consequent steadily increasing damage. Patton states that Presbyterian mission property alone in Nanking is suffering a weekly increase in damage estimated at 500 Mexican dollars. From this it is evident that no claim for loss or damage to real property may properly be made until property is actually restored to American owners, and it accordingly is [desirable] that American Commissioners be instructed to refrain from any consideration of any claim of this nature until all real property owned by claimant concerned is fully and permanently restored to possession of owner who shall then file revised claim to include damage suffered since filing of original claim."

2. Cunningham's suggestion appears to be well founded. It is suggested that the American Commissioners be instructed to confine their examination of claims to those for personal injuries and losses of personal property until such time as all real property is fully and permanently restored. In order to prevent this point from giving rise to discussions of a character calculated seriously to delay the work of the Commission, it is further suggested that the American Commissioners be instructed not to overemphasize it but merely to state their attitude to their Chinese colleagues and at once proceed with the examination of claims for injuries and personal property.

3. It is also suggested that claims for injuries and loss of personal property be considered as preferential as regards payment and that so soon as all such claims have been passed upon the sum already paid in by the Chinese be prorated and paid over to the claimants, also that all subsequent payments by the Chinese be so applied until such claims have been fully met.

4. This procedure would have double advantage of giving relief first where it is most needed and of temporarily avoiding what may prove a provoking question. It is barely possible that in the near future Nanking regime may be in a better position to enforce discipline upon its soldiers and effectively to restore real property to the owners.

MACMURRAY

493.11 N 15/163 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 8, 1928—6 p. m.

185. Your 418, June 3, 11 a. m.

1. Department approves your suggestions *in toto* as guiding initial instructions. However, Department feels that before the termination of the life of the Commission all claims for real property losses

should be examined, be appraised and, if it proves possible, be acted upon.

2. Reference to paragraph 4. Dr. Wu ³² has confidentially informed Department that he has cabled Nanking urging prompt restoration.

KELLOGG

493.11 N 15/171 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 11, 1928—4 p. m.

219. Inform American members of the Sino-American Joint Commission that the Department authorizes them to accept for scrutiny and appropriate action further claims for reparation under the terms of Nanking settlement of March 30 last that may be received too late for submission to the Department. The Department desires to receive detailed and tabulated record of the official action and decisions of the Joint Commission.

KELLOGG

493.11 N 15/182 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, August 10, 1928—6 p. m.

[Received 10:45 p. m.]

614. Legation's number 339, May 13 [11], 7 p. m. July 25, Wang ³³ addressed personal note to Cunningham reading in part as follows:

"As the Sino-American Joint Reparation Commission will convene at Nanking in the near future, it is much desired that you will be good enough to visit the American consulate at Nanking in order to assess the losses beforehand for use of the said Commission."

Cunningham telegraphed me he assumed that Wang was fully aware that the Commission was not to investigate the American Government claim which had been accepted as presented and that he purposed to accept Wang's invitation with the statement that he, accompanied by Vice Consul Paxton, would informally visit Nanking to inspect all American property there.

I replied approving of this procedure and have now been informed by Cunningham that, accompanied by Paxton, he is proceeding August 9 to Nanking. He stated that Wang had expressed his pleasure that they were coming and had said that, when the

³² C. C. Wu, Special Representative of the Chinese Nationalist Government.

³³ C. T. Wang, successor to Huang Fu as Nationalist Minister of Foreign Affairs.

American consulate was reopened, any desired ceremonial as to raising the flag would be given.

MACMURRAY

493.11 N 15/189 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, August 15, 1928—5 p. m.

[Received August 15—12: 55 p. m.]

629. My 614, August 10, 6 p. m.

1. The British Minister informed me yesterday that, although he expected their consulate at Nanking would be reopened very shortly (on or about August 21st), a definite decision on the matter had not yet been received from London. He said he would let me know as soon as the matter was decided.

2. Following telegram has been received today from the commander in chief:

"In a personal conversation with the British rear admiral of the Yangtze, August 12th, he stated that he had just arrived from Nanking after a visit of several days. He stated that the British had settled Nanking incidents on terms similar to ours.³⁴ It is expected that the British consul general will be reinstated within a week with the British rear admiral of the Yangtze present and also the English commander in chief may possibly be there. Until the regular consulate is repaired temporary quarters will be used. The question of appropriate ceremonies is still unsettled and might interfere with the immediate return of the consul general. It is considered by the British home Government that at this time it is important to have official representatives at Nanking. They might make concessions elsewhere to China in the matter of ceremonies."

PERKINS

125.643/47a : Telegram

The Acting Secretary of State to the Chargé in China (Perkins)

WASHINGTON, August 17, 1928—6 p. m.

273. Your 614, August 10, 6 p. m. and 629, August 15, 5 p. m.

1. Unless there are urgent reasons for delay, not yet reported to the Department, you should instruct Cunningham to arrange for re-occupation of Nanking Consulate at earliest possible date. Depart-

³⁴ For the texts of notes, dated Aug. 9, 1928, constituting the Sino-British settlement, see Great Britain, Cmd. 3188, China No. 1 (1928): *Papers Relating to the Settlement of the Nanking Incident of March 24, 1927.*

ment is taking steps to commission Spiker as Consul at Nanking and desires that Spiker and Paxton shall take up residence in Nanking following return of premises. Telegraph estimated cost of repairing and refurnishing Consulate and of renting temporary premises for use during repairs and refurnishing.

2. Last sentence your 614. Department considers it desirable that return of consular premises be accompanied by ceremonies calculated to lend dignity and mutual cordiality to the occasion. Department suggests that American representation should include, besides Spiker and Paxton, Consul General Cunningham and a naval officer of high rank to be designated by the Commander-in-Chief, and that if the Nationalist authorities propose to render a suitable military salute to the American flag it would be fitting for an American naval vessel to return a similar salute to the Nationalist flag. Decision in this and pertinent matters is left to the Legation's discretion in consultation, when necessary, with the American naval authorities.

3. Should the claims negotiations subsequently require the presence of Spiker in Shanghai, Department will issue necessary instructions.

CASTLE

493.11 N 15/184 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, August 18, 1928—6 p. m.

[Received August 18—1:40 p. m.]

643. 1. Paxton reports that, of those who presumably suffered losses at Nanking in 1927, 62 have made no response to his repeated requests that they either render claims or submit waivers, while 30 individuals have rendered only unsworn statements.

2. I am accordingly sending him the following instructions:

"Since the majority of delinquents are missionaries, it is suggested that you request the Shanghai secretary of each mission to cable his home board the names of its delinquents and ask the board to see to it that each of the missionaries concerned either send in a formal waiver or a properly made-out claim without delay. You might also request that after a reasonable time the boards cable lists of those who have sent in waivers or have made out claims."

3. I venture to suggest that the Department also urge upon all mission boards concerned the necessity of prompt cooperation. The Department may wish to consider the advisability of fixing a date subsequent to which claims will not be received.

PERKINS

125.643/45 : Telegram

The Acting Secretary of State to the Chargé in China (Perkins)

WASHINGTON, August 21, 1928—8 p. m.

281. Your 637, August 17, 7 p. m., 638, August 17, 10 p. m. and 644, August 20, 1 p. m.³⁵

1. Your 637 and 638 were received after the Department's 273, August 17, 6 p. m. was sent. Portions of them were unintelligible because of garbling. Referring to points not covered in the Department's No. 273, you are instructed as follows:

2. Renewal of consular lease at Nanking on year to year basis approved. Spiker should proceed with repairs and replacement of government property obtainable locally. Articles not obtainable locally should be requisitioned from the Department. Department would expect the Nationalist authorities as owners of the premises to defray cost of their restoration to former condition. Cost of replacing United States government property was included in the reparation estimate of \$8,321.97 (see paragraph 1, Department's telegram 112 of April 4, 5 p. m.). Department can, if necessary, arrange to advance the necessary funds in anticipation of reimbursement by the Chinese authorities of the cost of repairs and payment of the reparation indicated. Instructions regarding drafts will be telegraphed upon receipt of estimates. In estimating cost of furnishing, amount of reparation estimate should not be exceeded and allowance should be made for cost of articles to be purchased by the Department. Use of temporary quarters, if provided by the Nationalist authorities, may be accepted.

3. Department appreciates courtesy of British Consul General Hewlett³⁶ but has no preference in regard to priority of American or British reoccupation of premises. The Department does not appear to have been informed concerning the proposal in regard to ceremonies made at the time of the Nanking Settlement Agreement in March last, other than in Section 2 of the Legation's telegram 213, April 7, 3 p. m.³⁷ The Legation may use its own discretion regarding this matter. However, insistence upon particular ceremonies should not be allowed to interfere with carrying out of the Department's instruction 273 of August 17, 6 p. m. Department considers it would be inexpedient for a secretary of legation to proceed to Nanking to attend such ceremonies as may take place.

³⁵ None printed.

³⁶ W. M. Hewlett, British consul general at Nanking.

³⁷ Not printed.

4. Department believes return of American citizens to Nanking should still be discouraged but it desires an early telegraphic recommendation from Spiker after he takes up residence there.

CASTLE

125.643/50 : Telegram

The Acting Secretary of State to the Chargé in China (Perkins)

WASHINGTON, August 25, 1928—1 p. m.

287. Your 653, August 24, noon.³⁸ The Department's desire is that the return of the consular premises in Nanking and any ceremonies attendant thereon shall take place as soon as possible without awaiting completion of repairs. See Department's 273, August 17, 6 p. m., paragraph 1, and 281, August 21, 8 p. m., paragraph 2, regarding temporary quarters.

WHITE

493.11 N 15/196 : Telegram

The Chargé in China (Perkins) to the Secretary of State

[Extract]

PEKING, August 28, 1928—1 p. m.

[Received August 28—9:40 a. m.]

664. 1. Following from Spiker:

"August 27, 4 p. m. Inaugural and very conciliatory meeting of the Sino-American Joint Commission held this morning. All the sessions to be held in Shanghai until consideration of consular property losses necessitates visit to Nanking. . . ."

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PERKINS

125.643/51 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, August 29, 1928—1 p. m.

[Received August 29—10:35 a. m.]

667. Department's 265, August 10, noon,³⁹ last paragraph; 273, August 17, 6 p. m., paragraph number 2; and 281, August 21, 8 p. m., paragraph number 3.

Following from the commander in chief.

"Your telegram of August 24, noon, and August 27, noon. I have examined the samples of plans for ceremonies at Nanking and have

³⁸ Not printed.

³⁹ *Ante*, p. 192.

to suggest that, with the exception of two orderlies, no bluejackets be landed with Admiral Stirling.⁴⁰ The staff of Admiral Stirling should be selected by him and should not exceed five in number. The uniform for the Admiral and his staff should be full dress. The United States ensign should be hoisted on the same staff as that from which it was hauled down, provided this staff is still standing at the consulate.

I contemplate having the U. [S.] S. *Isabel* fire the salute. She will be accompanied by a division of four or five destroyers, all of which during the ceremonies will be anchored off Nanking.

It is my opinion that we should resume official relations insofar as the interchange of salutes, honors, visits and ceremonies are concerned immediately upon the return of the national salutes rendered to the United States flag, for otherwise Admiral Stirling will be unable to return the salutes and visits which will be the natural result of the above ceremonies at Nanking."

In the event that Cunningham is able to arrange for ceremonies, including an interchange of salutes, I shall be glad to receive the Department's comments with regard to the last paragraph of the Admiral's telegram and to be informed whether the Department contemplates any modification of the attitude indicated in the last paragraph of its number 265, August 10, noon.

PERKINS

493.11 N 15/202 : Telegram

The Acting Secretary of State to the Chargé in China (Perkins)

WASHINGTON, August 30, 1928—2 p. m.

294. Your 643, August 18, 6 p. m.

1. Department approves the Legation's instruction to Paxton but, in view of the length of time since Nanking incident occurred and the press releases of the terms of settlement issued by the Department and the Consulate General at Shanghai on April 3, 1928,⁴¹ the Department considers communication to missionary bodies as suggested in your paragraph 3 unnecessary.

2. American members of the Commission may act under authorization granted in the Department's telegraphic instruction 219, July 11, 4 p. m., until Joint Commission concludes its discussions.

3. [Paraphrase.] Any commitment that would estop the presentation to the Nationalist Government of claims not submitted to the Joint Commission should be avoided by the American members of the Commission. [End paraphrase.]

CASTLE

⁴⁰ Rear Admiral Yates Stirling, U. S. Navy, commanding the Yangtze Patrol.

⁴¹ This refers to the release of the texts of the notes of March 30, constituting the settlement. See telegram of March 30 from the Minister in China, p. 331.

125,643/51 : Telegram

The Acting Secretary of State to the Chargé in China (Perkins)

WASHINGTON, August 31, 1928—7 p. m.

300. Your 667, August 29, 1 p. m.

1. Department's instructions authorizing the Legation to exercise its discretion in regard to salutes and pertinent matters superseded last paragraph of the Department's telegram 265, August 10, noon.⁴² Plans described in paragraph 2 of that telegram were not completed before departure of the Secretary of State for France and the Legation may now proceed on assumption that the Nationalist Government has been fully recognized by the American Government.

2. The Department concurs with the views of the Commander-in-Chief as quoted in your telegram August 29, 1 p. m., and desires that you express to him the Department's gratification at designation of Admiral Stirling. Department would suggest that number of American Naval officers present should not exceed that of civilian officers but leaves that to decision to be arrived at between Legation and Admiral.

3. Since the American Minister presumably cannot be present, the Department suggests that Consul General Cunningham be entrusted with a suitable message from the Minister or Chargé d'Affaires to be delivered at ceremony.

4. Department feels that there should be no insistence on military features if the Chinese oppose, provided the occasion be characterized by dignity and mutual cordiality. Telegraph date when arranged.

5. Department desires that whatever program the Legation may arrange the action involved be proceeded with as promptly as possible.

CLARK

125,643/52 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 6, 1928—10 p. m.

[Received September 6—4:11 p. m.]

692. Legation's 637, August 17, 7 p. m.⁴³

1. Cunningham reports that in an interview on September 3rd, Wang gave complete assent to the following proposals: (a) That a new lease from year to year would be entered into for the present premises to begin upon the completion by the Chinese of the repairs and provided the old lease was canceled and an assurance given

⁴² *Ante*, p. 192.⁴³ Not printed.

that no [claim] would be made for unpaid rent to date of the new lease; (b) that it was hoped that the reopening would be accompanied by ceremonies contemplated last March.

2. Cunningham then continues:

[“(a) Wang in agreeing to carry out ceremonies that were contemplated in March stated that the details could be worked out on his next visit to Shanghai which would be within one week. He seemed pleased to carry out the ceremonies. It is hoped Admiral Stirling will be present and participate in working out details of these ceremonies.

(b) Wang was discreetly sounded as to prompt carrying out of the ceremonies but urged that they be deferred until some day between September 20th and 25th by which time the consulate should be rehabilitated permitting ceremonies to be closed with fitting dignity and in proper setting. Wang further stated his belief that ceremonies prior to evidence of a permanent return to the consulate would ‘make a wrong impression on the Chinese officials in Nanking.’

(c) It will not be convenient to detail officers from Shanghai consulate general to accompany me, other than Spiker and Paxton, unless can be arranged for 22nd. Huston and Stevens⁴⁴ both could accompany if Legation desires; therefore it may be desirable that the naval contingent be limited to this number. There is no opposition of the Chinese to full military ceremonies and I suggest that details be left to Stirling, Wang and me at our meeting not later than September 10th. It is impracticable to reopen consulate in temporary quarters and since Wang desires it I urge that the date of reopening and ceremonies be simultaneous and fixed for a date between September 20th and 25th.

(d) In view of Wang’s assurances above, renting of temporary quarters appears inadvisable since only unfurnished houses and furnishing for use for two or three weeks appears highly impracticable as well as expensive. Wang suggests that while he cannot offer regular accommodations until repairs of consulate are completed, American officials making brief visits to Nanking will be comfortably cared for in the official hostel at Nanking. I accordingly suggest that Spiker and Paxton be authorized to make such visits to Nanking as appear advisable in carrying out instructions relative to refurnishing and supervision of repairs of premises as well as performing entire consular matters. Bids will be obtained and estimates for refurnishing will be promptly submitted following Spiker’s visit to Nanking. Spiker’s visits will be brief since he is on Sino-American Commission but it may be desirable for Paxton to remain informally at hostel and with friend in Nanking considerable time.”

3. I approve the foregoing suggestions *in toto* and respectfully request the Department’s observations as soon as possible in view of Wang’s early visit to Shanghai.

PERKINS

⁴⁴ Jay C. Huston and Harry E. Stevens, consuls at Shanghai.

125.643/52 : Telegram

The Acting Secretary of State to the Chargé in China (Perkins)

WASHINGTON, September 8, 1928—noon.

308. Your 692, September 6, 10 p. m. Approved throughout.

CLARK

125.643/49 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 11, 1928—5 p. m.

[Received September 11—9:28 a. m.]

698. Legation's 692, September 6, 10 p. m.

1. Following from Shanghai:

"September 10, 5 p. m. This morning, accompanied by Admiral Stirling and Spiker, I called on C. T. Wang who accepted, without demur, programme embodying features proposed by Minister Mac-Murray in March last, this including full military ceremonies with guards of honor. Copy of typed memorandum of ceremonies supplied to Minister Wang will be transmitted to Legation by mail tomorrow. Wang again referred to dignified ceremony in proper setting and stated date will be fixed for September 25th or thereabouts depending upon progress of repairs.

2. It is requested that message from Minister or Chargé d'Affaires to be delivered on day of ceremony be promptly transmitted to this office."

2. Reuter's, Shanghai, September 10th, carries report giving substantially the arrangements described by Cunningham but fixing the date as October 1st. The release has not been authorized by the Legation which is inquiring of Cunningham how this report became public. Since, however, the general arrangements contemplated have thus become public, the Legation perceives no reason for withholding from the press general confirmation thereof. It is hoped that this premature disclosure will not afford an occasion for Chinese extremists to make political capital by raising objections to the carrying out of the arrangements made.

PERKINS

493.11 N 15/206 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 13, 1928—4 p. m.

[Received September 13—10:35 a. m.]

704. Legation's 664, August 28, 3 [1] p. m.

1. Following from Shanghai:

"September 12, noon. Examination of claims discloses marked lack of uniformity in method of filing, this permitting the Chinese

Commissioners [to] raise a number of questions upon which the definite instructions of the American Government are requested, particularly in view of the fact that rulings of the Sino-American Commission will in all likelihood be cited by the Chinese *vis-à-vis* the Sino-British, Sino-French and other Nanking claims commissions and may lead to embarrassment if any departure has been made from well-established international practice in reference to claims in general. As indication of such tendency on the part of Chinese authorities, Mrs. Williams' waiver of any indemnity for murder of Dr. Williams⁴⁵ is now being strongly pressed by Chinese on Italian authorities as reason for withdrawal of Italian claims for murder of Italian priests at Nanking.

(2) Reference books available to Commission fail to indicate general practice in reference to following points which appear elemental in nature, and specific instructions are accordingly requested on following points:

1st. Is original cost, estimated value at time of loss, or replacement value to be used as measure of damages assessed?

2d. Is interest on amount of claim a proper charge on Nationalist Government? If so at what rate and for what period is such interest to be computed? It is assumed that such interest will accrue to American claimants.

(3) Chinese Commissioners propose that other than in American Government claim and certain special cases where Mexican payments would work an injustice, all damages be paid in Chinese currency at the rate of \$2 Mexican to \$1 United States currency. Since United States rate for last five years preceding Nanking incident averages slightly less than \$2 Mexican to \$1 United States currency; since most losses were for goods purchased within that period and were paid for in Mexican dollars; since many claimants have filed [claims?] in Mexican dollars only; and since at least half of claimants have definitely used two for one exchange rate in reducing Mexican values to United States currency, the Chinese Commissioners' proposal for the payment of claims in Chinese currency rather than in gold drafts purchased at prevailing rate of exchange, appears in general preferential and American Commissioners are inclined to accept such proposal without prejudice to special cases, unless American Government insists upon payments in United States currency. In latter case, most claims must be held up while more exact information as to exchange rates used in gold conversions are obtained from claimants, many of whom are in the United States.

(4) Pending definite instructions from the Department, Commissioners have meticulously avoided commitments on these points raised by Chinese Commissioners but have insisted for the time upon latitude of action to meet special circumstances in cases as they arise. However specific instructions are urgently requested since Chinese are seeking to make American attitude in reference to claims precedential insofar as other international claims are concerned."

⁴⁵ Dr. J. E. Williams, vice president of the University of Nanking, killed at Nanking, Mar. 24, 1927.

2. Suggestions made in paragraph (3) seem reasonable to the Legation. Department's instructions respectfully requested.

PERKINS

125.643/53 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 16, 1928—10 a. m.

[Received 12:07 p. m.⁴⁶]

710. Department's 300, August 31, 7 p. m., paragraph 3.

1. The following is submitted as a tentative draft of a message to be delivered by Consul General Cunningham at the ceremony as coming from the chief of mission:

"The ceremonies observed today mark the return of an American consul to Nanking and the resumption in this district of those direct official relations between American consular representatives and the officials of the Chinese Government which were unfortunately interrupted some one and a half years ago. During this period those subversive elements of society which were the cause of this interruption have been suppressed. Though faced with numerous problems demanding solution China has acted with energy in asserting a determination to maintain the ancient tradition of a society which is fundamentally one of order and of social harmony.

The American Government has not failed to note the efforts which have been made in the direction of stability; and although it is fully aware of the difficulties yet to be surmounted by the Chinese people in the establishment of the system of government chosen by them over a decade ago, it looks with sympathetic interest on each measure of progress which China finds herself able both to plan and to execute. It was as an earnest of the faith of the American Government in the ability of China to achieve effective political unity that the American Government concluded with the Nationalist Government of the Republic of China on July 25, 1928, a treaty regulating tariff relations between the United States of America and the Republic of China.⁴⁷

The cordial reception accorded today to the representatives of my Government, the honors given and received, and the friendly spirit of these ceremonies will, I am sure, be welcomed by the American Government as an indication of a genuine desire to maintain and promote those relations of mutual understanding which have traditionally existed between China and the United States."

2. I should be glad to receive the Department's observations on the foregoing, particularly with regard to the suitability of the sentence referring to the conclusion of the tariff treaty. Should the Minister have returned prior to the date of the ceremony, he may of course desire to modify the message or substitute another one.

PERKINS

⁴⁶ Telegram in two sections.

⁴⁷ See pp. 449 ff.

493.11 N 15/206 : Telegram

The Secretary of State to the Chargé in China (Perkins)

WASHINGTON, September 17, 1928—4 p. m.

315. Your 704, September 13, 4 p. m. In passing on claims the Department considers that:

1. As to value to be used as measure of damages to be assessed, this is a question that should be settled by the Commission after taking the circumstances involved in each case into consideration. The Department's view would be that generally the actual value of property at time of loss as nearly as may be ascertainable should be used.

2. Interest on the amount of the award is a proper charge against the Nationalist Government. Just compensation would require the payment of the normal commercial rate obtaining at the time the loss occurred. However, in view of possible difficulty in ascertaining such rate or rates for different classes of transactions Department considers that a uniform rate of 5 percent would be equitable. Interest should be computed from date of loss to date of payment.

3. The Department perceives no objection to the plan suggested with respect to the payment of awards in Mexican or United States currency.

KELLOGG

125.643/53 : Telegram

The Secretary of State to the Chargé in China (Perkins)

WASHINGTON, September 18, 1928—3 p. m.

319. Your 710, September 16, 10 a. m.

1. For your tentative draft substitute the following message:

"The ceremonies observed today mark the return of an American Consul to Nanking and the resumption of those direct relations between American consular representatives and the officials of the Chinese Government in this city which were unfortunately interrupted one and one-half years ago. One of the important duties of consular officials is to promote friendly and mutually profitable relations between their own fellow citizens and the citizens of the country in which they reside. My Government is confident that the officials of the Nationalist Government will accord to the American consular officials who are today returning to Nanking all proper assistance and cooperation in this and other matters. In a larger field the treaty regulating tariff relations between the United States and China signed on July 25, 1928, already stands as a signal indication of the faith my Government has in the ability of the Nationalist Government to undertake with success the great task of organizing the nation as an effective political unit.

The cordial reception tendered today to the officials of my Government, the exchange of salutes to the flags of the two countries and the friendly spirit of these ceremonies are additional evidence of the deep desire of both Governments to maintain and strengthen those friendly relations between the peoples of the two countries which had their origin more than one hundred years ago."

2. If the Minister wishes to submit still another draft the Department will give it consideration.

KELLOGG

125.643/55 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 20, 1928—6 p. m.

[Received September 20—12:07 p. m.]

719. Legation's 698, September 11, 5 p. m. Following in part from Shanghai.

"September 17, 5 p. m. On September 15th I called on Minister for Foreign Affairs and he informed me that he had encountered unexpected opposition in Nanking to the proposed honors to the American flag. I expressed astonishment and embarrassment since his former unqualified assurances had been transmitted to the American Government. (Omission.) I received Wang yesterday evening. He stated he would bend efforts to carry out original ceremonies with some modification and would promptly acquaint me with developments.

Wang informed me that owing to unforeseen circumstances the rehabilitation of the consular premises will be somewhat delayed but that he will make every effort to expedite. Spiker states he is now in a position to request local estimates for refurnishing of premises and will duly forward to the Department."

2. Cunningham has been, of course, fully acquainted with the Department's desires regarding ceremonies as expressed in paragraph 4 of its No. 300, August 31, 7 p. m.

PERKINS

125.643/55 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, October 4, 1928—3 p. m.

334. Your 719, September 20, 6 p. m. *New York Times* October 1 carries Associated Press story from Shanghai stating that plans for reopening of Nanking Consulate are deadlocked because Nationalist officials refuse to salute the American flag unless the United States should salute first.

What are the facts, where do the negotiations stand and what do you recommend? Refer to Department's telegram 300, August 31, 7 p. m., paragraph 5.

KELLOGG

493.11 N 15/215 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, October 4, 1928—4 p. m.

335. Following for guidance American Members Joint Commission:

"Replying to inquiry from University of Nanking, Department has stated that statements of losses will not be presented to the Joint Commission against the expressed wishes of the claimants, and the Department and its officials in China will, when so advised, treat the statements as having been submitted solely for information purposes."

KELLOGG

125.643/56 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 5, 1928—5 p. m.

[Received October 5—11:40 a. m.]

748. Your telegram No. 334, October 4, 3 p. m.

1. Associated Press report of a deadlock is not correct. Status of the matter is unchanged since Legation's No. 719, September 20, 6 p. m. We are still awaiting word from Wang both as to his efforts to overcome factional opposition to the arrangements offered by him and as to the progress of repairs of consulate.

2. My recommendation is that we should not seek to force the issue one way or the other but await the outcome of Wang's efforts to arrange the matter.

MACMURRAY

493.11 N 15/234 : Telegram

The Acting Secretary of State to the Minister in China (MacMurray)

WASHINGTON, October 20, 1928—6 p. m.

354. Department's 335, October 4, 4 p. m. Department has been informed by American Baptist Foreign Mission Society that the Society's Board of Managers "prefers not to file through diplomatic channels any claims for losses sustained to mission property in connection with the Nanking affair of March, 1927."

Inform American members Joint Commission.

CLARK

493.11 N 15/236 : Telegram

The Secretary of State to the Chargé in China (Perkins)

WASHINGTON, October 23, 1928—3 p. m.

356. Department's 335, October 4, 4 p. m. Following for guidance American members Joint Commission:

"Department is informed by the Trustees of Nanking University that under date of October 18 they wrote the Board of Directors communicating a decision reached by them on October 17 in part as follows: '(1) that no statement of losses or claims for reparations covering the damages sustained by the University of Nanking on March 24th, 1927, or during the disturbances of the succeeding months, be submitted by the Board of Trustees to the Department of State or to the Sino American Joint Commission.'"

KELLOGG

125.643/56 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, October 26, 1928—4 p. m.

359. Your 748, October 5, 5 p. m. I have been willing to accede to your recommendation not to force the issue: Nevertheless you are referred to the series of previous instructions and I wish to know whether return of consular officers to Nanking may be expected soon. I consider the presence of an American official at the seat of government very desirable.

KELLOGG

125.643/61 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 30, 1928—8 p. m.

[Received October 30—11 a. m.]

801. Your telegram No. 359, October 26, 4 p. m. I am hopeful that the matter can be arranged in the near future.

MACMURRAY

125.643/61 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 2, 1928—11 a. m.

367. Your 801, October 30, 8 p. m. I am constantly being questioned by the press as to why the Nanking Consulate is not opened. I should like to know definitely why the time is being postponed, particularly whether it is on account of failure to agree on the details of a ceremony. I understood the ceremony was agreed on. Why has it not been carried out? Originally my instructions were that

the opening of the Consulate should not be made dependent upon any particular ceremony. I should like to be able to say to the press definitely when it is going to be opened.

KELLOGG

125.643/62 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase—Extract]

PEKING, November 3, 1928—5 p. m.

[Received November 3—12:10 p. m.]

807. Department 367, November 2, 11 a. m.

1. For the reasons set forth in the Legation's 748, October 5, 5 p. m., the reopening of the consulate at Nanking has been delayed. Until the receipt last night of the following telegram from the consul general at Shanghai, the situation has remained essentially unaltered, despite efforts to discover a basis on which Wang could fulfill at least the substance of his promise in regard to the ceremony:

"November 2, 5 p. m. My telegram of October 29, unnumbered, 9 p. m. With profound disappointment I report that the following verbal message was received yesterday from Wang, namely, that the matter of a salute to the American flag again had been taken up by him with the Nationalist Government but that the attitude of the latter remains unaltered; that, however, a warm reception would be given by the Nationalist Government to the American consular officer upon his arrival in Nanking and the assumption of his consular duties; and that Wang desired to point out particularly that although it was regretted that the wishes of the United States Government could not be met in this matter, the warmest friendship was cherished by the Chinese Government and people for the Government and people of the United States.

3. Cunningham and Spiker are being directed, in accordance with the Department's instructions to me, that the consul is to proceed to Nanking and reoccupy the consular premises as early as possible, say about November 9, without any ceremonies whatsoever.

4. Although steps are being taken to carry out the decision of the Department, it is my hope that, in view of the new situation created by the definite refusal of the Nanking Government to accord to the American flag the recognition and respect customary under the circumstances, the Department may yet give consideration to the fact that the consular representatives and I, as well as the commander in chief, have the firm belief that, from the standpoint of our position in China, it would be a mistake to dispense with a ceremony of a dignified nature, appropriate for the return of the American flag to Nanking. It is my opinion that to do so would have the effect not

only of impairing the respect which the Chinese people hold for us, but of definitely increasing the peril to American consular representation at Nanking and to American lives and property throughout China.

MACMURRAY

125.643/63 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, November 4, 1928—8 a. m.

[Received 2:20 p. m.]

808. Referring again to the Department's 367, November 2, 11 a. m. Assuming that the Department is ready to give consideration to the recommendation in the fourth paragraph of the Legation's 807, November 3, 5 p. m., it is suggested that if the persistency of the press is embarrassing in any way, the Department might be relieved from a defensive position by publicizing the fact that although we were inclined not to stand upon any formality and were quite willing to cooperate in making arrangements for what the Minister of Foreign Affairs himself thought would be appropriate ceremonies to mark the return of the American flag to the capital of the Nationalists, where it had been subjected to desecration and was driven out in March 1927, the Nationalist authorities at Nanking (not the United States) have raised the question by revoking the promise which their Foreign Minister made and by declaring their unwillingness to render, as agreed, the customary honors. It may be made known further that the placing of any such obstacle in the way of a resumption of our consular representation at Nanking is, of course, regretted by us, but that if the Nationalist authorities themselves raise the issue as to whether the American flag and what it represents are entitled to those honors which are customarily recognized as due, then we are thrust into the unfortunate position of having no alternative but to refuse to accept humiliating and unexpected terms upon which the Chinese desire that our consulate at Nanking be reopened.

MACMURRAY

125.643/62 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, November 8, 1928—1 p. m.

372. Legation's 807, November 3, 5 p. m., and 808, November 4, 8 a. m. Careful attention has been given by the Department to the

problem presented in these telegrams and to the Minister's views, which are said to be shared by the commander in chief, in regard to a salute to the flag which has been proposed as a part of the ceremonies incident to the reoccupation at Nanking of the consular premises. It is assumed that the nature, purport, and significance of the exchanges of courtesies between governments often regarded as appropriate in connection with such occasions have been brought fully to the attention of the Nationalist authorities in the conversations which have continued since last March. Since this feature of the contemplated program has been deliberately rejected by the Nationalist authorities, it is my desire that in the reopening of the consulate there should be no ceremonies whatsoever. There should be an expediting of the work on the consular premises; and, when this work has advanced sufficiently to enable a dignified occupation of the building, Spiker and Paxton should proceed to Nanking and, without any ceremony but in a routine manner, take up their residence and official functions. It is desirable, in my opinion, that they should not be accompanied by any additional officers, either civilian or naval. It is suggested that, provided the commander in chief approves, naval personnel of rank and number equal to the party expelled on March 24, 1927, with the consular personnel, might accompany Spiker and Paxton, with the idea that this would constitute a return to the *status quo ante* and that such guard might raise the flag and be withdrawn later. November 9 is approved as the tentative date for the proposed return. The press is being informed by me that when the premises are ready the consulate will be opened without ceremony. The Nationalist Government may be so informed by you. Further developments in this matter should be reported to me by telegraph.

KELLOGG

125.643/66: Telegram

The Minister in China (MacMurray) to the Secretary of State

[Extract]

PEKING, November 13, 1928—7 p. m.

[Received November 13—1:35 p. m.]

827.

3. Department's 372, November 8, 1 p. m. I am not referring to the commander in chief the Department's suggestion with regard to the return of naval personnel to the Nanking consulate since I feel that this action would be provocative and dangerous in itself

and would at the same time merely emphasize the refusal of the Chinese to accord us the honors which are due. With the Department's approval therefore I propose to instruct Spiker to take oath as consul at Nanking on the occasion of his next visit to Nanking in connection with the work of the Claims Commission. While there, he could, accompanied by Paxton, informally reopen the office and make the usual routine calls upon the appropriate officials without drawing undue attention to the return of an officer in charge.

MACMURRAY

493.11 N 15/255 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, November 26, 1928—11 a. m.

[Received November 26—9:45 a. m.]

844. 1. Following from Shanghai:

“November 23, 10 a. m. Following from Spiker and Lyman:

‘1. American mission has included in its claim for Nanking losses a nominal rental for mission premises forcibly occupied by Nationalist troops for many months. Chinese Commissioners hold that such rental claim is not properly included as loss but American Commissioners dissent. Does Legation agree with position of American Commissioners?

2. Chinese Commissioners suggest that Sino-American Joint Commission shall not consider claims originally filed after November 27, 1928. In view of lapse of time since all interested parties were advised to file claims, this proposal appears reasonable to the American Commissioners with the proviso that such action by the Commission shall in no wise affect other claims which may later be filed for consideration in the usual way by the American and Chinese Governments. American Commissioners have repeatedly and definitely gone on record in this regard in strict compliance with Legation's telegraphic instructions No. 218 of August 31, 7 p. m. Since some time limit must be set for the acceptance of claims to be assessed by the Commission, American Commissioners request Legation's sanction to the acceptance with the proviso named.’”

2. I am inclined to agree with the American Commissioners on the two points raised but venture to request the Department's instructions before replying. The Legation's telegram No. 218, August 31, 7 p. m., referred to quotation from the third paragraph of the Department's 294, August 31 [30], 2 p. m., paragraphs No[s]. 1 and 2, having been previously repeated to Shanghai.

MACMURRAY

493.11 N 15/261 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, November 28, 1928—noon.

[Received November 28—10:10 a. m.⁴⁸]

846. Following from Shanghai:

"November 24, 10 a. m. Following from Lyman and Spiker:
'At meeting yesterday American and Chinese Commissioners agreed on following notification:

"In the identic instructions issued to the members of the Sino-American Joint Commission," paragraph (4) reads as follows (see Legation's instructions to American Commissioners).

1. While the Commission has already dealt with the last of the claims, it will be unable to complete its work by the end of the three months' period—that is, November 27th, 1928—in view of the fact that information requested by the Commission from a number of claimants abroad has not yet been received.

2. It is therefore agreed by the Commission that their respective Governments be requested to sanction an extension of the stated period for such time as is necessary for the Commission to wind up its work.

3. It is understood that no new claims will be accepted by the Commission during the period of extension—that is, after November 27th, 1928. Signed C. J. Spiker, C. Kuangson Young, Wu Chin, V. G. Lyman."'"

I have replied as follows:

"November 27, 8 p. m. Your 343, November 24, 10 a. m.

1. Please communicate the following to Wang from me as of today's date:

'EXCELLENCY:

In view of the fact that the Sino-American Commission has found that its work cannot be completed within the period of three months from the constitution of the Commission, as contemplated, since it is waiting for the receipt of additional information regarding certain claims from abroad, I have the honor to propose that the period specified in our instructions to our respective Commissioners should be extended by mutual consent, as was contemplated therein, for such time as is necessary for the Commission to wind up its work.

Accept Excellency the renewed assurances of my highest consideration.'"

As soon as a reply is received the Department will be promptly informed.

MACMURRAY

493.11 N 15/262 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 30, 1928—6 p. m.

393. Your 844, November 26, 11 a. m.

1. Department considers that claim for rental as such cannot be supported on legal grounds, but will leave to the discretion of the Commissioners to decide to what extent the argument of simple justice should be pressed.

⁴⁸ Telegram in three sections.

⁴⁹ See par. 2 of telegram No. 260, April 23, from the Minister in China, p. 340.

2. Department agrees to time limit mentioned for original filing of claims with Commission. Time limitation not to affect class claims mentioned in Department's 185, June 8, 6 p. m., paragraph 1.

KELLOGG

493.11 N 15/263 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 30, 1928—7 p. m.

394. Your 846, November 28, noon. Commission's recommendation and your action approved.

KELLOGG

493.11 N 15/264 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 6, 1928—6 p. m.

[Received December 6—9:30 a. m.]

861. 1. Your 393, November 30, 6 p. m. was repeated to Shanghai which has replied:

"December 4, 3 p. m. Following from Spiker and Lyman:

'Referring to the Legation's telegram No. 2, December 1, 4 p. m., in reference to paragraph 1 of Department's November 30, 6 p. m., quoted, American Commissioners will discreetly carry out instructions but since Department holds rent claims not supportable legally as Nanking losses, Commissioners desire definite instructions as to advices to be given to claimants concerning remedy available in claims for rent of property forcibly occupied.'"

2. Department's instructions respectfully solicited.

MACMURRAY

493.11 N 15/271 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, December 17, 1928—5 p. m.

410. Your 861, December 6, 6 p. m. Department's 393, November 30, [6 p. m.,] was only intended to cover the special case. Department assumed that full indemnity, including item for loss of use of property, had been asked by mission. In such case tacking of [on?] item for rent would amount to double indemnity for loss of use.

In the absence of the facts of a particular case the Department cannot lay down a definite rule for assessing damages due to the

deprivation of the use and occupation of property which would include an item covering the rental value of the property. As a general proposition, where the claimants by reason of being deprived of their premises were unable to rent them or were compelled to pay rent for other premises, the money losses sustained on that account could properly be included in the claim as essential elements of damage due to loss of use and occupation. When premises have no rent status, but rental value is known or readily ascertainable and there exists no more practicable method for computing compensation for loss of use of premises, rental value may properly be employed in computation of damages.

KELLOGG

125.643/79 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, January 3, 1929—6 p. m.

[Received 9:20 p. m.]

4. Department's 300, August 31, 7 p. m.

1. It has been the Legation's understanding that the establishment of customary naval honors with the Chinese authorities would be resumed in connection with the ceremonies to be observed on the reoccupation of the Nanking consulate. The consulate was reoccupied on December 15th without any ceremonies whatsoever and the question of such formalities has not been otherwise disposed of. Admiral Bristol has now inquired of me as to the attitude which he should adopt in this particular.

2. . . . I should however be glad to ascertain the Department's view with regard to this matter in order that I may inform Admiral Bristol of the course to be followed.

MACMURRAY

125.643/79 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, January 5, 1929—5 p. m.

7. Your 4, January 3, 6 p. m. In regard to matters of official etiquette such as naval honors the Department considers it advisable that henceforth the officers of this Government should accord to Chinese national and provincial authorities the courtesies usually accorded to the authorities of a fully recognized foreign State.

KELLOGG

CHINESE PROPOSALS FOR TARIFF AUTONOMY AND COOPERATION
OF THE UNITED STATES AND OTHER POWERS WITH CHINA IN THE
REVISION OF CHINESE TARIFF VALUATIONS

693,003/758 : Telegram

*The American Delegation at the Chinese Tariff Conference to the
Secretary of State*

PEKING, August 7, 1926—3 p. m.

[Received August 7—9:23 a. m.]

Conference 57. The Legation has received from the Ministry of Foreign Affairs a communication with reference to the revision of schedule of import duties provided for in the 1922 customs treaty.⁵⁰ Reference is made to a "proposal concerning the revision of the customs tariff schedule" put forth by the Chinese delegation at the fifth meeting of committee B of the Customs Conference December 10, 1925 (see Conference minutes)⁵¹ and the suggestion is made that the various interested powers notify their commercial attachés or consuls at Shanghai to exchange views with the Chinese representatives at that port in order that the revision of the tariff may be concluded at an early date.

The Chinese proposal of December 10th was never made the subject of discussion between the foreign and Chinese delegations and the Customs Conference has not to date formulated the rules contemplated in article 4 in question. It is moreover unlikely in view of the present indeterminate situation that the Customs Conference will formulate these rules within a period which would permit of their being applied so as to effect completion of the present revision during the current year. It is not our opinion that the formulation of these rules under article 4 constitutes a condition precedent to revision: for the purpose of the treaty provision is "to prevent delay". It is furthermore not our opinion that the question of the recognition of the present Peking Government need be considered as relevant in a matter of this character which is essentially routine and relates to fulfillment of specific previous commitments. We suggest therefore that the Department authorize participation in the revision proposed on the specific understanding that the revised schedule is not to go into effect on the unilateral sanction of China but must receive assent on the part of the American Government before it can be applied to imports of American goods. I see no objection how-

⁵⁰ Art. IV of the multilateral treaty, signed at Washington, Feb. 6, 1922, *Foreign Relations*, 1922, vol. I, pp. 282, 285.

⁵¹ *The Special Conference on the Chinese Customs Tariff, October 1925-April 1926* (Peking, 1928), p. 213. For correspondence concerning the conference, see *Foreign Relations*, 1925, vol. I, pp. 833 ff; *ibid.*, 1926, vol. I, pp. 743 ff; *ibid.*, 1927, vol. II, pp. 371 ff.

ever to complying with what is obviously the Chinese wish that actual work of revision shall be done by them in more or less informal consultation with the foreign members of the revision commission.

If these recommendations meet with the approval of the Department it is suggested that the Department of Commerce be requested to give its approval to the designation of Arnold⁵² as the American delegate. It is not believed necessary to appoint a special delegate from the Treasury Department as was done in 1919⁵³ and 1922.⁵⁴

AM[ERICAN] TAR[IFF] DEL[EGATION]

693.003/758 : Telegram

The Secretary of State to the American Delegation at the Chinese Tariff Conference

WASHINGTON, August 27, 1926—2 p. m.

41. With reference to Conference 57 August 7, 3 p. m. and 59, August 27, 3 p. m.,⁵⁵ you may inform Arnold that he has been designated as American delegate to Tariff Revision Commission at Shanghai. Department is informed that Arnold has received instructions from Department of Commerce in this regard.

KELLOGG

693.003/778 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 29, 1927—3 p. m.

[Received April 29—10:15 a. m.]

500. 1. Arnold has informed the Legation that the Nationalist Commissioner of Foreign Affairs took possession of the office of Tariff Valuations Commission at Shanghai on April 4th and that it appears that the labors of the Commission as at present constituted are terminated.

2. The Legation has received a note from the Foreign Office, dated April 25th, proposing that, with a view to carrying out treaty provisions, Commission convene at Peking in order that work of revision of valuations may be completed. I am referring the matter to Arnold for his recommendations.

MACMURRAY

⁵² Julean Arnold, commercial attaché in China.

⁵³ See *Foreign Relations*, 1919, vol. I, pp. 640 ff.

⁵⁴ See *ibid.*, 1922, vol. I, pp. 816 ff.

⁵⁵ Latter not printed.

693.003/796: Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, November 10, 1927—4 p. m.

[Received November 10—11:15 a. m.]

984. 1. On October 17, the Senior Minister informed the Minister of Foreign Affairs that the diplomatic body agreed to the continuation in Peking of the work of the Tariff Valuation Revision Commission.

2. The Minister of Foreign Affairs has now notified this Legation the next Commission will convene here on December 1st.

3. Commercial attaché suggests that the Department request the Treasury to instruct Nicholson⁵⁶ to proceed to Peking for this purpose. I concur.

MAYER

693.003/797: Telegram

The Secretary of State to the Chargé in China (Mayer)

WASHINGTON, November 25, 1927—6 p. m.

383. Your 984, November 10, 4 p. m. Treasury Department states that Nicholson has been directed to proceed to Peking to assist American delegate.

KELLOGG

693.003/803

*The Commercial Attaché in China (Arnold) to the Legation in China*⁵⁷

PEKING, December 7, 1927.

1. The China Tariff Valuations Commission was instituted by an agreement between the Chinese Government and the treaty powers concerned.

2. The special expenses for the work of the Chinese members of this Commission were defrayed by allotments, from the Custom's funds.

3. The Chinese members of the Commission assembled in Shanghai in August, 1926, prepared to draft a schedule of valuations to supersede those in the present tariff which have been in force since January the seventeenth, 1923,⁵⁸ and which represented the work of

⁵⁶ Martin R. Nicholson, Treasury representative at Shanghai.

⁵⁷ Copy transmitted to the Department by the Minister in China in his despatch No. 1312, Dec. 14, 1927; received Jan. 23, 1928.

⁵⁸ For the schedules as revised by the Tariff Valuations Revision Commission in 1922, see *China Year Book*, 1923, pp. 525 ff.

a similar Commission which met for the purpose April to October, 1922.⁵⁹

4. Probably as much as eighty per cent of the revenues derived from the import tariff are from a five per cent tax on commodities bearing a fixed value basis, the remainder being from a five per cent assessment on an open ad valorem basis.

5. Twelve treaty powers⁶⁰ appointed delegates to confer with the Chinese members of the Commission in regard to the drafting of the proposed new schedule of valuations. Subsequently two of these treaty powers⁶¹ were obliged to withdraw their delegates upon notice being served upon them by the Chinese Government that their treaties with China had expired.

6. The sessions of the Commission were convened early in September, 1926. At the first meeting, the Chinese announced having decided upon the wholesale Shanghai market values for the year 1925, as forming the basis for the valuations for the proposed revised import schedules.

7. The American and French delegates, as also those of certain of the other powers, agreed to the acceptance of the Chinese proposal. The Japanese and British delegates offered counter-proposals involving the use of other periods than the year 1925.

8. Several informal meetings were held after the meeting in September, but it was not until March the ninth, 1927, that the Japanese and British delegates finally accepted the Chinese original proposal.

9. Following the acceptance by all the delegates of the Chinese proposal, re the basis of values, the Commission proceeded to a drafting of schedules of valuations. This work was in progress when on March the twenty-fourth, the Nationalists took possession of Shanghai, thereby making it necessary for the Chinese members of the Commission, who were functioning under the Peking Government, to return to Peking.

10. The Commission resumed its labors in Peking, sending the proposed schedules of values as they were completed, to the foreign delegates at Shanghai, with a request that within certain designated periods of time, the delegates send to the Commission any suggested counter-proposals re values.

11. June the tenth was fixed by the Chairman as the latest date upon which all counter-proposals should be mailed to the Commission at Peking, after which all the foreign delegates would be in-

⁵⁹ See *Foreign Relations*, 1922, vol. I. pp. 816-821.

⁶⁰ Belgium, Denmark, France, Great Britain, Italy, Japan, the Netherlands, Norway, Portugal, Spain, Sweden, and the United States.

⁶¹ Belgium and Spain.

vited to come to Peking and discuss the proposed schedules of valuations and the counter-proposals.

12. At the request of the delegates of one or two of the foreign powers, the time for submitting counter-proposals was extended to July the tenth, and later to August the first.

13. The diplomatic representatives of the treaty powers concerned, agreed to the resumption of the sessions of the Commission at Peking, and upon the request of Japan, the date for the convening of the Commission at Peking was postponed until December the first.

14. On December the first, the Tariff Valuation Commission, reconvened at Peking, headed by Ch'an Lun, the chairman originally appointed to this position.

15. On December the sixth, the Commission held its first actual business meeting in Peking. The schedule of valuations submitted for discussion at this meeting, covered the metals group in the tariff. There are thirty-six schedules covering the six hundred items of the Chinese tariff.

16. Although the Japanese delegate stated some months ago in Shanghai that he had but few counter-proposals to offer, yet since coming to Peking he has stated that his counter-proposals on valuations will aggregate upwards of a hundred. The British is probably next in line in the number of counter-proposals, and the French third. The American delegate has no more than fifteen or twenty to offer, of which but a very few are of real importance.

17. The American delegate suggested at the meeting of December the sixth, that the foreign delegates waive the consideration of such counter-proposals as fall within a certain percentage of the values as proposed by the Chinese. Whether this margin be ten, fifteen or twenty per cent could, he suggested, be agreed upon by the Commission. The Japanese delegate objected, contending that his country's goods are cheap and inferior, hence each item must be considered on the basis of the counter-proposals made.

18. As many of the Japanese counter-proposals differ as much as from thirty to fifty per cent from the values as proposed by the Chinese, there appears to be very remote chances for an agreement on some of these. The Chinese claim the prerogative of putting an item upon which they cannot reach an agreement as to value, upon an open five per cent ad valorem basis. The Japanese delegate appears to be disinclined to admit this prerogative, on the part of the Chinese.

19. The American delegate, supported by his foreign colleagues, protested against the ruling of the Chairman that re-classifications be not permitted during this revision. The American delegate contended that a proper revision of valuations could not be effected without in some cases making alterations in classifications. The Chairman agreed to reconsider his ruling.

20. It is patent that the statements of importers regarding valuations of import commodities are being given more consideration, and are being made the basis of counter-proposals by certain of the delegates to a greater extent than is in the interest of an equitable revision of the tariff schedule valuations.

JULEAN ARNOLD

693.003/804

The Commercial Attaché in China (Arnold) to the Legation in China^{61a}

PEKING, December 10, 1927.

The China Tariff Valuations Revision Commission met at the Shui Wu Chu on Friday, December 9, to consider schedules embodying valuations of chemicals, fishery, food products, animal products, canned goods and groceries. Concerning the varied items included in these schedules, France offered six counter-proposals affecting values as proposed by the Chinese delegate, Great Britain nine, Japan fifteen, and the United States one.

Very little progress was made at the meeting toward an agreement on values for the commodities under consideration. The British delegate acquiesced in a number of items by accepting the Chinese valuations, reserving several for further consideration. The French delegate was less conciliatory in accepting the Chinese values, whereas the Japanese delegate showed no disposition whatsoever to accept any other than the valuations as proposed by him. The differences between the Japanese and Chinese valuations are in many cases quite considerable. The Japanese delegate also objected to the idea of accepting a five per-cent ad valorem arrangement for any items concerning which the proposed valuations differed from those fixed by the Chinese delegates. However, the Japanese delegate submitted in each case a statement showing the method of arriving at the valuation which formed the basis of his counter-proposal. A similar procedure was adopted by the other delegates who had counter-proposals to offer. The one item concerning which the American delegate offered a counter-proposal was settled by accepting a five per cent ad valorem basis.

The French delegate, in answer to a proposal on the part of the Chairman that condensed milk be placed on a five per cent ad valorem basis, inquired as to the methods adopted by the Customs in assessing an ad valorem duty on condensed milks. He wished to know whether the duty would be assessed on what might be termed an average

^{61a} Copy transmitted to the Department by the Minister in China in his despatch No. 1316, Dec. 15, 1927; received Jan. 23, 1928.

Shanghai wholesale market value for all brands of condensed milk, or whether each brand would be assessed a five per cent duty on the basis of its particular market value: For instance, it is commonly known that Eagle brand condensed milk, which is now marketed in China under the auspices of a Swiss corporation, commands from ten to twenty-five per cent higher price than does any other brand of condensed milk. The Customs' expert as well as Chairman both asserted that the Customs' duties are assessed on the basis of the actual wholesale market value of the particular commodity in question, thus any one brand of condensed milk would be considered on the basis of its Shanghai wholesale market value, and the duty assessed accordingly, provided this fell within the category of the open five per cent ad valorem items.

JULEAN ARNOLD

693.003/800 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 29, 1927—8 p. m.

[Received December 30—9:15 a. m.⁶²]

1134. 1. Vice Minister for Foreign Affairs of the Peking Government December 8th asked my sympathetic consideration of a proposal for acquiescence by the powers in certain tariff arrangements which it was hoped could be arrived at between delegates of North and South. He outlined the project only in vague, general terms stating that it would be more fully explained to me by the officiating Inspector General of Customs.⁶³

2. On December 21st Edwardes called, under instruction of the Wai Chiao Pu, to discuss this project with me and permitted me to read a memorandum of it of the following general purport: intra-regional tariff autonomy, as recently considered by the Nanking Government, is impracticable and economically unsound. It does not envisage special *pro quo* [*quid pro quo?*] arrangement between China and other countries beneficial to the trade of those concerned. China has no national tariff at present; there should be such in which duty on all kinds of goods is specifically laid down. China has a perfect right to compile her own tariff and there should be no question of any international tariff conference to assist her in its compilation. It is impossible however during present unfortunate political strife for any single government now functioning in China to compile national tariff since other governments would repudiate it. Two or three representatives from each of the governments functioning in

⁶² Telegram in three sections.

⁶³ A. H. F. Edwardes.

China should meet in the interests of Chinese national fiscal economy at Shanghai and there compile a national tariff in an entirely non-party spirit. The Maritime Customs would be available for exports [*exports?*] and for such information as the Commission might require as also for assistance in making necessary arrangements to bring together such a commission.

When the national tariff is compiled in accordance with the idea that it be used as a means of obtaining *quid pro quo* arrangements with the various powers the tariff should be sent individually to the representatives of all foreign governments for study accompanied by a definite offer on the part of China that if any articles in the tariff are found to be detrimental to the trade of the countries concerned China is willing to enter into reciprocal arrangements with a view to bettering economic relations between that country and China.

The question arises as to how this tariff is to be presented to each of the foreign powers since recognition of territorial rights of the different governments in China has not yet been settled. Unless some united commission is appointed expressly to deal with foreign affairs, the tariff conference (local Chinese conference by commissioners described above), which will be composed of duly accredited representatives from all the governments functioning in China, might assume in any negotiations with any individual powers or any combination of powers the rights and functions of a united foreign affairs commission so far as the tariff and economic relations are concerned, seeing that tariff affairs are fundamental and their settlement is essential to the future welfare of China.

Question of tariff autonomy should be approached by stages, first stage being acceptance by the powers of collection by China customs administration of existing two and one-half percent surtax. When this is established China might reasonably approach the diplomatic body with the request that until national tariff has been properly compiled and promulgated, the arrangement as recommended by America, Great Britain and Japan bases [*basis?*] 1926,⁶⁴ shall be enforced, all other existing taxes by the Maritime Customs to remain unchanged with the exception of two and one-half percent surtax which would be abrogated in favor of the increased import duty. Until all China is united, Maritime Customs should meet all obligations secured thereon from this collection and should hand over the surplus monthly to the governments in control of the collecting ports.

⁶⁴ See "Washington Treaty Surtaxes" in sec. II of the report submitted to the Secretary of State on July 8, 1926, by the American delegation to the Special Conference on the Chinese Customs Tariff, *Foreign Relations*, 1926, vol. I, pp. 767, 833. See minutes of meetings of Sub-Committee to Draft a Resolution on the Levying of the Interim Surtaxes, *The Special Conference on the Chinese Customs Tariff October 1925-April 1926* (Peking, 1928), pp. 382 ff.

It is computed that available surplus would be some sixty million Haikwan taels per annum on the basis of the 1926 customs returns. Question of abolition of likin is a purely internal affair of the various governments in China. Although the difficulty tantamount almost to impossibility of effecting total abolition of likin should not be minimized.

3. [Paraphrase.] I am informed by Edwardes that in this project, which is heartily approved by the Peking Government, a member of Customs is acting as intermediary with the Nanking authorities. Edwardes informed me at that time and later that a point has been reached in these informal negotiations at which the Southern regime has voiced its approval in principle, but is still undecided as to the practical problem of how, without impairment to its claims to national authority, to take part in the arrangement.

4. Prior to my return to Peking, Edwardes stated, the proposal had been explained by him to the other ministers who in any considerable degree were interested and all had been found favorably disposed toward it with the exception of the Japanese, who at first had taken an unsympathetic attitude but later had given what appeared to be an indication that it might be considered favorably by Japan.

5. Without hesitation I informed Edwardes that the United States Government, I felt sure, would approve the proposal in principle, but that for reasons arising from the treaty-making system in the United States, I was doubtful whether it would be practicable for our trade to be subjected by us to any interim surtaxes during the period between the present time (when, by virtue of broad construction of the Washington customs treaty,⁶⁵ we are making no objection to the two and a half percent surtax) and the date of exchange of ratifications of a new treaty by which "tariff autonomy" is accepted.

6. Before it had been possible for me to consider this matter fully and report to you, it became necessary to consider it in the light of the Department's 418, December 18, noon.⁶⁶ My original belief that the plan is deserving of the full support of the United States is confirmed by such reconsideration.

7. Although appearing to restrain my judgment that it may not be misguided by false hopes, it is my belief that this project, with the measure of success it has already achieved, is the most hopeful and concrete basis for constructive action for the solution of the present chaotic condition in China that has been suggested thus far. Only through developing cooperation in meeting problems of a

⁶⁵ *Foreign Relations*, 1922, vol. I, p. 282.

⁶⁶ *Ibid.*, 1927, vol. II, p. 366.

national character having a definite relationship to the actual internal conditions of China can there be any prospect of bringing about any degree of unification. Not only would agreement in regard to some phase of fiscal arrangement afford such an opportunity, but, once effected, it would constitute a continuing incentive for the maintenance and development of cooperation. On the other hand, no such purpose would be served by an ephemeral and purely localized combination for the sole purpose of contesting and probably terminating the existing treaty rights of one or more powers.

8. Furthermore, the project presents a means of meeting the main difficulty anticipated in executing the plan of negotiations on tariff matters as discussed by me with you last October. It will be recalled that although suggesting that the effort would be worth making I conceded that the chances were against the possibility of being in a position to negotiate with the several factions jointly or to undertake preliminary conversations with either faction without encountering partisan opposition of the other. By reason of its recognition as the representative body with which negotiations for the purpose we have in view could be carried on, the Joint Commission created pursuant to the present plan would solve this difficulty.

9. Accordingly, with a view to its potential value as a stabilizing agency in the affairs of China and with a view to its direct applications to us in promoting the plans which we have for adjusting tariff questions with China, it is recommended that I be directed by you to make known in any appropriate way your approval of the project and to make the influence of the United States Government available for the support of the project. [End paraphrase.]

MACMURRAY

693.003/800 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, *January 12, 1928—1 p. m.*

12. Legation's telegrams 1127, December 28, noon,⁶⁷ and 1134, December 29, 8 p. m.

1. As to the possibility of negotiations of the nature referred to in the Department's 418, December 19 [18], noon,⁶⁸ the Department has not been especially optimistic. The Department has not contemplated going further than indicated in the statement which I made on January 27, 1927.⁶⁹ Although the Department concurs in the

⁶⁷ *Foreign Relations*, 1927, vol. II, p. 368.

⁶⁸ *Ibid.*, p. 366.

⁶⁹ See telegram No. 28, Jan. 25, 1927, to the Chargé in China, *ibid.*, p. 350.

view which you express that existing conditions in China would limit serious discussion automatically to the treatment of American trade and customs matters, it has no desire to give the impression that it discourages any efforts which might tend toward the unification of China. The reasons which you set forth for holding the negotiations, if any are undertaken, in China are appreciated by the Department.

2. The project described by Edwardes is, it is understood (see Legation's 1134, December 29, 8 p. m., paragraph 2), as follows: (a) A joint commission would be formed at Shanghai by the different regimes functioning in China for the purpose of compiling a national tariff, with the assistance of the Maritime Customs. (b) When such national tariff shall have been completed the commission shall present it to the powers for acceptance or possible negotiation. (c) During the interim which precedes a compilation of the national tariff and the assumption of tariff autonomy by China, there shall be formal assent on the part of the powers to the collection by Maritime Customs of the Washington two and one-half percent surtax, so-called, and that thereafter the powers shall consent that this surtax be replaced by increased import duties as recommended in 1926 by the United States, Great Britain and Japan, the said increased duties to remain effective until the realization of tariff autonomy. (d) China supposedly would be represented by the Chinese joint commission in negotiations in regard to these preliminary steps.

3. The above proposals involve changes in existing tariff treaties of October 8, 1903, between the United States and China⁷⁰ and the October 20, 1920 treaty.⁷¹ Only in two ways can this be done legally: (1) by entering into a new agreement or treaty to be submitted for ratification to the Senate, or (2) by a *modus vivendi* specifically authorized in advance by Congress—that is, an act could be passed by Congress authorizing the President to consent to a modification, so far as the tariff is concerned, of the rates of duties prescribed in the treaties. After the agreement with the representatives of the various regimes had been made, it could, of course, be submitted for ratification to the Senate. Probably this would be interpreted as a recognition of the various governments. I can not say whether or not this would be particularly objectionable. Whether Congress, by joint resolution, would give the President this blank authority, I do not know. I should like to have your views concerning the question as to the effect which publicity necessarily involved might have on the negotiations in China. This departure from treaties, it should al-

⁷⁰ *Foreign Relations*, 1903, p. 91.

⁷¹ *Ibid.*, 1921, vol. I, p. 459.

ways be borne in mind, can be achieved only through the authorization by the Congress as a whole giving to the President authority to exercise his discretion or through the ratification by the Senate. It is my opinion that, under our treaty of 1903 and under article III of the 1922 Washington Treaty,⁷² you could, as suggested, in concurrence with the other Ministers, consent to the interim surtax of two and one-half percent without the necessity of submitting it to the Senate for ratification. There is only one other alternative, namely, that if this Government should find such an agreement satisfactory, the authority might be assumed by the President to raise no objection to the rates becoming effective pending ratification by the Senate. The President might be justified in doing this as the Chinese are not living up to, and probably will not live up to, the present treaty rates.

4. From the second paragraph of Legation's 1134, it is noted that reciprocal tariff bargaining by China is anticipated. No action should be taken by you endorsing the principle involved in that proposal or committing the United States to acceptance of such principle. Tariff discrimination is not only inconsistent with the concept of equality of opportunity advocated for so long by this Government, but appears also to be specifically in contravention of article 5 of the customs treaty adopted at the Washington Conference. The January 1927 statement reaffirmed this principle. Also, see paragraphs (3) and (4) of article I, as well as article II, of the Washington Conference treaty on principles and policies.⁷³ The policy of this Government, furthermore, is opposed to reciprocal tariff arrangements. It has been announced by us that in all our recent treaties, and in prolonged negotiations with France, we have insisted that our tariff rates must be uniformly applied to all.⁷⁴ Reciprocal arrangements are not permitted by our tariff law and our tariff could not be varied for the purpose of receiving reciprocal benefits from China. The commencement of a policy whereby each country would bargain with China would involve the United States and the other countries in a regime of bargaining for special privileges disastrous to China's relations with all the powers.

5. In view of existing commitments, including article 7 of the treaty on principles and policies, you are authorized to take up with your interested colleagues such phases of the project in question as you may deem it discreet and necessary to discuss.

KELLOGG

⁷² *Ibid.*, 1922, vol. I, p. 282.

⁷³ *Ibid.*, p. 276.

⁷⁴ See telegram No. 282, Sept. 19, 1927, to the Chargé in France, *ibid.*, 1927, vol. II, p. 678.

693.003/806: Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, February 13, 1928—6 p. m.

[Received February 13—11:45 a. m.]

91. Department's 12, January 12, 1 p. m.

1. With reference to your third paragraph, it is assumed that, with the exception of the so-called Washington surtax of two and a half percent (which you have authorized me to accept on the part of the United States, provided the other powers also accept it), no alteration can be made in the existing treaty stipulations fixing customs tariffs unless such change is achieved by one or the other of the two methods outlined in the Department's telegram. Of the two alternatives mentioned, congressional authorization for entering into a *modus vivendi* would be, in my opinion, very perilous, not only because it would involve publicity tending to result in our involvement in Chinese domestic problems, but also because it would create a situation in which, as a matter of fact, we could be compelled to proceed with negotiations on the defensive.

2. With reference to the fourth paragraph of Department's telegram, it is my understanding that the reciprocal agreements envisioned by the Edwardes proposal would not involve any discrimination or any impairment of the principle of equality of opportunity. What Edwardes intends is that which the delegation of Japan proposed in 1925 at the Tariff Conference and which the American delegation voiced its readiness to accept; namely, that in case there should be concessions of a mutual nature in the tariff rates upon, for example, certain items of Japanese imports into China, or vice versa, the advantage of the reduced rates on such items would accrue automatically to other nationalities which enjoyed most-favored-nation treatment. Even though we are not in a position, under our tariff system, to enter into such an arrangement in regard to items of especial interest to American trade, nevertheless we would not be subjected to any differential treatment with regard to those or other items.

3. It may be argued that the classes of trade in which we have an interest would be burdened with heavier duties in order to compensate for the lowering of the revenues to be obtained from those classes of goods; for example, low-grade cotton textiles, in which, in fact, there is no competition between us and the Japanese. However, there does not seem to me to be any practical force in such an argument since it has already been made clear by the Chinese that

they are disposed to tax petroleum and tobacco products (which comprise a very great proportion of imports into China from the United States) to the full extent that the traffic will bear, and undoubtedly the Chinese will follow, under tariff autonomy, the same policy with respect to other products which make up what, in their view, is substantially a trade in luxuries or quasi luxuries.

4. There is, in my opinion, very little probability that the requisite assent of Japan to any change in existing tariff restrictions is obtainable until arrangements satisfactory to Japan have been made for low rates on the classes of goods which certain essential industries of Japan produce. As far as I am aware, the only means to that end suggested thus far is the kind of reciprocal agreement described above. I trust, in view of the nondiscriminatory nature of such an agreement, that there will be no need for us to oppose it and thereby obstruct the accomplishment of any practical result from the tariff autonomy negotiations which, in pursuance of the Edwardes project, the Chinese may undertake.

MACMURRAY

693.003/813

The Minister in China (MacMurray) to the Secretary of State

No. 1389

PEKING, February 15, 1928.

[Received March 17.]

SIR: I have the honor to report that the American Commercial Attaché on February 13, 1928, addressed the following note to the Legation concerning the work of the China Tariff Valuations Revision Commission, which is now holding sessions in Peking:

"The Chairman of the Commission for the revision of the import tariff valuations recently informed me that he anticipates that it will require about six weeks longer to complete the labors of the Commission. Of the ten foreign Powers represented on the Commission, Japan alone seems to be inspired with a desire to press for every possible advantage by way of valuations lower than those as proposed by the Chinese. Last June, while in Shanghai, my Japanese colleague informed me that the Japanese had very few counterproposals to offer to the valuations as proposed by the Chinese. I had informed him, in reply to his enquiry as to whether or not the American delegation had many counterproposals to offer, that we had very few. He then stated that the Japanese also had very few. After the Commission resumed its sessions in Peking, it developed that the Japanese had a counterproposal for nearly every item which had to do with Japan's trade with China. Furthermore, during the progress of the Commission's sessions, it has become increasingly apparent that while the other delegates have assumed a very conciliatory attitude and have shown a disposition to meet the Chinese a little more than half way on their proposals, the Japanese have thus far consistently stood out against making concessions on their

counterproposals. In other words, they appear to be adopting the attitude of driving a bargain on every point at issue. This is a matter which would not concern the American delegate on this Commission were it not for the fact that should the Japanese be able by their obstinate tactics to prevail upon the Chinese to make considerable concessions in order to effect a successful conclusion of the work of the Commission, it will mean that relatively speaking, those commodities which have primarily to do with America's trade with China will be obliged to pay more import taxes than will Japanese products."

I have [etc.]

J. V. A. MACMURRAY

693.003/808 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 6, 1928—5 p. m.

[Received March 6—12:50 p. m.]

142. Commercial attaché reports that Chinese members of the Commission for the Revision of Import Tariff Values claim [*give?*] present indications of putting on a 5 percent ad valorem basis any items of tariff concerning which Chinese members cannot agree to accept fixed values as offered in counterproposals of foreign delegates. Tariff schedules contain upwards of 500 items. Japanese and British delegates each offered about 100 and American delegates about 20 counterproposals to those suggested by Chinese members. Japanese show disposition to make but few concessions while British and American delegates are quite conciliatory. Should American delegate respect contention of members and accept 5 percent ad valorem basis for those items affecting American trade, concerning which Chinese are reluctant to accept American counterproposals as to fixed values?

MAYER

693.003/808 : Telegram

The Secretary of State to the Chargé in China (Mayer)

WASHINGTON, March 8, 1928—6 p. m.

87. Your 142, March 6, 5 p. m.

1. Department is prepared to approve 5 per cent ad valorem basis for disputed items. Commerce Department concurs.

2. Department assumes duty paying value will be determined as provided in Rule 1 attached to the Revised Import Tariff of 1922.⁷⁵ If otherwise inform Department.

KELLOGG

⁷⁵ See *The China Year Book*, 1923, pp. 525, 544.

693.003/812 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 17, 1928—2 p. m.

[Received March 17—12:50 p. m.⁷⁶]

170. Following from Shanghai:

"59, March 15, 8 p. m. Today's foreign press published Kuo Min News Agency report of regulations promulgated by Government counsel yesterday and immediately effective in reference to duties of National Tariff Committee of Nationalist Government. These regulations *inter alia* contain following provisions:

'Article 1. This committee created for the purpose of hastening and realizing tariff autonomy shall be known as the National Tariff Committee.

Article 2. The committee shall consist of a limited number of members to be appointed by the Nationalist Government. The Ministers of Finance, Foreign Affairs, Industry and Commerce, Communications, and the directors of the Auditing Department and the Customs Administration being members of the committee *ipso facto*.

Article 3. The committee shall be presided over by a chairman, with the Minister of Finance concurrently acting as such.

Article 4. The committee shall establish three sections, etc.:

(a) The first section shall take charge of the nationalist [*national*] tariff schedule; the revision of the tariff schedule; and all affairs not pertaining to these conditions [*the second*] and third section[s].

(b) The second section shall take charge of reorganization of the national loans; and abolition of likin and increase of the tariff.

(c) The third section shall take charge of tariff policy; deposit of the cash loans reserved; and all matters relating to the organization and regulations of the Custom Administration.

Article 5. All resolutions of the committee shall be executed upon approval by the Nationalist Government.

Article 6. The committee shall be authorized to invite explain [*invite and engage*] such Chinese and foreign tariff experts as may be needed to form [a] technical committee to investigate and discuss various technical matters as they may arise. Members of the technical committee whenever called upon for consultation may attend meetings of the members of the committee to explain their recommendations.

Article 7. The committee shall appoint a private secretary and other secretaries and staff member[s] as may be required.'"

MAYER

⁷⁶ Telegram in two sections.

693.003/818

*The Commercial Attaché in China (Arnold) to the Legation
in China*"

PEKING, March 21, 1928.

MEMORANDUM

The Chinese members of the tariff valuations revision commission appear to be bent upon increasing the values of the 1922 tariff schedules irrespective of the relation of these increases to the Shanghai wholesale market values for the year 1925, which was the period selected by the Chinese commission as a basis for the revisions. Naturally there are instances in connection with items in the tariff which would show decreases in values for the year 1925 as compared with those for 1922.

Chinese members of the commission are reluctant to admit these decreased values. Confidentially one of the members of the commission stated that they had instructions not to lower any of the values which appear in the 1922 tariff. Naturally when the foreign delegates agreed to the acceptance of the average Shanghai wholesale market values for the year 1925 as a basis of the revisions they anticipated that the commission would accept lower values where market conditions justified as would the foreign delegates be obliged to accept higher values where these market conditions warranted.

Chinese members of the commission are apparently very sensitive to the possible criticisms of the Nationalists in the south in what might be termed by them an attitude of leniency toward foreign interests in accepting lower values than those which appear in the 1922 tariff schedules.

It is not an easy matter in all cases to determine the Shanghai wholesale market values. In certain commodities there are certain ranges in qualities and prices so that it is difficult to fix upon an average for the year. This is especially true with commodities which experienced during that year considerable fluctuations in price.

The Chinese have been working through the Bureau of Markets of the Ministry of Finance which has its headquarters at Shanghai and which has been functioning some years. This Bureau compiles monthly and quarterly reports on Shanghai market prices. But the reports of this bureau are in some cases inaccurate as so-called wholesale prices have been found in reality in some cases to be retail prices.

"Copy transmitted to the Department by the Chargé in China in his despatch No. 1446, March 23; received April 28.

Furthermore, there are commodities concerned for which it is difficult to arrive at a fixed wholesale market price.

The Chinese commission also uses the customs returns values in its efforts to arrive at the Shanghai wholesale market value. These are not always reliable for the reason that importers often give prices on their applications which are nominal and which do not represent the Shanghai Wholesale market value. These importers pay duties on a specific basis hence are not particularly careful about the values they place on their invoices. In some cases they will purposely put on a higher price with the idea of realizing on the commodity in question as much as competitive market conditions will allow hoping to approximate the price stated on their customs application. Thus, there are times when the customs returns values cannot be relied upon.

The American delegate is experiencing considerable difficulty in trying to persuade the commission to accept the Shanghai wholesale market values for petroleum products. These it appears were lower in 1925 than they have been since that year. They were also lower in 1925 than they were in 1922. Certified copies of contracts and other certified data regarding the prices of petroleum products for the year 1925 have been produced for the commission. Members of the commission have been unable to dispute the inaccuracy [*accuracy?*] of these values. However, they are insistent upon the acceptance by the American delegate of higher values than the 1925 market conditions warranted. The American petroleum companies are averse to the idea of accepting a 5% ad valorem basis for petroleum products. The customs authorities are also unfavorably inclined toward putting petroleum products on an open ad valorem basis. Thus, it will be necessary to come to some agreement in regard to the valuations on these products.

As for importers of synthetic indigo, the American delegate is also confronted with a similar situation as that obtaining in connection with petroleum products, but in this case the American dye stuffs companies appear to be willing to accept an ad valorem basis although they greatly prefer to have the valuation fixed. The difference between the proposed Chinese values and the actual Shanghai wholesale values is too great to permit of the acceptance of the Chinese proposal. Thus, it may be necessary in this case to accept a 5% ad valorem duty rather than to try to arrive at some settlement on a fixed value basis.

JULEAN ARNOLD

693.003/820

*The Treasury Representative at Shanghai (Nicholson) to the Minister in China (MacMurray)*⁷⁸

The following comprises the organization of the National Tariff Commission now in session at the Maritime Custom House, Shanghai, for the purpose of promulgating a so-called Autonomous Chinese Tariff, effective January 1st, 1929.

There is also in the process of formation another Commission in Nanking which will bear a more or less similar name. The two Commissions are not to be confounded as in object and personnel they will be entirely different.

The National Tariff Commission of Shanghai was formed with the main object of drawing up a national tariff schedule applicable under the present circumstances and of studying questions related to tariff making. As by products it also studies problems which may have bearing with the making of National tariff, such as: The abolition of Likin, disposal of Customs funds, China's domestic and foreign loans, revision of export tax, reciprocity, etc. The Commission is essentially technical.

This Commission is constituted by six members, the Chief of Customs Administration of the Ministry of Finance being the ex-officio chairman of the Commission, thus insuring a close touch with Customs Administration at Nanking. The Commission undertakes its study by dividing itself into the following divisions:—

1. Division of Compilation
2. Division concerning Agricultural Products
3. Division concerning Chemical Products
4. Division concerning Spinning and Weaving Products
5. Division concerning Mechanical Products
6. Division concerning Customs funds
7. Division concerning Customs Laws and Administration

Each of these divisions is headed by one or more experts. The work is done under the actual direction of the heads of the divisions and general supervision of the Commissioners. A secretariat under the direction of a general secretary handles the general affairs. Meetings are held every two weeks in which are present all the commissioners and secretary to discuss the progress of the work and whatever may come up from time to time. The Commission works also in close co-operation with the market bureau, the chief of which is also a member on the Commission.

⁷⁸ This paper bears the notation: "Copy of Memorandum handed to the Minister by the American Treasury Attaché at Shanghai, China, March 30, 1928." Copy transmitted to the Department by the Minister in China in his despatch No. 1465, Apr. 10, 1928; received May 12.

An effort has been made by the Chairman of this Commission, through Professor Sayers of Harvard University,⁷⁹ to engage the services in China of Professor Taussig⁸⁰ in connection with their work on their proposed National Tariff. Professor Taussig has refused the offer of the Commission and has recommended Edward P. Costigan of the United States Tariff Commission in his stead. It is believed that the Commission are now carrying on negotiations with Mr. Costigan.

SHANGHAI, *March 29, 1928.*

693.003/822

*Memorandum by the Counselor of Legation in China (Perkins)*⁸¹

[Extracts]

Subject: Conversation between Mr. A. H. F. Edwardes, Officiating Inspector General of Customs, and Mr. Perkins, on April 12, 1928.

Mr. Edwardes said that his plan regarding Customs matters was that the Chinese, laying political considerations aside, should form a commission, composed of both Northerners and Southerners, to deal with the treaty powers with a view to putting into effect the "interim tariff rates" until such time as the Chinese should be able to establish a reasonable national tariff act. This plan contemplated that the present illegal taxes should be abolished, such as the levies which are now being collected on special imports of oil, tobacco, etc. It also provided that a certain limited portion of the surplus should be set aside for the purpose of making payments on the unsecured debt. This amount would be very small and would not even suffice to pay current interest, but it would show a measure of good faith on the part of the Chinese with respect to their financial obligations. This fund was to be administered by a joint commission of Chinese and foreigners alike.

Mr. Edwardes said that, in his visit to the South, this plan was favorably received by the civil officials of the Nationalist Government but that the military people would have nothing to do with it and that it therefore had to be abandoned. The military were not interested in his proposals because, as they said, they would take Peking in a month or two and then there would be but one government to deal with matters of this kind. It appeared, therefore, that at present little if anything could be done about Customs matters until

⁷⁹ Refers to Francis B. Sayre, professor of law at Harvard University.

⁸⁰ Frank William Taussig, professor of political economy at Harvard University.

⁸¹ Copy transmitted to the Department by the Minister in China in his despatch No. 1482, April 26, 1928; received May 26.

the Nationalists had finished with their anti-Northern expedition. Perhaps by that time they would be in a more chastened frame of mind and it would be possible to make progress along the lines which he had described.

Mr. Edwardes stated that there was no Customs surplus at the present time although all of the foreign loans secured on the Customs were being met, both as to principal and interest. With regard to domestic loans, only interest payments were made during the past year as funds were insufficient to meet amortization instalments.

Mr. Edwardes' plan also provided that the increased revenues to be derived from the application of the "interim tariff rates" should be divided among the local Chinese authorities in the areas where these revenues were collected. From these new revenues, however, there would be set aside such amounts as were to form the fund above mentioned for the purpose of making payments upon the unsecured debts.

M[AHLON] F. P[ERKINS]

693.003/842

*The Commercial Attaché in China (Arnold) to the Minister in China (MacMurray)*⁸²

PEKING, June 29, 1928.

SIR: I have the honor to report that the commission for the revision of the values in the China tariff schedule completed its labors on June 28. The commission convened for its first session early in September, 1926. On March 9, 1927, the Chinese proposal that the Shanghai wholesale market values for the year 1925 be used as the basis for the revised tariff was formally accepted by the delegates to this commission.

With the taking over of Shanghai by the Nationalists the latter part of March, 1927, the sessions of the commission were temporarily adjourned. The Chinese members returned to Peking and in July the commission reconvened at Peking. The commission was about to conclude its labors when on June 8 of this year the Nationalists took over the control of Peking.

Recently the chairman of the commission, Chan Lun, informed me that Mr. Chang Fu-yun, the Nationalist successor to the post of Director of the Shuiwuchu (now known as the Kwanwuchu) informally instructed him to complete the work of the commission, allowing

⁸² Copy transmitted to the Department by the Minister in China in his despatch No. 1568, July 2, 1928; received August 20.

until June 30 for this task. In accordance with these instructions the sessions of the commission have been completed and the commission adjourned *sine die* on June 28.

In an informal interview with Mr. Chang Fu-yun, the director of the Kwanwuchu, he informed me that he will submit a report on the commission to the Ministry of Finance of the Nationalist government and indicated that there is a likelihood that the report will be accepted and the new tariff schedules made effective. However, Mr. Chang is not authorized to anticipate the action of the Ministry of Finance of the Nationalist government, hence the attitude of the Nationalist government in connection with the work of the commission awaits an official statement from that government in regard to this matter.

Regarding the work of the commission I may state that in my opinion the values finally assessed are fair. The Japanese consistently and persistently put forth the contention that because of their goods being "cheap and inferior" they were at a disadvantage in being grouped with those of certain other countries in efforts to arrive at an average wholesale market value. While it is necessary to admit the justice of the Japanese contention within certain limits, yet it is patent that they were inclined to take greater advantage than the circumstances in some cases seemed to justify. Thus on the whole, the Japanese probably secured relatively more consideration for values of their commodities than did either the British or American delegates, who were inclined to be more liberal and less exacting in insisting upon the commission conforming with the true wholesale market values.

It is evident that the Chinese associated with the work of the commission were determined to produce a schedule of valuations which would guarantee increased revenues to the Customs. They are probably disappointed in the results which have finally been attained in that the revision was more one of a readjustment of valuations than one of increases which would aggregate greater revenues from the import tariff.

The American delegate tried to persuade the commission to adhere rigidly to the accepted basis of valuations, that is, the average Shanghai wholesale market values for the year 1925. Unfortunately in order to come to an agreement with the Japanese in connection with the valuations of certain commodities, the Chinese pursued the policy, which they may have found necessary, of trading values of one commodity with those of distinctly unrelated commodities. In other words, distinctly unscientific compromises were not infrequent in bringing about an agreement between the Chinese and Japanese delegates in connection with a number of commodities in which the Japanese were primarily interested.

However, on the whole it may be said that the values are quite fair and represent the best that could be done under the circumstances. It was, indeed, unfortunate that the work of the commission dragged over such a long period of time. So far as the American delegate was concerned, the work might have been completed during the latter part of the year 1926.

There were on the commission, besides the Chinese members, delegates of the following countries: Denmark, France, Great Britain, Italy, Japan, Netherlands, Norway, Portugal, Sweden and the United States of America. I was fortunate in having the assistance in my work on the commission of Mr. M. R. Nicholson, United States Customs Attache, who contributed a very considerable amount of valuable technical knowledge in the handling of the values and classifications of the various import commodities considered.

I have [etc.]

JULEAN ARNOLD

693.003/829: Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 3, 1928—1 p. m.

[Received 1:40 p. m.]

505. Legation's despatch number 1389, February 15 and previous.

1. Arnold has informed me that China Tariff Valuations Commission completed its labors on June 28. Nationalist successor to the post director of Shuiwuchu (now known as the Kuanwuchu) instructed chairman of the commission to complete its work by June 30. New director has intimated that he will submit a report on the work of commission to the Ministry of Finance of the Nationalist Government and there is a likelihood that the report will be accepted and the new tariff schedules made effective.

2. Arnold states that in his opinion values finally assessed are fair, though on the whole the Japanese probably secured relatively more consideration for values of their commodities than did the British and American delegates who were inclined to be less active in insisting upon conformity with actual wholesale values. Distinctly unscientific compromises were not infrequently made between the Chinese and Japanese delegates in connection with certain commodities in which Japanese were primarily interested but on the whole values are fair and represent the best that could be had in the circumstances. Complete tables of the proposed revised schedules will be forwarded by mail as soon as prepared.

3. In view of the probability that the Nationalist Government will accept revised schedules I request authority to assent to their appli-

cation to American imports into China contingent upon unanimous assent of other treaty powers concerned.

MACMURRAY

693.003/829 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 12, 1928—2 p. m.

220. Your 505, July 3, 1 p. m. Department is doubtful concerning its authority specifically to assent to application of revised schedules to American imports. Present tariff revision is not in conformity with Article IV of Washington Customs Treaty.⁸³ Department will not, however, object to enforcement of revised schedules providing they are accepted by the other treaty powers concerned and contain no discriminatory features.

KELLOGG

693.003/858 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 8, 1928—5 p. m.

[Received December 8—1 p. m.]

864. 1. Following from the American consul at Shanghai:

"December 7, 4 p. m. Last evening the Secretary of the Minister for Foreign Affairs requested that an unsealed envelope and accompanying package be forwarded to the American Minister. The translation of the letter from the Minister for Foreign Affairs to the American Minister reads as follows:

'EXCELLENCY: With reference to the import tariff in force at present, I have the honor to state that China has been using the system of uniform rate for more than eighty years. With the present change in conditions, such a system has become inapplicable for a long time and is furthermore inconsistent with the principle on which the existing system of taxation in all other countries is based. With a view to adapting itself to the altered conditions and to readjusting the system of taxation, the Nationalist Government has issued special instructions to the competent functionaries to certify a suitable import tariff which, as announced by express mandate,⁸⁴ will come into force on the first day of February 1929.'

2. I am endeavoring to secure unofficially a copy of the new tariff. Should I be successful is it not desirable that I cable some particulars to the Department?

3. I am making no comment in regard to the above pending receipt of copy of new tariff.

⁸³ *Foreign Relations*, 1922, vol. 1, pp. 282, 285.

⁸⁴ For schedules of the customs import tariff promulgated Dec. 7, 1928, by the Nationalist Government, see *The China Year Book*, 1929-30, pp. 238ff.

4. Consul at Shanghai has been requested to telegraph Department immediately principal items as soon as copy of new tariff is available.

MACMURRAY

693.003/858 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, December 11, 1928—2 p. m.

404. Your 864, December 8, 5 p. m.

Paragraph 2. Particulars of tariff schedules not necessary but information concerning attitude of other governments and any steps contemplated or taken by them are desired.

Paragraph 4. Noted and approved.

It is assumed that Commercial Attaché will give Department of Commerce complete information.

KELLOGG

693.003/861 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 13, 1928—2 p. m.

[Received December 14—10 a. m.⁸⁵]

875. My telegram No. 864, December 8, 5 p. m.

1. I received yesterday from Minister for Foreign Affairs single copy of new tariff schedules.

2. After preliminary examination commercial attaché submits the following notes thereon:

“(1) It is patent that American trade must carry the heaviest burden of the increased tariff.

(2) The revised valuations as agreed upon by the Chinese convention tariff revision commission in July, 1928, were disregarded in the drafting of the new tariff.

(3) The new tariff is based upon the valuations as set forth in the import tariff of 1922.

(4) The schedules as agreed upon by the American, British and Japanese delegations at the Peking conference, 1926, are substantially the basis of the new tariff.

(5) Kerosene, gasoline, cigarettes and leaf tobacco are the most important items which are assessed duties at variance with those of the schedule mentioned in item 4 above.

Under the new system tariff kerosene will probably be about thirty-one percent, gasoline twenty-one percent, cigarettes forty percent and leaf tobacco ten percent; instead of twelve and a half percent for kerosene and gasoline, cigarettes twenty-seven and a half percent and leaf tobacco twenty-two and a half percent.

⁸⁵ Telegram in two sections.

(6) Under the new tariff, raisins, an important item in American trade, is assessed at twelve and a half percent on a value now more than one hundred percent above the actual market or about thirty percent on actual present-day market. In the 1928 tariff revision coding it was agreed to put this item on an open ad valorem basis.

(7) It means that the tariff stipulates a twelve and a half percent duty on motor buses completed with a minimum seating capacity of twelve persons and for complete motor trucks, while all other motor vehicles or accessories are taxed twenty-two and a half percent as importing of chassis and assembling in China is penalized, thereby working a hardship on American trade.

(8) It is patent that Japanese trade is on the whole favored and American trade burdened by the schedules as set forth in the new tariff."

3. Repeated to Shanghai.

MACMURRAY

693.003/864 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 20, 1928—1 p. m.

[Received 1:45 p. m.⁸⁶]

884. Department's 404, December 11, 2 p. m. and 407, Dec[ember] 11, 6 p. m.⁸⁷

1. Following from Shanghai:

"December 19, 11 a. m. Since it is problematical as to whether or not ratifications⁸⁸ can be exchanged before January 1st (see my December 6, [5] p. m.⁸⁹) it does not seem that new tariff will become effective February 1st. On Monday the Customs gave public notice in the press that new customs import tariff [would be] put into force on February 1st. Legation's instruction as to advice to be given to American inquirers is earnestly solicited."

2. I should appreciate very much being informed as to the likelihood of the tariff treaty being ratified by January 1st and I also request to be notified by cable should the Senate adjourn for the holidays without ratification and also of the date of the presentation of the Chinese instrument of ratification.

3. Should the exchange of ratifications not take place by January 1, and should the Chinese insist upon putting into effect the new schedules on February 1, we should be confronted by a situation in which the present Nationalist Government would be violating the terms of a treaty which that Government itself had but recently

⁸⁶ Telegram in three sections.

⁸⁷ Latter not printed.

⁸⁸ See section on treaty between the United States and China regulating tariff relations, signed July 25, 1928, pp. 449 ff.

⁸⁹ Not printed.

concluded. In this case I suggest that we should enter a *pro forma* protest against the imposition of the new schedules.

4. Reuter telegram just received states that the Dutch, Portuguese, and British treaties were signed last night.⁹⁰ British Chargé states that treaty deals solely with the tariff and is the same as our treaty with the addition of an exchange of notes relating to most-favored-nation treatment specifying British goods as well as importations of British goods by British nationals.

I have no information as to the attitude which may be adopted by other governments toward the imposition of the new schedules on February 1st; but in view of the fact that no agreement has yet been reached with Japan, I consider it very likely that Japanese opposition may bring about a postponement of the date of actual enforcement.

MACMURRAY

693.003/865 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 20, 1928—4 p. m.

[Received December 21—9:25 a. m.⁹¹]

885. Legation's 875, December 13, 6 [2] p. m. The following is major portion of a report on the new tariff schedules, dated December 19th, which is being forwarded by the commercial attaché to the Department of Commerce:

"Political rather than economic considerations dictated the schedules in China's new tariff. From an economic viewpoint the new tariff may be described as distinctly unscientific. Items of undisputed luxury character are assessed lower duties than are certain important necessities. Little or no cognizance has been taken of the theory of utilizing a tariff as a means of encouraging domestic industry. The tariff imposes an unfairly heavy burden upon American trade. Furthermore there are no accompanying assurances that the import trade will be relieved of any of the present burdensome internal taxes, in lieu of the increased import duties.

Kerosene, one of China's more important items of import and now generally recognized as a necessity, is assessed a higher duty than any other article in the tariff with the exception of tobacco, which in addition to a 7½ percent import duty is taxed a 32½ percent excise or a total tax of 40 percent. Kerosene is taxed at about 31 percent while champagne and liquors are subjected to a duty of 27½ percent and light wines and beer 22 percent. In this connection it is well to note that the bulk of China's imports of both kerosene and rolled tobacco are of American origin. Awabi, a Japanese sea product, which is found only on the menu of the wealthy in China, is permitted to be imported under a duty of less

⁹⁰ For texts of treaties, see League of Nations Treaty Series, vol. cxi, p. 161; vol. cvii, p. 93; and vol. xc, p. 337.

⁹¹ Telegram in six sections.

than 10 percent, figured on present-day values, while raisins, which are imported in large quantities from America, are subjected to a duty which, calculated on present-day prices, is probably about 30 percent.

With a sad dearth of railway mileage in China the motor bus has come in many sections of the country to take the place for passenger purposes of the railway. Naturally the cheaper the bus the cheaper may be the passenger rates. Furthermore it is not yet possible to build roads in the interior of China which can stand heavy traffic. This means that the most economic type of bus is that assembled in China from the chassis of such cars as Ford, Dodge and Chevrolet. The new tariff imposes a duty of $[22\frac{1}{2}]$ percent on all motors and accessories except bus[ses] with a minimum seating capacity for 12 persons and completed trucks of over one ton capacity, for which new tariff is only $12\frac{1}{2}$ percent. By this method American companies are discouraged in promoting assembly plants in China, and Chinese are discouraged in the buying of chassis and accessories and assembling in China.

During the years 1927 and 28 there sat in China a commission for the revision of the valuations in China's import tariff of 1922. It concluded its labors in July 1928. The chairman of this commission was a Chinese. Thirteen [nations] were represented. In compiling the new tariff the Chinese totally ignored the findings of this commission and elected to use values as fixed by a similar previous commission which sat in 1922 and used 1921 market values as the basis for the revision made at that time. Hence values as they appear in the new tariff are those of the 1922 values based upon Shanghai wholesale market values of 1921, whereas 1927-28 commission based its revision upon the 1925 Shanghai wholesale values.

The new tariff schedules are divided into seven classes, namely: $7\frac{1}{2}$ percent, 10 percent, $12\frac{1}{2}$ percent, 15 percent, $17\frac{1}{2}$ percent, $22\frac{1}{2}$ percent, and $27\frac{1}{2}$ percent. It was presumably to be a $12\frac{1}{2}$ percent tariff with certain necessities on lower schedules and certain commodities of patently luxury character in the upper classes. However, the new tariff departs radically from this theory in a number of important particulars among which were those as enumerated above. It is patent that it places the heavier burden of the increased duties upon American trade not because the economic situation in China warrants, but because generous good-hearted America would probably stand for that which would occasion an outburst of protest from certain other nations had they been placed in a similar situation. To what extent American trade will be adversely affected by this new tariff is difficult to prophesy but it has within it certain elements of unfairness to American trade which are bound to result unfavorably as contrasted with that which effects [*affects*] the trade of other countries.

It is a significant fact that nothing has appeared in any official documents or in press in connection with this new tariff which may lead any one to infer that, when it becomes effective, internal taxes on trade, for instance as likin, transit dues, destination taxes, consumption taxes, and other similar excises, will be abolished or materially reduced. It was presumed when the foreign powers signatory

to the Washington Conference treaties and agreements met in Peking during the year 1926 that when China's assumption of tariff autonomy on January 1, 1929, went into effect it would be accompanied with some definite arrangement for the abolition of those internal taxes in the event the import schedules were materially increased. Unless there is a substantial reduction in the internal taxes on trade, it would seem that the additional import duties, will with certain commodities increase the costs to such an extent as appreciably to lower the quantities imported."

MACMURRAY

PROPOSALS FOR REVISION OF CHINESE TREATIES REGARDING
TARIFF CONTROL AND EXTRATERRITORIALITY ⁹²

793.00/194 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, December 31, 1927—1 p. m.

[Received December 31—11 : 30 a. m.]

1137. 1. As a result of the recent action of the Peking regime in denouncing the Spanish treaty ⁹³ there has been much discussion among the diplomatic representatives in regard to the practicability of the powers manifesting a concerted attitude towards the increasing propensity of the Chinese to repudiate international obligations. With the object of formulating a course of action which might be presented by the Senior Minister (the Dutch Minister) for the consideration of the diplomatic body as a whole, there was an informal meeting yesterday of the Senior Minister with the British, French, Italian, and Japanese Ministers, and myself. It is our suggestion that, having obtained the approval of their several Governments, the various Ministers arrive at an understanding that each of them, when faced with the denunciation of his Government's treaty, will reply along the line of the following formula A to the Chinese notification, though presumably such reply would be in the third person in his Government's name:

"Even if it be assumed that you are to be regarded as the other government party to my treaty, I entirely contest any right on your part to denounce the treaty in the way you have done.

I have no intention, however, of discussing with you the question as to whether you are legally entitled to denounce the treaty. Noth-

⁹² Continued from *Foreign Relations*, 1927, vol. II, pp. 341-370. See also section on treaty regulating tariff relations between the United States and China, signed July 25, 1928, *post*, pp. 449 ff.

⁹³ This apparently refers to the action of C. C. Wu (then Nationalist Minister of Foreign Affairs) in notifying the Spanish Minister, Nov. 24, 1927, that the Sino-Spanish treaty of friendship, commerce and navigation of Oct. 10, 1864 (China, Imperial Maritime Customs, *Treaties, Conventions, etc., Between China and Foreign States*, Shanghai, 1908, vol. II, pp. 1085, 1104), had expired and become inoperative.

ing in the treaty gives to you the right to take any such action. You have, moreover, estopped yourself by refusing to have the point determined in the Belgian case by the Permanent Court of International Justice at The Hague,⁹⁴ despite the fact that the optional clause of the Court's protocol⁹⁵ which is applicable to the case had been accepted by you a short time before.

There is entire willingness on my part that the matter of your right to denounce the treaty should be decided by the Permanent Court. Unless, however, the matter is submitted to arbitration, and, pending a decision in your favor, I shall continue to consider that my treaty is in force.

There is no implication in this that my Government is not willing to negotiate a revision of the treaty, but it must continue to be understood that if, in the meantime, you take any action inconsistent with the treaty, I reserve the right to take such steps as I may deem appropriate for the protection of my interests and those of my countrymen."

2. In view of the fact that the United States is not a party to the Permanent Court, I stated that in submitting the formula for your consideration it would be recommended that in our case all of the third paragraph might be omitted except the words "I shall continue to consider that my treaty is in force" and that the reference to the Court in the preceding sentence might also be omitted. It may be that you would think it appropriate to substitute something analogous, such as a reference to The Hague Court of Arbitration or to a commission under our 1914 treaty for the advancement of peace with China.⁹⁶

3. The suggestion of the diplomatic representatives contemplates further that in case the treaty of one country is denounced in the manner mentioned, a communication in the terms of the following formula B should be addressed to the Chinese by the representatives of the other countries, or by as many of them as feel themselves in a position to do so.

"The action taken by the Peking Government in regard to the (blank) treaty has been learned by my Government with concern, such action being in their opinion an additional exhibition of a spirit of disregard of international obligations. The communication of (date) by the (blank) Minister, is therefore, endorsed by my Government."

4. The next treaties which will be denounced are, it is anticipated, the Portuguese in March and the Danish and Italian in July.⁹⁷ It is

⁹⁴ For correspondence regarding the abrogation by China of the Sino-Belgian treaty of Nov. 2, 1865, see *Foreign Relations*, 1926, vol. I, pp. 984 ff.

⁹⁵ League of Nations Treaty Series, vi, pp. 380, 384.

⁹⁶ For text of treaty signed Sept. 15, 1914, see *Foreign Relations*, 1915, p. 41.

⁹⁷ For texts of treaties signed on Dec. 1, 1887, July 13, 1863, and Oct. 26, 1866, respectively, see China, Imperial Maritime Customs, *Treaties*, etc., vol. II, pp. 1010, 1043, and 1129 (1166), respectively.

felt by all the Ministers here that if the treaty rights of one country after another continue to be set aside by the Chinese without any demonstration of concern on the part of the others, the Chinese soon will be emboldened to force the issue of voluntary repudiation and, therefore, that it is for the self-protection of all of us that we should manifest a concerted attitude toward the Chinese program of treaty denunciation when the terms of the treaties provide for revision by negotiation. I am in entire agreement with the view that the course of action by which the Chinese not only are contravening foreign rights but also are creating very serious perils for the future international relations of China would be very soon halted by the manifestation of disapproval on the part of the powers.

5. It is recommended, therefore, that you authorize me to act favorably upon the above-mentioned suggestions.

MACMURRAY

793.00/194 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, January 3, 1928—5 p. m.

2. Your telegram No. 1137, December 31, 1 p. m.

1. Referring to the first paragraph. It is not considered advisable by the Department that any commitment be entered into which purports to bind the Government of the United States in advance in regard to the action which will be taken by it or the phraseology it will use in the event that it is confronted with the action of any Chinese regime in denouncing a treaty between the United States and China.

2. Referring to your third paragraph. As to the effectiveness of identic protests by all the powers in the case of treaty denunciation by the Peking or any other Chinese regime it does not seem that optimism is justified, considering the experience gained during the so-called "gold-franc controversy" between the Chinese and French Governments.⁹⁸ Although the Department is not disposed to object to your exerting your influence, informally and unofficially, in an appropriate case in opposition to an improper denunciation, any such action on your part must reserve, in each instance, the liberty of action of this Government.

KELLOGG

⁹⁸ See *Foreign Relations*, 1924, vol. I, pp. 559 ff.

711.93/164

Memorandum by the Assistant Secretary of State (Johnson)[WASHINGTON,] *January 5, 1928.*

Mr. Frank W. Lee, of the Nationalist Government at Nanking, called on Mr. Johnson, Assistant Secretary of State, at 3 P. M.⁹⁹ Mr. Lee said that he supposed Mr. Johnson had been wondering what had taken place in Nanking. Mr. Johnson said that he had heard that something violent had taken place there and that there had been a number of resignations. Mr. Lee replied that he had recently received two telegrams from Nanking. The first one had informed him of the resignation of Dr. C. C. Wu, from the portfolio of Foreign Affairs, and the second, relayed to him over the long distance telephone from New York, had said that Dr. Wu had been requested to remain as Minister for Foreign Affairs and that a mandate had been issued appointing him, additionally, as a delegate of the Nationalist Government to come to America to conduct negotiations for treaty revision. Mr. Lee said that Mr. T. V. Soong would take the place of Mr. Sun Fo as Minister of Finance, and the latter would be Minister of Reconstruction.

Mr. Lee described the political situation at Nanking somewhat as follows: He said that it still remained for the plenary session of the Kuomintang to confirm the appointment of General Chiang Kai-shek¹ as commander in chief. He said that the "Western Hills" faction seemed to be opposing Chiang and it would be necessary for the latter to win the support of the Kwangsi group of generals. He thought that Chiang could do this as he would consent to act with a Military Council. Mr. Lee expressed the opinion that the Nationalist Government controlled the South solidly, including Canton and Hankow.

Mr. Lee said that he wished to come to the principal subject in interest, namely the formation of the Chinese delegation to negotiate with representatives of the American Government regarding treaty revision. He inquired how the appointment of Dr. Wu as a delegate, or as the chief delegate of the Southern delegation, would be regarded by the American Government. Mr. Johnson replied that the proposed Chinese delegation must be the spontaneous creation of the Chinese themselves and he did not wish to express any opinion about the eligibility or desirability of any particular person. Mr. Lee asked whether Mr. Johnson would not express a personal opinion, pointing out that if the Nationalist Government sent its Minister

⁹⁹ Mr. J. K. Caldwell and Mr. W. R. Peck, of the Division of Far Eastern Affairs, were also present.

¹ Former commander in chief of the Chinese Nationalist armies.

for Foreign Affairs this was evidence of the serious purpose of the Nationalist Government. Mr. Johnson observed that, of course, if either of the Governments sent its Minister for Foreign Affairs it would be evident, without any comment from him, that the Government concerned regarded the matter seriously.

Mr. Lee said that he thought there was no doubt that the Nationalist Government represented the South, but it might be considered that there was a question whether Chang Tso-lin² represented the North. He had heard that Generals Chang Tsung-chang³ and Sun Chuan-fang⁴ were getting very powerful. Mr. Johnson remarked that after the delegation should be formed the American Government would, of course, examine it to ascertain whether it was truly representative, as claimed. He said that the result of the negotiations would have to be submitted to the Senate and the Senate would be unwilling to ratify an agreement unless it were concluded with an entity capable of enforcing it.

Mr. Lee, toward the close of the conversation, remarked that a question had been raised whether the negotiations should take place in China or the United States. He expressed the view that the Nationalist Government would prefer the negotiations to take place in the United States, but that the Peking Government would prefer China. Mr. Johnson said that he personally favored holding negotiations in China. As in the case of the Special Customs Conference,⁵ the American Government felt that the Chinese people would know much more about it, if it were held in China. Moreover, the proposed negotiations would be conducted by the Chinese delegates on behalf of several different principals and communication with the latter would be much easier if the Conference were held in China. Mr. Lee said that it would be difficult to select a suitable place. Either Nanking or Peking would be objected to, for obvious reasons, and when Mr. Johnson said that he thought the negotiations should be held at Shanghai Mr. Lee commented that in that case the claim would be made that the Conference was dominated by the commercial interests. Rather illogically Mr. Lee, in discussing the representative quality of the proposed Chinese delegation, said that he thought it would be a good thing to have on it a representative of the Chinese Chambers of Commerce.

Mr. Lee inquired what Mr. Johnson thought would be the scope of the negotiations, whether they would be limited to tariff matters and

² Generalissimo of military and naval forces under the Peking Government.

³ Military Governor of Shantung Province.

⁴ Nominal overlord of Kiangsu, Kiangsi, Chekian, Fukien, and Anhwei Provinces.

⁵ See *Foreign Relations*, 1925, vol. I, pp. 833 ff; *ibid.*, 1926, vol. I, pp. 743 ff.

extraterritoriality, which had been specifically mentioned in the Secretary's January statement,⁶ or would include a wider range of subjects. Mr. Johnson expressed no categorical opinion in regard to this, but in reference to the subject of extraterritoriality he pointed out that the January statement set forth certain conditions precedent to the renunciation of extraterritorial rights.

Mr. Lee said that he was returning to New York the same evening but that he would inform Mr. Johnson if he received any important news of action taken at Nanking. He inquired whether he might direct a letter to Mr. Johnson and the latter said that he could write either to him, or to Mr. Caldwell or to Mr. Peck. It would be all the same. Mr. Lee said that he felt confident that an agreement had been arrived at during the Conference at Nanking and that there would be no split.

N[ELSON] T. J[OHNSON]

711.93/166a : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, January 12, 1928—6 p. m.

14. In view of the fact that a garbled report of what occurred at press conference on the 11th may be telegraphed to China, I repeat hereunder memorandum of what was said at the time.

"A correspondent asked whether there has been any development in the Chinese matter, due to messages to the effect that someone is coming from the Nanking or Shanghai Government to Washington. The Secretary said he does not know whether or not anyone is coming. He added that his offer made on January 27, 1927, to negotiate in China a treaty on the tariff subject, still stands, but it has never been accepted over there, and, so far as the Secretary is aware, there is nothing new in regard to the matter."

KELLOGG

893.00/9729

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] January 23, 1928.

During a conversation with the Japanese Ambassador this morning, the Ambassador referred to an item which he had seen in the press telegraphed through a Japanese news agency from Peking to the effect that it had been stated in Peking that instructions had been issued through the Chinese Minister, Mr. Sze, to join with a representative of the Nationalist Government of Nanking in authorizing a joint delegation to represent China in discussions intended to lead

⁶ For the Secretary's statement of Jan. 27, 1927, see telegram No. 28, Jan. 25, 1927, to the Chargé in China, *Foreign Relations*, 1927, vol. II, p. 350.

up to the revision of the treaties between the United States and China. The Ambassador asked me whether we had any information to this effect.

I told the Ambassador that we had no official indication that any such instructions had been issued to the Chinese Minister here. I said to him I had reason to believe, however, that the so-called Nationalist authorities at Nanking, who were represented here in the United States by a Mr. Frank Lee, were making an attempt to organize some kind of a joint delegation representative of the various factions in China which would meet the requirements of the statement made by the Secretary of State on January 27, 1927, and I said that the Chinese Minister in the course of conversations at the Department had said that he desired, on his own personal responsibility and without instructions from his government, to state that he was cognizant of this effort on the part of the Nanking Government and desired to participate in it and wondered what attitude we would take toward this participation. I said the Minister was told on that occasion that we stood by the statement the Secretary had made on January 27; that the delegation would have to be the spontaneous action on the part of the Chinese themselves and capable of binding the several Chinese groups to the observance of any understanding which might be discussed with them. I told the Ambassador that beyond this we had no information on the subject and that it seemed to me that it would be a very difficult thing for the Chinese to organize any delegation that could accomplish anything while they were still engaged in national warfare among themselves.

The Ambassador remarked that the Japanese Government had engaged in informal discussions with the Chinese authorities at Peking looking to a revision of existing treaties between China and Japan. He said that these discussions had been carried on for a while, but that they had suddenly stopped last summer and he had heard nothing about them and he was not sure whether they had continued or not. He said it was a very difficult thing to accomplish anything by such negotiations at this time.

The Ambassador said that in his own mind in thinking over the situation in China, which was so complicated and seemed so hopeless, that he was constantly led back to the Resolution which was adopted during the Washington Conference, at the Fifth Plenary Session, on Wednesday, February 1, 1922, which reads as follows:

"Whereas the Powers attending this Conference have been deeply impressed with the severe drain on the public revenue of China through the maintenance in various parts of the country of military forces, excessive in number and controlled by the military chiefs of the Provinces without coordination.

"And whereas the continued maintenance of these forces appears to be mainly responsible for China's present unsettled political conditions;

"And whereas it is felt that large and prompt reductions of these forces will not only advance the cause of China's political unity and economic development but will hasten her financial rehabilitation;

"Therefore, without any intention to interfere in the internal problems of China, but animated by the sincere desire to see China develop and maintain for herself an effective and stable Government alike in her own interest and in the general interest of trade;

"And being inspired by the spirit of this Conference whose aim is to reduce, through the limitation of armament, the enormous disbursements which manifestly constitute the greater part of the encumbrance upon enterprise and national prosperity;

"It is resolved: That this Conference express to China the earnest hope that immediate and effective steps may be taken by the Chinese Government to reduce the aforesaid military forces and expenditures."

The Ambassador stated that he wondered whether the time would not shortly arrive when the powers would be compelled to act under this Resolution for the purpose of bringing to an end the ceaseless warfare which was going on now and which so far as the future seemed to promise would go on for many years to come. I said that it seemed to me that it would be a very difficult thing for the powers to step in for the purpose of aiding in the disbandment of the armies now working about in China, first because of the expense involved and second, because of the difficulty that such action would necessarily entail because of the obligation which the powers would assume to protect the authorities agreeing to such disbandment and the rehabilitation of the soldiers once they had been disbanded. I reminded him that once before this sort of thing had been attempted during the time of Yuan Shih-kai⁷ and great expense had been involved with little accomplished.⁸ The Ambassador said that this, of course, was merely a personal thought of his own and that he had not worked it out very carefully. Of course an expense might be involved in the matter, but he thought that that might be a situation which could be overcome. He had no definite plan in his mind.

N[ELSON] T. J[OHNSON]

⁷ Elected Provisional President of the Republic of China Feb. 15, 1912, following the abdication of the Manchu Emperor; see *Foreign Relations*, 1912, p. 46.

⁸ See section concerning reorganization loan and other matters, *ibid.*, pp. 112 ff.

793.00/197 : Telegram

*The Consul General at Shanghai (Cunningham) to the
Secretary of State*

SHANGHAI, February 28, 1928—noon.

[Received February 29—9:25 a. m.]

42. Following telegram sent to the Legation is repeated for your information:

"February 28, noon. The following is report of a statement made by Huang Fu, who was installed Minister for Foreign Affairs of the Nanking regime on February 16th, upon the occasion of his assumption of such office as reported by the Kuo Min News Agency as a result of an interview with their representative and Mr. Huang Fu.

'1. With a view to arrangements for early abrogation of China's treaties now universally recognized to be unequal, the Nationalist Government will make all necessary preparations in the hope of opening negotiations at the earliest possible moment with the friendly powers for the collaboration of new treaties on the basis of equality and mutual respect for territorial sovereignty.

2. Pending the nature of such new treaties, the Nationalist Government is prepared to maintain and defend friendly relations with the [powers] in such a manner as to be able to meet the altered circumstances of the present times and to remove all sources of difficulties and misunderstanding between the Chinese people and foreigners.

3. The Nationalist Government is prepared to protect to their fullest ability the lives and property of foreigners in China in accordance with international law and usage.

4. The Nationalist Government will recognize as valid and binding all treaties or agreements to be hereafter concluded by the local authorities with the foreign governments, or contracts to be hereafter made by them with foreign companies or individuals, provided that they are concluded or made with the participation or full knowledge of the Nationalist Government; will equally recognize as valid and binding all treaties or agreements concerning China to be hereafter made between or among the foreign powers, provided that they are made with the participation of the Nationalist Government.

5. The Nationalist Government is prepared to settle important outstanding cases, at any appropriate occasion, in a spirit of fairness and mutual understanding.

6. As for those foreign powers who seek to interfere with China's domestic affairs or impair her *status quo ante* institutions, the Nationalist Government, for the purpose of self-preservation, feels constrained to adopt and consider all suitable measures to deal with the situation.'

Repeated to Department."

CUNNINGHAM

793.00/198 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, March 9, 1928—8 p. m.

[Received March 10—9:25 a. m.]

153. Following from Shanghai:

"50, March 8, 3 p. m. The following is a statement of Huang Fu given out by the Kuo Min Agency and published in this morning's *North China Daily News*. This is explanatory of his foreign policy as given out by the same news agency of [on] February 22d:

'While international treaties are binding and, therefore, legally speaking, the treaties entered into between the defunct Peking Government and the powers previous to the establishment of the Nationalist Government have to be recognized as valid, at the same time, most of these treaties are humiliating to our national dignity and greatly detrimental to our interests. Supported by the entire strength of the Nationalist Government, I shall try to reach the goal either of abrogating or revising these unilateral and unequal treaties. Of course, our method of abrogating these treaties must be other than a mere declaration that they are invalid.

As regards those treaties for loans contracted from foreign governments by Peking since the establishment of the Nationalist Government, we naturally cannot recognize them as valid, the Nationalist Government having already publicly declared its opposition to them at Canton.

More recently still, the communist secretary entered [*sic*] to concede Mongolia in favor of Russia to obtain assistance so as to prolong the agitation. Chang Tso-lin likewise has planned to use Manchuria and the Chinese Eastern Railway as a *quid pro quo* for Japanese money and other assistance.

The Nationalist Government, mindful of such dangers, specially declared its attitude in order that the Japanese and Russian Governments may awaken to their mistake [omission?] agreed for their selfish interests of the immediate future, forgetting that the Nationalist Government is Chinese sole organ for foreign relations, and thereby causing complications in the future.

That Japan has entertained wild ambitions regarding China was early noticeable by all clear-sighted men, and that Chang Tso-lin is anxious to secure Japanese support in order to prolong his existence is a fact still more evident. There is only one question behind the shaping of my country's attitude as regards another, and that is, whether the other country's attitude embraces an aggressive policy. If Japan can completely alter her former policy and cease her assistance to Chang Tso-lin, then the Nationalist Government ought to be able to look at the past with sympathy and tolerance. Only yesterday I was discussing with General Chiang Kai-shek various matters in connection with the Northern expedition. If Japan, at the moment of our positive advance into Shantung, refrains from despatching troops there, or only sends a small number of soldiers and remains true to her spirit of merely protecting

Japanese subjects in Shantung and not being an obstacle to the movement of the Northern expeditionary forces, then her attitude can manifest itself, and the Nationalist Government, as well as the entire Chinese people, can assume a new attitude towards any change [in] their traditional views regarding Japan; for then, I firmly believe our Northern expedition can conquer Peking in two months, and likewise since Japanese relations will gradually become more friendly.

The encroachments of Great Britain upon China in the past have been most decidedly detestable and have consequently aroused national hatred of the entire Chinese people. But lately, the British Government has apparently awakened to its mistake as they [*is?*] evidenced by Sir Austen Chamberlain's⁹ repeated professions of profound sympathy towards the aspirations of the Chinese people even in other quarters, theirs are manifestations of sincere attempts to modify its traditional policy toward China. If in future the British Government can adhere consistently to the policy of international justice and fair dealing, the Nationalist Government can also reciprocate with good will.

The attitude of the American Government towards China has been more conciliatory than both Japan and Great Britain, but, recently, due to the Nationalist Government not having yet arrived at a definite settlement with the American Government as regards the Nanking incident,¹⁰ America has not been quite sympathetic and tolerant. However my conversations with the American Minister, Mr. J. V. A. MacMurray, during his recent visit here, were wholly satisfactory.⁷

Repeated to Hankow.[""]

MAYER

711.93/174

The Minister in China (MacMurray) to the Secretary of State

No. 1485

PEKING, April 26, 1928.

[Received May 29.]

SIR: I have the honor to recall that, in the course of consultation with the officers of the Department last autumn, I was instructed by the Secretary to seek opportunity to negotiate concurrently with the representatives of the several factions in China, with a view to an agreement on the subject of tariff arrangements, along the general lines indicated in a memorandum which I had submitted to the Department on October 21st last.¹¹

On my recent visit to the Yangtze Valley Region, I had various conversations with General Hwang Fu, Minister of Foreign Affairs of the so-called Nationalist government established at Nanking, and

⁹ British Secretary of State for Foreign Affairs.

¹⁰ See pp. 323 ff.

¹¹ *Foreign Relations*, 1927, vol. II, p. 363.

in one of the earlier of these conversations which took place at Shanghai on February 26, he raised the subject of negotiations for the revision of our treaties with China. A memorandum summarizing this conversation is enclosed herewith. I endeavored to make clear to General Hwang my readiness to negotiate on tariff matters with a unified Chinese government (whether under Northern or Southern control), or with a commission or other body simultaneously representing North and South, or concurrently and along parallel lines with the North and with the South; and I indicated that, while holding no brief for the so-called Edwardes plan,¹² I felt that something along that line would afford the readiest means for such negotiations as the American Government has in view. General Hwang, while speaking in general terms of appreciation of the friendly disposition of the American Government, made no concrete response with regard to any of the alternatives suggested.

On my return to Shanghai after my trip up the Yangtze, I again saw General Hwang in Shanghai on March 29, for the purpose of arranging with him a settlement of the Nanking incident of March 24, 1927.¹³ The subject of treaty revision came up incidentally to the second exchange of notes additional to the exchange actually covering the settlement of the Nanking incident. In the discussion of my proposed reply to his note requesting treaty revision, General Hwang queried the necessity of my replying so guardedly as I proposed to do, saying outright that we need not be afraid that the Nationalist government would actually press us too hard by demands for radical revision of the treaties. During the same phase of our discussions, it appeared that a very strong objection which he had made to my inclusion of the phrase "an administration so far representative of the Chinese people as a whole" was based upon the apprehension that this phraseology might be construed as implying the existence or the prospect of some understanding between North and South—a possibility to which the Political Council and the military authorities of the Nanking regime were definitely opposed in view of the concentration of all their efforts upon the prosecution of the military campaign against the North. In this connection, he further stated that the Edwardes proposals had failed largely because of this same feeling against any *rapprochement* with Peking. It was quite clear that under existing circumstances he was not prepared to entertain in behalf of the Nanking regime any offer to carry on negotiations with the Nanking and Peking regimes, either jointly or concurrently.

¹² See telegram No. 1134, Dec. 29, 1927, from the Minister in China, p. 376.

¹³ See pp. 323 ff.

It may well be that the attitude thus indicated to me by the Minister for Foreign Affairs was at least in part dictated by the fact that there exists no coordination whatsoever between the Ministry for Foreign Affairs and the Ministry of Finance of the Nanking regime . . .

I should add that, before leaving Peking on my recent visit to Central China, I had taken occasion to discuss the tariff question with Mr. Wang Yin-t'ai, then Minister for Foreign Affairs of the Peking regime, along the same lines as those on which I later presented the matter to General Hwang Fu. Probably because he was not in a position to commit himself with regard to the Edwardes proposals which were still a matter of debate among the interested authorities of the Peking regime, and because of an unwillingness to entertain a proposal for concurrent negotiations which would have implied a parity between the Northern and the Southern administrations, Mr. Wang likewise made no concrete response to my suggestions in this matter.

It is evident that, however desirable it would be to find as soon as possible an adjustment of the tariff question which seems certain to become acute by the close of the present calendar year, the time has not yet come when either the Peking or the Nanking regime is prepared to enter into such negotiations as we have contemplated to that end.

I have [etc.]

J. V. A. MACMURRAY

[Enclosure]

*Memorandum by the Third Secretary of Legation in China
(Bucknell)*

SHANGHAI, February 26, 1928.

At four p. m., Mr. MacMurray went to tea at the residence of Mr. Chang Hsi-ao,¹⁴ and met there General Huang Fu with whom the following conversation took place:

General Huang dilated upon the long continued friendship which had existed between the two Governments without being marred by misunderstandings and quarrels. He expressed his entire appreciation of the consistently friendly attitude of the United States *vis-a-vis* China, and his realization that America desired no spheres of influence or any other special advantages. He explained that the Nationalist Government desired America as a friend among the family of nations, and that that Government's sole ambition was

¹⁴ Vice president of the Bank of China.

to be able to assume an equal place among such family of nations, and that General Huang would be glad to hear Mr. MacMurray's views upon the question of Treaty Revision.

Mr. MacMurray replied that it must of course be understood that many of the so-called unequal provisions were embodied in the treaties for the purpose of meeting definitely abnormal conditions, some of which still existed, and that a change in such provisions could only follow a change in the conditions in question.

General Huang said that he realized this was true, and that he did not expect a sudden change in such provisions in the treaties, but rather a gradual change as the unusual conditions became corrected. He said, however, that there were some provisions that could be changed without affecting the position of American citizens in China, especially those relating to the tariff, and that he hoped the American Government would take the lead in such change.

Mr. MacMurray explained that any treaty between the United States and other countries had the force and effect of law, and could only be altered by the negotiation of a new treaty. He said that at the Tariff Conference in Peking, the American Delegation had definitely set forth our Government's position as to the revision of the treaty restrictions upon the Chinese Tariff, but that that conference had simply run down without accomplishing its purposes. Since then, we had encountered conditions which had thus far made it impossible for the American Government to proceed as it would have desired in the matter: in the first place, there had been created conditions very unfavorable for trade, which had made it at any rate difficult to deal with tariff questions; in the second place, the attitude taken by the Chinese (and more particularly by the Nationalists) in the matter of taxation and other questions of treaty rights, had been openly one of repudiation and defiance rather than of cooperation, so that we had had no reason to expect either the good-will or good-faith with which it would be necessary for them to meet us in any negotiations for treaty revision; and in the third place, in the present unsettled state of affairs in which there is no Governmental Entity actually representative of China, we had been confronted with the impossibility of finding anyone with whom to deal in such matters.

General Huang asked if the American Government would agree to such a procedure as outlined in the Edwardes proposal if accepted by the Nanking Government, without any further negotiations. Mr. MacMurray informed him that this could only be done through a new treaty, that no doubt General Huang was familiar with the American attitude toward tariff autonomy as shown at the Tariff Conference, but that the difficulty lay in the fact that there was

no one group in China with which such a new treaty could be negotiated; that in the event that the Nationalists should unify China, he would be ready at once to discuss such an agreement with them; or that he would be equally ready to discuss such a new treaty with the Northern Government in the event that they should be able to bring the country under one unified Government; or that in the event that both failed to unify the country, he would be prepared to discuss the matter with any such joint commission of both Governments as the American Government might be convinced upon careful investigation, was not a purely formal body, but one representing an actual agreement between the Chinese factions on the subject-matter, and competent to bind the entire country to any provisions agreed to. He said that in any such negotiations the American Government was prepared to be as helpful as possible, and would make for its part no demands beyond such obvious conditions as the assurance of non-discriminatory treatment for our nationals, and that meanwhile it was not a question of unwillingness on the part of his Government to negotiate, but of actual impossibility of finding actually representative and responsible parties with whom such negotiations could be carried on.

General Huang said that Mr. Frank Lee had reported that the State Department held the same views as Mr. MacMurray had outlined, and that he was sincerely grateful for the fair attitude of the American Government in this regard.

Mr. MacMurray replied that he was extremely glad to hear the views expressed by General Huang with regard to the gradual modification of the so-called unequal provisions of the parties [*treaties?*] by means of friendly negotiation, and that General Huang could rest assured that he would be glad to institute discussions with regard to tariff as soon as the requirements explained by him had been met.

H[OWARD] BUCKNEILL, Jr.

701.9311/345 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 29, 1928—8 p. m.

176. At the written request of Chinese Minister I received C. C. Wu informally as a "Representative of the Nationalist Government" yesterday morning at 11 o'clock. He made no proposals, but during 20-minute conversation gave account of Japanese activities in Tsinan and Manchuria, claiming that Japanese military last year and this year interfered with advance of Nationalist troops northward and that recent Japanese action concerning Manchuria implies assump-

tion of extraordinary political rights. He inquired concerning my attitude and I told him that I would make no comments on those questions at this time. He referred to question of treaty revision and I stated that the policy of this Government has not changed from that outlined in my statement of January 27, 1927.¹⁵ I authorized conversation with Johnson. Wu stated that he would be here for probably several weeks.

KELLOGG

793.00/202 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 17, 1928—2 p. m.

[Received June 17—9:15 a. m.¹⁶]

471. Reuters, Shanghai, June 16th, states that the Nationalist Government has issued the following declaration:

"Now that unification of China is being accomplished, the Nationalist Government of the Republic of China has the honor to make to the friendly nations of the world the following declaration.

The revolution led by Nationalist Government has as its primary object the building up of a new state. As the military period of the revolution is closing, the Nationalist Government is now engaged in the work of rehabilitation and reconstruction so that the new state may soon be realized.

What we mean by the new state is putting into effect the 'Three Principles' laid down by our late chief, Dr. Sun Yat-sen, so that we may gain for our people the blessing of liberty and freedom, and for China's [*China*] international peace on a basis of equality.

We will naturally discard any militaristic form of government which has been the practice of the past and we will not tolerate any person aiming at the [destruction?] of modern social institutions, such as the Communists.

To realize its hope of a new state the Nationalist Government must put its international relations on a new basis. For 80 years China has been under the shackles of unequal treaties. These restrictions are a contravention of the principle in international law, of mutual respect and sovereignty and are not allowed by any sovereign state. Hence China has asked in various declarations for a sympathetic understanding by friendly nations. We are pleased to note that since the latter part of 1926 the spokesmen of the foreign powers have expressed their willingness to negotiate new equal treaties.

Now that the unification of China is being consummated we think the time is ripe for taking further steps and begin at once to negotiate—in accordance with diplomatic procedure—new treaties

¹⁵ See telegram No. 28, Jan. 25, 1927, to the Chargé in China, *Foreign Relations*, 1927, vol. II, p. 350.

¹⁶ Telegram in six sections.

on a basis of complete equality and mutual respect for each other's sovereignty.

The Nationalist Government firmly believes that when this is accomplished the friendly relations between China and the other powers and good will among the people and China's international trade and other facilities for transportation will ever increase, and even better protection will be afforded the lives and property of foreigners in China.

The Nationalist Government wishes to make to the friendly powers a further declaration that it will not disregard nor has it disregarded, any international responsibility in consequence of agreements and understandings properly and legally concluded on a basis of equality.

When the treaty restrictions are removed the mutual assistance, morally as well as materially, that may be rendered between China and other powers will no doubt enhance the progress of civilization of the world.

With profound sincerity the Nationalist Government, in the name of the people of all China, makes the foregoing declaration to the whole world and hopes that all friendly nations will accord their fullest sympathetic understanding to its program of a new state as a step toward the attainment of [the] ideal [of] mutual help for the glory of mankind and for the permanent peace of the world."

Reuters also reports that Dr. C. T. Wang in his assumption of office as Foreign Minister made the following statement:

"We now stand on the threshold of a new China. The vast energy which the whole nation has devoted in the achievement of the great object of battering down the opposition of the true spirit of democracy can now be released for constructive work and for making China a better China to live in for all, and for the generation[s] coming after. China is being unified and wars are now over. On the ruins of the military operations the Nationalist Republic of China must begin at once its program of rehabilitation and reconstruction, aiming at the realization of the declared purpose of the revolution to the fullest extent: to give the people a better livelihood. Simultaneously it should direct its energy towards bringing about equality among nations.

In cooperation of [*with*] all other nations, China will contribute her share towards the promotion of world peace.

At this juncture of China's rebirth the Government has honored me with the portfolio of Foreign Affairs, involving great responsibility. I solemnly declare that I will do my utmost to carry into effect in letter and spirit diplomatic policy embodied in the declaration of the Nationalist Government, to the end that China may be freed from treaty restrictions and that China's international relations may become more and more friendly.

A weak country invites external encroachment, so our fundamental policy should be internal improvement. With the cessation of fighting, we, one and all, should devote our energy to the improve-

ment and reorganization of our industries and the spreading of education among our people. May China progress with the rest of the world in prosperity and happiness. It is to be hoped that the friendly nations will accord to China sympathetic assistance in her efforts to realize her aspirations by first freeing her from treaty restrictions and secondly by giving her material aid. A strong and well-ordered China will mean peace and happiness to the world."

MACMURRAY

711.93/184

*The Special Representative of the Chinese Nationalist Government
(C. C. Wu) to the Secretary of State*

WASHINGTON, July 11, 1928.

SIR: The treaties and agreements forming at present the basis of the relations between China and the United States are admittedly anachronistic, incompatible with China's status as a sovereign state, and ill fitted to promote the best relations between the two countries. The Chinese people are unanimous in demanding that forthwith these shackles to their development as a modern state shall be removed and relations between China and foreign states shall be placed on a basis best calculated to foster international friendship and good-will.

The Nationalist Government of the Republic of China which represents, and has always represented, the Chinese people, particularly since the elimination of the administration in the former capital of China, feels it to be its imperative duty to take immediate steps to give effect to that demand. In view of the traditional friendship between the United States and China, and your statement of January 26 [27], 1927, it is the hope and expectation of the Nationalist Government that the Government of the United States will be prepared at once to enter into negotiations with it for a new treaty between the two countries on a footing of equality and reciprocity.

Under instructions from my Government, I have the honor to inform you that the Nationalist Government has decided to appoint plenipotentiary delegates for the purpose of such negotiations, and to request that the Government of the United States will likewise appoint delegates for the same purpose.

Accept [etc.]

CHAO-CHU WU

711.93/186

*The Chinese Legation to the Department of State*¹⁷

Declaration made on July 7, 1928, by the Ministry of Foreign Affairs of the Nationalist Government of the Republic of China on the conclusion of new treaties.

The Nationalist Government, with a view to adapting themselves to the present day circumstances, and with the object of promoting the welfare of China and the friendly relations between China and different countries, have always considered the abrogation of the unequal treaties and conclusion of new treaties on the basis of equality and mutual respect for territorial sovereignty as the most pressing problem at the present time. These aims have been embodied in declarations repeatedly made by the Nationalist Government.

Now that the unification of China is an accomplished fact, it is the task of the Nationalist Government to use every effort to fully realize these aims. While they will continue to afford protection to foreign lives and properties in China, according to laws, the Nationalist Government hereby make the following specific declaration with regard to the unequal treaties:

First. All the unequal treaties between the Republic of China and other countries, which have already expired, shall be *ipso facto* abrogated, and new treaties shall be concluded.

Second. The Nationalist Government will immediately take steps to terminate, in accordance with proper procedure, those unequal treaties which have not yet expired, and conclude new treaties.

Third. In the case of old treaties which have already expired, but which have not yet been replaced by new treaties, the Nationalist Government will promulgate appropriate interim regulations to meet the exigency of such situation.

WASHINGTON, July 13, 1928.

711.93/190 : Telegram

The Minister in China (MacMurray) to the Department of State

PEKING, July 16, 1928—4 p. m.

[Received July 16—10:11 a. m.]

537. Your number 221, July 13, noon.¹⁸ In addition to the declaration of July 7th made by the Nationalist Minister of Foreign Affairs concerning new treaties, Wang also announced the following:

"Provisional rules are applicable during the interim between the abrogation of old treaties and the conclusion of new treaties between the Republic of China and foreign states.

¹⁷ This memorandum, left at the Department on July 13 by the Chinese Minister, purports to be the text of a telegram to the Chinese Minister from the Ministry of Foreign Affairs at Nanking.

¹⁸ *Post*, p. 459.

1. The terms ["foreign countries"] and ["foreigners,"] as hereinafter used, refer only to those foreign countries and their nationals whose old treaties have been terminated and with whom new treaties have not yet been renewed.

2. Diplomatic and consular officers of foreign countries resident in China shall be accorded such treatment as is granted by international law.

3. The persons and property of foreigners in China shall be subjected to the regulations of the Chinese law and subject to the jurisdiction of Chinese.

5. [*sic*] Pending enforcement of the national tariff, the customs duties payable on commodities imported into China from foreign countries or by foreigners, and on those exported from China to foreign countries shall be collected in conformity with the regulations now in force.

6. All taxes and impositions which Chinese citizens are in duty bound to pay shall be paid likewise by foreigners in China in accordance with the regulations.

7. Matters not hereby covered shall be dealt with according to international law and the law of China."

In reporting the foregoing, Shanghai states that while substantially correct, it cannot be guaranteed with respect to entire accuracy of text or translations.

MACMURRAY

793.942/16: Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 21, 1928—11 p. m.

[Received July 21—5:50 p. m.]

557. 1. Reuter, July 20th, reports that the Japanese consul at Nanking received [on] that date a note from the Nationalist Government stating that the 3 months' extension arranged by Japan with the former Peking Government for negotiations for a new Sino-Japanese treaty had expired 5 o'clock July 20th and that the regulations or so-called *modus vivendi* for those whose old treaties had expired would be applied to Japanese in China. It is reported that the consul at Nanking refused to accept the note formerly [*formally*], but finally agreed to transmit to the Japanese Minister the fact that the note had been submitted to him and did in fact unofficially wire to the Minister the contents or gist of the *note verbale*.

2. I have not as yet had opportunity to confirm accuracy of the foregoing report.

MACMURRAY

793.942/17 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 23, 1928—6 p. m.

[Received July 23—12:50 p. m.]

560. My No. 557, July 21, 11 p. m.

1. Although I have not discussed the matter with Japanese officials here, I gather from various sources that the action of Wang¹⁹ in denouncing the treaty of 1896²⁰ has caused the Japanese both surprise and indignation. As a mark of disapproval, all members of the Japanese Legation absented themselves from large reception given on the 21st by General and Madame Chiang Kai-shek to the members of the diplomatic body, their families, and others of the Peking community. Press reports from Tokyo are to the effect that, in view of the unfriendly attitude taken by Nationalist Government, Japan has issued warning to Marshal Chang Hsueh-liang²¹ against Manchuria joining the Nationalist Government. Japanese Legation has no official knowledge of the foregoing but is reliably quoted as expressing opinion that the report is probably correct.

2. If as a logical consequence of their action in abrogating the treaty, the Chinese decline to meet the Japanese halfway in the matter of treaty revision and attempt specifically to apply to Japanese subjects the regulations reported in my 537, July 16, 10 [4] p. m., a serious impasse between Japan and the Nationalist Government seems probable.

Repeated to Tokyo.

MACMURRAY

793.942/17 : Telegram

The Secretary of State to the Chargé in Japan (Neville)

[Paraphrase]

WASHINGTON, July 24, 1928—6 p. m.

82. Referring to Peking's 560, July 23, 6 p. m. It is requested that you cable briefly your comments regarding official reaction in Japan to the Chinese denunciation of the 1896 treaty, and also regarding press reports to the effect that the Japanese Government has warned Marshal Chang against allying with the Nationalist Government.

KELLOGG

¹⁹ C. T. Wang, Minister of Foreign Affairs in the Nationalist Government.²⁰ For text of treaty, see *Treaties and Agreements With and Concerning China*, 1894-1919, vol. I, p. 68.²¹ Son of Chang Tso-lin, successor to his father in the control of Manchuria.

793.942/19 : Telegram

The Chargé in Japan (Neville) to the Secretary of State

Tokyo, July 25, 1928—9 p. m.

[Received July 25—6:30 p. m.]

90. Department's 82, July 24, 6 p. m. The recent change in the position of Vice Minister together with the fact that the Minister for Foreign Affairs is also Prime Minister has made it difficult the last few days to keep closely in touch with the foreign policy. Some days ago the chief of the Asia Bureau was asked if the Japanese Government cared to make any statement in regard to the conditions in Manchuria and the Japanese attitude in regard to the attempt at abrogation of the Japanese commercial treaty with China. He stated that Baron Tanaka was preparing a statement which he would give to the representatives of France, Great Britain, Italy and the United States. He did orally at 4 o'clock this afternoon.

1. In regard to the treaty of 1896 Baron Tanaka said that for some months the Japanese Government had been negotiating at Peking for a revision of the treaty in accordance with its terms. Recent events in China had rendered these negotiations fruitless and the Japanese therefore considered, in accordance with article 26, that the treaty was to continue in force for another 10 years; this position they intended to adhere to and they would not admit that a unilateral denunciation was of any value in terminating the treaty. The consul general at Shanghai had been instructed to inform the Nationalist authorities in this sense and the Japanese were prepared in case of necessity to take such measures as were necessary to safeguard their interests. In reply to a question, the Prime Minister said that as yet of course no definite steps were contemplated and that what action might be taken would be dictated by circumstances and in any event the Japanese would not adopt concreté measures without notifying the other interested powers. He said he had invited us to the Foreign Office to explain the Japanese position and he hoped that other powers would see their way clear to support the Japanese in their contention; that treaty rights and interests in China were not to be completely disregarded at the wish of only one party to the compact. He said that Japan was ready and had been ready at all times to carry out the promises entered into in concert with other powers at Washington in 1922;²² that she was still ready and had no wish to be hard upon the Chinese people or to take advantage, if such a thing were possible, of the disturbed conditions in that country; he felt strongly however and he knew that he had the public

²² Refers to the Conference on the Limitation of Armament, Washington. Nov. 12, 1921–Feb. 6, 1922; see *Foreign Relations*, 1922, vol. 1, pp. 1 ff.

opinion of the country behind him in his insistence that treaty revision could be discussed only between responsible people. He could not admit that the Nanking regime had proved itself capable of administering a government in China or of affording adequate protection of life and property. He asked careful consideration of the history of the present Nationalist movement. While in Canton it had been completely in the hands of the future communist wing, at Hankow its actions were extremely high-handed, and the Nanking incident was of recent occurrence; it is true that at Peking and further north the Nationalists had shown a more moderate attitude but he felt sure that he was safe in saying that this regime had hardly proved itself in a position to inspire confidence; this was altogether apart from the question which he felt was of prime importance—the necessity of insisting upon the sanctity of treaties.

2. A few days ago Chang Hsueh-liang invited the Japanese consul general at Mukden to call upon him stating that he was in mourning for his father and could not himself go out. Baron Tanaka said that at this interview Chang asked the consul general what he thought would be the best policy to pursue in view of his father's death and unsettled state of affairs in China proper. The Japanese consul general seems to have told him, speaking purely in his personal capacity, that it was not desirable to permit too sudden a change to occur in the political situation in Manchuria and that it perhaps would be advisable to await developments in China proper before accepting the national regime. Apparently he pointed out that the status of affairs in China proper was very unsettled and that it was not quite certain who was in control and Chang might well find himself allied to one faction or another to no purpose and perhaps to his own detriment if he took too precipitate a course. Baron Tanaka said that while this statement was made by the Japanese consul general on his own responsibility, the Prime Minister thought it was very good advice (I understand, although the Prime Minister did not say so, that the consul general in Mukden had been previously advised of the general attitude of the Japanese Government toward Manchuria). Baron Tanaka then stated that it would be extremely unfortunate if the chaotic conditions which prevail in other parts of China should extend to Manchuria. He did not mean to make any special claim for Japanese rights and interests against those of any other powers in that region, but the Japanese interests there are enormous and the livelihood and well being of thousands of people depend upon the smooth working of the economic machinery (I presume this means the South Manchuria Railway) and the Japanese are convinced that no benefit to anybody could accrue if the Manchurian authorities take

precipitate action in tying up with factions in other parts of China when perhaps by waiting until the situation further develops the Three Eastern Provinces could be included in a general arrangement for China without any local political upheaval at all. He added that the action of the Nationalists in denouncing the Japanese treaty of 1896 could not be other than disquieting and he did not see what the people of Manchuria had to hope in the way of political betterment from action which would only arouse antagonism on the part of the foreigners without accomplishing any practical good. In reply to a question he admitted that there was opposition to Chang in Manchuria. He said that this was due to the ill-advised action of Chang Tso-lin in attempting to spread his influence over [*beyond?*] Manchuria. Many of the inhabitants of the Three Eastern Provinces had been opposed to this from the beginning and Chang Tso-lin had been repeatedly urged to remain in Mukden. He had not done this and of course his family have lost prestige and it might be quite a while before it was regained. This condition he regarded however as a local one in Manchuria and in no way concerned with the Nationalist movement in China proper.

3. In conclusion the Prime Minister said that he wished to assure us all that Japan was extremely desirous of acting in these matters in concert with the other powers; that this country had no intention or desire to increase its responsibilities in China or to take action for any purpose other than that of affording protection to the lives and property of Japanese subjects in China; and that before taking any concrete action whatever Japan would inform the interested powers.

Copy to Peking.

NEVILLE

711.03/184

The Chief of the Division of Far Eastern Affairs (Hornbeck) to the Special Representative of the Chinese Nationalist Government (C. C. Wu)

WASHINGTON, July 27, 1928.

DEAR DR. WU: Under instruction from the Secretary of State, it gives me pleasure to acknowledge the receipt of your communication of July 11, 1928, on the subject of treaties and agreements forming at present the basis of the relations between China and the United States, and I am happy to be able to inform you that the American Minister to China, on behalf of the Secretary of State, has transmitted to the Minister for Foreign Affairs of the Nationalist Gov-

ernment at Nanking a statement, of date July 24, 1928, a copy of which is attached, setting forth the attitude of the American Government.²³

Yours sincerely,

STANLEY K. HORNBECK

793.94 Manchuria/25 : Telegram

The Chargé in Japan (Neville) to the Secretary of State

TOKYO, August 4, 1928—7 p. m.

[Received August 4—10:29 a. m.]

94. My 91, August 1, 5 p. m.²⁴ The Vice Minister for Foreign Affairs in conversation today said that the Japanese Government for the moment was unable to admit that the Nationalist Government had proved itself; that there was no immediate prospect of its being able to establish a stable regime in China, and that the Japanese felt it would be extremely unwise to allow them to spread their control over Manchuria. He disclaimed any intention on the part of Japan to prevent political development in China; and stated that Japan was now willing as she always had been to negotiate new treaties with China, but the Japanese Government had to protect the interests of Japanese domiciled in that country and that in the present turmoil it was useless to expect any sense of political responsibility on the part of the Nationalist leaders. The Japanese were too close to China and had too many interests there to allow their people to be placed under the control of such governmental machinery as the Nationalists had. To date, Japan had received nothing but abuse from the Nanking regime and all efforts to reach a basis for negotiation had failed. He said that in these circumstances and in view of the disturbed conditions the best policy was simply to "wait and see." He assured me that Japan was not seeking any new advantage but was determined to maintain as far as possible the *status quo*, at least in Manchuria.

He said that he knew that there were many rumors current in the United States and elsewhere in regard to Japan's aggressive intentions. He was emphatic in asserting that these rumors were entirely without foundation. To begin with, it would be foolish for Japan to attempt any sort of political control in Manchuria or else-

²³ See telegrams No. 230, July 20, to the Minister in China, and No. 566, July 24, from the Minister in China, pp. 464 and 473.

²⁴ Not printed.

where in China apart altogether from this country's obligation under the Washington treaties.²⁵ What Japan wanted was a measure of political stability which would enable economic and commercial development to continue there. This required peaceful conditions and peaceful conditions would be seriously jeopardized by Japan's attempt to establish a protectorate so-called or "autonomous government".

Copy to Peking.

NEVILLE

793.942/23 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, August 9, 1928—4 p. m.

[Received 5:55 p. m.²⁶]

609. My 557, July 21, 11 p. m.²⁷ In a note of July 31st, draft translation of which was communicated to me last night, the Japanese Minister acknowledged the receipt of Wang's note of July 19th, which (1) stated that the Sino-Japanese treaty of 1896, its annexed notes and protocol, and the supplementary treaty of 1903 with its annexes,²⁸ all expired on July 20th, (2) proposed the conclusion of a new treaty, and (3) declared that the Nationalist Government would meanwhile and [*act?*] in accordance with the provisional regulations for the period after treaties between China and foreign countries had been abrogated and not yet replaced.

After quoting article 26 of the treaty, the Japanese note continues as follows:

"There is no stipulation providing for the abrogation [or] expiration of the treaty. It is natural therefore that the treaty can neither be abrogated nor terminated with[out] special mutual consent or agreement between both contracting parties. Further, as it is expressly stipulated in the provisions of the same articles that if the negotiations for the revision were not completed within 6 months, then the treaty and tariffs should remain in force for 10 years more, it admits of no doubt that the treaty and tariffs should remain in force for another 10 years.

The Japanese Government having consistently held the above [view] made it clearly known to the Waichiaopu of the Peking Government in the memorandum of the Japanese Government in reply

²⁵ *Foreign Relations*, 1922, vol. i, pp. 276, 282.

²⁶ Telegram in five sections.

²⁷ Not printed.

²⁸ MacMurray, *Treaties*, 1894-1919, vol. i, pp. 68 and 411.

to that Ministry's proposal for the revision of the treaty of commerce and navigation, and they have never failed to remind the Chinese authorities thereof on several subsequent occasions when the term for treaty negotiations was renewed.

Three [*The*] treaties and the accompanying documents being, for the above reasons, still in force then [*even*] after the expiration of the term for treaty negotiation on July 20th last, the Japanese Government deem it impossible to share the view of the Nationalist Government that [the] expiration of the term for treaty negotiation coincides with the expiration of these [*those*] treaties.

Moreover, in their note, the Nationalist Government maintain to rule during the interim [*period*] before the conclusion of a new treaty, with the so-called 'provisional regulations' which have been unilaterally drawn up by them, bringing into practice the termination of the present treaties still in effect. It is, on the part of the Nationalist Government, not only an infringement on [*of*] the terms of the treaty, which is inadmissible in the light of both treaty interpretation and international usages, but also an outrageous act disregarding good faith between [the] nations in which the Japanese Government find themselves absolutely unable to acquire [*acquiesce*].

As for the revision of the treaties, however, the Japanese Government, as they have declared on more than one occasion, have sincerity and are in readiness for entering into its negotiations with the Nationalist Government in view of the national aspirations of the Chinese people and also the close relationship in every respect between the two countries.

The above attitude of Japan has been, as the Nationalist Government are well aware, clearly evidenced by the fact that in the informal negotiations for treaty revision held at Peking the Japanese Government endeavored to facilitate the treaty revision by consenting several times to the expiration [*extension*] of the term for treaty negotiations even after the expiration of the original six months. In this connection it must be especially pointed out that the revision was unfortunately not effected during the term, chiefly because of political unrest in China.

In short, the attitude of the Japanese Government towards the treaty revision has in no way been altered. If the Nationalist Government therefore having regard to international fidelity as well as neighborly friendship between Japanese [*Japan*] and China recognize the validity of the existing treaty [*treaties*] by withdrawing their declaration to enforce the so-called 'provisional regulation', the Japanese Government are ready gladly to agree to the proposal of the Nationalist Government for treaty revision and not in the least dissent [*hesitate*] to effect such revision as may be considered appropriate. If however the Nationalist Government will stick to their attitude to insist on the expiration [*of*] the existing treaties, the Japanese Government cannot see their way to open the negotiations for treaty revision and, further, if the Nationalist Government should persistently attempt to enforce the so-called 'provisional regulations' unilaterally, the Japanese Government declare hereby that they may be obliged to take such measures as they deem suitable for safeguarding their rights and interest[s] assured by the treaties."

793.94/1694

The Japanese Embassy to the Department of State ²⁹

The Japanese Government have watched with deep and sympathetic interest the progress of the Nationalist movement in China and, together with the other Governments concerned, have always shown their willingness to make their best possible efforts to facilitate the realization by China of her legitimate national aspirations. At the same time, they are convinced that if this movement were to be crowned with success and if international complications were to be avoided, it is imperative that counsel of reason and moderation should prevail.

2. Unfortunately, last spring a disquieting situation arose in Shantung and the safety of the Japanese subjects there was endangered. It was feared that a similar situation might also arise in Manchuria. Consequently the Japanese Government were forced to despatch troops to Shantung for the protection of the lives and property of the Japanese subjects there and to adopt such precautionary measures as have been taken in regard to Manchuria.

In sending these forces to Shantung and subsequently in giving to both the contending factions the warning of May 18th last,^{29a} the Japanese Government had no intention whatever of interfering in the domestic affairs of China. Only the exigencies of the situation called for the adoption of such a measure. As declared by the Japanese Government on the occasion of the despatch of these troops, they are to be withdrawn entirely immediately there ceases to be any menace to the lives and property of the Japanese people in that region. In fact a part of these troops has already been withdrawn and the rest will be recalled in due course with the stabilization of the situation there. Sometime ago, the Japanese Government approached the Nationalist Government with suggestions for the settlement of the Tsinan incident. They regret that the Nationalist Government have not shown their readiness yet to enter upon negotiations on this subject, but the Japanese Government are confident that a satisfactory adjustment of this question will be eventually reached.

3. As for Manchuria, it need hardly be said that it is the part of China in which Japan is most keenly and vitally interested. Both from the standpoint of her national defence and that of her economic and political welfare, Japan regards it as a matter of imperative need that peace and order be fully maintained there. Once Czarist Russia occupied that region to the great menace of Japan. For the

²⁹ This paper bears the notation: "Handed to Secretary by Count Uchida 9/29/28."

^{29a} See telegram No. 63, May 17, 1923, from the Ambassador in Japan, p. 224.

purpose of self defence, Japan took up arms against Russia and liberated it from her yoke at the cost of tens of thousands of lives and hundreds of millions of money. Since then Japan has spared no efforts in achieving the economic development of that region within her rights legitimately acquired. As the result of her ceaseless labor in this direction for the past twenty years, there are now in Manchuria 200,000 Japanese and 1,000,000 Koreans, while her investments amount to nearly 2,000,000,000 Yen. Dairen, which was only a small town immediately after the Russo-Japanese War, has now a population of 300,000, and it is patent that in point of volume of trade, it ranks next to Shanghai. In the meantime the number of Chinese people migrating to that region have increased year after year. Within a single year of 1927, it reached the figure of 1,000,000. Naturally, the Japanese people are most sensitive in regard to Manchuria. The preservation of peace and order in that region is a matter of paramount importance and absolute necessity for Japan. She is constrained to oppose at any cost the introduction of any political influence or system subversive of order and peace in Manchuria. Emphasis should be placed in this connection on the fact that Japan has no territorial ambitions in Manchuria, nor will she attempt to establish a protectorate there. Japan's desire is to see Manchuria remain under Chinese sovereignty a region where in conformity with the principles of the open door and equal opportunity, both Chinese and foreigners may prosecute their lawful pursuits in full enjoyment of the blessings of peace.

Accordingly, it is a matter of no material importance to Japan who rules Manchuria so long as the conditions above set forth prevail. The Japanese Government would not look with disfavor upon a possible conciliation of Mukden authority and the Nanking Government if they would neither put in practice communistic principles in Manchuria nor commit such a breach of international good faith as the Nanking Government did on the subject of the Treaty of Commerce with Japan.⁸⁰

4. The Treaty of Commerce constitutes the backbone of mutual friendship between Japan and China. Its revision is a matter of the greatest importance. In fact the Japanese Government have made a most careful study of the whole subject by taking into consideration both the national aims of China and the economic position of Japan in that country and have agreed most willingly to the demand of China for the revision of the Treaty. Many difficulties arose in the course of negotiations due principally to the unsettled political condition of China, but Japan has consistently done her utmost to expedite the negotiations with a view to reaching a satisfactory settlement. In entire disregard, however, of these circumstances,

⁸⁰ Treaty of July 21, 1896.

and in defiance of explicit provision of the Treaty, the Nationalist Government sent to Japan sometime ago the abrupt notice that the Commercial Treaty between China and Japan would be abrogated and that, pending conclusion of a new treaty, the Japanese nationals and commerce in China would be governed by provisional regulations unilaterally adopted by China.

Independent of the question of the sanctity of treaties, Japan is deeply concerned that if this kind of procedure is once concurred in, it may lead to the subversion of all the rights and interests legitimately secured by Japan under treaties or agreements. Nevertheless the Japanese Government have been and are ready to enter upon negotiations for treaty revision as soon as the policy of the Nationalist Government makes it possible for them to do so. It is sincerely hoped that ways and means may be found by which the treaty question may be settled to the mutual satisfaction of both countries. Further, the Japanese Government are willing to cooperate with the other Governments concerned in the completion of tasks started at the time of the Tariff Conference at Peking and by the Commission of Extraterritoriality if only the demands of China are fair and reasonable.

5. It is believed that the attitude of the Japanese Government towards China as above enunciated is not incompatible with the policy of the United States Government now being pursued in that country. Hopeful as it is, the present situation in China is still pregnant with difficulties of various nature and the best way for the Powers to follow in dealing with such a situation is to act in the spirit of cooperation. In this conviction it is most sincerely desired that, guided always by this spirit the countries having deep interest in China, particularly those signatory to the Washington Treaty of 1922 would exchange their views frankly from time to time in regard to questions affecting their common interests and act in conjunction as far as possible with a view to each making its contribution to the stabilization of the political situation and the durable establishment of peace in China.

793.94/1694

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] *September 29, 1928.*

Count Uchida³¹ called upon the Secretary by appointment at 10 a. m., accompanied by Mr. Sawada, the Japanese Chargé. Mr. Johnson was present during the interview.

³¹ Count Yasuya Uchida, Special Japanese Ambassador to Paris to sign the treaty for the renunciation of war, who was visiting in the United States.

Count Uchida read the attached memorandum³² to the Secretary. When he had completed the Secretary made comment on it as follows:

With reference to troops and naval vessels in China, the Secretary stated that as he remembered it when the Japanese sent their forces into Tsinan a year ago and then again during the past summer the Japanese Government had explained to us and had stated publicly that this despatch of troops was for the purpose of protecting Japanese lives and property in that area. The Secretary stated that he had considered that these statements had been made by the Japanese Government in good faith and that he had so informed the Chinese Minister on more than one occasion. He added that he felt that this policy was similar to that which we had followed in sending our marines to China. We had stated at the time that they were there for the purpose of protecting American citizens and for no other purpose. He stated that we were now at this time in process of withdrawing a portion of our marines from China, inasmuch as conditions were quieting there and that we hoped that conditions soon would justify the complete withdrawal of our marines, but that naturally we could not withdraw them all until their presence was no longer necessary for the protection of our citizens.

As regards the question of treaty revision, the Secretary stated that there were two things to be considered. He reminded Count Uchida that during the winter of 1926-27 there was pending in the House of Representatives a resolution, which subsequently passed the House and would have passed the Senate if it had gone on there, which called upon the American Government to commence at once the work of revising treaty relations between the United States and China.³³ The Secretary stated that in January, 1927, he had made a statement in which he said that whenever a government appeared in China capable of representing the Chinese, or whenever delegates fairly representative of China capable of binding all alike appeared, we would be prepared to enter into negotiations with regard to the tariffs. The Secretary pointed out that at that time China was divided into a northern and a southern faction and that it did not appear possible for these factions to get together on any kind of a delegation, so that it was impossible to have discussions or negotiations, but that later on when the nationalist faction established its regime in China and fighting ceased and the other faction had been driven off the field it appeared that China had a government capable of speaking for the whole country. He pointed out that when this happened, as

³² *Supra.*

³³ See *Foreign Relations*, 1927, vol. II, p. 341.

doubtless was known to the Japanese Government, the Nationalist authorities served notice upon us that they were ready to proceed under the statement which the Secretary had made and naturally he felt bound to carry out his promises. We had settled the Nanking incident and the way was clear for discussions, and inasmuch as during the past winter, or nearly a year ago, when Mr. MacMurray was home on leave we had decided upon what we were prepared to do with regard to tariffs, when the time came we were ready to go ahead and matters moved very swiftly as the signing of the treaty³⁴ followed almost on the heels of our notice to the interested Powers of what we were ready to do.

The Secretary stated that he was not informed clearly as to just what the phraseology of the Japanese treaty with China provided, but that he believed there was a difference in wording between the two treaties. He read to Count Uchida the article providing for revision which appears in the American treaty of 1903³⁵ and pointed out that under this wording if either one of the contracting parties asked for a revision at the end of the ten-year period a revision would have to take place or the treaty would cease to be valid. Of course this question was not up at the present time, as the American treaty would not come up for attention until 1934, but that we had determined that we would not wait until that time before taking up the matter. The only question that confronted us now was the question of what to do. The Secretary understood that the Chinese had not enacted any codes of laws such as those called for by the report of the Commission on Extraterritoriality.³⁶ Until they did so it would be very difficult to do anything about extraterritoriality. The whole matter was being studied and if we could find some formula which would be acceptable we were prepared to take up the matter with the Chinese. The Secretary stated that he was very anxious to know what attitude the Japanese Government might take on this question of extraterritoriality. In fact, he would probably ask all the Governments concerned their attitude in this matter. Count Uchida stated that he had no instructions other than those which were given him when he left which were along the lines of the attached memorandum; that of course as regards Japan they were in this position: the Chinese Government had put obstacles in the way of the settlement of the Tsinan incident and had also taken a very recalcitrant position with regard to the treaty and that until these obstacles had been cleared away Japan could do nothing. The Japanese Chargé stated

³⁴ Treaty of July 25, 1928.

³⁵ Art. xvii, *Foreign Relations*, 1903, pp. 91, 99.

³⁶ Department of State, *Report of the Commission on Extraterritoriality in China, Peking, September 16, 1926* (Washington, Government Printing Office, 1926). See also *Foreign Relations*, 1926, vol. I, pp. 966 ff.

here that he wondered whether the last paragraph of the memorandum handed to the Secretary by Count Uchida was acceptable to the United States, pointing to the last sentence which reads:

"In this conviction it is most sincerely desired that guided always by this spirit the countries having deep interest in China, particularly those signatory to the Washington Treaty of 1922 would exchange their views frankly from time to time in regard to questions affecting their common interests and act in conjunction as far as possible with a view to each making its contribution to the stabilization of the political situation and the durable establishment of peace in China."

The Secretary stated that we believed in cooperating with the Powers in this matter, that it was his feeling that one of the greatest dangers that confronted the Powers out in China at this time was the danger of communist activities inspired from Russia, that the present Nationalist Government appeared to be making every effort to build up a stable and ordered government in China and that it was his feeling and the feeling of the United States that all the Powers should cooperate to strengthen the efforts of the present government of China in so far as it was possible to the end that a stable government might be built up there. It was our feeling that this might be done by going as far as each country could go, considering its own interests, towards solving these questions of the treaties, and that it was our desire to cooperate with the other Powers to that end. He repeated once more that he hoped to ascertain what the views of the Japanese Government would be on this subject of treaty revision and that he expected, perhaps, to make inquiry of the Powers regarding this subject.

The interview here ended.

N[ELSON] T. J[OHNSON]

693.0031/1 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 3, 1928—7 p. m.

[Received October 3—2:20 p. m.³⁷]

745. 1. Under a variety of forms of covering note[s,] Nationalist Minister for Foreign Affairs on or about September 12th proposed negotiation of new tariff treaties to the representatives of the following countries whose treaties are considered by the Nationalist authorities still to be in effect: Great Britain, the Netherlands, Norway and Sweden. The basis of negotiation proposed in the note to the

³⁷ Telegram in two sections.

Netherlands Minister (and apparently of the same purport in the other notes) consists of the following points:

“(a) All provisions contained in the treaties or [*now*] existing between China and the Netherlands relating to rates of duty on imports and exports of merchandise, drawbacks, transit dues and tonnage dues in China shall be annulled and the principle of complete national tariff authorizations [*autonomy*] shall apply;

(b) In customs and related matters the principle of reciprocal and undiscriminatory treatment shall apply;

(c) Contemplated treaty to become effective on January 1, 1929 if ratifications have been exchanged by that date, otherwise at a date 4 months subsequent to such exchange of ratifications.”

2. At the same time Dr. Wang addressed notes to the representatives of Belgium, Denmark and Spain whose treaties with Chinese are considered by the Nationalist Government to have expired. The basis of negotiation proposed in the note to the Danish Minister (which so far as I have been able to ascertain is of the same general tenor as that proposed in the other notes in this category) contains in addition to the above points (a) and (b) one regarding extra-territoriality and one providing for a new commercial treaty as follows:

“(c) Civil and criminal cases arising in the territory of one of the contracting powers which involve nationals of one of the contracting powers with the nationals of the other as well as cases involving two nationals of one of the contracting powers which are in its territory, or cases involving nationals of some other foreign country which may arise in the territory of either of the contracting powers, shall be subject to the jurisdiction of the courts of the country in which the cause of action arises, and shall be adjudicated in accordance with the laws of that country;

(d) Both contracting powers shall within the shortest period of time, hold negotiations looking toward the conclusion of a treaty of commerce and navigation on the basis of complete equality and reciprocity.”

3. No such notes of course were sent to the representatives here of the United States and Germany which have recently concluded tariff treaties³⁸ nor were they sent to the representatives of France, Japan, Italy or Portugal. In the case of Italy, whose treaties with China are considered by the Nationalist Government to have expired, it was doubtless felt that proposal should await the shortly expected Sino-Italian settlement of the Nanking incident. In the case of France and Japan, previous conversations on treaty matters have

³⁸ See Sino-American treaty, signed July 25, 1928, pp. 449 ff. For text of Sino-German treaty, signed Aug. 17, 1928, see League of Nations Treaty Series, vol. xci, p. 93.

apparently made it clear that such action would not be favorably received at this time.

4. [Paraphrase.] At the end of August the *Chargé d'Affaires* of Belgium was in Nanking and, earlier than the others, received Wang's proposal. No reply has yet been made by his Government, to which this proposal was forwarded.

5. Authorization has been obtained by the Danish Minister for the signing of a tariff treaty similar to that which we have concluded with China, but privately he informs me that his Government will not acquiesce in the loss of extraterritorial rights and, rather than yield on that point, would prefer to leave both questions undecided.

6. A sympathetic acknowledgment of Wang's proposal was made by the British Minister. Consideration is being given by him to the presentation of a confidential proposal for the conclusion of a treaty along the lines of the Sino-American treaty but with an understanding whereby, in return for assurances to China of a guaranteed free list for Chinese imports into Great Britain, the Nationalist Government shall agree that the duties upon certain British imports into China will not, for a period of years, exceed certain maxima—for example, rates recommended by the experts, in drawing up the "interim surtaxes", at the Tariff Conference.

7. I am informed by the Dutch Minister that he has told his Government that he regards favorably the conclusion of a treaty similar to ours and that his Government is still considering the matter.

8. Authorization has been obtained by the Norwegian *Chargé d'Affaires* for concluding a treaty like ours but with the suggestion that, before doing so, he should await action by the British.

9. The position of the Portuguese Minister, I understand, is like that of his Danish colleague; the Nationalist Government regards the Sino-Portuguese treaties likewise as having expired. During the latter part of summer the Portuguese Minister was in Shanghai, where the negotiation of a new treaty was suggested orally to him. According to my information, he replied that relinquishment of extraterritorial rights could not be conceded.

10. There is no disposition on the part of the Dutch Minister to take any action in the matter at the present time.

11. Wang's proposal has been forwarded by the Swedish *Chargé d'Affaires* to his Government with a recommendation for the negotiation of such a treaty.

12. During the absence in Japan of the Czechoslovak delegate, Mr. Hnizdo is in charge of his Government's mission here. Mr. Hnizdo informs me that there are in progress at this time discussions with a view to the conclusion of a treaty of amity and commerce between Czechoslovakia and China. The principal point at issue is

the desire of his Government to receive assurances of most-favored-nation treatment; extraterritoriality is not to be claimed. [End paraphrase.]

MACMURRAY

693.0031/1 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, October 6, 1928—1 p. m.

338. Legation's telegram 745, October 3, 7 p. m. On September 27 there was read to me by Minister Sze, who was accompanied by Dr. Wu, a telegram in which the hope was expressed by C. T. Wang that the Government of the United States will be prepared to begin negotiations immediately at Washington for the conclusion of a new treaty relating to general subjects other than tariff matters. Wang's telegram requested further that I use my influence in an effort to induce other powers to take steps at once to meet the "policy for treaty revision" of the Nationalist Government.

Sze and Wu were informed by me that we could not first negotiate independently of the other powers and then request that our example be followed by them, and that although the other powers most concerned would be canvassed by me as to their attitude, this did not signify that a conference would be called or that proposals would be put forward. It was urged by Wu that the United States Government designate plenipotentiaries and open negotiations. It was positively stated by me that I would not undertake to do this, because the situation did not warrant such action, but that conversations with officers of the Department would be authorized by me. Such conversations, however, were not to be confused with negotiations. As to the time and manner of approaching the other Governments in this connection, the question is being studied by me.

KELLOGG

711.93/221

The Secretary of State to the Minister in China (MacMurray)

No. 1026

WASHINGTON, October 29, 1928.

SIR: The Department refers to its strictly confidential telegraphic instruction to the Legation No. 338 of October 6, one p. m., and transmits herewith a copy of a note received from the Chinese Min-

ister dated September 24, 1928,⁴⁰ with which he handed to the Department credentials issued by the Nationalist Government to Dr. C. C. Wu empowering him to negotiate a new treaty with the United States.

The Legation will be interested to learn that although Dr. Wu has been given clearly to understand that the Department is willing at any time to hold conversations with him on the subject of a new treaty, the Division of Far Eastern Affairs having been entrusted with this duty, in the manner set forth in the Department's telegram in reference, Dr. Wu has not yet called at the Department for the purpose of holding conversations.

The letter from the Chinese Minister of which a copy is enclosed was left at the Department on September 24, 1928. Its receipt has not been acknowledged in any formal way.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

793.00/212

The Secretary of State to the Minister in China (MacMurray)

No. 1034

WASHINGTON, November 12, 1928.

SIR: The Department transmits herewith a copy of a memorandum of a conversation held on October 30, 1928, by the Chinese Minister and Mr. Nelson T. Johnson, Assistant Secretary of State,⁴⁰ on the subject of the revision of the treaties between China and foreign countries.

The Legation will note that the Chinese Minister broached the idea of convening a general conference of representatives of all the nations concerned with the matter of treaty revision. This suggestion was made informally and has not been discussed since the conversation reported in the enclosed memorandum. Informal conversations are in progress between Dr. C. C. Wu, special representative of the Nationalist Government, and the Division of Far Eastern Affairs on the general subject of a revision of the treaties now in force between the two countries. As you were informed in the Department's telegram 338, of October 3 [6], 7 [1] p. m., these conversations do not partake of the character of formal treaty negotiations. They are being engaged in by the officers of the Department, at the desire of Dr. Wu, with the general object of ascertaining whether

⁴⁰ Not printed.

the Nationalist Government has any proposals to make upon which, in the light of conditions now obtaining in China, negotiations may be based.

I am [etc.]

For the Secretary of State:
NELSON TRUSLER JOHNSON

793.003/70a

*The Department of State to the British Embassy*⁴¹

AIDE-MÉMOIRE

The Secretary of State refers to his statement made public on January 27, 1927,⁴² and his note of July 24, 1928,⁴³ with its enclosure, regarding the attitude of the American Government toward the question of revision of its treaty relations with China, and to the signing of a treaty, at Peiping (Peking) on July 25, 1928, to regulate tariff relations between the United States and China.

The American Government has now been approached by the Nationalist Government of the Republic of China through its Minister at Washington with a request that negotiations be begun on the subject of a general revision of the treaties between the two countries, with special reference to the steps which it may be desirable to take looking toward relinquishment of extraterritorial rights in China.

The American Government, while it has felt that conditions in the past have not warranted entering upon negotiation of a new general treaty with China, nevertheless feels that the Nationalist Government gives promise of greater stability and national unity than has prevailed heretofore; it believes that all possible encouragement should be given to the Nationalist Government; it is willing to discuss the subject of revision of the treaties; and, in response to the above mentioned request of the Nationalist Government, it has approved the holding of informal conversations between certain of its officers and spokesmen for the Nationalist Government, with a view to discovering, if possible, a basis for negotiations.

Believing that the situation in China has changed in certain particulars within the past few months, the Secretary of State would be

⁴¹ The same, *mutatis mutandis*, to the Belgian, French, Italian, Japanese, Netherlands, and Portuguese diplomatic representatives at Washington.

⁴² See telegram No. 28, Jan. 25, 1927, to the Chargé in China, *Foreign Relations*, 1927, vol. II, p. 350.

⁴³ Identic notes (not printed) to the diplomatic representatives of the interested powers, transmitting copy of statement communicated by the Minister in China to the Nationalist Government at Nanking, according to instruction No. 230, July 20, *post*, p. 464.

pleased to be informed, if it be agreeable and convenient to the British Government to give him such information, concerning the present views of the British Government with regard to revision of treaties with China.

WASHINGTON, *November 22, 1928.*

793.003/69

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] *November 22, 1928.*

Conversation

The British Ambassador, Sir Esme Howard.

Present: The Secretary and Mr. Johnson.

The British Ambassador stated that sometime ago the Secretary had mentioned to him the question of extraterritoriality in China, saying that it was in the Secretary's mind to communicate a request to the British Government for its views on this subject. The British Ambassador stated that without awaiting any formal request from the Secretary he had communicated with his Government on this subject and had now been instructed to refer the Secretary to the communication which had been made to the Chinese Government by the British Government through their Chargé d'Affaires in February 1927.⁴⁴ The British Ambassador stated that it was the opinion of his Government that the Chinese Government did not desire a conference on this question of extraterritoriality. In fact, they were very anxious to negotiate with the countries severally in the matter and therefore the British Government doubted whether there would be anything accomplished by suggesting a conference, and further it was the opinion of the British Government that even if the Chinese should agree to a conference and a conference could be called, it was doubtful whether they could proceed beyond the point reached in the proposal which the British Government had made to the Chinese Government in its memorandum of February 1927. The Ambassador stated that conditions had arisen which had made it difficult for most of the points mentioned in that note to be carried out and that some of them still remained to be worked out.

The Secretary referred the Ambassador to his statement made in January 1927 and to the fact that he had promised in that statement to take these matters up with the Chinese when the moment might become proper. The Secretary stated that he had approved in-

⁴⁴ Refers probably to proposal communicated, Jan. 27, 1927, to the Hankow Government, and Jan. 28, 1927, to the Peking Government. For text, see p. 440.

formal conversations regarding these matters between the Chief of the Far Eastern Division and the spokesman for the Nationalist Government, but that nothing much had occurred at these conversations except an exchange of views. The Secretary stated that he had had prepared an *aide-mémoire* on this subject which he had intended handing to the Ambassador and he would now hand it to him,⁴⁵ although the Ambassador had practically answered all of the questions asked in the *aide-mémoire*. The Secretary asked the Ambassador whether he would reproduce what he had already said in the form of a memorandum, which the Ambassador promised he would do.

N[ELSON] T. J[OHNSON]

793.003/68

*Memorandum by the Secretary of State*⁴⁶

[WASHINGTON,] November 22, 1928.

The Japanese Ambassador called at my request and I gave him the *Aide Memoire* inquiring of his Government their attitude on negotiating with China on the subject of extraterritorial rights. I informed the Japanese Ambassador that some time in December 1926, as I recollect, Mr. Porter, Chairman of the House Committee on Foreign Affairs, had passed [*introduced?*] a Joint Resolution calling on the United States to negotiate new treaties to take the place of the unequal treaties (as he called them) with China;⁴⁷ that the Bill passed the House with very little objection and went to the Senate. I felt as though it would be better for the State Department to carry on the negotiations than to have the Bill pass and become a law. Thereupon on January 27, 1927, I made a statement which was published in China and delivered to the heads of the various military authorities as well as the officers of the Nationalist Government stating in substance that whenever China had a government prepared to negotiate or would appoint delegates fairly representative of China, the United States was prepared to negotiate new treaties, either alone or in cooperation with the other governments; that at that time China was not prepared to negotiate but when the Nationalist Government got possession of Peking and fairly consolidated their authority over China, I was notified that they were prepared now to negotiate and asked the United States to do so. I

⁴⁵ *Aide-mémoire* printed *supra*.

⁴⁶ A similar memorandum, *mutatis mutandis*, of the same date, relates to the handing of the *aide-mémoire* to the French Ambassador (793.003/67).

⁴⁷ i. e., H. Con. Res. 46, introduced Jan. 24, 1927. See *Foreign Relations*, 1927, vol. II, p. 341, footnote 74.

thereupon sent a note to each of the governments that we were going to negotiate with China on the subject of the tariff. About that same time, T. V. Soong, representing C. C. [T.] Wang, Minister of Foreign Affairs, notified Mr. MacMurray that he was prepared to negotiate right at that time in Peking. We gave Mr. MacMurray authority to proceed with the negotiations whereupon the Chinese immediately accepted the form of treaty we had suggested to MacMurray on his last visit to Washington; in fact, the treaty was signed only a day or two after I sent out my notice. I informed him further that Mr. Alfred Sze, the Minister, and C. C. Wu had likewise given us written notice of their desire to negotiate on the subject of extraterritoriality and commercial treaties; that we had been holding preliminary informal conferences with them on the subject and I had made up my mind to inquire of the other governments; that I had already inquired of the British Government; that this morning I had delivered this memorandum and at the same time the British Ambassador had read me a memorandum which he is going to send me ⁴⁸ stating in substance that the British Government did not think it wise immediately to raise the legation to an embassy but to take up all the questions with China as rapidly as we could. He did not indicate just when the British Government was going to do it.

The Ambassador thanked me for the note and said his Government was already negotiating with China for the settlement of questions between the two governments; that he would cable the *Aide Memoire* and ask his Government's attitude.

793.003/70

The British Ambassador (Howard) to the Secretary of State

WASHINGTON, November 22, 1928.

MY DEAR MR. SECRETARY OF STATE: In accordance with the request which you made to me at the close of our conversation this morning, I send you herewith an *aide memoire* setting forth the views of my Government in regard to current problems in China, as communicated to you verbally by me today.

I have this afternoon received a further telegram from the Foreign Office according to which Dr. Wang Fu ⁴⁹ recently informed the British Consul-General at Nanking that reliable information had reached him from Shanghai to the effect that the United States Government had agreed to the establishment of Embassies at Wash-

⁴⁸ *Infra*.

⁴⁹ Refers apparently to C. T. Wang, who succeeded Huang Fu as the Nationalist Minister of Foreign Affairs.

ington and Peking. Dr. Wang Fu stated at the same time that he had not heard from Washington that this step had been decided on. Believe me [etc.]

ESME HOWARD

[Enclosure]

The British Embassy to the Department of State

AIDE MEMOIRE

In their relations with the Nationalist Government in China His Majesty's Government are most anxious to adopt a really constructive policy. They feel that the problem is one which must be dealt with progressively and that they must proceed step by step. They feel that the most urgent question at present is that of the tariff. They are therefore dealing with that question first.

In December 1926 His Majesty's Government declared themselves as in favour of tariff autonomy for China.⁵⁰ In these circumstances they feel that if they were now merely to sign a tariff autonomy treaty with China with a most favoured nation clause this would in actual fact imply hardly any practical advance from the position at the time when their abovementioned declaration was made. They feel too that if any real progress towards Chinese Tariff autonomy is to be made, a successful outcome of the negotiations now in progress between China and Japan must first be promoted. If this could be secured the actual coming into force of an increased Chinese tariff, after friendly agreement, at an early date would be facilitated. This is the immediate problem on which His Majesty's Government are concentrating all their energies and they are inclined to think that it would be wiser to postpone dealing with other outstanding questions until this most urgent tariff question, which includes *de jure* recognition of the Nationalist Government, has been settled.

With regard to the appointment of Ambassadors at Peking, His Majesty's Government feel that it would be preferable if the principal Powers took simultaneous action in this matter. His Majesty's Government themselves will not in any case make any definite change until there has been a full and frank interchange of views with the other interested Powers, including the United States, Japan, France and Italy. For the present, however, they feel that this question, while it doubtless will arise in due course, is as yet altogether premature.

As regards the question of the extraterritorial status of foreigners in China the United States Government will recall that on January 27th, 1927, His Majesty's Government made a definite offer to

⁵⁰ See note No. 816, Dec. 23, 1926, from the British Ambassador, *Foreign Relations*, 1926, vol. I, p. 923.

the Chinese. That offer was made by Mr. O'Malley ⁵¹ to Mr. Eugene Chen ⁵² at Hankow on January 27th, 1927, and by Mr. Lampson ⁵³ to Dr. Wellington Koo ⁵⁴ at Peking on the following day. The text of the proposal in question is given in the appendix to this *aide memoire*. This offer has been the subject of considerable discussion with the Chinese Government and still stands on record as concrete evidence of readiness on the part of His Majesty's Government to continue these discussions and to take such practical steps in agreement with the Chinese Government as present conditions may allow. The very great practical difficulties which attend any attempt to solve this most difficult problem have so far prevented this offer being carried into full effect; but His Majesty's Government doubt whether an international conference would provide the best method of solving these difficulties or indeed carry matters any further than His Majesty's Government are already prepared to go. His Majesty's Government also doubt whether an international conference would be welcome to the present rulers of China since the latter have repeatedly made it clear that they are determined in these matters to deal with the Powers separately.

WASHINGTON, *November 22, 1928.*

[Subenclosure]

TEXT OF PROPOSALS FOR THE WAIVER OF TREATY RIGHTS COMMUNICATED BY MR. O'MALLEY TO MR. EUGENE CHEN AT HANKOW ON JANUARY 27TH, 1927, AND BY MR. LAMPSON TO DR. WELLINGTON KOO AT PEKING ON JANUARY 28TH, 1927

1. His Majesty's Government are prepared to recognise the modern Chinese law courts as the competent courts for cases brought by British plaintiffs or complainants and to waive the right of attendance of a British representative at the hearing of such cases.

2. His Majesty's Government are prepared to recognise the validity of a reasonable Chinese nationality law.

3. His Majesty's Government are prepared to apply as far as practicable in British courts in China the modern Chinese Civil and Commercial Codes (apart from the Procedure Codes and those affecting personal status) and duly enacted subordinate legislation as and when such laws and regulations are promulgated and enforced in Chinese courts and on Chinese citizens throughout China.

⁵¹ Owen St. Clair O'Malley, then acting counselor of the British Legation in China.

⁵² Then Minister of Foreign Affairs in the Hankow Government.

⁵³ Sir Miles W. Lampson, British Minister in China.

⁵⁴ Then Minister of Foreign Affairs and Premier in the Peking Government.

4. His Majesty's Government are prepared to make British subjects in China, as far as practicable, liable to pay such regular and legal Chinese taxation, not involving discrimination against British subjects or British goods, as is in fact imposed on and paid by Chinese citizens throughout China.

5. His Majesty's Government are prepared as soon as the revised Chinese Penal Code is promulgated and applied in Chinese courts to consider its application in British courts in China.

6. His Majesty's Government are prepared to discuss and enter into arrangements, according to the particular circumstances at each port concerned, for the modification of the municipal administrations of British concessions so as to bring them into line with the administrations of the special Chinese municipalities set up in former concessions or for their amalgamation with former concessions now under Chinese control or for the transfer of police control of the concession areas to the Chinese authorities.

7. His Majesty's Government are prepared to accept the principle that British missionaries should no longer claim the right to purchase land in the interior, that Chinese converts should look to Chinese law and not to the treaties for protection, and that missionary, educational and medical institutions should conform to Chinese laws and regulations applying to similar Chinese institutions.

793.003/71

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] *November 26, 1928.*

The Counselor of the Belgian Embassy called on the Secretary today and stated that he had received the Secretary's memorandum regarding the question of extraterritoriality in China and had telegraphed a summary of it on Saturday to his Government; that while the telegram was being prepared telegraphic instructions were received from his Government to the effect that he communicate orally to the Secretary the following information:

A preliminary treaty has been signed at Nanking on November 22, between the Economic Union (Belgium-Luxemburg) and China.⁵⁵ The text of this treaty is not to be given publicity for the moment. It recognizes the autonomy of Chinese customs and in customs matters it is based on the most favored nation treatment. This treaty acknowledges the principle of the renunciation of extraterritorial privileges. However, a subsequent agreement will intervene in order

⁵⁵ League of Nations Treaty Series, vol. LXXXVII, p. 287.

to regulate definitely the judicial regime of Belgian citizens residing or dealing in China.

The following points should be noted in this connection: Provision is made for the negotiation in the near future of a treaty of commerce based on reciprocity and equal treatment. With regard to the renunciation of extraterritorial privileges, it is noted that this renunciation will not be effective until January 1, 1930. If the agreement which is to be negotiated between now and then has not been arrived at on that date, Belgian citizens in China will be submitted after January 1, 1930 to Chinese jurisdiction as soon as most foreign powers which now have the benefit of extraterritorial privileges will have renounced them. Furthermore, it is indicated that, when Belgian citizens will cease to enjoy the benefit of the extraterritorial privileges and when the relations between the two countries will be based on complete equality, the Belgian citizens will reside, acquire property in China, and do business dealings according to the laws and regulations of the country.

N[ELSON] T. J[OHNSON]

793.003/77

The Italian Embassy to the Department of State^{5a}

The Italian Government has not yet received the text of the American *Aide-Memoire* concerning the revision of treaties with China. The Government is willing, however, to remain in contact with the American Government and to an exchange of views concerning a settlement of the relations with China on new and practical basis.

It seems that the abolition of extra-territorial rights, when becoming effective must be accompanied by some guarantees, in particular judicial guarantees (in order to avoid the effects of the sudden passage from the old to the new system and in order to protect the interests of the powers which enjoyed the extra-territorial rights).

The Italian Government thinks that this end can be more effectively reached if the States which are parts of the Washington Agreements will exchange in advance their views and come to an understanding.

The Italian Government will answer to the American *Aide-Memoire* later and with more details.

793.003/81

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] December 20, 1928.

The Dutch Minister called on the Secretary this morning and communicated to him the message of his Government concerning its

^{5a} This paper is undated; an attached memorandum, dated Dec. 4, 1928, from the Assistant to the Secretary of State (Beck) to the Assistant Secretary of State (Johnson) reads: "The Secretary asked me to send the attached to you with the statement that it was left the other day by the Italian Ambassador. WHB"

attitude on the subject of the relinquishment of extraterritorial jurisdiction in China by the Powers requested by the Secretary in his *Aide-Mémoire* of November 22. The Minister stated that his Government felt that they should proceed with extreme caution in this matter as they did not feel that conditions in China had changed so that the Powers could relinquish their position and subject their citizens to the jurisdiction of the kind of courts which the Chinese had. He referred to the Report of the Commission on Extraterritoriality and stated that he felt that the Powers should consult together as to their plans in this matter, and that they should use that Report as a basis for any negotiations. He said that it was the opinion of his Government that the Powers should cooperate in this matter. The Secretary outlined to the Dutch Minister the replies or comments which he had received from the British Ambassador, the Italian Ambassador and the Belgian Ambassador and stated that he had not received any replies from France, Portugal, Spain or from Japan. The Secretary stated that Italy had already made an agreement regarding the question of extraterritoriality⁵⁷ as also had Belgium, and he was not certain but what Japan might not relinquish it, although he did not know what position the Japanese might take. He had discovered in previous discussions with the Japanese that while they were extremely interested in the tariff situation they felt rather disposed to be somewhat lenient as regards the question of extraterritoriality, because, he supposed, the Japanese had gone through a similar situation with respect to the Powers when they had given up extraterritorial rights in Japan. The Secretary stated that he would inquire of the Japanese Ambassador as to the attitude of that country and would inform the Dutch Minister.

N[ELSON] T. J[OHNSON]

793.003/85.

The French Embassy to the Department of State

While the French Government entertain liberal views concerning encouragements to be given for the establishment, on modern bases, of a Chinese Government exercising its authority on the whole of China, they do not believe that it is in the interest either of the Chinese people, or of foreigners, to prematurely put an end to present guarantees of judicial and residential order. These guarantees allow French nationals to do useful work which has already contributed to bringing closer together Chinese and occidental civilizations. Their suppression, in the present state of administration and justice in China, would disorganize the economical life and would be more

⁵⁷ Sino-Italian preliminary treaty of amity and commerce, signed Nov. 27, 1928. League of Nations Treaty Series, vol. xciii, p. 173.

detrimental than favorable to the gradual development of a normal administration. Efforts made by several nationalists to establish a central civil authority and subordinate to it the military chiefs, so numerous and so unstable, have in fact remained up to now inoperative. The suppression of extraterritoriality privileges can be only considered without danger in the measure as, in the practice of their policy, the Chinese people will be inspired by modern principles and when experience shall have demonstrated that the actual modernization of Chinese administration and justice render valueless the dispositions of the present treaties.

[WASHINGTON,] *December 25, 1928.*

793.003/86

The British Ambassador (Howard) to the Secretary of State

WASHINGTON, *December 26, 1928.*

SIR: I did not fail to transmit to my Government a copy of the *aide memoire* regarding the attitude of the United States Government to the question of the revision of their treaty relations with China, with particular reference to the question of extraterritorial rights, which you were so good as to hand to me on the 22nd ultimo, and I now have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to thank you for that courteous communication.

With regard to the enquiry contained in the concluding paragraph of the abovementioned *aide memoire*, as to the views of His Majesty's Government with regard to the revision of treaties with China, I am to inform you that the verbal communication which I had the honour to make to you on November 22nd and to confirm in the *aide memoire* enclosed in my letter of that date, express very fully the views held by His Majesty's Government on that question. In these circumstances His Majesty's Government feel that they have no further observations which they can usefully make at the present juncture.

I have [etc.]

ESME HOWARD

793.003/85

Memorandum by the Secretary of State

[WASHINGTON,] *December 27, 1928.*

The French Ambassador called and left the attached memorandum⁵⁸ in answer to the inquiry I made of the French Government about negotiations with China on the subject of extraterritoriality.

⁵⁸ Memorandum dated Dec. 25, 1928, p. 443.

He wanted to know if we had had answers from the other governments and I told him we had; that some of them were in writing and some verbal; that as near as I could remember, most of the governments took about the same position that France does but that I had understood that Italy, Belgium and perhaps another country had negotiated a treaty on the tariff similar to our treaty and had also promised to take up the subject of extraterritoriality conditionally; that I did not remember the exact conditions but we had asked those countries for copies of their treaties.

793.003/92

The Japanese Embassy to the Department of State

AIDE-MÉMOIRE

The Japanese Government are much gratified by the friendly invitation of the American Government to express their views on the question of the revision of treaties concluded with China. While it has been and will remain the policy of the Japanese Government to extend all possible assistance to China in her effort to realize her national aspirations, they would at the same time expect that China, on her part, should endeavour to adjust her foreign relations gradually and through proper methods. The difference between the Japanese and Chinese Governments arising from the repudiation by the latter of the Sino-Japanese Commercial Treaty not being settled, the Japanese Government find themselves for the moment in a position somewhat different from that of either the United States or the British Empire who has no such question pending with China. As has been early declared, however, the Japanese Government are prepared to enter into negotiations on the subject of treaty revision, if the Chinese Government do not insist upon repudiating the existing Treaty, and they are confident that ways and means will before long be found for the relief of this apparently difficult situation.

In negotiating the revision of the Treaty with China, the Japanese Government would not attempt to confine the scope of modification to the matters provided for in Article 26 of the Treaty of Commerce and Navigation of 1896, namely, to the customs tariff and the commercial articles of that Treaty, but would be ready to discuss generally such questions as those of customs affairs, consular jurisdiction, the navigation of inland waters, the coasting trade, etc., upon all of which they would endeavour to reach a satisfactory settlement. Briefly stated, their attitude would be:—

a) regarding customs, to recognize tariff autonomy on conditions which would be adequate to prevent too violent changes being caused in the existing economic relations between Japan and China;

b) regarding consular jurisdiction, to discuss its abolition on the basis of the recommendations of the Committee on Extraterritoriality of 1926;

c) regarding the navigation of inland waters and the coasting trade, to settle the question on the principle of reciprocal recognition.

While it is desired that all of these matters should speedily be settled to the satisfaction of both China and Japan, the Japanese Government would be ready to conclude separate arrangements on the several subjects according as agreement may be reached.

The Powers interested, from a spirit of friendship and sympathy toward China, have made unselfish efforts, as they did at the Washington Conference, the Tariff Conference of Peking and the sitting of the Committee on Extraterritoriality, to promote the attainment by China of her national aspirations. The Japanese Government, who heartily co-operated in all these international efforts, would be animated by the same spirit in the coming negotiations on the subject of treaty revision. The recent tendency, however, of the Chinese Government to persist only in their zealous endeavours to attain their desired objects while neglecting the fulfillment of the promises which they have on various occasions given in the past will not have escaped the notice of the Powers who have the main interest in China. The Japanese Government can not but express the hope that the nations concerned, in lending assistance to China for the realization of her aspirations, may not neglect that fact and will endeavour to secure that in her attempt at liquidating her foreign relations, China does not entirely disregard actual conditions and commitments.

The Japanese Government, who are greatly interested in China and who hope for the sound and genuine development of this neighboring country, attach great importance to this last point and are confident that the American Government will find themselves in agreement with them in this respect.

WASHINGTON, December 29, 1928.

793.003/92

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] December 29, 1928.

The Japanese Ambassador called upon me this morning and handed to me the attached carbon copy of an *Aide Memoire*, the original of which he had just handed to the Secretary.⁵⁹ He said he had told the Secretary that he would come and discuss its details

⁵⁹ *Supra*.

with me. He desired to say to me first that his Government was delighted to know that we were prepared to discuss questions concerning China with Japan as well as with the other powers. He referred with satisfaction to the fact that since his arrival in Washington, the Secretary had already discussed with him two important questions concerning China; the first, the question of the raising of the legations to the status of embassies; the second, with regard to treaty revision, and he hoped that the Secretary would continue to call him in and discuss such matters from time to time as his Government especially prized this evidence of confidence. He said that the attached *Aide Memoire* contained two important points which he desired to emphasize orally. The first was the fact that the Chinese Government had adopted a policy of insisting on repudiating unilaterally the treaty between China and Japan. He said that Japan could never assent to this method of treatment; that they could never assent to China's insistence upon her rights under her own interpretation of the treaty terms thus to repudiate the treaty. He said he hoped that we would understand the difficulties arising in Japanese relations with China as long as China took this point of view.

The Ambassador said, however, that provided China retreated from this unreasonable attitude, Japan was quite prepared to enter upon serious discussions regarding treaty revision and to go as far as anyone in meeting the aspirations of China; that they were prepared to recognize tariff autonomy; that they were prepared to discuss consular jurisdiction, although this was a very delicate policy and one which waited upon China's cleaning up of her own house, to use his phraseology.

The Ambassador said there was a third point upon which Japan desired to negotiate with China, and that was inland water navigation. He said that doubtless on account of my long acquaintance with China I would understand this question as being important to Japan. I told him I quite understood its importance as I knew that practically the whole fabric of foreign inland water navigation in China, American, British and Japanese, was based on the terms of the Japanese Treaty of 1896. The Ambassador said he was very anxious to know whether we would have any objection to Japan insisting upon freedom of navigation of Chinese inland waters and reminded me that it was his understanding that a very large proportion of American commerce in China was handled by Chinese coastwise vessels and the small launches and river boats flying the Japanese flag and navigating the inland waters of China. He said he thought with this large interest involved that America would not be opposed to Japan negotiating this on a basis of reciprocity. In

fact he wondered whether we ourselves would not be ready to negotiate on such a basis. I told the Ambassador that I was not authorized to make any statement with regard to this matter, although personally I felt that the United States could have no objection to any position which the Japanese Government for its part might wish to adopt in this matter. However, I could not see how we could negotiate with the Chinese in such a matter on the basis of reciprocity as we would not permit foreign vessels to navigate the inland waters of the United States, at least so was my understanding, and it would be out of the question for us to take up and consider seriously such a matter. The Ambassador said that nevertheless he hoped we would not object to Japan negotiating along this line.

The second important point in the *Aide Memoire*, the Ambassador said, was to be found in the next to the last paragraph where the Japanese Government mentioned the tendency of the Chinese to insist upon attaining their objects while neglecting the fulfillment of the promises which they have on various occasions given. The Ambassador said that his Government placed great importance upon the hope that the nations should concert themselves while lending assistance to China for the realization of her aspirations in insisting on the other hand that China should not entirely disregard actual conditions within her own territories and commitments made to other powers.

I said to the Ambassador that I realized the importance of this matter. I said that personally, and entirely off the record, I would like to say with regard to China's promises in the past that I was of the opinion that frequently China had made promises under duress or in the hope of obtaining some benefit thereby, promises which the Chinese people and the Chinese officials who made the promises never intended to fulfill. As an instance of this type of promise I recited somewhat the history of the question of likin, pointing out that although China had on various occasions promised to abolish likin, it was known to everyone that there was no established feeling of opposition to likin current among the Chinese and that therefore it was almost impossible for the Chinese to fulfill any promise to give up this matter.

The Ambassador said that he would understand from what I said that I would be opposed to any concerted action on the part of the powers against China and I said that I would like to qualify that statement a little, that I felt there were certain things upon which the powers could agree to take action alike. At least we could take concerted action in constructive measures, or in the line of moderation, but unfortunately in the past the powers had only considered it necessary to concert themselves when one or more of them were in

the position of the defensive and it seemed to me that that fact reduced our action to one of mutual interest in our defense but individual interest in all other matters. I was sometimes doubtful as to the benefits when action was limited in this way. I reminded him however that in saying these things I was speaking entirely from my own personal viewpoint and must not be understood as necessarily expressing myself as giving the views of this government.

The Ambassador concluded by asking whether the British had made any further reply on this subject or whether the French had made any reply and I told him we had nothing further from the British nor had we anything further from the French. He said he felt that if the Secretary or myself could find an opportunity to make some frank comment officially either orally or in writing, upon the Japanese Government's statement of their position, they would be very happy. I told him I would discuss the matter with the Secretary and see if I could not arrange it.

Before leaving, the Japanese Ambassador once more referred to statements in the press about the renewal of the Anglo-Japanese Alliance. He pointed out that it was utterly impossible that this should happen and felt certain that everyone understood this now. He spoke rather bitterly of an editorial in the *Star* one or two nights ago which stated that the United States had taken the lead in recognizing the Nationalist Government; that this lead had been followed now by the British and that the Japanese were left alone of all the nations adopting an intransigent attitude towards the Chinese.

N[ELSON] T. J[OHNSON]

TREATY REGULATING TARIFF RELATIONS BETWEEN THE UNITED STATES AND CHINA, SIGNED JULY 25, 1928⁶⁰

893.01/289 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, *June 23, 1928—3 p. m.*

202. Legation's number 487, June 20, 11 p. m.⁶¹

1. Authority is given you to commence at an appropriate time (and an early date is suggested) conversations with the Nationalist authorities with a view to the revision of tariff provisions of our

⁶⁰ See also section on proposals for revision of Chinese treaties regarding tariff control and extraterritoriality, pp. 398 ff.

⁶¹ *Ante*, p. 184.

treaties on the following basis, this basis being subject to modification from time to time as the conversations proceed.

2. I am in agreement with you that unless it is raised by the Nationalist authorities it is not necessary that the question of recognition be taken up in the first instance. We are at present, undoubtedly, in *de facto* relationship with the Nanking Government, and negotiations for a treaty with that Government would be at least a recognition of that status. Although the making of a treaty with them would certainly have the effect of *de jure* recognition, the question of such recognition need not be raised at this time.

3. The Nationalist Government may be informed by you that the Government of the United States is willing now to proceed with negotiations for a revision of the provisions regarding tariffs in treaties between the United States and China and is prepared to agree that all provisions in treaties heretofore concluded and in force between the two countries relating to rates of duty upon the importation and exportation of merchandise, drawbacks, and tonnage dues in China shall be annulled and become inoperative as of and from January 1, 1929, or 4 months after this treaty becomes effective, whichever shall last occur, and that, subject to the condition that each of the High Contracting Parties shall enjoy in the territories of the other in regard to the matters specified above and any related matters, treatment in no way discriminatory as compared with the treatment accorded to any other country, the principle of complete national tariff autonomy shall be applicable. It is suggested that January 1 be made the date for termination of present tariff provisions because there should be a lapse of some reasonable time after the conclusion of the treaties before they become effective, so that commerce may be adjusted to the new conditions.

Under no pretext whatever shall the nationals of either of the High Contracting Parties be compelled to pay within the territory of the other party internal charges or taxes other or higher than such charges or taxes paid by nationals of the country or by nationals of any other country.

4. The Nationalist authorities should be clearly impressed with the fact that any arrangement negotiated in regard to the tariff will require, in this country, Senate ratification.

It may be stated by you that upon the conclusion, in the manner suggested, of an agreement regarding the tariff provisions, the United States Government will be willing to proceed with discussions on the subject of extraterritorial rights. On the part of the United States there is a readiness to consider with China the relinquishment of extraterritorial rights at such time as the authorities in China are prepared to give to American lives and property the proper protec-

tion. There has been and is a readiness on the part of this Government to fulfill the promises made in the Treaty of 1903⁶² and in the identic note addressed on September 4, 1925 to the Chinese Foreign Office.⁶³ The contents of the Report of the Commission on Extraterritoriality⁶⁴ have been given careful consideration by this Government. Of course it will be necessary, whenever discussions in regard to possible relinquishment are begun, to take into account the condition of laws of China and the administration of such laws, the independence of the Chinese courts and the quality and effectiveness of the protection to be afforded the citizens of the United States. Considering that the entire subject of commerce and treatment of the citizens of the two countries is covered in various aspects by the treaties entered into between 1844 and 1920 between the United States and China, it is the view of this Government that negotiations bearing upon the question of releasing extraterritorial rights would involve necessarily a modification or revision of virtually all the treaties between the United States and China. It is my opinion that, with a view to expedition, it would not be advisable to embark at this time upon a project so large, but that in all probability this will have to be done in the not distant future.

5. For the information of the Minister: In the event that there is established by the Chinese a government that is fairly stable and gives substantial evidence of a capacity to fulfill obligations entered into, this Government is prepared to proceed with negotiations in relation to extraterritorial rights.

6. It is requested that your views pertaining to the above should be telegraphed completely.

7. It is my desire to give to the press here a statement to the effect that we are prepared to enter into negotiations on the tariff treaties when you are ready to open the discussions with the Nanking authorities. Inform me by telegraph what you believe should be included in my statement. Certainly it will appear in the press in China and it is my wish that it make its appearance here first. Inform me also what governments should, in your opinion, be notified of our action. Nothing has been said as yet to any of them.

KELLOGG

⁶² *Foreign Relations*, 1903, p. 91.

⁶³ *Ibid.*, 1925, vol. I, p. 831.

⁶⁴ Department of State, *Report of the Commission on Extraterritoriality in China, Peking, September 16, 1926* (Washington, Government Printing Office, 1926). For correspondence, see *Foreign Relations*, 1925, vol. I, pp. 886 ff.; *ibid.*, 1926, vol. I, pp. 966 ff.

893.01/293 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, June 30, 1928—3 p. m.

[Received June 30—10:10 a. m.]

503. Department's 202, June 23, 3 p. m.

1. Although the Department's telegram has been carefully considered, I have found it difficult, due to the almost complete aloofness which the Nationalist authorities have thus far maintained, to make any helpful suggestions. They have maintained thus far a diplomatic vacuum, which may be either in pursuance of a deliberate policy of acting independently of problems of an international nature or a result of their preoccupation with the task of reorganization.

2. I had occasion, even before the Department's 189, June 15, 1 p. m.,⁶⁵ was received, to remind P. W. Kuo, who called upon me as the personal representative of C. T. Wang,⁶⁶ of the attitude of the United States Government in regard to tariff matters, as communicated by me last February to Huang Fu.⁶⁷ Although he gave me assurance that these views would be communicated to Wang and that Wang would be much interested in them, no further reference to the subject has been made by him.

3. I have learned, meanwhile, of certain preparations which are being made with the apparent purpose of reconvening the Tariff Conference, the sessions of which were discontinued in 1926.⁶⁸

4. Wang is expected to visit Peking in the near future. It is my hope that it may be possible at that time to gain some conception of the purposes and the procedure which the Nationalist authorities have in mind. Until it has been possible to gain a clear conception of what it is the Nationalists contemplate and of the temper in which it may be anticipated they will approach the subject, I am impelled to request authority to postpone the making of the statement which the Department requests in its telegram in regard to the steps that should be taken in order to achieve the objectives outlined in that telegram.

MACMURRAY

⁶⁵ *Ante*, p. 181.

⁶⁶ Minister of Foreign Affairs in the Nationalist Government at Nanking.

⁶⁷ Predecessor of C. T. Wang as Nationalist Minister of Foreign Affairs. For record of conversation, see memorandum of Feb. 26, 1928, by the Third Secretary of Legation in China, p. 410.

⁶⁸ See *Foreign Relations*, 1925, vol. I, pp. 833 ff; *ibid.*, 1926, vol. I, pp. 743 ff.

893.01/293 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 7, 1928—2 p. m.

214. Legation's telegram 503, June 30, 3 p. m.

1. The final paragraph is not clear. It is assumed that it will be necessary to begin negotiations soon and it is desired to be prepared. It is requested that a specific and detailed reply be made to the sixth and seventh paragraphs of Department's 202, June 23, 3 p. m.

2. According to press despatches published under Shanghai date line it is the intention of the Nationalist authorities to extend to foreign diplomatic representatives an invitation to attend a conference beginning July 20 at Nanking. The despatches infer that resumption of the Tariff Conference or general treaty revision is the object. Furnish any information you may have on this subject.

3. In the event that the conference referred to above should become the subject of discussion, you are authorized to make at the outset the statement that the United States is prepared, either with or without the other powers, to proceed with negotiations concerning tariffs, and also that the Government of the United States prefers a disposition of the tariff question before proceeding with discussions concerning general treaty revision.

KELLOGG

693.003/831a : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 11, 1928—11 a. m.

218. My 189, June 15, 1 p. m.;⁶⁹ your 487, June 20, 11 p. m.;⁷⁰ my 202, June 23, 3 p. m.; your 503, June 30, 3 p. m.; my 214, July 7, 2 p. m. It is the opinion here that in the near future understandings should be effected with the Government at Nanking, which apparently is demonstrating a capacity to establish itself in China as the accepted government. The views which you expressed in the third paragraph of your 487 are interpreted as being in harmony with this opinion.

Consistent with the statements in my 189, I believe that, fairly interpreting my statement of January 27, 1927,⁷¹ we are obligated,

⁶⁹ *Ante*, p. 181.

⁷⁰ *Ante*, p. 184.

⁷¹ See telegram No. 28, Jan. 25, 1927, to the Chargé in China, *Foreign Relations*, 1927, vol. II, p. 350.

either by ourselves or in concert with the other powers, to proceed to negotiations for the purpose of eliminating the tariff from among the outstanding questions between China and the United States.

I am aware that, because of the apparent unwillingness of the Nationalist authorities to make the requisite overtures referred to in the first paragraph of your 503, you may find it difficult to take any forward steps. I believe, nevertheless, that we should go forward and it is desired that advantage be taken by you of the first opportunity for opening discussions along the lines set forth in my 202 of June 23.

It is my belief that the Nationalist Government might be prompted to come forward if a statement to the following effect were made by me here:⁷²

"With a deep realization of the tremendous nature of the difficulties confronting the Chinese nation, I feel impelled to record my belief that a strong and unified China is in process of emerging from the chaos of civil war and turmoil which has distressed that country for so many years. As an earnest of that belief and of the conviction that the welfare of all the peoples concerned will be promoted by the creation in China of a responsible authority, which will undertake to speak to and for the nation, I am happy to announce that the American Government is ready to begin at once, through the American Minister to China, negotiations with properly accredited representatives whom the Chinese may appoint with reference to certain matters which urgently need to be regulated by new treaty provisions. Concerning the tariff provisions of present treaties between the United States and China, this Government will be glad forthwith to conclude a new treaty, in which it may be expected that the United States will give full recognition to the principle of China's tariff autonomy and it will be agreed reciprocally that the commerce of each of the countries shall enjoy in the ports and territories of the other treatment in no way discriminatory as compared with the treatment accorded therein to the commerce of any other country.

To that end, the American Minister to China has been authorized to state to the Nationalist authorities that he is prepared to enter upon negotiations."

A statement of your views is still being awaited. I intend within the next few days, unless you give reasons which show me the inadvisability of following this course, to inform the principal diplomatic missions here of the text or substance of the above and to make the text public within two or three days thereafter. It is requested that you communicate to me at once such comments as you may care to make. You will be informed in advance when action and dates are decided upon.

KELLOGG

⁷² Text of statement not paraphrased.

711.93/184a

The Secretary of State to President Coolidge

WASHINGTON, July 11, 1928.

DEAR MR. PRESIDENT: You will remember that on January 27, 1927, I made a statement of the attitude and policies of the United States in reference to treaty negotiations. I enclose you a copy.⁷³ You will notice from the third paragraph that I stated in substance that the United States was prepared to negotiate with any government of China or delegates who can represent or speak for China. This has been our policy from that day to the present.

During Mr. MacMurray's visit here last autumn we discussed in great detail the plan of negotiating a tariff treaty which would release China from tariff control in so far as the United States is concerned but whereby China should receive tariff autonomy on condition that both the United States and China would each enjoy, in the territories of the other, treatment in no way discriminatory as compared with the treatment accorded to any other country. It seemed to me, since the consolidation of the Nationalist authorities in China, that the time had come when we should be prepared to make good our promise and take up negotiations if the Nationalist authorities were willing. With that in view I telegraphed instructions to Mr. MacMurray on June 23, 1928, a paraphrase of which I enclose.⁷⁴

Mr. MacMurray has had some conversations with the Nationalist authorities but nothing definite has occurred. In the meantime the press, to a considerable extent in this country, has been calling on the United States to take action for the recognition of the present Chinese government and that we enter into negotiations for the revision of the treaty. I am of the opinion that the time has come when we should make some statement of our position, and then if the Chinese authorities are prepared, we will first go ahead with the tariff negotiations, which are comparatively simple, and afterwards take up the revision of the other treaties which will be more difficult and require much time and also a consideration of the facts in relation to extraterritoriality which I will not stop to discuss at this time.

I have telegraphed to Mr. MacMurray that this is the plan and I have prepared a suggestion for a statement to be made, and unless Mr. MacMurray sees some controlling reason to the contrary I propose to make this statement in the near future, first notifying the

⁷³ See telegram No. 28, Jan. 25, 1927, to the Chargé in China, *Foreign Relations*, 1927, vol. II, p. 350.

⁷⁴ See telegram No. 202, p. 449.

interested governments of our intention. I enclose you a copy of the statement.⁷⁵ I do not see that we can be in any way prejudiced. We stand pledged to the release of tariff control and if China guarantees us equal treatment under a treaty I do not think we can suffer. One thing is sure, tariff control of China is doomed. Whether the present government is going to evolve into a stable civil government of course I can not say, but I think any encouragement which can be given it by the world powers will strengthen their hands in dealing with the enormously difficult domestic problems.

I should be glad to have your views as to whether this program is approved. I wish this at present to be strictly confidential as the press are constantly questioning me about what we are going to do in China and I have refrained from making statements.

Faithfully yours,

FRANK B. KELLOGG

711.93/191

President Coolidge to the Secretary of State

SUPERIOR, WIS., July 12, 1928.

[Received July 16.]

MY DEAR MR. SECRETARY: I approve the program which you set out in your letter of July 11th regarding the matter of the treaty negotiations with China.

Very truly yours,

CALVIN COOLIDGE

893.01/302 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, July 12, 1928—6 p. m.

[Received July 13—7:47 a. m.⁷⁶]

529. Department's 202, June 23, 3 p. m., and 214, July 7, 2 p. m.

1. As to the desirability of negotiating prior to next January 1, along the lines indicated in the Department's 202, a revision of the tariff provisions of our treaties, I am entirely in accord. It is assumed that it would still be satisfactory to take as a basis of negotiations the draft text which I discussed with the Solicitor last October and which you approved at that time.⁷⁷

⁷⁵ See telegram No. 218, July 11, to the Minister in China, *supra*.

⁷⁶ Telegram in three sections.

⁷⁷ Not printed.

2. However, considering the disposition and attitude of the Nanking authorities with whom it would be necessary for us to deal, the immediate problem is not one of objective but of the method of proceeding toward that objective. Our position on this subject and our readiness to open negotiations were called to the attention of the previous Nationalist Minister for Foreign Affairs five months ago. A month ago this intimation was recalled to the personal representative of the present Minister for Foreign Affairs. In both instances the suggestion has been ignored. Meanwhile, there is a conspicuous contrast between the indifference exhibited by the Nanking authorities in regard to the suggestion of our readiness to go more than halfway in meeting them on the question of tariffs and the public declarations made at various times by the Minister for Foreign Affairs with respect to the urgency of treaty revision. It begins to appear that in tariff matters at least it is now the intention of the Nanking authorities to take an independent initiative in fixing tariffs regardless of the treaties rather than to seek an understanding with the treaty powers.⁷⁸ An offer on our part to negotiate regarding tariff matters would be, under such circumstances, highly inexpedient as well as untimely. . . . It is a genuine danger that, having once committed ourselves to the relinquishment of our tariff rights without any other condition or consideration than that of a most-favored-nation clause, Wang would exploit our liberality by withholding even an assurance of the advantages of such a clause.

3. Although it is my belief that we should go fully halfway to meet the Nationalist Government in the event that they address to us any request for revision of the tariff provisions of the treaties, it is my very firm opinion that it would be a tactical mistake for us to show any inclination toward haste or to take any positive initiative in the matter, and that such action on our part would result almost certainly in a rebuff to us and in the frustration of our purpose. As to the best means for accomplishing our purpose, I believe it to be quite clear that the chances of our success are far greater if we show no indication of eagerness in the matter as to which the Nationalist authorities either feel or are feigning a very marked indifference with respect to our attitude. In fact, it is my feeling that the early adjustment of this matter would be encouraged if we ourselves act in a way that is indicative of the fact that, in connection with the treaty revision which they are demanding, it is they rather than we who have the most to be concerned about.

⁷⁸ Governments signatory or adherent to the nine-power treaty relating to Chinese customs tariffs, signed at Washington, Feb. 6, 1922, *Foreign Relations*, 1922, vol. 1, p. 282.

4. Accordingly, it is my belief that the making of any public statement of our intentions in this matter would be a mistake, and that until at least the method of approach has become clearer it is impossible to anticipate the sort of statement that would be suitable to the circumstances. Your desire in regard to a press statement will be borne in mind by me, however, and I shall, when the occasion arises, communicate with you on that subject.

5. As for consulting with other governments, it is my suggestion that the matter first be taken up in strict confidence and informally with the British and the Japanese, the two Governments most interested, and that it would not be wise to discuss the matter with the other governments signatory or adherent to the Washington Conference treaties concerning China until it is certain that the negotiations are proceeding favorably.

6. In view of the fact that we are not prepared to make a full and unconditional relinquishment of extraterritorial rights at the present time and considering that consequently any revision would have to make provision for establishing an interim system of jurisdiction requiring the assumption by the Chinese of an entirely new set of obligations, the revision of those treaty provisions which deal directly or indirectly with extraterritorial rights rests upon a completely different basis from the revision of tariffs. First of all, the Nationalist Government as now constituted would unquestionably not be able, even in the few central provinces where the degree of its control is fuller than elsewhere, to fulfill any such obligations. Second, it would not be politically possible, in the light of Kuomintang commitments, for any Nationalist Government to enter into such obligations as would be required. Retention of the *status quo* and the making of academic protests against the *status quo* would be vastly less difficult for them than the acceptance of any such remedy of the situation as we could accord. Consequently, even if we were willing to take the risk of nonfulfillment of promises made to us, an offer to negotiate on extraterritorial matters would thrust us into this situation: either it would be necessary for us to yield that which we would not feel warranted in yielding, or it would be necessary for us to reconsider our offer and to withdraw from the negotiations under circumstances which would make us the victims of agitation and reproach founded on the claim that the equity of China's position had been recognized by us but that we had failed to abide by our convictions. With possibly two exceptions, every thoughtful and intellectually honest Chinese leader with whom I have talked privately has acknowledged that the legal and judicial institutions of China are not yet sufficiently established to warrant the raising of this issue, for if once raised it

would lead to circumstances that could not be coped with by either side without further needless bitterness. It is my earnest recommendation, therefore, that until there emerges a stable government capable of meeting its responsibilities in such matters the question of negotiations for revision of the treaty provisions on extraterritoriality be postponed.

7. I believe that the comments above are responsive to your request for an expression of my views in regard to the subject matter of the Department's telegram.

MACMURRAY

711.93/186 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 13, 1928—noon.

221. Department's 218, July 11, 11 a. m. Department has just received following communication, dated July 11.

[Here follows text of a communication from C. C. Wu, the Special Representative of the Chinese Nationalist Government, printed on page 415.]

This morning Sze⁸¹ called upon me and left with me a copy of the declaration made on July 7 by the Ministry of Foreign Affairs of the Nationalist Government,⁸² concerning the question of new treaties between China and the powers, containing the following:

"First. All the unequal treaties between the Republic of China and other countries, which have already expired, shall be *ipso facto* abrogated, and new treaties shall be concluded.

Second. The Nationalist Government will immediately take steps to terminate, in accordance with proper procedure, those unequal treaties which have not yet expired, and conclude new treaties.

Third. In the case of old treaties which have already expired, but which have not yet been replaced by new treaties, the Nationalist Government will promulgate appropriate interim regulations to meet the exigency of such situation."

[Paraphrase.] Considering that it is necessary to make some reply to both of these communications, it is desired that the Chinese Ministry for Foreign Affairs be informed by you that the Department has received from C. C. Wu the above communication, as well as the declaration communicated by Sze, and that you inform the Minister of Foreign Affairs that you are prepared to open with him discussions along the lines of the authorization set forth in the Department's telegram number 202 of June 23, 3 p. m., paragraphs 1, 2, 3,

⁸¹ Sao-Ke Alfred Sze, Chinese Minister at Washington.

⁸² For full text of declaration, see note of July 13, 1928, from the Chinese Legation, p. 416.

and 4. When this communication has been made by you, you should inform the Department in order that it may proceed in the manner indicated in the final paragraph of Department's number 218. Your colleagues at Peking should be notified also. [End paraphrase.]

KELLOGG

693.003/832 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, July 13, 1928—1 p. m.

[Received July 13—9:32 a. m.]

532. In my 529, July 12, 6 p. m., are set forth my views on the same general subject as the Department's 218, July 11, which I received later in the evening. It is with keen regret that I find myself not in accord with a suggestion which you make with the purpose of coping with the situation brought about by the lack of responsiveness of the Nationalist authorities towards the attitude of helpfulness which we have evidenced with respect to revision of treaty provisions relating to the tariff. I feel a particular obligation, however, since there is imposed upon me the responsibility of accomplishing the desired result in this matter, to advise you that I believe the contemplated public announcement would have a strong tendency to defeat the purpose for which it would be made. Whereas it is your belief that such a statement might prompt the Nationalist authorities to come forward, I urge, very respectfully but with conviction, that my evaluation of the situation in China is to the contrary. Judging from that which has appeared thus far to indicate the direction of Nationalist policy, I am apprehensive that it is likely, in any event, to prove at least difficult to perform the task you set. The making of such a statement as that proposed, in my judgment, certainly would not only increase the difficulties but would diminish very greatly the prospects of achieving a satisfactory result.

MACMURRAY

711.93/189a : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 13, 1928—7 p. m.

223. Your 529, July 12, 6 p. m., and 532, July 13, 1 p. m. Just before receiving the above messages I sent you my No. 221 of July 13, noon a. m. [*sic*]. I quite appreciate the arguments which you make. I am pleased to have your views, nevertheless we have received this definite request from C. C. Wu which he said was sent

on instructions of the Nationalist authorities. There is in addition to this a rising demand in the press that the United States recognize the Nationalist Government and proceed with negotiations. It seems to us that if in reply to Wu's statement you indicated your willingness to take up negotiations on the tariff treaties and we made that statement here it would prevent the Nationalist Government from making claims that we are not willing to proceed according to my statement of January 27, 1927. Apparently while not acting very responsive to your overtures they still are pressing me to proceed with negotiations. What I fear is that unless we make some answer or indication that we are willing to proceed there will be publication of Wu's note and other statements perhaps by the Nationalists which will tend to put us in the wrong.

I quite agree with you about the negotiations for the present being confined to the tariff. The latter part of paragraph 4 of my No. 202 of June 23, 3 p. m., was intended for your information to explain to the Nationalist authorities if they brought up this subject. I think it would be better in the first instance to confine your offer to negotiate on the tariff.

Frank Lee ⁸³ called to see Johnson ⁸⁴ today, in the absence of C. C. Wu, to find out if we were prepared to make an answer to his communication wired to you in our No. 221. Mr. Johnson told him that we were considering the whole matter and hoped to be able to make some reply shortly. He said that Alfred Sze had seen the communication and that any reply should be given to him as well as to C. C. Wu; that the Nationalist Government had offered Wu the appointment of Minister here which he had declined on the ground that Sze had been here a long time and had many friends; that his mission here was to get something started in connection with negotiations on new treaties and that the Nationalist authorities expected to appoint Wu and Wang Chung Hui ⁸⁵ and one other not named as delegates to carry on these negotiations. He said further that there would be many things to discuss which would take a good deal of time and they wanted to get started as soon as possible.

It is evident from this that they intend to press for negotiations.

The draft text discussed with the Solicitor last October is a satisfactory basis on which to negotiate and was somewhat elaborated in my No. 202. I quite agree with you about confidential communications with British and Japanese. In view of my No. 221, July 13, will await further communication from you before taking action.

KELLOGG

⁸³ Representative of the Chinese Nationalist Government.

⁸⁴ Nelson T. Johnson, Assistant Secretary of State.

⁸⁵ Latter was a member of the Kuomintang Central Executive Committee and of the Central Political Council.

711.93/195 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, July 17, 1928—8 p. m.

[Received July 17—5:30 p. m.]

546. Department's 221, July 13, noon; and 223, July 13, 7 p. m.

1. In compliance with the desires indicated in the telegrams cited, I have prepared a note (the text of which is being sent in my 547, July 17, 9 p. m.) to the Nationalist Minister of Foreign Affairs, subject to approval of the suggested text by you. It is proposed that you authorize me to send the note by telegraph to the American consul general at Shanghai to be communicated by him, in my name, to the Commissioner of Foreign Affairs at Shanghai for transmission to the Minister.

2. It is suggested also that the release of the text of the note may well be the equivalent of the public statement referred to in the Department's 218, July 11, 11 a. m. A certain portion of the terminology of the draft statement has been incorporated in the text of the proposed note, it will be observed.

3. In regard to the attitude which it may be expected Wang will take concerning the proposals which we plan to make, the following comments are submitted. Although entirely speculative in nature, I believe that these comments should receive consideration.

(1) Considering the position assumed by the Chinese hitherto in relation to most-favored-nation treatment, as shown in the previously mentioned negotiations of Japan in the course of and following the Tariff Conference, it is not by any means impossible that an offer of tariff autonomy made conditional upon an arrangement committing China to the general policy of most-favored-nation treatment in revising her treaties with other powers will be flatly rejected by Wang. However, if we are positively resolved that the proposals which you set forth clearly in your statement of January 27, 1927, represent the utmost concession we are prepared to make, it would appear, nevertheless, that we would stand in a position of tactical advantage, having made a definite offer to fulfill promises made last year. Upon the Chinese would rest the responsibility for rejection of that offer.

4. The entire course of action outlined above is based upon the supposition of a definite desire on your part to make Wu's letter of July 11, despite his apparently undetermined status as representing the Nationalist Government, the occasion for inaugurating negotiations with a view to the revision of our tariff relations with China.

Attention is invited, in this connection, to the tenor of his letter in comparison with the notes of July 1 addressed to the Italian and Danish Ministers by Wang in regard to matters of similar import. (See my 541, July 16, 3 [8] p. m. for the text of note to the Danish Minister, the note to the Italian Minister being substantially similar.)⁸⁶ I apprehend that the impression will be made upon readers, in contrasting between the studied courtesy of the notes just mentioned and the peremptory and abrupt tenor of Wu's letter, that the Nanking authorities intend to accord less courtesy and respect to the American Government than to other governments.

MACMURRAY

711.93/194: Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 17, 1928—9 p. m.

[Received 9:30 p. m.⁸⁷]

547. Following is the draft note referred to in my earlier telegram of today.

1. "Sir: I have been instructed by the Secretary of State to inform you of the receipt by him on July 13 of the following communication dated July 11 from Dr. C. C. Wu (text of above communication as contained in Department's No. 521 [221], July 13, noon).

2. The Secretary of State has also received from Dr. Alfred Sze a copy of the declaration made on July 7 by the Ministry of Foreign Affairs of the Nationalist Government concerning the question of new treaties between China and the powers.

3. With regard to the attitude of the American Government towards the question of full and complete treaty revision, I suggest this occasion to recall the statement of policy in this regard communicated by me in a note of March 30 last to your predecessor,⁸⁸ in which I stated that the Government and people of the United States are in full sympathy with the desire of the Chinese people to develop a sound national life of their own and to realize their aspirations for a sovereignty so far as possible unrestricted by obligations of an exceptional character. With that in view I stated that the American Government entertained the hope that the remedying of the conditions which necessitated the incorporation of such provisions in the earlier treaties might from time to time afford opportunity for the revision in due form and by mutual consent of such treaty stipulations as might have become unnecessary or inappropriate.

⁸⁶ Telegram not printed; for texts of the notes, see *The China Year Book*, 1929-30, pp. 864 and 869.

⁸⁷ Telegram in two sections.

⁸⁸ See unnumbered telegram of March 30, 8 p. m., from the Minister in China, p. 331.

I also stated that to that end the American Government looked forward to the hope that there might be developed an administration so far representative of the Chinese people and so far exercising real authority, as to be capable of exercising the actual fulfillment in good faith of any obligations such as China would of necessity have for its part to undertake incidentally to the desired readjustment of treaty relations.

4. With specific reference to the statement of the Secretary of State of [January] 27th, 1927, to which Dr. Wu made this reference, I am happy to inform you that the American Government is prepared at the present time to undertake a revision of the treaty provisions relating to the tariff for which purpose I have been authorized to enter into negotiations with properly accredited representatives whom the Nationalist Government may appoint with a view to concluding a new treaty in which it may be expected that the American Government will give full recognition to the principle of China's tariff autonomy and that it will agree reciprocally that the commerce of each of the two countries shall enjoy in the ports and territory of the other, treatment in no way discriminatory as compared with the treatment accorded therein to the commerce of any other country.

I avail, et cetera."

MACMURRAY

611.9331/67a : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 20, 1928—1 p. m.

230. Department's 223, July 13, 7 p. m., your 546 and 547, July 17 and previous.

1. I feel that unless we act immediately, the Nationalists will force two issues, first that of negotiating a complete new treaty covering both tariff and extraterritoriality, and, second, that of negotiating in Washington rather than in Peking.

I have given full consideration to your suggestion that, if offered negotiations on lines such as I have proposed, they may take advantage of the offer, for bargaining purposes, but I feel that if we make this offer promptly and openly, before being forced by them to assume a defensive position with regard to the question of discussing extraterritoriality, we will have put our position in a proper light and will have demonstrated that we are willing to do all that the situation warrants. In pursuance of the policy set forth in my statement of January 27, 1927, I do not wish to have this Government put on the defensive. Moreover I wish to dispose conclusively of the idea which some of the Nationalists advocate, that the negotiations should be conducted here.

2. I have considered the draft submitted in your 547 and your comments and suggestions.

3. I desire that you address and send to the Minister of Foreign Affairs of the Nationalist Government as from you on my behalf a note as follows:

"Events in China have moved with great rapidity during the past few months. The American Government and people have continued to observe them with deep and sympathetic interest. Early in the year the American Minister to China made a trip through the Yangtze Valley region and while in Shanghai exchanged on March 30, 1928, with the Minister of Foreign Affairs of the Nationalist Government notes in settlement of the unfortunate Nanking incident of March 24, 1927.⁸⁹ In pursuance of the terms therein agreed upon, a Sino-American Joint Commission has been entrusted with the appraisal of damages suffered by the American nationals during that occurrence.

On January 27, 1927, I made a statement of the position of the United States toward China. To it I have often subsequently had occasion to refer in reaffirmation of the position of this Government. I stated therein that the United States was then, and from the moment of the negotiation of the Washington Treaty had been prepared to enter into negotiations with any government of China or delegates who could represent or speak for China, not only for putting into force the surtaxes of the Washington Treaty but for restoring to China complete tariff autonomy. Ever since, the American Government has watched with increasing interest the developments pointing toward coordination of the different factions in China and the establishment of a government with which the United States could enter into negotiations. Informed through press despatches and through official reports which have from time to time been released to the Press, the American people also have observed with eager interest these developments.

In a note addressed by the American Minister to China to the Minister for Foreign Affairs of the Nationalist Government at Nanking on March 30 of the present year, in reply to a suggestion of the latter concerning revision of existing treaties, reference was made to the sympathy felt by the Government and people of the United States with the desire of the Chinese people to develop a sound national life of their own and to realize their aspirations for a sovereignty so far as possible unrestricted by obligations of an exceptional character, and it was stated that the American Government looked forward to the hope that there might be developed an administration so far representative of the Chinese people as to be capable of assuring the actual fulfillment of any obligations which China would of necessity have for its part to assume incidentally to readjustment of treaty relations.

In a communication addressed to me under date July 11, 1928, Mr. Chao-chu Wu informs me that the Nationalist Government has decided to appoint plenipotentiary delegates for the purpose of treaty negotiations and that he is instructed to request that the Government of the United States likewise appoint delegates for that purpose.

⁸⁹ See telegram of Mar. 30, 1928, from the Minister in China, p. 331.

The good will of the United States toward China is proverbial and the American Government and people welcome every advance made by the Chinese in the direction of unity, peace and progress. We do not believe in interference in their internal affairs. We ask of them only that which we look for from every nation with which we maintain friendly intercourse, specifically, proper and adequate protection of American citizens, their property and their lawful rights, and, in general, treatment in no way discriminatory as compared with the treatment accorded to the interests or nationals of any other country.

With a deep realization of the nature of the tremendous difficulties confronting the Chinese nation I am impelled to affirm my belief that a new and unified China is in process of emerging from the chaos of civil war and turmoil which has distressed that country for many years. Certainly this is the hope of the people of the United States.

As an earnest of the belief and the conviction that the welfare of all the peoples concerned will be promoted by the creation in China of a responsible authority which will undertake to speak to and for the nation, I am happy now to state that the American Government is ready to begin at once, through the American Minister to China, negotiations with properly accredited representatives whom the Nationalist Government may appoint, in reference to the tariff provisions of the treaties between the United States and China, with a view to concluding a new treaty in which it may be expected that full expression will be given reciprocally to the principle of national tariff autonomy and to the principle that the commerce of each of the contracting parties shall enjoy in the ports and the territories of the other treatment in no way discriminatory as compared with the treatment accorded to the commerce of any other country. Further, I am happy to state that when the question of the tariff, which is of primary importance to China, shall have been disposed of, I shall hope to discuss with the Government of China other aspects of the treaty relationships between the two countries, with a view to concluding, if the conditions warrant, a new treaty in regulation thereof."⁹⁰

[Paraphrase]

4. All previous proposals regarding statements are superseded and canceled by this instruction. Extraterritoriality, you will note, is not expressly mentioned therein. In answering possible questions, I shall say that I desire the tariff question to be disposed of before anything is done about extraterritoriality.

5. I wish the note above to be delivered on July 25 at noon, China time, to the Chinese Minister for Foreign Affairs and at the same time copies of the note to be delivered, confidentially for their information, to your colleagues who represent the powers signatory and adherent to the Nine-Power Tariff Treaty of February 6, 1922.

⁹⁰ Concluding sentence omitted from note as sent; see telegram No. 566, July 24, p. 473.

When you have arranged delivery accordingly, you will please immediately inform me in order that I may be simultaneously prepared here to make deliveries confidentially.

6. In delivering the note to the Minister for Foreign Affairs, you will separately state that the Secretary of State proposes that publicity be given by the Minister and by you and by the Secretary 24 hours afterward to the text of the note and that your Legation and the Department of State have been instructed by me to proceed accordingly.

7. When the note has actually been delivered, you will please immediately inform me.

8. I have fully considered the question of giving advance information to the representatives of the interested powers of my intention in this regard and have concluded that considerations against such action outweigh those for.

KELLOGG

611.9331/65 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, July 20, 1928—10 p. m.

[Received July 20—2:26 p. m.]

555. Department's 218, July 11, 11 a. m.

1. The Minister of Finance of the Nationalist Government, T. V. Soong, is now visiting Peking. He discussed with me today the general attitude of the United States toward treaty revision. When I indicated to him that we were ready to proceed to a revision of the tariff provisions, in the manner indicated, Soong surprised me by inquiring whether I would be prepared to negotiate with him a treaty of such a nature prior to his return to Nanking, not later than July 26, for which purpose plenipotentiary powers would be obtained by him immediately to be communicated to me through Vice Minister Tong⁹¹ who is here also.

2. I informed Soong that I was prepared to do as he suggested, and that I would request the Department to communicate through Dr. Sze the fact that I have been given full powers for this purpose.

3. A copy of the draft text which was the subject of discussion last autumn at the Department and which was attached to my memorandum of October 21,⁹² was given to Soong as a basis of discussion.

⁹¹ Y. L. Tong, Vice Minister of Foreign Affairs of the Chinese Nationalist Government.

⁹² Draft text not printed. For memorandum, see *Foreign Relations*, 1927, vol. II, p. 341.

4. He stated that such basis was quite satisfactory to him, except for a reservation in regard to the clause (borrowed in effect from article 7 of our treaty with Siam⁹³) which reads: "On the further condition that no tariff increases in return for any compensatory privilege or benefit shall have been assented to by China". I explained to Soong that this clause was quite optional and was proposed in this case, as it was in the case of Siam, on the assumption that it might prove advantageous in forestalling demands for a *quid pro quo* on the part of any government which might, with a view to bargaining for its assent to tariff autonomy, delay taking similar action.

5. He appears to be very confident that the Nationalist Government can successfully abolish likin during the calendar year. It was even suggested by him that his hand as Minister of Finance in accomplishing that result might be strengthened if the proposed treaty were made to contain an additional condition that likin should be substantially abolished before tariff autonomy should become effective.

6. Soong, on his part, made it clear that the text would have to receive the approval of the Political Council before he could sign. He added rather significantly, however, that the approval of certain persons now in Peking (and he mentioned General Chiang⁹⁴ and one or two others in this connection) would mean that the Political Council would approve the proposal in rubber stamp fashion. It is agreed by us that for the moment the matter should be held in strictest confidence, but I informed Soong that in compliance with the spirit of the Washington treaties you would have to notify the signatory and adherent governments whenever the negotiations had assumed a definite form.

8. [*sic*] It is assumed that you give me full authority to proceed in the manner indicated.

MACMURRAY

611.9331/65 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 21, 1928—3 p. m.

233. Legation's telegram No. 555, July 20, 10 p. m.

1. The text of a note which I wish you to communicate to the Nationalist authorities and which I desire to release to the press here is communicated to you in my 230, July 20, 1 p. m.

⁹³ *Ibid.*, 1921, vol. II, p. 867, 870.

⁹⁴ Chiang Kai-shek, commander in chief of the Chinese Nationalist armies and member of the Kuomintang Central Committee.

2. In my telegram it was suggested that the proposed note be delivered on July 25. It is suggested that you deliver the note at once to Soong and C. T. Wang and that I be notified when you have done so, that it may be released here. You may state to Soong, in handing the note to him, that you have authority to proceed in the manner indicated in your telegram 555.

3. As to the text of a treaty on tariff matters such as that which the Department has in mind, it is felt that the draft discussed last October with the Solicitor, though satisfactory as a basis, embodies certain nonessential provisions. The new arrangement should confine itself exclusively to that which is essential for the purpose of relinquishing the old and setting up a new basis for treatment in tariff matters. For that purpose, the substance of all that is essential is set forth, in my opinion, in the Department's telegram 202, June 23, 3 p. m., third paragraph.

It is suggested that, to this end, the substance of the main stipulations should be along the line following:⁹⁵

"(a) It is agreed by the High Contracting Parties that 4 months after this agreement shall have been ratified, all provisions which appear in treaties hitherto concluded and in force between the United States of America and China relating to rates of duty upon imports and exports of merchandise, drawbacks and tonnage dues in China shall be annulled and become inoperative between the United States and China, subject, however, to the condition that each of the High Contracting Parties shall enjoy in the territories of the other with respect to these and any related matters treatment in no way discriminatory as compared with the treatment accorded therein to any other country.

(b) The nationals of neither of the High Contracting Parties shall be compelled, under any pretext whatever, to pay within the territory of the other Party any internal charges or taxes other or higher than those paid by nationals of the country or by nationals of any other country."

KELLOGG

611.9331/66 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, July 21, 1928—6 p. m.

[Received July 21—12:40 p. m.]

556. Legation's 555, July 20, 10 p. m.

1. Soong and I, in a further discussion, reached an agreement upon the following text, which corresponds, you will observe, more

⁹⁵ Quotation not paraphrased.

closely with that set forth in the Department's 202, June 23, 3 p. m., than with the draft which was the subject of discussion last October.

"All those provisions appearing in treaties hitherto concluded and in force between the United States of America and China and relating to rates of duty on imports and exports of merchandise, drawbacks, transit dues, coastwise duties, and tonnage dues in China shall be annulled and become inoperative, and the principle of complete national tariff autonomy shall apply subject, however, to the condition that in the territories of the other each of the High Contracting Parties shall enjoy, with respect to the above specified and any related matters, treatment in no way discriminatory as compared with the treatment accorded any other country. (The bracketed clause reading as follows is optional: On the further condition that the assent of no other power to tariff increases in return for any compensatory privilege or benefit shall have been obtained by China.)

Under no pretext whatever shall the nationals of either of the High Contracting Parties be compelled to pay within the territory of the other party any duties, internal charges or taxes upon their importations and exportations other or higher than those which are paid by the nationals of the country or by the nationals of any other country.

On January 1, 1929, the above provision shall become effective, if the exchange of ratifications hereinafter provided shall have taken place by that date; otherwise, at a date 4 months following such exchange of ratifications."

2. The possibility of a clause making tariff autonomy conditional upon a substantial abolition of likin is still being considered by Soong.

3. The treaty would be signed by him under authority granted by the "Government Council of the Nationalist Government of the Republic of China".

4. I am informed by Soong that General Chiang Kai-shek, who has been consulted by him, supports the proposed treaty enthusiastically.

MACMURRAY

611.9331/67 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, July 22, 1928—9 p. m.

[Received July 22—7:10 p. m.]

559. Legation's 555, July 20, 10 p. m., and 556, July 21, 6 p. m., will have revealed to you the development of circumstances which were not anticipated at the time of the Department's 230, July 20, 1 p. m. The opportunity to enter into negotiations with Soong in regard to tariff matters offers the means of accomplishing more speedily and under more auspicious conditions than can be foreseen,

the definite purpose which you have had in mind all along. It was my intention, therefore, unless contrary instructions were received by me from you, to proceed with those negotiations, which I hope may reach by the 26th a successful result.

2. The Department's 230 is so categorical that I am left with no discretion in regard to the wording of the proposed note or as to the time for proceeding with the prescribed steps. In the absence of modifying instructions from you, therefore, I shall carry it out to the letter despite the fact that it would seem to me that the final paragraph of the note, in the light of the new development, might advantageously and properly be modified, and the communication of the note to the Chinese and to colleagues might be delayed until the signing of the tariff treaty.

3. It is recommended that if the negotiations for the tariff treaty proceed satisfactorily, authority be given me to so inform my more interested colleagues informally on the eve of signing the treaty, but to postpone any communication of your note until it is possible to send it to the Nationalist Minister for Foreign Affairs (and to communicate it simultaneously, for information, to my colleagues) as a statement of an accomplished fact. The final paragraph of the note should, in that case, be modified to read (in its opening sentence) thus: "as an earnest, et cetera, I am happy to state that the Government of the United States through its Minister in China has now concluded with an accredited representative of the Nationalist Government a treaty expressing fully and reciprocally the principle that, et cetera."

4. It is earnestly recommended that, in such event, the concluding sentence ("further, I am happy to state, et cetera,") should be omitted. By reason of the actual conclusion of the treaty on tariff matters we should have achieved a tactical position so strong that any apprehension of being placed on the defensive is not necessary. The impression is received by me, from my interviews with Soong, that such action would be regarded among the more responsible authorities of the Nationalist Government as sufficing generously under the existing conditions to show our good will and vouchsafe our commitments. Not only would it be unnecessary to invite further negotiations which, in the terms of the Department's telegraphed note, would be scheduled to begin immediately, but, as previously pointed out by me, such an invitation would threaten us with the dangerous dilemma of having either to surrender our entire position or suffer the odium of having failed to satisfy expectations which had been encouraged by us.

5. With reference to the fifth paragraph of the Department's telegram, it is not possible for me to communicate with the Minister for Foreign Affairs at a stated hour, as he is in Nanking. It is assumed

that the object of the instruction in this connection would be satisfied if I should telegraph him *en clair* a few hours earlier, and hand copies at the specified hour to the Vice Minister (if still here) and to Soong.

6. In case the negotiations with Soong should not result in the signing of a treaty, the note prescribed in the Department's 230 might be sent as soon as communications on the subject could have been exchanged between us, say July 29, Sunday.

7. The Department's 233, July 21, 3 p. m., has been received by me since drafting this telegram. Nevertheless, I am inviting your attention to the suggestions outlined above, which are of considerable importance, in my estimation of the situation, before proceeding to act upon your suggestion that the proposed note be communicated before the time specified in the Department's 230.

MACMURRAY

611.9331/67 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 23, 1928—6 p. m.

235. Legation's 556, July 21, 6 p. m., 559, July 22, 9 p. m., and previous.

1. The text submitted by you is approved by the Department with any changes in phraseology that, in view of the phraseology suggested in the Department's telegram referred to, you may feel it advisable to make.

2. As to the inclusion or omission of the proposed optional clause, it is the Department's view that this should be decided entirely in accordance with the wishes of the Chinese.

3. As to the matter of likin, it is the opinion of the Department that there is nothing practicable to be gained by fixing as a condition something which, at best, could be fulfilled in part only and which, if not fulfilled, will in all likelihood be ignored. It is recommended by the Department that you suggest to Soong an exchange of notes, in the form of an annex to the agreement, containing an unequivocal and forceful declaration of China's intention to abolish likin.

4. It is desired that the procedure outlined in the Department's 230, July 20, 1 p. m., be followed. Would it not be possible for Soong to postpone his departure for Nanking and sign the treaty at the same time as, or subsequent to, the release of my statement to the press?

5. Considering the fourth paragraph of the Legation's 559, I am omitting and you will omit the final sentence of my statement. that is, the sentence relating to future discussions.

6. My statement may be telegraphed by you to Wang *en clair*.

7. The statement will be given by me to the representatives here of the 12 interested powers, including the Minister of China, at 6 p. m. on Tuesday, in confidence, and to the press at 6 p. m. on Wednesday, Washington time. At your discretion, you may inform your colleagues of the interested powers.

8. The date of my statement will be Washington, Tuesday, July 24, 1928.

KELLOGG

611.9331/68 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, July 24, 1928—5 p. m.

[Received July 24—6:05 p. m.]

566. Department's 235, July 23, 6 p. m.

1. At 10 o'clock tonight I am sending to Wang a telegram *en clair* containing the text of your note as set forth in Department's 230, July 20 (omitting the concluding sentence), and likewise I am informing him by telegraph that you propose that this note be made public in China Thursday, July 26, at noon, and have given me instructions accordingly, and that at practically the same hour you are releasing the note in Washington. Tomorrow morning copies are being sent by me to interested colleagues.

2. I have just been informed by Soong that he is in receipt of an authorization from Wang (confirmation to be given me in writing by Vice Minister Tong) which will make it possible for him to conclude with me tomorrow, July 25, a treaty in the terms which are given in my 567, next following.

3. It has been decided by Soong that the optional clause borrowed from the treaty between the United States and Siam should be omitted as he feels that under existing circumstances Japan might resent it.

4. Soong decided likewise against the inclusion in the treaty itself of any clause whereby the abolition of likin would be made a condition. However, the suggestion that he annex to the treaty a declaration of intention for the permanent abolition of the likin system in the near future was accepted by him. No agreement has been reached as yet on the texts of his declaration and of my reply taking note thereof.

5. Soong wishes to have the opportunity, before the treaty is made public, to discuss it with Nationalist leaders at Shanghai. Accordingly, he requests that the treaty be withheld from publication in China until noon of August 1 and in the United States until the same time, midnight of July 31.

MACMURRAY

611.9331/75a : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 24, 1928—7 p. m.

239. My telegram number 235, July 23, 6 p. m. On July 25 at 9 a. m., Washington time, the text of my statement, together with the information that it is being sent by you to the Nationalist Government at Nanking, will be given in confidence to the representatives here of the 12 interested powers,⁹⁶ and at the same time the text will be given in confidence to the press correspondents for release 24 hours later. Arrangements are being made by the Department for the issuance to you of full powers for the signing, with representatives of the Government Council of the Nationalist Government of the Republic of China, of the treaty as prescribed in recent telegrams.

KELLOGG

611.9331/80a

The Secretary of State to President Coolidge

WASHINGTON, July 25, 1928.

DEAR MR. PRESIDENT: The question of taking up with representatives of China the subject of negotiating a new treaty has advanced with unanticipated rapidity.

I have sent to the diplomatic representatives here of the twelve most interested powers the text of a statement indicating this Government's attitude, which statement has been addressed by Minister MacMurray, on my behalf, to the Nationalist Minister for Foreign Affairs at Nanking and concerning which information is being released to the press for use not earlier than July 26 at 9 a. m. A copy of this statement is enclosed.⁹⁷

Since discussion with regard to this procedure began between this Department and our Legation in Peking, the proposal was made to Mr. MacMurray by the Minister of Finance of the Nationalist

⁹⁶ The text of the statement was transmitted by the Secretary of State to the diplomatic representatives at Washington of the Governments of Belgium, China, Denmark, France, Great Britain, Italy, Japan, the Netherlands, Norway, Portugal, Spain, and Sweden, with identical covering notes dated July 24, 1928; notes not printed. (611.9331/72a)

⁹⁷ See telegram No. 230, July 20, to the Minister in China, p. 464.

Government that a treaty concerning the tariff be concluded at once and I authorized Mr. MacMurray to proceed with negotiations. I received this morning a telegram stating that an agreement has been arrived at.⁹⁸ The important provisions are as follows:

"All provisions which appear in treaties hitherto concluded and in force between the United States of America and China relating to rates of duty on imports and exports of merchandise, drawbacks, transit dues and tonnage dues in China shall be annulled and become inoperative, and the principle of complete national tariff autonomy shall apply, subject, however, to the condition that each of the high contracting parties shall enjoy in the territories of the other with respect to the above specified and any related matters treatment in no way discriminatory as compared with the treatment accorded to any other country.

"The Nationals of neither of the high contracting parties shall be compelled under any pretext whatever to pay within the territory of the other party any duties, internal charges or taxes upon their importations and exportations other or higher than those paid by Nationals of the country or by Nationals of any other country.

"The above provisions shall become effective on January 1st, 1929, provided that the exchange of ratifications hereinafter provided shall have taken place by that date, otherwise, at a date four months subsequent to such exchange of ratifications.

"This treaty shall be ratified by the high contracting parties in accordance with their respective constitutional methods, and the ratifications shall be exchanged as soon as possible."

It now becomes necessary to issue full powers for the negotiating and signing of this treaty. To that end, the Department has prepared and I have countersigned the formal document, which I send enclosed to you for your signature.⁹⁹ If you approve, I should like to inform Mr. MacMurray at once by telegraph that the full powers have been issued, and I beg to request that you inform me by telegraph that you approve and have signed.

Faithfully yours,

FRANK B. KELLOGG

Treaty Series No. 773

*Treaty Regulating Tariff Relations Between the United States of America and the Republic of China, Signed at Peking, July 25, 1928*¹

The United States of America and the Republic of China, both being animated by an earnest desire to maintain the good relations

⁹⁸ Telegram No. 567, July 24, 10 p. m., from the Minister in China, not printed (611.9331/69).

⁹⁹ See telegram No. 258, Aug. 1, to the Minister in China, p. 486.

¹ In English and Chinese; Chinese text not printed. Ratification advised by the Senate, Feb. 11, 1929; ratified by the President, Feb. 13, 1929; ratified by China, Nov. 30, 1928; ratifications exchanged at Washington, Feb. 20, 1929; proclaimed by the President, Feb. 23, 1929.

which happily subsist between the two countries, and wishing to extend and consolidate the commercial intercourse between them, have, for the purpose of negotiating a treaty designed to facilitate these objects, named as their Plenipotentiaries:—

The President of the United States of America:

J. V. A. MacMurray, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to China;
and the Government Council of the Nationalist Government of the Republic of China:

T. V. Soong, Minister of Finance of the Nationalist Government of the Republic of China;

who, having met and duly exchanged their full powers, which have been found to be in proper form, have agreed upon the following treaty between the two countries:

ARTICLE I

All provisions which appear in treaties hitherto concluded and in force between the United States of America and China relating to rates of duty on imports and exports of merchandise, drawbacks, transit dues and tonnage dues in China shall be annulled and become inoperative, and the principle of complete national tariff autonomy shall apply subject, however, to the condition that each of the High Contracting Parties shall enjoy in the territories of the other with respect to the above specified and any related matters treatment in no way discriminatory as compared with the treatment accorded to any other country.

The nationals of neither of the High Contracting Parties shall be compelled under any pretext whatever to pay within the territories of the other Party any duties, internal charges or taxes upon their importations and exportations other or higher than those paid by nationals of the country or by nationals of any other country.

The above provisions shall become effective on January 1, 1929, provided that the exchange of ratifications hereinafter provided shall have taken place by that date; otherwise, at a date four months subsequent to such exchange of ratifications.

ARTICLE II

The English and Chinese texts of this Treaty have been carefully compared and verified; but, in the event of there being a difference of meaning between the two, the sense as expressed in the English text shall be held to prevail.

This treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional methods, and the ratifications shall be exchanged in Washington as soon as possible.

In testimony whereof, we, the undersigned, by virtue of our respective powers have signed this Treaty in duplicate in the English and Chinese languages and have affixed our respective seals.

Done at Peiping, the 25th day of July, 1928, corresponding to the 25th day of the 7th month of the 17th year of the Republic of China.

[SEAL] J. V. A. MACMURRAY

[SEAL] TSE VEN SOONG

611.9331/70 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 25, 1928—6 p. m.

[Received July 25—11:43 a. m.]

569. 1. Treaty was signed by Soong and myself this afternoon in the terms set forth in my telegram 567, July 24, 10 p. m.,² with the following modifications:

(a) The heading was changed to read: "Treaty regulating tariff relations between the United States of America and the Republic of China."

(b) In the second paragraph of article 1 the word *territory* was changed to *territories*.

(c) In the concluding paragraph the new name *Peiping* was used instead of *Peking*.

2. Soong acted under authorization communicated to me in a letter of the following tenor, dated July 24th, from Y. L. Tong, Vice Minister for Foreign Affairs of the Nationalist Government.

"I am requested by Dr. C. T. Wang, Minister for Foreign Affairs of the Nationalist Government, to officially inform you that Mr. T. V. Soong, Minister of Finance of the Nationalist Government, is fully empowered to negotiate and sign with you any treaty pertaining to China's tariff autonomy and cognate questions."

Soong has undertaken to obtain from Wang formal credentials for the purposes of record.

3. Soong now proposed and I have agreed that the treaty be made public midnight of this July 26th, Washington time, to [and?] noon of Friday, July 27th in China.

4. Simultaneously with signature of treaty we exchanged notes, on his part *ad referendum*, regarding abolition of likin; but he now

² Not printed.

informs me he has received instructions not to make such a declaration, and the exchange of notes is therefore to be considered *non avenue*.

5. Repeated to Tokyo together with my number 567, July 24, 10 p. m.

MACMURRAY

611.9331/70 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 26, 1928—9 a. m.

240. Your 569, July 25, 6 p. m. Unless it is too late, suggest publication of treaty be held up for a few days or until about August 1st as you previously suggested. Please cable immediately.

KELLOGG

611.9331/71a : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 26, 1928—1 p. m.

241. I desire to give expression of my appreciation and of my hearty congratulation to you and your staff upon the successful negotiation of the treaty which you and Mr. T. V. Soong have signed.

KELLOGG

611.9331/75 : Telegram

The Secretary to the President (Sanders) to the Secretary of State

SUPERIOR, WIS., July 26, 1928—4:30 p. m.

[Received July 26—?]

The President has approved and signed full powers for Minister MacMurray transmitted with your letter 25th. Will be returned in pouch tomorrow.

EVERETT SANDERS

611.9331/71 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 27, 1928—10 a. m.

[Received July 27—1:45 a. m.]

574. Your No. 240, July 26, 9 a. m. just received. Regret it is too late to change arrangements made with Chinese who I understand have already left. The fact of signature of treaty has also leaked out.

MACMURRAY

611.9331/71: Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 27, 1928—11 a. m.

245. 1. Full powers have been issued to you.

2. Legation's telegram 574, July 27, 10 a. m. has been received. Announcement will be made here today of signature and text of the treaty.

KELLOGG

611.9331/104

The Minister in China (MacMurray) to the Secretary of State

[Extract]

No. 1592

PEKING, July 28, 1928.

[Received September 4.]

SIR: Referring to my telegrams No. 567, July 24, 10 pm,³ and No. 569, July 25, 6 pm, and previous telegraphic correspondence, I have the honor to transmit herewith one of the two original signed copies of the treaty regulating tariff relations between the United States and China, concluded on July 25th between Mr. T. V. Soong, Minister of Finance of the Nationalist Government, and myself.⁴ I also enclose additional mimeographed copies of the English and Chinese texts.

There is nothing of importance to add to such reports on the matter as were included in the telegrams cited above, except to record the fact that I found Mr. Soong, in the course of our negotiations, gratifyingly frank and straightforward and clear-headed, fully conscious of the advantages which the Nationalist Government would derive from the signature of such a treaty (particularly at the present juncture of political affairs), and of the consequences implied in its acceptance of terms constituting the equivalent of a most-favored-nation clause. It will be recalled that the Chinese Government has for some years refused to incorporate any such clause in such treaties as it has concluded, but has endeavored to establish relations with each foreign nation upon an individual basis. It is understood that the Japanese negotiations with the former Peking régime for the revision of their treaty of 1896⁵ have for almost two years centered around this question. . . . The presence of Mr. Soong in Peking afforded, almost fortuitously, but very fortunately, the opportunity to deal with one of the more influential Nationalist

³ Not printed.⁴ *Ante*, p. 475.⁵ MacMurray, *Treaties and Agreements With and Concerning China, 1894-1919*, vol. I, p. 68.

leaders who is sufficiently realistic to concern himself with the actual interests of China . . .

A word of comment is perhaps appropriate on the use of the new name *Peiping* instead of *Peking*. In the several drafts discussed with Mr. Soong, the name appeared as *Peking*, and elicited no comment from him. Just before preparing the copies for signature, however, I called his attention to it and asked whether he would wish to change it, saying that while for sentimental reasons I personally preferred *Peking*, I should not wish to insist upon it at the risk of placing him in a false position with those members of his party whose enthusiasm for the cause is so largely identified with changes in terminology. He said that he had noted that the old name was used in the drafts, and had refrained from raising what might appear to be a trifling issue, but that, if I were willing to do so, he would be spared some embarrassment and would therefore be very much gratified, if the new name could be used in the text.

I enclose herewith a copy of the letter, under date of July 24th,⁶ in which Vice Minister Y. L. Tong, now in Peking, communicated to me the fact that Mr. Soong was authorized to negotiate and conclude the treaty with me.

As stated in the telegrams cited above, Mr. Soong has undertaken to arrange that his formal credentials for this purpose will be sent me for the purpose of record. I take it, from your telegram No. 239, July 4 [24], 7 pm, that corresponding credentials are to be furnished me for deposit with the Nationalist Foreign Office.

At the time of signing the treaty Mr. Soong and I also effected an exchange of notes in which he made, on his part, a declaration of the intention of the Nationalist Government to abolish the *likin* system. It was understood between us, however, that his declaration was conditioned upon the subsequent approval of the appropriate authorities of the Nationalist Government; that if such approval were given, the exchange of notes would be considered effective as an annex to the treaty, but that it would otherwise be considered void and as though *non avenue*. Very shortly after signing, however, he sent me a letter, of which a copy is enclosed,⁷ stating that he had received word that the Nationalist Government did not desire such a declaration to be made in connection with the treaty. A copy of my reply to this letter is enclosed.⁷ Although the notes thus exchanged are therefore of no effect, I nevertheless quote, as of possible interest to the Department, the substantial portions of them.

⁶ See telegram No. 569, July 25, from the Minister in China, p. 477.

⁷ Not printed.

Mr. Soong to Mr. MacMurray.

Recognizing that the system of levying likin and other internal charges and taxes on goods in transit impedes the free circulation of commodities, injures trade, and retards the development commercial intercourse, the Nationalist Government of the Republic of China has long contemplated the abolition of this system together with all of the analogous charges and taxes involved therein. The Nationalist Government purposes to remove in its entirety this obstruction to the growth of China's foreign and domestic commerce.

I am, therefore, happy to inform you, in connection with the treaty concluded between us this day, that I am authorized to declare, on behalf of the Nationalist Government, that it will immediately set about and, at an early date carry to completion, the permanent abolition of the system which now prevails of levying likin and other internal charges and taxes upon goods in transit.

Mr. MacMurray to Mr. Soong.

I have received your despatch of this date in which you inform me, in connection with the treaty concluded between us this day, that you are authorized to declare, on behalf of the Nationalist Government that it will immediately set about, and at an early date carry to completion, the permanent abolition of the system which now prevails of levying likin and other internal charges and taxes upon goods in transit.

In taking note of this declaration, let me express, on behalf of the American Government, its appreciation of the attitude of the Nationalist Government in this regard, and its hope that the Nationalist Government will carry out at the earliest practicable date the undertakings comprised therein.

I have gathered from Mr. Soong that he was personally disappointed by the unwillingness of the Nationalist authorities to have him make this declaration, as he had hoped that it would strengthen his hand, at the Fifth Plenary Conference⁸ which is shortly to take place at Nanking, in his effort to centralize financial control and bring about the abolition of likin and other internal charges upon goods in transit.

Copies of the treaty were communicated confidentially on July 26th, to the diplomatic representatives of all countries signatory and adherent to the Washington Treaties concerning China. The text was also given out to the papers at noon on July 27th, as arranged with Mr. Soong.

I have [etc.]

J. V. A. MACMURRAY

⁸ Fifth Plenary Session of the Central Executive Committee of the Kuomintang, Chinese Nationalist Government.

611.9331/76 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 30, 1928—10 a. m.

[Received July 30—3:32 a. m.]

582. My 575, July 27, 4 p. m.⁹ The following received from the Minister for Foreign Affairs, Nanking:

"Your Excellency: I have sent my note in reply to Your Excellency's communication of July 24th¹⁰ to Mr. Y. L. Tong, Vice Minister for Foreign Affairs, for transmission to Your Excellency. I am now sending you an English translation of the same which may be released to press Tuesday noon.

'MONSIEUR LE MINISTRE: I have the honor to acknowledge the receipt of Your Excellency's communication of July 24th transmitting a note from the American Secretary of State regarding the question of readjustment of treaty relations between China and the United States.

The Nationalist Government feel much gratified to be apprised of the deep and sympathetic interest with which the American Government and people have been watching the recent developments in this country and of the readiness of the American Government to enter into negotiations at once through Your Excellency with the representative of the Nationalist Government for the purpose of concluding a new treaty. The Chinese people rejoice in the fact that the United States is yet the first power to make a response in a spirit of sincerity and good will to the policy of treaty revision maintained by the Nationalist Government; and that such frank cooperation between the American Government and people, between the Chinese Government and people will not only put the traditional friendship between the two countries on a yet firmer and nobler foundation but promote the peace of the world.

It is the hope of the Nationalist Government that the negotiations soon to commence between China and the United States will result in a proper settlement of all questions which are in need of immediate solution.

I have the honor to inform Your Excellency that the Nationalist Government have appointed Mr. Chao-chu Wu as the plenipotentiary delegate to negotiate with the representatives of the American Government. I deemed it advisable to have the negotiations commenced at an early date so that a new treaty may be concluded within the shortest possible period of time thus ushering in a new epoch in the diplomatic relations between the two countries.

I avail myself of the opportunity to extend to Your Excellency the assurances of my highest consideration. Signed CHENG TING T. WANG."

MACMURRAY

611.9331/79 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 30, 1928—11 p. m.

[Received July 30—4:17 p. m.]

584. Following is text of note addressed to Doctor Wang, Nationalist Minister for Foreign Affairs:

"Excellency: I have the honor to acknowledge the receipt, on July 29th, of the undated telegram in which you were so good as to

⁹ Not printed.

¹⁰ Minister MacMurray's communication of July 24 embodied the text as prescribed in the Department's telegram No. 230, July 20, p. 464.

communicate to me directly the English translation of a note, the original of which you advised me was being transmitted to me through other channels, in response to the telegram of July 24th, 10 p. m., in which I had conveyed to you a note of that date from the Secretary of State.

Since the time at which it may be presumed your note was written, you have no doubt learned of the signature at Peking, early in the afternoon of July 25th, of the treaty regulating tariff relations between the United States and China. In the conclusion of that treaty, the Government of the United States very promptly and completely fulfilled what had been offered in Mr. Kellogg's note of the 24th. In order, therefore, to avoid any possibility of misconception as to the purposes of my Government under present circumstances, I must point out that, whereas your note to me refers to 'negotiations soon to commence', it is now the fact that such negotiations as the American Government had in contemplation have already been satisfactorily concluded.

I avail myself of this opportunity to extend to Your Excellency the renewed assurance of my highest consideration."

MACMURRAY

611.9331/79 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 30, 1928—5 p. m.

250. Your 584, July 30, 11 p. m. Department suggests deletion of last sentence.

KELLOGG

611.9331/76 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, July 30, 1928—6 p. m.

251. Legation's number 582, July 30, 10 a. m., and previous.

(1) Inform the Department of the date which this communication bears.

(2) Inform the Department whether or not the fact of conclusion of the treaty of July 25 has been communicated to Wang and whether or not the text has been made public in China.

(3) Although it would appear that the note is a quite satisfactory response to your note of July 24, communicated on my behalf, in regard to our readiness to negotiate on tariff matters, I fail to understand that paragraph which informs you that Chao-chu Wu has been appointed plenipotentiary by the Nationalist Government.

KELLOGG

611.9331/89

Memorandum by the Assistant Secretary of State (Johnson)[WASHINGTON,] *July 31, 1928.*

Mr. Sawada¹² called today and said that in his conversation with the Secretary some time ago he had clearly understood from what the Secretary told him that we intended to commence negotiations with the Chinese in the matter of treaty relations and that he was therefore prepared for the statement which we made in the press on July 24, giving the text of the note addressed to the Nationalist Minister for Foreign Affairs by our Minister at Peking. He said the next day, however, he had seen the text of the treaty which had been signed and he had been a little surprised at this as he had been given to understand that it was actually in negotiation.

I gave Mr. Sawada the mimeographed text of the treaty and explained to him that we had ourselves not expected the matter to proceed quite so quickly but that we had sent instructions to Mr. MacMurray and had given him the necessary authorization and that the opportunity had occurred to complete the negotiations even while the note was in preparation to be sent and that Mr. MacMurray having notified us of this, we had told him to go ahead.

I explained to Mr. Sawada that we felt very definitely here that conditions had proceeded to such a point in China where anything that we could do to give encouragement to those interested in setting up a stable government should be given and he agreed with me.

The Chargé asked me whether we had any late information from China and I told him we had not, except that we had received a telegram through our legation from our consul at Mukden¹³ indicating that feeling was somewhat tense in Mukden, rumors apparently going about that negotiations between the Manchurian authorities and the Nationalist authorities had broken down.

Conversation ended here.

N[ELSON] T. J[OHNSON]

611.9331/79 : Telegram

The Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, *July 31, 1928—10 a. m.*

252. Legation's number 583, July 30, 5 p. m.¹³ and number 584, July 30, 11 p. m. It is regretted that you regarded it as necessary to send, without consulting me, the note quoted in the Legation's

¹² Setsuzo Sawada, Japanese Chargé at Washington.

¹³ Not printed.

584. Although, of course, I had no intention of beginning negotiations immediately on other subjects, it is inevitable that we will have to do so in the near future and it was preferred by me, if the Chinese insisted on such negotiations, to discuss the reasons why it is not possible for us to sign such a treaty immediately. Serving upon them notice that we do not intend to go further is likely, I feel very strongly, to result in controversy and to counterbalance much of the good which may have been achieved by us in the original negotiations and will be quite embarrassing to us. It is not my plan to give your note to the press here.

KELLOGG

611.9331/82: Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, *July 31, 1928—5 p. m.*

[Received July 31—11:13 a. m.]

588. Department's 251, July 30, 6 p. m.

1. There was communicated to me directly, by a telegram received July 29, the English translation of Wang's note; this translation bore no date. Vice Minister Tong has since communicated to me the Chinese version, which bears the date of July 28.

2. On July 27 public announcement was made in China of the conclusion of the treaty. In the meanwhile Wang must have been aware of the fact, considering that Soong took the occasion on the morning of the 26th to state to Perkins¹⁴ that the authorities at Nanking were considerably elated over it. As a matter of fact, there can be no reasonable doubt that when Wang wrote his note of July 28 he had full knowledge of the conclusion of the treaty 3 days before, . . .

3. The Nationalist Government, according to reports of local news services, had appointed Wu on July 27 as plenipotentiary to carry on negotiations in the United States for treaty revision. . . .

4. The situation is met satisfactorily, I trust, by the action reported in my 583¹⁵ and 584, July 30.

MACMURRAY

¹⁴ Mahlon F. Perkins, counselor of Legation in China.

¹⁵ Not printed.

611.9331/87b : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, August 1, 1928—2 p. m.

258. Department's 245, July 27, 11 a. m. Following is text of your powers dated July 21, original follows by pouch:¹⁸

"CALVIN COOLIDGE,

PRESIDENT OF THE UNITED STATES OF AMERICA,

To all to whom these presents shall come, greeting:

Know ye, That reposing special trust and confidence in the integrity, prudence and ability of John Van Antwerp MacMurray, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to China, I have invested him with full and all manner of power and authority for and in the name of the United States of America to meet and confer with any person or persons duly authorized by the Government Council of the Nationalist Government of the Republic of China, being invested with like power and authority, and with him or them to negotiate, conclude and sign an agreement modifying or amending the provisions of the treaties hitherto concluded and in force between the United States of America and China relating to rates of duty upon imports and exports of merchandise, drawbacks and tonnage dues and other related matters, the same to be transmitted to the President of the United States for his ratification, by and with the advice and consent of the Senate thereof.

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

Done at the city of Washington, this 21st day of July, in the year of our Lord one thousand nine hundred and twenty-eight, and of the Independence of the United States of America the one hundred and fifty-third.

[Seal]

Calvin Coolidge"

By the President:

Frank B. Kellogg

Secretary of State

KELLOGG

611.9331/88 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, August 2, 1928—6 p. m.

[Received 9:30 p. m.]

594. Referring to my telegram No. 569, July 25, 6 p. m., second paragraph.

1. I have now received from Wang the following document:

"The Nationalist Government of the Republic of China, Ministry of Foreign Affairs, Nanking, July 25, 1928.

¹⁸ The original of the full powers was sent to the Minister in China in instruction No. 940, Aug. 2 (611.9331/87a).

Minister John Van A. MacMurray, The United States Legation, Peiping.

Dear Mr. : This is to certify that Mr. T. V. Soong has been fully authorized to sign any document with you in behalf of the Nationalist Government.

Yours very sincerely, Signed (C?) T. Wang, Minister of Foreign Affairs."

2. Do you consider this document sufficient or should I ask Wang for more formal credentials in the name of the Government Council of the Nationalist Government?

MACMURRAY

611.9331/88 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, August 6, 1928—2 p. m.

261. Your 594, August 2, 6 p. m.

1. In view of facts reported in your 555, July 20, 10 p. m., paragraph 1, your 556, July 21, 6 p. m., paragraph 3 and your 569, July 25, 6 p. m., paragraph 2, and preamble of treaty, Department feels that in addition to the letter over Wang's signature you should be supplied with a more formal document expressive of Soong's full powers, for purposes of record.

2. Inasmuch as your full powers which have been mailed cannot reach Peking for several weeks, you may communicate a true copy of the text thereof, as embodied in the Department's telegram No. 258 of August 1, 2 p. m. It is suggested that you give this to Tong, if still present in Peking, with the request that a similar formal document issued by the chief executive authority of the Nationalist Government, expressive of Soong's full powers, as indicated in the preamble of the treaty, be delivered to you. It is suggested that you give the matter an appearance of routine inseparable from negotiations of this character and refrain carefully from imputing any doubt as to Soong's authority on the basis of credentials hitherto presented.

KELLOGG

611.9331/119

The Minister in China (MacMurray) to the Secretary of State

No. 1703

PEKING, October 15, 1928.

[Received November 24.]

SIR: I have the honor to refer to correspondence relative to the treaty, of July 25, 1928, regulating tariff relations between the United

States of America and the Republic of China, and to enclose, for the records of the Department, the original Full Powers, appointing Mr. T. V. Soong, Minister of Finance of the Nationalist Government of the Republic of China, as Delegate Plenipotentiary to conclude and sign the treaty. A translation of the Full Powers is likewise enclosed.

I have [etc.]

J. V. A. MACMURRAY

[Enclosure—Translation]

*Full Powers Invested in Tse-ven Soong to Negotiate and Sign a
Tariff Treaty With the United States*

Whereas the Government of the United States of America has expressed its desire to conclude a new treaty with the Nationalist Government of the Republic of China concerning tariff and related matters, I, Chairman of the Nationalist Government Council of the Republic of China, hereby specially appoint T. V. Soong, Minister of Finance of the Nationalist Government of the Republic of China, as Delegate Plenipotentiary, with full powers to negotiate, and to conclude and sign a treaty, with the Delegate Plenipotentiary appointed by the Government of the United States of America. All agreements which the aforesaid Delegate Plenipotentiary shall have concluded and signed in the name of the Republic of China will be put into force when duly ratified by the Nationalist Government of Republic of China.

In witness whereof these full powers are issued to the aforesaid Delegate Plenipotentiary.

Done at Nanking this twenty-third day of the seventh month of the seventeenth year of the Republic of China [July 23, 1928].

T'AN YÊN-K'AI

Chairman of the Nationalist Government Council

[SEAL OF THE NATIONALIST GOVERNMENT COUNCIL]

[SEAL OF THE NATIONALIST GOVERNMENT OF THE REPUBLIC OF CHINA]

(Countersigned) WANG CHÊNG-T'ING

Minister for Foreign Affairs

[SEAL OF THE MINISTER FOR FOREIGN AFFAIRS]

611.9331/115 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 23, 1928—5 p. m.

[Received, October 23—11:30 a. m.¹⁷]

790. 1. In the course of a personal letter dated October 17th Soong writes:

"Our commercial treaty is deservedly popular and could be ratified today if desired, as with us the question is simple enough. My Government is holding back only because it realizes that under your constitution ratification hinges on favorable Senate action. As soon as we receive word that America will ratify the treaty, we will announce our ratification, which is only a mere matter of form with us.

However, if for any reason you believe that immediate ratification on the part of our Government would assist the matter, I shall be very glad to learn of it, and see what can be done. In any case I feel quite sure that nothing could prevent ratification, as the Government and people are overwhelmingly in favor of it; the little opposition here and there is an outcome of domestic politics, which need not be taken seriously."

2. In view of the possibility that the factional opposition to the provision for most-favored-nation treatment, as manifested in connection with the recent treaty with Germany¹⁸ and the negotiations with Czechoslovakia,¹⁹ might develop into something serious, it would seem to me advisable to have the treaty ratified on the part of the Nationalist Government as early as possible.

3. If the Department concurs, I should propose to Soong that there is every reason to anticipate early ratification on our part and that the matter might be somewhat expedited if China were previously to have ratified.

MACMURRAY

611.9331/115 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, October 26, 1928—3 p. m.

358. Your 790, October 23, 5 p. m. The Department believes that in your reply to Soong you should propose that the ratification by his Government of the treaty signed July 25 be expedited, in accordance with his suggestion. You may assure him, on our part,

¹⁷ Telegram in two sections.

¹⁸ For text of treaty of Dec. 8, 1923, with Germany, see *Foreign Relations*, 1923, vol. II, p. 29.

¹⁹ *Ibid.*, 1927, vol. II, pp. 539 ff.

that early ratification in this country may in all probability be anticipated, though it cannot be absolutely guaranteed.

KELLOGG

611.9331/121 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 1, 1928—noon.

[Received December 1—9:30 a. m.]

851. My 790, October 23, 5 p. m. Following from Shanghai:

"November 30, 10 a. m. Under date of November 28, T. V. Soong requested that the Minister be advised that the Political Council today passed a resolution to confirm our commercial treaty and had asked the State Council to officially confirm the treaty. Confirmation by State Council will follow almost immediately and under the Nationalist Government is a matter of course once the Political Council has signified Government intention."

MACMURRAY

611.9331/122a

The Secretary of State to President Coolidge

WASHINGTON, December 1, 1928.

THE PRESIDENT: The undersigned, the Secretary of State, has the honor to lay before the President, with a view, if his judgment approve thereof, to its transmission to the Senate to receive the advice and consent of that body to ratification, a treaty regulating tariff relations between the United States and China, which was signed on behalf of the United States by the American Minister at Peiping (Peking) and on the part of the Nationalist Government of the Republic of China by the Minister of Finance of that Government, on July 25, 1928.

The terms of existing treaties between the United States and China, which were concluded prior to the Treaty of Washington of February 6, 1922, provide for a Chinese tariff on imports and exports of five per cent ad valorem or for specific duties computed on the basis of an ad valorem rate of five per cent. Those treaties also provide for the issuance by China of drawback certificates for the return of duties, and they fix the rates at which China may collect transit dues and tonnage dues.

The Treaty of Washington of February 6, 1922, relating to the revision of the Chinese customs tariff, to which the United States, Belgium, the British Empire, China, France, Italy, Japan, the

Netherlands and Portugal are signatories, and Denmark, Norway, Spain and Sweden have adhered, provided for a conference of the interested Powers to revise the tariff provisions of existing treaties with China and to authorize the levying of surtaxes on dutiable goods imported into or exported from China. That treaty was ratified by the last one of the signatory Powers on July 20, 1925.

Shortly before that time, I informed the American Minister at Peking²⁰ that this Government believed that the Powers concerned should expedite preparations for holding the Special Tariff Conference and that this Conference should not only carry out the stipulations of the Washington Treaty but should also make recommendations with a view to granting complete tariff autonomy to China. The Tariff Conference met at Peking on October 26, 1925, and the delegates of the United States had full powers to negotiate a new treaty recognizing tariff autonomy for China. On November 19, 1925, there was adopted a resolution²¹ which affirmed the right of China to enjoy tariff autonomy and which envisaged the going into effect of the Chinese National Tariff Law on January 1, 1929. Unfortunately this Conference was forced to adjourn on account of civil conflict in China, without carrying out its program.

In my statement made public on January 27, 1927, a copy of which is attached,²² there was affirmed again this Government's readiness to conclude a treaty recognizing the tariff autonomy of China as soon as there should emerge in China a situation in which it would be possible for the Chinese to appoint representatives with whom representatives of the United States could enter upon treaty negotiations. When, after the military activities of last spring, the Nationalist forces came into occupation at Peking, such a situation arose for the first time since the inconclusive and forced adjournment of the Peking Tariff Conference, and it became possible to negotiate a treaty.

This treaty relates to the regulation of tariff relations between the United States and China. It abrogates the provisions of existing treaties between the two countries which relate to rates of duty on imports and exports of merchandise, drawbacks, transit dues and tonnage dues. The two countries agree that the principle of complete national tariff autonomy shall apply between them and that neither shall discriminate against the other in the field of tariffs. The underlying principles of national autonomy and equality of treatment are those that apply generally among independent nations.

²⁰ Telegram No. 125, July 1, 1925, to the Chargé in China, *Foreign Relations*, 1925, vol. I, p. 767.

²¹ See telegram of Nov. 19, 1925, from the American tariff delegation, *ibid.*, p. 881.

²² See telegram No. 28, Jan. 25, 1927, to the Chargé in China, *Foreign Relations*, 1927, vol. II, p. 350.

Copies of the existing treaties containing the provisions affected by the new treaty are enclosed.²³

It is believed that by the signing of this treaty a benefit has been conferred upon all concerned, in that, while safeguarding American interests and doing no injury to the interests of any other country, the way has been pointed and a model has been provided for a procedure whereby the Powers may relinquish their so-called "control" over China's tariff. It is believed, moreover, that this action is in conformity with the traditional American policy of friendship toward the Chinese nation.

Respectfully submitted:

FRANK B. KELLOGG

PROPOSED TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND CHINA

711.9312 A/2

The Secretary of State to the Chinese Minister (Sze)

WASHINGTON, December 21, 1928.

SIR: I have the honor to transmit herewith, for the consideration of your Government and as a basis for negotiation, the draft of a treaty of arbitration between the Government of the United States and the National Government of the Republic of China.²⁴

The proposed treaty is identical in effect with treaties of arbitration which were signed at Washington on February 2 [6] and May 5, 1928, by representatives of the United States and of France and Germany, respectively,²⁵ and with similar treaties which have recently been concluded between the United States and other countries. It resembles in some respects the arbitration treaty concluded between the United States and many countries, including China, beginning in 1908,²⁶ but represents, in the opinion of this Government, a defi-

²³ Treaties between the United States and China relating to tariffs: July 3, 1844 (Malloy, *Treaties*, 1776-1909, vol. I, p. 196); June 18, 1858 (*ibid.*, p. 211); Nov. 8, 1858 (*ibid.*, p. 222); Nov. 17, 1880 (*ibid.*, p. 239); Oct. 8, 1903 (*Foreign Relations*, 1903, p. 91); Oct. 20, 1920 (*ibid.*, 1921, vol. I, 458). Treaty between the United States, China, and other powers, Feb. 6, 1922 (*ibid.*, 1922, vol. I, p. 282).

²⁴ Not printed. For treaty as signed at Washington, June 27, 1930, see Department of State Treaty Series No. 857.

²⁵ *Post*, pp. 816 and 867.

²⁶ For text of treaty with China, signed Oct. 8, 1908, see *Foreign Relations*, 1909, p. 93.

nite advance over the earlier formula. Within the past twelve months such treaties have been proposed to thirty-two countries and signed with eleven: Albania, Austria, Czechoslovakia, Denmark, Finland, Italy, Lithuania, Poland and Sweden, in addition to the two already mentioned. Negotiations with the countries with which the treaties have not already been signed are in progress.

You will recall that the conciliation treaty between the United States and China, concluded September 15, 1914,²⁷ is still in force. Similar conciliation treaties have been offered to twenty-two countries during the past twelve months, of which seven, namely, Albania, Austria, Czechoslovakia, Finland, Germany, Lithuania and Poland have been signed. The negotiations in respect of these treaties with the countries with which they have not already been signed are also in progress.

I feel that the Governments of the United States and China have an opportunity, by adopting a treaty such as the one suggested herein, not only to promote further the friendly relations existing between the peoples of the two countries, but also to advance materially the cause of the pacific settlement of international disputes. If your Government concurs in this view and is prepared to negotiate a treaty along the lines of the draft transmitted herewith, I shall be glad to enter at once upon such discussion as may be necessary.

Accept[etc.]

FRANK B. KELLOGG

711.9312 A/5

The Chinese Minister (Sze) to the Secretary of State

WASHINGTON, December 29, 1928.

SIR: I have the honor to acknowledge the receipt of your note of December 21, 1928, enclosing, for the consideration of my Government and as a basis for negotiation, the draft of a treaty of arbitration between the National Government of the Republic of China and the Government of the United States.

It affords me great pleasure to bring the provisions of this proposed treaty to the attention of my Government.

Accept[etc.]

SAO-KE ALFRED SZE

²⁷ *Foreign Relations*, 1915, p. 41.

EFFORTS OF THE UNITED STATES TO MEET SITUATION CREATED BY IMPOSITION IN CHINA OF TAXES IN CONFLICT WITH TREATY PROVISIONS²⁸

893.512/740 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, January 9, 1928—1 p. m.

[Received January 9—9:35 a. m.]

13. 1. Following from Hankow:

"January 6, 3 p. m. Fifty percent ad valorem tax on cigarettes became effective yesterday, pursuant to instructions from Nanking. Tobacco companies have been paying 12½ percent. Request instructions whether protest should be lodged. American companies Peking claim impossible to continue business under this tax."

2. Lockhart²⁹ authorized to lodge protest, if he considers it advisable, bearing in mind the Department's 278, July 7, 2 p. m., 1927.³⁰

MACMURRAY

893.512/801

*The Minister in China (MacMurray) to the Consul General at Tientsin (Gauss)*³¹

PEKING, January 10, 1928.

SIR: I beg leave to advert to your despatch of November 29, 1927, enclosing copy of a communication addressed to you as Senior Consul by the Chairman of the Tientsin General Chamber of Commerce³² regarding the consumption tax on luxuries which at that time it was believed would be put into effect in Peking on December 1, 1927.

While the original intention of the Ministry of Finance to impose this tax has so far been successfully postponed by the resistance of the Chinese business classes, it is apprehended that the matter has not been dropped. If and when, therefore, the imposition of this tax again appears likely, it is my intention to take the matter up with my colleagues in the hope that joint or similar protests may be made. This action may possibly so far strengthen the Chinese commercial opposition as to enable it to prevent the tax. Towards the same end, you are authorized to make local protest, either singly or jointly, with your consular colleagues, whenever such a course

²⁸ Continued from *Foreign Relations*, 1927, vol. II, pp. 372-433.

²⁹ Frank P. Lockhart, consul general at Hankow.

³⁰ *Foreign Relations*, 1927, vol. II, p. 393.

³¹ Copy transmitted to the Department by the Minister in China, without covering despatch; received April 18.

³² Neither despatch nor enclosure printed.

appears to you as wise. You will, of course, inform the Legation of any such action when taken.

I am [etc.]

[File copy not signed]

893.512/742 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, January 11, 1928—4 p. m.

[Received January 11—11:50 a. m.]

21. My 1080, December 12, 11 a. m.³³ Following from consul general at Hankow:

"January 5, 3 p. m. Special agreement concluded at Shanghai between Standard Oil Company and Nationalist authorities on December 12 last, for the payment of a special tax of 60 cents per unit on oil, is not being recognized here and company is still required to pay special tax of \$1.00 per unit. Shanghai informed."

MACMURRAY

693.003/807

The Minister in China (MacMurray) to the Secretary of State

No. 1347

PEKING, January 12, 1928.

[Received February 18.]

SIR: I have the honor to enclose copy of despatch No. 5370, of December 21, 1927, received from the American Consulate General at Shanghai,³⁴ in which is enclosed copy of a letter dated December 16, 1927, from the President of the American Chamber of Commerce at Shanghai, embodying a resolution passed by the Board of Directors of the Chamber at its meeting on December 16th. A copy of the letter above mentioned is enclosed.³⁴

In my opinion, it would be unwise to arrive at any decision with regard to the question of making collections on other articles, as has been done in the past in the case of import duties on wine and tobacco products, until the specific need for such action has arisen, and Mr. Cunningham's³⁵ remarks with regard to the dangers that might result from such a practice have my approval.

With regard to the retention of funds now in the hands of the American Consul General at Shanghai, composing lawful import duties on goods imported from the United States of America and collected by him from importers in Shanghai, and the possible payment of such funds to American citizens or firms, as a reimbursement for such amounts as they may now or hereafter be obliged to

³³ *Foreign Relations*, 1927, vol. II, p. 432.

³⁴ Not printed.

³⁵ Edwin S. Cunningham, consul general at Shanghai.

pay to military or political factions on account of illegal impositions, it is believed that the dangers attendant upon such a course far outweigh any practical advantages to be gained.

A copy of this despatch is being forwarded to the American Consul General in Shanghai for his information, and the Department's instructions are respectfully requested as to the possibility of acceding to the request of the American Chamber of Commerce in Shanghai.

I have [etc.]

J. V. A. MACMURRAY

893.512/748 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, January 16, 1928—1 p. m.

[Received January 16—9:30 a. m.]

32. My 13, January 9, 1 p. m.

1. Following from consul general at Hankow:

"[5] January 14, 11 a. m. Your 2, January 9, 1 p. m. Tobacco companies have been approached with a view to compromise arrangement on the 50 percent tax and there is some prospect that question will be settled on a basis of less than half of new tax provided certain cash advances are made. I am confidentially informed that Mr. Arthur Bassett on behalf of the British-American Tobacco Company is negotiating with the Nanking authorities at Shanghai for a special agreement on the basis of a tax of 22½ per cent on cigarettes."

2. Repeated to Shanghai for confidential information.

MACMURRAY

893.512/794

*The Legation in China to the Chinese Ministry of Foreign Affairs*²⁶

[No.] 00548

The American Legation presents its compliments to the Ministry of Foreign Affairs and has the honor to inform that Ministry of the receipt by it of letters from the American Chambers of Commerce in Peking and Tientsin, in which those bodies point out that the Luxury and Special Articles Tax, which it is proposed to put in force in Peking, will contravene the provisions of the treaties now in force and will adversely affect American trade. Accordingly, the American Legation has the honor very earnestly to request that the intention to put into effect this tax, which will injure American trade and violate existing treaty rights of American merchants, be abandoned.

PEKING, January 20, 1928.

²⁶ Copy transmitted to the Department by the Minister in China, without covering despatch; received April 6.

893.512/750 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, January 21, 1928—11 a. m.

[Received 2:45 p. m.]

45. My 32, January 16, 1 p. m. Following from consul general at Hankow:

"January 19, 4 p. m. My 5, January 14, 11 a. m. I have been informed confidentially today that Bassett has been successful in his negotiations and that contract calling for payment of 22½ percent on the basis of customs valuations has been signed. Chinese authorities here have agreed to postpone 50 percent tax until after China new year. Probability is that companies concerned here will arrange compromise on a basis of about 22½ percent."

MACMURRAY

893.512/755 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, January 26, 1928—5 p. m.

[Received January 26—2:45 p. m.⁸⁷]

51. 1. Following from consul general at Shanghai:

"(1) [9.?] January 26 [17?], 2 p. m. There was instituted in the Bank of China a stamp tax on petty duty memos varying from 2 cents to a maximum of \$1.50, according to the amount of duty quoted from Taels 3.50 to Taels 1,700.

(2) This is an unauthorized use of stamps because it increases the import duties. It is one which creates a dangerous precedent since it is capable of unlimited increase and applicable to cover a great variety of documents. If maintained, bills of lading and other documents concerning imports will be included next. I am advising importers not to pay until I have consulted the Legation. I venture the suggestion that Inspector General might instruct the Commissioner to disregard the stamp tax on duty memos. Request authorization to protest to the Commissioner for Foreign Affairs and endeavor to have this remitted.

(3) It is suggested that until the powers of the Bank of China are confined strictly to collection of treaty duties its [apparent omission] of duty memos and other documents will be used to collect not only the Washington surtaxes,⁸⁸ but innumerable other taxes. This was imposed without opposition effective from the 16th.

(4) Stamp tax is placed on the agenda for the consular body's consideration tomorrow."

⁸⁷ Telegram in two sections.

⁸⁸ See art. III, Nine-Power Treaty concerning the revision of the Chinese customs tariff, signed at Washington, Feb. 6, 1922, *Foreign Relations*, 1922, vol. I, pp. 282, 285.

"June [*January?*] 17, 6 p. m. Referring to my telegram No. 9, January 17, 2 p. m. Following, being declaration number 1, is posted by Superintendent of Customs in the Bank of China to be immediately effective:

'Under instructions from the Nationalist Government Revenue Department the public is hereby notified that all bills of lading must bear tax stamp. [If] tax stamp is already affixed the bill of lading is negotiable. If this is not done or if postmark is not sufficient no document is allowed to pass the customs.'

(2) Stamps to be offered chanceries in accordance with the value of the cargo, ranging from 1 cent on cargo valued at \$10.00 to \$1.50 on cargo valued at \$50,000.

(3) The recommendations in my telegram above referred to are repeated."

2. Following to Shanghai:

"January 19, 1 p. m. Your 3 [*9?*], January 17, 1 [*2?*] p. m., and 10, January 17, 3 [*6?*] p. m.

(1) You are authorized to protest to Commissioner for Foreign Affairs and request cancellation of both requirements.

(2) Second paragraph of your 9. Ministers principally concerned feel that it would be useless and of doubtful wisdom, in view of known policy of the Customs, to ask Inspector General to instruct Commissioner to disregard requirements of local authorities thus risking disruption of Customs organization."

3. Following from Shanghai:

"January 23, 10 a. m. Referring to my telegram January 17, 1 [*2?*] p. m. A letter has been received from American Chamber of Commerce [referring to] previous protest against the imposition of the stamp taxes and in connection therewith stating:

'Please be advised that we have no objection to this method of raising revenue, provided such taxes are legal and are imposed and enforced uniformly and without discrimination.

It is presumed however that the rates at present imposed are merely preliminary to an attempt on the part of the Nationalist Government to impose exorbitant taxes on American business in which [case] we shall again petition our Government to authorize its consular officials in China to accept on behalf of the Chinese Government payment of lawful tax only on American goods and to issue in due form permits for the landing and delivery of such goods.'

The chamber takes a very reasonable attitude in regard to the stamp tax on duty memos and bills of lading and, in accordance with my opinion, should the tax become unreasonable, points out only method of successfully combating these nontreaty taxes."

4. The question is shortly to be considered by the diplomatic body MACMURRAY

893.512/759 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, February 6, 1928—1 p. m.

[Received February 6—9:15 a. m.]

72. Following from Shanghai:

"February 5, 10 a. m. Referring to my telegram of February 3, 1 p. m. This consul general has just received and is forwarding to the Legation by registered mail, copy of 'Regulations governing collection of retail tobacco consolidated tax in the Provinces of Kiangsu, Chekiang, Fukien, Anhwei, Kiangsi, and any other provinces which may eventually come within the administration of the Nationalist Government of China.'³⁹ These regulations have been promulgated by the Minister of Finance of Nationalist Government nominally under date of January 18, 1928, to implement agreement concluded on that date between British-American Tobacco Company and the Minister as previously reported. American tobacco companies have not yet taken action but it is believed those importing or manufacturing cigarettes only will probably acquiesce in new regulations.

2. On imported retail tobacco and goods manufactured with leaf tobacco, regulations provide for payment of 20 percent consolidated tobacco tax in addition to treaty import duty and 2½ surtax. Similar tobacco products manufactured in factories in China are to pay consolidated tobacco tax of 22½ percent of the Maritime Customs appraised value of such manufactures. Goods paying such consolidated tax then may be marketed without payment of further duties or tax in all provinces under the control of the Nationalist Government."

Since there appears to be no discriminatory feature in this tax, consul general is not being instructed to lodge protest until copy of the regulations governing the collection of this tax is ready and it can be ascertained whether they involve discriminatory or other features such as were contemplated by the Department's 283, July 12, 3 p. m., 1927,⁴⁰ and previous instructions.

MACMURRAY

893.512/767 : Telegram

The Chargé in China (Mayer) to the Secretary of State

PEKING, February 24, 1928—3 p. m.

[Received February 24—12:40 p. m.]

121. Following from Swatow for the Department's information:

"February 7, noon. Chinese authorities are levying a 5 percent surtax on all merchandise entering Swatow under the name of a

³⁹ See *The China Year Book*, 1929-30, p.1087.⁴⁰ *Foreign Relations*, 1927, vol. II, p. 397.

luxury tax. I have informed the local authorities that I consider their action irregular. Shall I make further representations? Standard Oil Company inquire whether they may deposit regular taxes with me in the event that the matter cannot be satisfactorily adjusted with the Chinese."

The Legation replied:

"February 14, 3 p. m. Your February 7, noon.

1. Since tax is levied on imports and is, in effect, an extra treaty surtax, you are authorized to protest against it.

2. Report by radio whether you consider suggested acceptance by you of regular duties practicable in view of conditions obtaining at Swatow as well as the course of action which has been taken by your colleagues."

Swatow then telegraphed as follows:

"February 19, noon. With reference to your telegram February 14, 3 p. m. Chinese have agreed to levy surtax according to the luxury list published by the Nationalist Government and forwarded to the Legation by this consulate on March 16 last year.⁴¹ It is suggested that I should not interfere further in this matter except to prevent discrimination against American interests. This will be a tacit recognition of the legality of the surtax and is the procedure that is followed by my colleagues with the exception of the Japanese consul who is placing every possible obstacle in the way of the authorities. The proposal of the Standard Oil Company that I accept the regular tax is considered impracticable since the tax is omitted on imports which would be promptly seized by the Chinese authorities. This would involve me in an endless controversy with the authorities which could not be decided to the advantage of the Standard Oil Company except by the use of force. It is believed that such action would not be justified, more especially as the goods of the Standard Oil Company, possibly subject to the surtax, would only be petroleum products, otherwise kerosene and gasoline. I cannot conceive of any circumstances under which the real interests of Americans would be served by the disposition of funds to cover legal taxes with the consul without the consent of the local authorities."

I have replied:

"February 23, 7 p. m. Your February 19, noon.

1. It would appear inconsistent with the Legation's attitude towards such taxes for you to give even tacit recognition of legality of the surtax. You should make such protests therefore as will make it clear that we do not recognize legality of this or similar taxes.

2. In view of your statement Standard Oil Company's request appears impossible to agree to."

MAYER

⁴¹ Apparently not sent to the Department.

693.003/807

The Secretary of State to the Minister in China (MacMurray)

No. 802

WASHINGTON, March 7, 1928.

SIR: The Department has received your despatch No. 1347 of January 12, 1928, enclosing a copy of a despatch from the American Consul General at Shanghai forwarding a letter dated December 16, 1927, from the American Chamber of Commerce at Shanghai embodying a resolution passed by the Directors of the Chamber protesting against all illegal taxes imposed on American business throughout China, and requesting that American consular officers be authorized to accept the lawful import duties on goods imported from the United States and from the proceeds thereof reimburse American citizens or firms for the amounts which they are obliged to pay on account of illegal impositions.

The Department concurs in your opinions as set forth in your despatch under acknowledgment and considers that it would be both unwise and impracticable to accede to these requests. You are requested to instruct the Consul General at Shanghai to inform the American Chamber of Commerce to this effect.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

893.512/799a : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, April 17, 1928—7 p. m.

124. Department's 354, October 1, 4 p. m.⁴² What is present status of proposed surtax? It is intimated to the Department that objection of Japan only is preventing collection.

KELLOGG

893.512/808 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, April 25, 1928—11 a. m.

[Received 11 p. m.]

267. Your 124, April 17, 7 p. m.

1. The Decanate states that favorable replies have been received from the Belgian, Swedish, Danish, French, Netherlands, Italian, Spanish and Norwegian Legations, but that no replies have been received from the other Legations. It thus appears that the British and Portuguese as well as the Japanese have not yet replied.

⁴² *Foreign Relations*, 1927, vol. II, p. 417.

2. This proposed surtax is for the double object of securing funds for relief work and for the payment of China's arrears due to the League of Nations and in respect to the latter object is paralleled by the request for surtax on tonnage dues to provide funds for maintenance of Chinese Legations and consulates and for arrears due to the League of Nations last year.⁴³ When this request as to tonnage dues was originally made, Peking authorities claimed they could secure consent of the Southern regimes to the objects for which proceeds were to be applied. The request is now complicated without the promised understanding with the South.

MACMURRAY

893.512/812 : Telegram

The Consul General at Shanghai (Cunningham) to the Secretary of State

SHANGHAI, April 30, 1928—5 p. m.

[Received May 2—5:47 a. m.]

Referring to my telegram of December 21, 2 p. m.⁴⁴ I am happy to report that the customs duty and dues collected by me were today accepted by and paid over to the Commissioner of Customs who has agreed to accord to the importers the usual privileges in respect to extension fees, drawbacks and transit passes. Repeated to Legation.

CUNNINGHAM

893.5122/3

*The Minister in China (MacMurray) to the Consul General at Tientsin (Gauss)*⁴⁵

PEKING, May 5, 1928.

SIR: I beg leave to acknowledge receipt of your written despatch of May 2, 1928,⁴⁶ with further reference to the attempted imposition of a retroactive six per cent building tax on American mission property at Peking. It is noted that you intend unless otherwise instructed to decline to recognize the retroactive imposition of this tax should the matter be submitted to you by the Chinese authorities.

The attitude which you propose taking in this matter meets with the approval of the Legation.

I am [etc.]

J. V. A. MACMURRAY

⁴³ See *Foreign Relations*, 1927, vol. II, pp. 433 ff.

⁴⁴ *Ibid.*, p. 433.

⁴⁵ Copy transmitted to the Department by the Minister, without covering despatch; received June 9, 1928.

⁴⁶ Not printed.

893.512/830

*The Minister in China (MacMurray) to the Consul at Swatow
(Berger)*⁴⁷

PEKING, May 18, 1928.

SIR: I beg leave to acknowledge the receipt of your despatch of May 2, 1928,⁴⁸ on the subject of a 20% surtax for the relief of sufferers from "Red" outrages. It is noted that in reply to a protest lodged by the Consulate with the local Commissioner for Foreign Affairs, the Commissioner addressed to you a communication phrased in a very undignified manner. It is further noted that you recommend that the Consulate be permitted to refrain from making any protest whatsoever to the Chinese authorities unless it can be shown that the tax is discriminatory against American interests.

It is suggested that the proper procedure for the Consulate to follow upon the receipt of such a despatch from the Commissioner for Foreign Affairs would be to return it to him as being couched in improper language, and to inform him that the Consulate will continue to refuse to accept in future any despatch which contains any expressions which evidence either personal spite or rudeness on the part of the local authorities.

The Legation approves your attitude with regard to the question of in general refraining from protesting tax matters unless there is some discriminatory feature in the tax. You will realize, however, that such a rule cannot be made applicable to all cases and you should therefore report any new taxes to the Legation for instructions as to whether or not a protest should be lodged by you.

I am [etc.]

[File copy not signed]

893.512/816 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, May 25, 1928—5 p. m.

[Received May 25—10:40 a. m.]

392. Following from Tsingtau:

May 24, noon. The Japanese consul general yesterday notified the local Chinese authorities including military that on and after May 23rd Japanese subjects would no longer pay the illegal taxes imposed from time to time in Shantung. This includes customs surtax, provincial goods tax, railway freight, harbor dues, express goods tax, Yellow River emergency repair tax and military coal tax. This consulate has notified the appropriate Chinese authorities that any

⁴⁷ Copy transmitted to the Department by the Minister, without covering despatch; received June 27.

⁴⁸ Not printed.

attempt to continue the imposition of these taxes upon Americans while not fully imposed upon nationals of any other country would be regarded as discrimination and upon that basis the consulate is advising Americans to refrain from paying as long as others do not pay.

MACMURRAY

893.512/816 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, May 29, 1928—1 p. m.

173. Your 392, May 25, 5 p.m. Department considers action of Consul at Tsingtao technically correct but that unless forced by circumstances it was inopportune timed. Department desires that you confidentially caution the consular officers in Shantung, Tientsin and Manchuria to be not hasty to take advantage of opportunities for benefit which are created by and based upon presence and use of armed forces of other foreign countries. Ordinarily it may be regarded as advisable for them to consult Legation before thus acting.

KELLOGG

893.512 Flour/1 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 26, 1928—4 p. m.

[Received 6:50 p. m.]

494. 1. Following from Shanghai:

"June 21, 12 a. m. [noon.] Native press of June 16th published regulations promulgated by the Ministry of Finance to be immediately effective calling for special tax of 5 cents per sack on Chinese and imported flour. Washington agreement authorizes eventual levying of surtax on dutiable imports but since flour is now duty free Legation's instruction is requested in reference to request of American flour importers that some action be taken by the American Government."

2. It is suggested Legation be authorized to instruct Cunningham to protest as a matter of record.

MACMURRAY

893.512 Flour/4 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 28, 1928—5 p. m.

206. Your 494, June 26, 4 p. m.

1. Protest authorized but only if based on official information showing collection of the tax on American imported flour in open

ports or in transit under cover of exemption certificates or transit pass, or that the tax is discriminatory. For Department's attitude toward such protests in general see Department's telegrams, 1927, 61, February 15, 4 p. m.,⁴⁹ paragraph 3; 270, July 1, 5 p. m.,⁵⁰ and 283, July 12, 3 p. m.,⁵¹ paragraphs 1 and 4.

2. Franklin F. Korell, Member of Congress, from Oregon, telegraphs Department that cable from Hong Kong flour trade indicates Chinese authorities at Canton threatening to impose 7½ per cent ad valorem duty on flour imports. You will investigate and if Canton authorities appear to be violating treaty provisions, you will protest to Nationalist higher authorities.

KELLOGG

893.512 Flour/10 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 3, 1928—3 p. m.

[Received 4 p. m.⁵²]

506. Department's 206, June 28, 5 p. m. Following from consul general at Canton:

1. "July 1, 1 p. m. Canton regime is preparing to levy a special tax, probably 5 percent ad valorem, on all imports of foreign flour, the idea being to encourage local milling, it is said, and also to raise revenue. Importers declare that the American flour trade which is considerable will be ruined. I am protesting vigorously but without great hopes of success."

2. "July 2, 3 p. m. Your telegram of June 30, 3 p. m. Commissioner of Foreign Affairs [omission?] stated he is sending strong protest against promulgation of the flour tax to the Political Council for consideration at its meeting tomorrow morning. He does not believe that the tax will take effect immediately, if at all. I hope to see Marshal Li Chai-sum⁵³ tomorrow to discuss the question, and will telegraph you afterwards."

3. Following from consul general at Shanghai:

"June 29th, 12 noon. Referring to my telegram June 21st, 12 noon. Director of machine-made-flour tax administration has issued a notice effective July 1st that has been informed by the Ministry of Finance 'that a special tax on all machine-made flour at the rate of 5 percent (is 10 cents Mexican on each bag) shall be levied.'"

MACMURRAY

⁴⁹ *Foreign Relations*, 1927, vol. II, p. 382.

⁵⁰ *Ibid.*, p. 391.

⁵¹ *Ibid.*, p. 397.

⁵² Telegram in two sections.

⁵³ Nationalist military leader.

893.512 Flour/13 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 7, 1928—noon.

[Received July 9—10:37 a. m.]

521. Legation's 506, July 3, 6 [3] p. m.

1. Following from Canton.

"July 1 [5], 2 p. m. Referring to my telegram of July 1, 3 [1] p. m. and July 2, 3 p. m. Marshal Li Chai-sum left Canton without seeing me concerning the proposed tax on flour and I have no positive knowledge that it is to be canceled although Chu Chao-hsin, Commissioner of Foreign Affairs, intimates that the tax will not become effective for the present at least.

As the tax will apply to export flour only and it is reported will amount to $7\frac{1}{2}$ percent, I deem it an infringement of the treaties and would suggest a protest by the Legation to the Nationalist higher authorities. To strengthen my position I would also suggest that the Legation instruct the consulate general to file the protest here."

"July 6, 10 a. m. The following is for your information dated July 5, 2 p. m. Commissioner of Foreign Affairs tells me flour tax will be reduced to $2\frac{1}{2}$ percent, but as this is also contrary to the treaties and is handed to press, I venture to suggest protest to the Nationalist Government."

2. I have replied as follows:

"July 7, [omission?] Your July 5, 2 p. m. and July 6, 10 a. m. In view of the protest you have already made, and since it appears possible tax may not go into effect, I do not consider further [protest] advisable unless the Department specifically authorized it."

MACMURRAY

893.512 Flour/23 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 18, 1928—4 p. m.

[Received July 18—12:55 p. m.]

548. Legation's 521, July 7, noon.

1. Following from Canton:

"July 13, noon. Commissioner of Foreign Affairs has just intimated that regulations taxing foreign flour may soon be promulgated and suggests privately that a proposed basis from you might be useful. Amount of the duty stated but I understand that it will apply only to foreign flour. If so this would seriously handicap American mills whose imports are considerable."

2. Provided the Department approves I propose sending the following reply:

"If the proposed basis means the Legation's compounding with Canton concerning the violation of American treaty rights, it is obviously impossible to fall in with the suggestion of the Commissioner of Foreign Affairs."

3. When definitely informed of the imposition of this tax I propose in accordance with your No. 206, June 28, 5 p. m. to protest to Nationalist higher authorities. In view of the Cantonese demand for financial independence, reported in my No. 526, July 11, 7 p. m.,⁵⁴ I do not regard it as likely that such a protest would be effective.

MACMURRAY

893.512/876

*The Minister in China (MacMurray) to the Consul General
at Hankow (Lockhart)*⁵⁵

PEKING, July 21, 1928.

SIR: I beg leave to acknowledge the receipt of your despatch No. L 505 of July 13, 1928,⁵⁴ reporting the endeavor of the Wuchang-Hanyang-Hankow Tobacco and Wine Business License Branch Bureau to impose a tax upon the Liggett and Myers Tobacco Company's place of business. You state that since this is a tax not upon the products of the company but upon an American legal person you propose informing the Commissioner of Foreign Affairs that it cannot be considered as applicable to American firms until the agreement of the American authorities to it has been obtained.

The Legation approves of your suggestion and desires to be informed of any developments which may occur subsequent to your reply to the Commissioner of Foreign Affairs.

I am [etc.]

J. V. A. MACMURRAY

893.512 Flour/25 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, July 23, 1928—5 p. m.

234. Your 548, July 18, 4 p. m. Paragraphs 2 and 3 approved. What is present situation regarding the tax proposed at Shanghai?

KELLOGG

⁵⁴ Not printed.

⁵⁵ Copy transmitted to the Department by the consul in charge in his despatch No. 890, Oct. 2, 1928; received November 13.

893.512 Flour/26 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, August 3, 1928—6 p. m.

[Received 9 p. m.]

597. Department's 234, July 23, 5 p. m. Following from consul general at Shanghai:

"August 1, 10 a. m. Flour-tax regulations have already been issued and tax of \$100 paid on 1,000 bags of flour by American firms. According [to] treaty, flour pays no import duty; only wharfage dues are leviable. The Bank of China, into which import duties and wharfage dues originally paid, decline to accept wharfage dues until flour tax has been paid, and the Customs will not stamp shipping documents unless the Bank of China's receipt is produced. Machinery of Customs used indirectly to enforce payment of tax. That [The] British and French have protested. A protest will be filed against the levying of this tax."

MACMURRAY

893.512/840

The Secretary of State to the Minister in China (MacMurray)

No. 948

WASHINGTON, August 6, 1928.

SIR: The Department refers to your instruction of May 18, 1928, to the American Consul at Swatow⁵⁷ regarding a 20 per cent surtax for the relief of sufferers from "red" outrages and transmits herewith a copy of a letter, dated July 19, 1928, from the Art Embroidered Linen Importers Association of New York⁵⁸ asking that a protest be made against this tax. A copy of the Department's reply of today's date is also enclosed.⁵⁹

It is requested that further consideration be given to this matter in view of the request made by the Association above mentioned. If, in your judgment, a protest now seems advisable, you should issue appropriate instructions to the Consul at Swatow. The Department desires that it be informed of whatever action may be taken in the premises in order that it may in turn inform the Linen Importers Association.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

⁵⁷ *Ante*, p. 503.⁵⁸ Not printed.⁵⁹ Not printed; the pertinent portion of the Department's reply, dated August 4, reads as follows:

"In reply you are informed that, under conditions which have prevailed in China, new taxes of various kinds have been imposed from time to time and, when such taxes have been regarded as contrary to treaty stipulations, protests have been made against them. These protests have, in the majority of cases, not resulted in the withdrawal of the taxes in question, and for this reason it has been considered in some cases not advisable to continue to protest."

593.512/855

*The Minister in China (MacMurray) to the Consul General at Shanghai (Cunningham)*⁶⁰

PEKING, August 8, 1928.

SIR: I beg leave, adverting to your despatch No. 5550, of July 10, 1928, and your radio message No. 251, of August 2, 1 p. m.,⁶¹ both concerning the surtax on imported coal imposed at Shanghai, to inform you that although this tax is nominally a consumption tax, from the fact, as stated in your despatch, that it is imposed on coal imported by an American firm, it appears to the Legation that it partakes of the nature of a surtax on imports. For this reason you are authorized, should such a course now appear to you advisable, to enter a protest against its imposition.

I am [etc.]

J. V. A. MACMURRAY

893.512/839

*The Chargé in China (Perkins) to the Consul General at Shanghai (Cunningham)*⁶²

PEKING, August 22, 1928.

SIR: I beg leave to acknowledge the receipt of your despatch No. 5560, of July 12, 1928,⁶³ concerning the violation by the Ministry of Finance of the agreement entered into by it with the Standard Oil Company regarding kerosene oil and gasoline, in which you particularly request the Legation's instructions as to the attitude you should take in the event the company calls upon you for assistance in this connection.

The Legation concurs in your view on this matter and perceives no objection to the Consulate General extending its good offices in endeavoring to have carried out the provisions of such private agreements as the one above described which have been entered into between American companies and the properly constituted Chinese authorities. It is obvious, however, that should the terms of such private agreements in effect impair the rights accruing to American citizens under the treaties, such firms would not be in position to complain of their inability to enjoy their full treaty rights during the period of the existence of these agreements. With reference to the question of disputes as to the interpretation of the provisions of

⁶⁰ Copy transmitted to the Department by the Chargé in China in his despatch No. 1608, August 13; received September 15.

⁶¹ Neither printed.

⁶² Copy transmitted to the Department by the Minister in China without covering despatch; received October 13.

⁶³ Not printed.

such agreements, it is suggested that the Legation's instruction to your office of September 17, 1926, regarding the case of the Liggett and Myers Tobacco Company and the Tobacco Products Corporation, may prove of some assistance.

I am [etc.]

MAHLON F. PERKINS

893.512/842 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, August 25, 1928—11 a. m.

[Received 12:30 p. m.]

658. Following from Shanghai:

"Chinese tax authorities here yesterday unsuccessfully attempted to hold up cotton belonging to American firm of Anderson, Clayton and Company while being transferred in Chinese lighters from a godown at Pootungkuan to a cotton mill in the Settlement, insisting that an additional surtax of 54 tael cents per picul be paid. The attempt was frustrated by the use of an American-owned tug to tow the lighters to the Settlement side of the river. In view of an attempt being made to seize American property, I have protested to the Commissioner of Foreign Affairs but desire the Legation's approval of a protest against the tax on the ground that it is in addition to both the usual duty and the Washington surtax."

Legation is replying as follows:

"Legation approves protest but believes it should be based solely on the ground that the tax is contrary to existing treaty without mention of the tax being in addition to the Washington surtax. See last sentence Legation's circular July 20, 1927, transmitting instructions contained in the Department's telegram of July 12, 1927."⁶⁴

PERKINS

893.512/862

The Chargé in China (Perkins) to the Secretary of State

No. 1662

PEKING, September 10, 1928.

[Received October 13.]

SIR: I have the honor to acknowledge the receipt of the Department's instruction No. 948 of August 6, 1928, which refers to the Legation's instruction to the American Consul at Swatow concerning the imposition of a 20 per cent surtax at that port for the relief of sufferers from "Red" outrages. It is noted that, in view of a request made for such action by the Art Embroidered Linen Importers Association of New York, the Department instructs this Mission to give further consideration to the question of protesting against this surtax.

⁶⁴ See telegram No. 283, July 12, to the Minister in China, *Foreign Relations*, 1927, vol. II, p. 397.

The Legation is still of the opinion that no protest should be lodged in this particular case. This would seem to accord with the Department's general instruction upon this subject and in particular with its No. 61, of February 15, 4 p. m., 1927,⁶⁵ paragraph 3, and with its mail instruction of September 20, 1927.⁶⁶

In view of the Department's instructions; Mr. Berger's recommendations against making a protest in this instance; and in view of the fact that the Consular representatives of other Powers in South China, especially the British, are apparently following the practice of not making protests against such taxes, this Mission will refrain from a protest in this particular case unless definite instructions to the contrary are received from the Department.

I have [etc.]

MAHLON F. PERKINS

893.512/858 : Telegram

The Chargé in China (Perkins) to the Secretary of State

[Paraphrase]

PEKING, September 19, 1928—5 p. m.

[Received September 19—9:55 a. m.]

716. Legation's 672, August 31, 7 p. m., and 709, September 15, 7 p. m.⁶⁷ Admiral Bristol,⁶⁸ in the course of a general conversation, mentioned the taxation agreement made by the Standard Oil Company with Generals Yang Sen and Liu Hsiang. Lacking instructions from the Department, I did not feel at liberty to commit myself in this connection. Preferring not to remain in a position less frank than that desired by the Department, it would be appreciated if the Department would advise me what, if anything, it desires that I say to Bristol at this time on the subject.

PERKINS

893.512/848 : Telegram

The Secretary of State to the Chargé in China (Perkins)

[Paraphrase]

WASHINGTON, September 20, 1928—8 p. m.

323. Your telegram No. 672, August 31, 7 p. m.⁶⁶ There is nothing in your No. 672, or in any other direct statement by anyone connected with the matter, to make it appear that either Bristol or any other naval officer actually participated in any way in making

⁶⁵ *Foreign Relations*, 1927, vol. II, p. 382.

⁶⁶ Not printed.

⁶⁷ Neither printed.

⁶⁸ Commander in chief of the Asiatic Fleet.

the agreement between the Standard Oil Company and Generals Yang Sen and Liu Hsiang. The naval officers, it appears, by arranging for transportation of the interested parties to the place of meeting, merely facilitated the reaching of an agreement which would enable the American company to continue operations.

2. Under the situation now existing in China, trade agreements of this sort, as you point out, are not novel.

3. Those private arrangements which are entered into between *de facto* military authorities in disturbed areas and private American citizens who are doing business in such areas are guided always by practical considerations existing at the place and time; an element of *force majeure* exercised against the citizen is always involved in the making of such arrangements; usually, therefore, such arrangements are not regarded as binding upon our Government nor as compromising the position of our Government on questions affecting the relationship between it and the other government.

4. The Department does not wish to be placed in the position of appearing to act upon the principle that arrangements between local military leaders in China in *de facto* control of an area and private American citizens doing business or located in such area can alter or even affect in any way obligations under treaties between the United States and China, nor can the Department undertake to so act as to lend color to a suggestion that naval officers, even if, as does not appear, they had acted directly in this case, have any authority to act for our Government in its formal relations with China. Engagements of a binding and operative nature between governments cannot be made in this way. It appears likely that China would not recognize in the military leaders concerned any authority to enter into arrangements binding upon China, particularly if obligations were imposed; and it would seem that if no authority exists to impose obligations, none exists to stipulate for favors.

5. The Chinese Government might, on the other hand, consider applicable a different principle if, instead of participation by our naval officers, the Legation or a responsible member of the Legation staff should, by negotiating with a responsible officer of the Chinese Government, take part in effecting such an arrangement as is under consideration.

6. The entire transaction is regarded thus by the Department: Naval officers who were present at the time and place, charged with protecting American life, property, and interests, decided that instead of using the naval forces to protect American trade by force, it was easier and wiser to allow American citizens themselves to enter into arrangements with the *de facto* military leaders in con-

trol of the area, the naval authorities giving such informal assistance to this end as they could.

For this Government to accord undue emphasis to the impropriety of agreements of this nature, under the circumstances existing at the time and place this was made, would, in the opinion of the Department, not only give cause for a false impression in the minds of the Chinese as to the significance of such agreements, but also, in the present situation, would embarrass and militate against the promotion and protection of American trade and commerce in China.

7. Legation's 716, September 19, 5 p. m. You may inform Bristol that a telegram has been received by you from the Department commenting in regard to the private tax arrangement made by the Standard Oil Company with Generals Yang Sen and Liu Hsiang, and that in the course of such telegram the Department expressed its entire concurrence with his views in regard to the use of naval forces in preventing taxation as set forth in the Legation's 672, August 31, 7 p. m., and invited attention to the identity of these views with the Department's statement in its telegram 302, July 30, 1927, 7 p. m.,⁷⁰ that "this Government was not ready to undertake an obligation to use military or naval forces to protect the companies against such taxes" and statements of a similar nature in other instructions. His attention may be invited also to this Government's desire to avoid being associated with private agreements of this character, even going so far as to refrain from protests against violations of such agreements (see Department's 278, July 7, 1927, 2 p. m.).⁷¹ It is felt that the naval authorities are entitled to have full information concerning this Government's attitude in these matters, since all United States Government agencies in China are pursuing the one object, namely, the utmost assistance, consistent with the general interests, to each American citizen or firm. Singleness of policy is clearly desirable in pursuing this aim.

KELLOGG

893.512/859 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 23, 1928—noon.

[Received September 24—9:40 a. m.]

724. Department's 323, September 20, 5 [8] p. m. In conversation with Admiral Bristol I have acquainted him with the Department's views regarding the use of naval forces in preventing taxation

⁷⁰ *Foreign Relations*, 1927, vol. II, p. 444.

⁷¹ *Ibid.*, p. 393.

and regarding private taxation arrangements as set forth in paragraph 7 of the Department's telegram above mentioned. I have also made available to him the text of the Department's two telegrams to the Legation referred to in that paragraph.

PERKINS

893.512 Flour/32 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, September 25, 1928—7 p. m.

327. In order that Department may inform interested parties telegraph whether flour tax at Canton reported in Canton despatch 715, August 15 to Legation ⁷² is actually in force. Also whether Cunningham protested against flour tax at Shanghai (see your 597, August 3, 6 p. m.) and result if any of protest.

KELLOGG

893.512 Flour/33 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 3, 1928—5 p. m.

[Received October 3—1 p. m.]

743. Department's 327, September 25, 7 p. m.

1. Jenkins reports that the tax has been in force since August 16th. Cunningham reports that the Commissioner of Foreign Affairs has replied to his protest as follows:

"I would observe that the collection of a special tax on flour is a measure adopted to pave the way for increase of taxes and abolition of likin. As this tax supersedes miscellaneous impositions, it affords the advantage of free movement once the goods are thus taxed. There is no longer any reason for granting immunity to foreign flour in the matter of taxation, and, although customs duty was not collected in old days, foreign flour was not entirely free of miscellaneous impositions. As it is now treated on the same basis as Chinese-made flour so that it may share the benefit of free circulation after the payment of a single tax, it is believed that importers should be only too glad to comply with the present requirement."

MACMURRAY

⁷² Not printed.

893.512 Likin/43 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 17, 1928—8 p. m.

[Received October 17—1:05 p. m.]

783. Following from Swatow:

"October 16 [6], noon. The local likin authorities are refusing to recognize invoice transit certificates covering American goods although they pass British cargo without molestation. They state that they are carrying out the instructions of the provincial finance authorities. Will the Legation protest this to the Nanking authorities, or should the consulate accept the ruling of the likin authorities without further protest? What is the desire of the Legation regarding protests by consulates against inland taxation? Against discriminatory taxation of whatever nature?"

I have replied as follows:

"Since action of local authorities appears to be of a discriminatory nature you should file protest. Legation will decide what further action should be taken in the matter upon receiving from you mail report giving details and will at the same time instruct you fully with regard to protests by consulates against inland taxation."

MACMURRAY

893.512/866 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 19, 1928—4 p. m.

[Received October 19—10:40 a. m.⁷³]

785. Legation's 600, December 6, 4 p. m.;⁷⁴ and Department's 290, December 8, 2 [6] p. m., 1926.⁷⁵

1. Following from Canton:

"October 18, 11 a. m. Alleging that special tax stamp had not been properly affixed on containers, tax collectors at Samshui seized two Standard Oil Company lighters and cargoes on 11th and subsequently brought them to Canton. Lighters are bona fide American vessels, flying American flag and in my opinion charges are trivial and without substantial foundation.

As prerequisite to releasing craft, Chinese authorities now demand that company representative shall sign receipt practically admitting charges and promising to submit to decision of local authorities including possible fine and/or confiscation. Manager very properly refuses to do this, and we reached a deadlock with Chinese assuming very arbitrary attitude.

⁷³ Telegram in two sections.

⁷⁴ *Foreign Relations*, 1926, vol. I, p. 907.

⁷⁵ *Ibid.*, p. 908.

I fear we shall not be able to effect release of lighters without some show of force which in my opinion would be warranted in the circumstances. Lighters are lying off Canton bund with American flags flying but guarded by small armed launch. Favor sending our gunboat *Guam* alongside, with instructions to take no action for the time being other than to prevent removal of lighters or cargo. I believe Chinese would then realize seriousness of their action and adopt more reasonable attitude. However, I recognize the danger of showing force and shall not ask the Navy to act without your approval. In this connection see my despatch 731, September 17,⁷⁶ regarding British attitude in these cases.

I beg Legation to reply as soon as possible because Chinese may decide to remove cargo. I am keeping commander of *Sacramento* fully informed."

2. In view of the urgency of this case I have today instructed Jenkins as follows:

"October 19, 4 p. m. Your October 18, 11 a. m. The case you report does not seem to imply a question of the use of force to resist illegal taxation, there being no question of the payment of taxes involved but is rather one in which the Chinese are attempting to enforce regulations under a private agreement through direct forceful action against vessels under the American flag. I therefore concur in your opinion that it would be advisable to emphasize the seriousness of the incident by having a naval vessel stand by the lighters to prevent removal of them or their cargo. This would seem to be in accordance with Legation's mail instruction to you of December 13, 1926."

MACMURRAY

893.512 Likin/44 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 22, 1928—4 p. m.

[Received October 22—9:40 a. m.]

786. Legation's 783, October 17, 8 p. m. Following from Swatow:

"October 19, 1 p. m. My telegram of October 6, noon. Local government likin authorities are now recognizing inward transit certificates. No further action should be taken. Forwarding full report by mail."⁷⁸

MACMURRAY

893.512/867 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 26, 1928—1 p. m.

[Received October 26—9:30 a. m.]

794. Legation's 785, October 19, 4 p. m. The following has been repeated to the Legation by the commander in chief:

⁷⁸ Not printed.

"To U. S. S. *Sacramento* from commander in chief: Inform the consul general and the Standard Oil Company that the commander in chief, Asiatic Fleet, has directed you to give them aid as far as you possibly can without resorting to force which would result in an armed clash between Chinese officials and soldiers and our naval forces. The commander in chief has confidence in your discretion in handling this case. However, you are cautioned against making any bluff; that is, assuming any show of force which will involve armed intervention as a final action. Keep the commander in chief continually informed of the developments of the situation."

For the Minister:

PERKINS

893.512/866: Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, October 26, 1928—5 p. m.

360. Your 785, October 19, 4 p. m.

1. Inform Consul General that I do not regard as desirable in the premises any use of force.

2. If the gunboat has already been sent alongside, she may remain as I do not wish to reverse you or the Consular officer on action already taken or to invite additional offensive acts by the Chinese. But Consul and naval commander should be instructed to exercise utmost circumspection.

3. The principle which I wish to have observed in such situations is that of using force only for protection of American lives or to prevent outrage to the flag or to vessels properly flying it.

KELLOGG

893.512/870: Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 30, 1928—9 a. m.

[Received 10:45 a. m.]

802. Department's 360, October 26, 5 p. m. Following from consul general at Canton:

"Gunboat has not gone alongside, and I am still working with the Chinese authorities as indicated in my October 23, 2 p. m.

2. In view of our treaty rights I considered action of Chinese (other than Maritime Customs) in forcibly seizing bona fide American vessels as an outrage to our flag."

MACMURRAY

893.512/871 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, November 7, 1928—9 p. m.

[Received November 8—9:20 a. m.]

817. The Legation's 202 [802], October 30, 9 p. m. [*a. m.*]

1. Following from consul general at Canton:

"November 5, 5 p. m. Standard Oil Company lighters still being held without prospect of release. I am today asking Consul General Cunningham to endeavor to get in touch with Li Chai-sum through Chu Chao-hsin in Nanking and urge that orders be issued to release lighters. In the meantime I beg the Legation and the Department to instruct me to present strong note of protest to the Canton Government demanding release of lighters without further delay and pointing out that they are not subject to local jurisdiction."

"November 6, 11 a. m. Referring to my telegram of November 5, 5 p. m., concerning Standard Oil Company lighters, I fear that the Department does not realize the seriousness of this case. Although the lighters have now been detained nearly a month, neither the consulate general nor the Standard Oil Company has been informed officially regarding alleged stamp tax irregularities, nor have I received any reply to my official and unofficial communications to the Government on the subject. Moreover, aside from General Huang Shao-hung of Kwantung, I have not been received by any really responsible official of the local government. In this connection we should recall arbitrary seizure at Kong Moon two years ago of Texas Company's oil, for which no compensation has ever been made."

2. Following instruction has been sent to Jenkins:

"November 7, 8 p. m. Your November 5, 5 p. m., and November 6, 11 a. m. (1) You are authorized to make a strong protest, carefully bearing in mind however the Department's instructions as regards the use of force. (2) Your messages under reply have been repeated to Department as well as Legation's instruction as above."

MACMURRAY

893.512/871 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 8, 1928—7 p. m.

373. Your 817, November 7, 9 p. m. Department understands the case. Your instructions to Jenkins are approved.

KELLOGG

893.512/872 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, November 11 [12?], 1928—8 p. m.

[Received November 12—4:08 p. m.⁷⁸]

823. Department's 373, November 8, 7 p. m.

1. Following telegrams from the American consul general at Canton:

"November 8, 6 p. m. In regard to Standard Oil Company lighters: Finance Department has decided to fine the company \$26,000 Chinese currency and confiscate cargoes. Official notice not yet received but I am reliably informed following are given as reasons for fine.

(1) No permit to import your cargo. As to this, manager assures me company has never obtained import permits for stamped cargo.

(2) Shipping to port where there is no licensed warehouse. Manager says that there is nothing in oil regulations to prohibit this and that the company has consistently imported to such ports ever since oil tax regulations became effective.

(3) Shipping to a place where there is no oil tank. Manager says that the company has an oil tank at Shiuhing where oil was destined but there is nothing in the regulations regarding this point and the company has been shipping regularly to various places regardless of the existence or nonexistence of tanks. In fact, bulk shipments accompanied by stamps have been made during the last year under convoy of Chinese warships.

(4) Insufficient stamps to accompany bulk oil. Manager denies this charge and has handed me stamps for safekeeping which he says actually accompanied lighters when seized.

(5) Stamps on containers not properly placed. Admits that the stamps were not placed over caps but insists that there is nothing in existing regulations requiring this. He does insist, however, that all tins examined actually bore stamps [which] regulations require. More to follow."

"November 9, noon. My telegram of November 8, 6 p. m. Attention is invited to the fact that the lighters are still being held and that Finance Department has determined this case without contact with this consulate general and in spite of its protest [concerning the?] question of jurisdiction. Moreover, the charges on which fine is based are frivolous and in my opinion indicate unfriendly attitude and a determination on the part of local authorities absolutely to disregard existing treaty rights. If the authorities wished the company to change its method of importing under the practice of two years, originally approved by T. V. Soong,⁷⁹ they could have and should have so informed the company in advance of the seizure and not resorted to present illegal and arbitrary procedure.

The Legation will be interested to know that this same Smuggling Prevention Bureau has just seized a cargo of feathers belonging to

⁷⁸ Telegram in six sections.

⁷⁹ Minister of Finance in the Nationalist Government.

a Danish-British company and on board lighter flying Danish flag, alleging evidence of smuggling. According to the Danish consul, lighter is being held by armed Chinese guards in spite of the fact that he has exhibited letter from Maritime Customs showing that feathers were being handled in strict accordance with the special instructions of the Commissioner of Customs. Officials of the Smuggling Prevention Bureau say that Danish cargo must still be held because Maritime Customs are wrong.

In my opinion these cases conclusively show that Canton Government [is] intending to acquire jurisdiction of foreign vessels in local waters, no matter how unreasonable and arbitrary the pretext, and is using Smuggling Prevention Bureau for the purpose. This bureau evolved from late strikers' organization and protests of these methods.

I shall telegraph further as soon as I am officially informed of Treasury's decision, but must confess I am at my wit's end how to effect release of Standard Oil Company lighters. If the company submits to fine in this instance there will be no end of cases of this sort. Perhaps the Legation may appeal to Mukden [*Nanking?*]."

"November 10, 1 p. m. My November 8, 6 p. m., and November 9, noon. Official notice has been received and is substantially as outlined in my November 8, 6 p. m.

I have filed formal protest on the ground that proceedings were illegal and in violation of existing treaty rights; that this decision contains, first, official notice of the grounds on which lighters were seized and that Standard Oil Company contributes no other way to answer the charges and submit evidence. I have also pointed out that I must report the case in detail to my Government and for possible appeal to the National[ist] Government at Nanking, and have warned local authorities not to dispose of lighters and cargoes pending final outcome.

I would advise that the Legation take up this case by telegraph with Nanking, insisting upon release of lighters and cargoes and perhaps suggesting that charges may be jointly investigated by representatives from the Finance Department and this consulate general.

Full report is being forwarded by mail."

[2.] In view of the fact that the action taken by the Finance Department directly jeopardizes the whole system of American business in South China and further in view of the fact that the so-called Prevention Bureau which would appear to be responsible for the action taken is apparently acting without any legal authority, I venture most respectfully to suggest that the Department reconsider the possibility of instructing the consul general to inform local authorities that the American company will under no circumstances submit to such illegal and high-handed a trick and that he be authorized simultaneously to request the American Naval authorities at Canton to despatch a gunboat to lie [alongside?] the lighters to show that their illegal seizure will not be tolerated.

3. I immediately propose to lodge with the Nationalist Government a strong protest which however I anticipate will be disregarded unless the Department sees its way to authorize the Naval support recommended above.

MACMURRAY

893.512/877 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, November 13, 1928—8 p. m.

[Received November 14—9:15 a. m.⁸⁰]

828. My telegram No. 823, November 12, 2 [8] p. m. Following note of protest to Nationalist Minister of Foreign Affairs has been telegraphed to consul general at Shanghai for transmission:

"I have the honor to bring to the attention of Your Excellency the illegal seizure and detention at Canton of two American vessels. On October 18th American consul general reported that the so-called Prevention Bureau at Samshui had on October 11th seized two Standard Oil Company lighters and their cargoes alleging that special tax stamps had not been properly affixed on the containers. The lighters which are bona fide vessels flying the American flag were subsequently brought to Canton and there detained. The consul general stated that in his opinion the charges were trivial and without substantial foundation.

Informal negotiations were then undertaken with the local authorities with a view to effecting the release of the two. No satisfaction having been obtained, the Legation on November 7th instructed Consul General Jenkins to file a formal protest with the local government against this illegal seizure. In the face of this protest the Finance Department of the Canton Government has now announced its decision to fine the American company in the amount of \$25,000 and confiscate the cargo of the lighters.

Without entering into a discussion of the charges upon which this decision professes to be based (although not even formulated for discussion until the decision was announced) I wish at this time to protest against this arbitrary and illegal action of the Chinese authorities and to ask that the Nationalist Government despatch immediate instructions to Canton for the release of these two American vessels still detained in flagrant violation of American treaty rights. It is of course unnecessary for me to assure you that whatever complaint may be lodged against the American company concerned will receive prompt and appropriate attention by the American authorities.

I avail myself et cetera."

MACMURRAY

⁸⁰ Telegram in two sections.

893.512/877 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 15, 1928—1 p. m.

384. Your 828, November 13, 8 p. m. and preceding. Department heartily approves note. In addition, you may inform Consuls General at Shanghai and Canton that they may say that the Department is watching this and other cases closely and is unfavorably impressed by accumulative evidence that various Chinese authorities are indifferent not only to treaty rights but to processes and requirements of municipal and international law.

KELLOGG

893.512/878 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, November 16, 1928—5 p. m.

[Received November 16—6:58 a. m.]

833. 1. Shanghai and Canton have been instructed in accordance with your 384, November 15, 1 p. m.

2. In view of the probability of arbitrary confiscation by the Chinese in the near future, does the Department envisage the possibility of approving the action suggested in second paragraph of my 823, November 12, 8 p. m., as regards both representations by the consul general in Canton and cooperation of the naval authorities there?

MACMURRAY

893.512/878 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 17, 1928—3 p. m.

387. Your 833, November 16, 5 p. m. The Department authorizes the Consul General at Canton to convey to the local authorities any message or protest the Company may desire to make in regard to threatened seizure of their property. The Department does not regard naval cooperation in the matter as desirable. You are authorized to direct such further representations as you may consider expedient without involving the use or threat of forceful measures.

KELLOGG

893. 512/839

The Secretary of State to the Minister in China (MacMurray)

No. 1041

WASHINGTON, November 19, 1928.

SIR: In connection with the subject of tax agreements concluded by American firms with the Chinese authorities, you are informed that the Department has received from the American Consul General at Shanghai a strictly confidential despatch dated July 12, 1928, transmitting a copy of his despatch of that date to the Legation⁸¹ regarding an alleged violation by the Chinese provincial authorities of the petroleum tax agreement made by the Nationalist authorities with the Standard Oil Company of New York. The Department has received, also, without covering despatch, a copy of the Legation's instruction in reply of August 22, 1928.⁸²

In this exchange of correspondence the Consul General at Shanghai advanced, and the Legation approved, the view that there would be no objection to the Consulate General at Shanghai extending its good offices in endeavoring to have carried out the provisions of private agreements, such as the one in question, that have been entered into between American companies and the properly constituted Chinese authorities.

Embodying a different opinion, the Department has received from the American Consul General at Hankow, under date of September 13, 1928, a copy of his despatch of that date to the Legation⁸¹ reporting an attempt by the Chinese tax authorities in Hupeh to impose a fine upon the Standard Oil Company for an alleged failure to comply with the regulations of the Hupeh Kerosene Special Tax General Bureau. The despatch of the Consul General at Hankow contains the following paragraph:

"When the Standard Oil Company first requested my assistance in obtaining the cancellation of the proposed fine, I felt some hesitancy about taking official action, but finally concluded that if I refrained from touching upon the private tax agreement between the Standard Oil Company and the Nationalist authorities, I could with propriety make representations in the case."

This statement made by the Consul General at Hankow indicates that he was not inclined to adduce the tax agreement concluded by the Standard Oil Company as a basis for his protest against the attempted fine, and presumably he would have been equally disinclined officially to protest against a violation of the agreement.

The Department considers it desirable that this difference in con-

⁸¹ Neither despatch printed.

⁸² *Ante*, p. 509.

ception on the part of these two consular offices be adjusted. One reason for this view is that if the difference persists there may arise the erroneous assumption that the offices differ, as well, in the warmth of their desire to be of assistance to American interests.

In this connection, the Department refers to its telegraphic instruction to the Legation No. 278, dated July 7, 1927, 2 p. m.⁸⁴ In this telegram the Department pointed out that this Government had not been associated in any way with private taxation agreements between American companies and the Wine and Tobacco Administration and it expressed the belief that private arrangements of this kind should not be made the basis of protests by American officials against Chinese national taxation policies. It may be argued that neither the violations of the petroleum tax agreement of March 1, 1927, referred to in the despatch from Shanghai of July 12, 1928, nor the fine which the Hupeh Kerosene Special Tax Bureau attempted to impose arose from the application by the Chinese of a national taxation policy. Without discussing this point, the Department desires to point out that in any case violations by the provincial authorities of private tax agreements made by American companies with the Nationalist Government are matters that lie within the province of the Nationalist Government to adjudicate. The degree of control that will ultimately be exercised by the Nationalist Government over the provincial authorities in matters of taxation has yet to be determined and, while the interests of foreign commerce have always seemed to require, and seem to require at present, that the authority to tax foreign commerce shall be centralized in the national government, the Department believes that expediency requires that the American Government and its officials in China shall abstain from interference in the process of adjustment, thus avoiding, so far as possible, incurring the hostility of either party to the controversy. This was the position taken by the Department in its telegram to the Legation of July 12, 1927,⁸⁵ which advised, *inter alia*, that official protests against taxes should be limited to cases involving one or both of the following two grounds: (1) that the tax is contrary to existing treaty; or (2) that the tax discriminates against an American citizen or his interest.

In addition to the consideration that this Government desires to avoid, so far as that may be possible and expedient, being drawn into disputes between the Nationalist Government and the provincial authorities in the matter of taxation, and that it desires to avoid all commitments in the matter of taxation of foreign commerce before

⁸⁴ *Foreign Relations*, 1927, vol. II, p. 393.

⁸⁵ *Ibid.*, p. 397.

an eventual formal arrangement in regard thereto has been made through the medium of a treaty, there is the further consideration that this Government desires to act impartially as between and among all American citizens in China. This will be very difficult if in matters like the taxation of imports, a subject generally regulated by treaty and law, representations are made on the basis of so-called "private agreements". Moreover, the Department does not regard a taxation agreement concluded by an American concern with a foreign government as, to quote the words of the Consul General at Shanghai, exclusively a "private business agreement". The Nationalist authorities appear to have offered to large American concerns certain financial or other inducements to conform to special tax regulations, but it has subsequently appeared that these regulations were intended from the beginning to have the force of law and to apply generally. Therefore, if American consular officials had taken official cognizance of the so-called "private agreements", or if they had lent support thereto, they would in fact have been indicating their official acquiescence in taxes levied in contravention of existing treaties and to a considerable extent would have compromised the position of this Government in relation to subject matter to be discussed in connection with the question of negotiating new treaties.

If anything further were needed to suggest the advisability of abstaining from official recognition of the so-called "private agreements", it would be found in the right assumed by the Chinese authorities thereunder to inflict penalties for infractions, actual or alleged, of the rules or regulations appertaining to the agreements. Basing their action on alleged violations of the regulations, the Chinese authorities often seize American property on executive decision alone, with no pretense of legal authority or judicial process. If these agreements are to be accepted as a basis of American official action, it is obvious that the Department must accept stipulations which work in favor of the Chinese tax officials, as well as those which work in favor of the American parties, and the Department does not wish to be placed in the position of being obliged to condone, much less approve, actions repugnant to American conceptions of political and legal propriety.

The Department adheres, therefore, to the opinion that the Legation and American consular officials in China should avoid making tax agreements entered into by American companies with the Chinese authorities the basis of protests against taxes or other impositions.

I am [etc.]

FRANK B. KELLOGG

893.512/901

*The Minister in China (MacMurray) to the Consul in Charge at Hankow (Adams)*⁸⁶

PEKING, November 23, 1928.

SIR: I beg leave to acknowledge the receipt of your despatch No. L-576, of November 10, 1928,⁸⁷ in which you informed the Legation that you have been approached by the Texas Oil Company's representative in Hankow with a request for assistance in the negotiation of a tax agreement with Generals Liu Hsiang and Yang Sen of Szechuan, similar to that obtained by the Standard Oil Company of New York. It is noted that you have informed the company that the Consulate General cannot assist them in the negotiations for the payment of taxes not authorized by treaty.

In reply you are informed that your action in the matter has the approval of the Legation and that a copy of this instruction has been forwarded to the Department for its information and possible comment.

I am [etc.]

J. V. A. MACMURRAY

893.512/885 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 3, 1928—4 p. m.

[Received December 3—1:15 p. m.⁸⁸]

854. 1. Following from Canton:

"December 1, 1 p. m. Before releasing lighters Canton Government is demanding adequate money guarantee by Standard Oil Company or official statement signed by me that the company will comply with the final decision in the case. I understand unofficially this is intended to save face and that no further action is to be taken, but as it seems evident that if this demand is complied with we shall be submitting to Chinese jurisdiction, I am not inclined to give any guarantee in the sense indicated but propose to reply in a formal note to the Foreign Office assuring Canton Government that the consulate general will be prepared to deal in the usual course with any demands that may be received from local government in respect to this case.

If the Legation has any suggestions to offer I shall be most happy to receive them. I shall adopt a conciliatory tone but surrender no treaty rights."

⁸⁶ Copy transmitted to the Department by the Minister in his despatch No. 1772, Nov. 23, 1928; received Jan. 7, 1929.

⁸⁷ Not printed.

⁸⁸ Telegram in two sections.

2. I have replied as follows:

"December 3, 4 p. m. Your December 1, 1 p. m. Your proposed reply to the Foreign Office is approved. Please continue to keep the Legation fully informed as to any developments."

MACMURRAY

893.512/888 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 12, 1928—5 p. m.

[Received December 12—2:25 p. m.]

870. Legation's 854, December 3, 4 p. m. Following from Canton:

"December 12, 10 a. m. Standard Oil Company lighters released yesterday afternoon on written assurance from me that company 'would be held to strict accountability under any decision reached through due process of law'.

Lighters and cargoes were held exactly two months and, in my opinion, would never have been released if Marshal Li had not returned. Despatch follows."

MACMURRAY

893.512/889 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 15, 1928—4 p. m.

[Received December 16—10:40 a. m.⁸⁹]

880. 1. Following from Shanghai:

"December 13, 3 p. m. The Minister of Finance of the Nationalist Government has approached the Standard Oil Company with the proposal that the present tax agreement be redrawn with a view to the incorporation of the dollar consumption tax on kerosene and gasoline in the present tariff. Soong recognizes the fact that the company have certain protective clauses in the agreement of March 2, 1928, and has offered to grant similar protective clauses in any new agreement which might be entered into, providing the equivalent of this consumption tax on kerosene and gasoline [omission?] by the Chinese Maritime Customs. The company is not inclined to consider favorably the proposal. The company would greatly appreciate comments and advices should there be any objection on the part of the American Government to the company entering into an agreement such as proposed by Soong.

⁸⁹ Telegram in three sections.

Hopkins⁹⁰ of the Standard Oil Company wishes to recall his conversation of August 5, 1928, with Minister and Davis⁹¹ at Peking."

2. I am replying in part as follows:

"With reference to the attitude of the American Government toward the Standard Oil Company entering into an arrangement such as that proposed by Soong, the company should be informed that the making of private agreements of this character is a matter to be decided solely by the company itself, concerning which the Legation cannot undertake to give advice. I am however repeating your telegram to the Department for any possible comment that it may care to make."

3. When it was proposed at the time of the Customs Conference⁹² to increase the duties on kerosene from 5 to 12½ percent, it was contemplated that at least a definite program would be formulated and commenced for the gradual abolition of likin. Instead of following out this course the Chinese have apparently now added to an increased import duty the equivalent of the consumption tax now paid by the oil companies under private agreement in commutation of all other inland charges. This has been done in spite of the fact that the Nationalist Government, except in the provinces of Kiangsi, Chekiang, Anhui, Kiangsu and Fukien has acknowledged itself unable to give any assurance of immunity from still further transit and other taxes arbitrarily imposed by local authorities.

It should be noted that other commodities concerning which private agreements were not made are apparently entering into the dangers now facing the oil companies.

4. Although the taxes paid by the tobacco companies under private agreement are apparently not being added to the import tariff, it is understood nevertheless that cigars and cigarettes are to be subjected to a 32 percent excise.

MACMURRAY

893.512/889 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, December 21, 1928—4 p. m.

416. Your 880, December 15, 4 p. m. Your reply to Cunningham as quoted is approved.

KELLOGG

⁹⁰ Paul S. Hopkins.

⁹¹ John K. Davis, first secretary of Legation in China.

⁹² *Foreign Relations*, 1926, vol. I, pp. 743 ff.

893.512/888 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, December 21, 1928—7 p. m.

417. Your 870, December 12, 5 p. m.

Inform Consul General Canton Department is gratified at the success of his efforts in obtaining release of Standard Oil Company's lighters.

KELLOGG

**ARRANGEMENT FOR PAYMENT BY AMERICAN CITIZENS AND FIRMS
OF VOLUNTARY CONTRIBUTIONS IN LIEU OF TAXES TO THE
HARBIN MUNICIPALITY⁹³**

893.102 H/496 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, February 3, 1928—5 p. m.

33. Department's instruction 675 of November 7, 1927.⁹⁴

1. Following telegram received from Harbin:

"January 30, 5 p. m. Referring to my despatch No. 4350 dated December 10,⁹⁵ regarding municipal taxes at Harbin. The Department is requested to instruct by telegraph this office whether contributions in lieu of taxes should be made by Americans through the Consulate or direct to the municipal authorities."

2. Transmit following reply to Harbin:

"Your January 30, 5 p. m. It is noted from your report that payments of municipal taxes are made to the Chinese authorities direct by two important American concerns and by all other extraterritorial foreigners except the Japanese. The Department perceives no cogent reason why American citizens in general should not follow this practice and accordingly the Department desires that payments through the consulate should be discontinued. You should offer advice to American citizens as set forth in the Department's instruction to the Legation of June 2, 1927,⁹⁶ but should use all necessary and appropriate means to ensure the equitable treatment of American interests and the extraterritorial immunities of American citizens.

The Department does not consider it advisable at this time to raise the question of participation by American citizens in the municipal government nor to enter into any commitment with the Chinese authorities as to the principle involved in their taxation by such authorities. The continuance of the Department's present attitude in the matter will largely depend on the treatment received by American interests."

KELLOGG

⁹³ Continued from *Foreign Relations*, 1927, vol. II, pp. 492-498.

⁹⁴ *Foreign Relations*, 1927, vol. II, p. 498.

⁹⁵ Not printed.

⁹⁶ *Foreign Relations*, 1927, vol. II, p. 390.

893.102 H/501

The Secretary of State to the Minister in China (MacMurray)

No. 1070

WASHINGTON, November 19, 1928.

SIR: The Department has received your despatch No. 1689, dated October 5, 1928, in which you refer to despatch No. 1802, dated September 13, 1928, from the American Consul at Harbin, regarding the Harbin municipal question.⁹⁷

In reply to your request for an expression of the Department's views you are informed that the Department concurs in the opinion held by you and Mr. Hanson⁹⁸ that it is inadvisable to take any steps having as their object participation by American citizens in the meetings of the Assembly of Delegates or the Municipal Council. In this connection you are referred to the Department's telegram No. 33, of February 3, 1928, 5 p. m., in which a similar position was taken.

The suggestion has been made by Mr. Hanson that it might be possible to make an arrangement whereby the Japanese representative now placed in the Municipal Council would represent the interests of all extraterritorial foreigners, including American citizens. The Department believes that such an arrangement, in so far as citizens of this country are concerned, would be inexpedient. A review of events at Harbin would indicate that foreign residents have hitherto reaped small practical benefit from their attempted insistence on special municipal rights, while the advantage that will accrue to Japanese residents from being represented in the Municipal Government may be regarded as problematical. If the Legation agrees that this is the case, the Department desires that the American Consul at Harbin shall be instructed to abandon all attempts to obtain for American citizens any special right to participate in the Municipal Government, although he should report any offers made by the Chinese authorities in this connection, and to confine his efforts to obtaining for citizens of this country the enjoyment of their treaty rights and all advantages in the carrying on of their activities that may be enjoyed by the citizens of the nation most favored in such respects.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

⁹⁷ Neither despatch printed.

⁹⁸ The consul at Harbin.

PROTESTS BY THE UNITED STATES AGAINST PROPOSED CHINESE
FINANCIAL MEASURES DIVERTING REVENUES FROM PAYMENT OF
AMERICAN LOANS IN DEFAULT

693.003/853

The Chargé in China (Perkins) to the Secretary of State

[Extract]

No. 1614

PEKING, August 15, 1928.

[Received October 1.]

SIR:

In connection with the first paragraph of the enclosed memorandum, in which is mentioned the plan of Mr. T. V. Soong to float a domestic loan of some forty million dollars to be secured on the proceeds of the cancelled German indemnity, I have the honor to refer to the Legation's despatch No. 509, of March 25, 1926,⁹⁹ referring to two separate protests that had been filed with the Chinese authorities by the diplomatic representatives concerned¹ against the allocation, for fresh domestic loans, of that portion of the customs revenues formerly required for the services of the German Boxer Indemnity, and of recent years earmarked for the service of one of the earlier internal loans. In view of this action and the attitude which we have consistently taken toward the allocation of such funds to new obligations of the Chinese Government, I have the honor to recommend that I be authorized to make a further protest in the event the proposed loan is decided upon by the Nationalist Government. It would seem that a failure to protest in these circumstances might have a serious bearing upon the whole question of the assumption by the Nationalist Government of China's existing financial obligations. It is requested that a telegraphic instruction be sent with regard to the Department's wishes in the matter.

I have [etc.]

MAHLON F. PERKINS

[Enclosure—Extract]

*Memorandum by the Chargé in China (Perkins) of a Conversation
With the Officiating Inspector General of Customs in China
(Edwardes)*

Mr. Edwardes took up the discussion of financial plans which he understands Mr. T. V. Soong, Nationalist Minister of Finance, has in mind for the near future. Mr. Edwardes said that, in the first

⁹⁹ Not printed.

¹ For the protests of Mar. 18, 1926, and Apr. 19, 1926, see *Foreign Relations*, 1926, vol. 1, pp. 947 and 948.

place, it is planned to float a domestic loan of some \$40,000,000, to be secured on the proceeds of the cancelled German Boxer Indemnity; that a sufficient amount of money was actually available from the Indemnity for this purpose; and that the Chinese bankers in Shanghai had this scheme well worked out. The funds obtained from this loan were to be used for the disbandment of troops and for looking after their employment in various kinds of public works.

With regard to the domestic loans now secured on the Customs, Mr. Edwardes said that it was planned to take the administration of the service of these loans out of the hands of the Inspector-General and to place it with a special board of Chinese bankers. The Inspector-General would, however, be one of the members of this board. Mr. Edwardes seemed to think that this was a good idea and apparently was not at all averse to being relieved from the sole responsibility of supervising the service of these loans.

[PEKING,] *August 13, 1928.*

493.11/1379a : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, *October 9, 1928—6 p. m.*

343. Your despatch 1614, August 15. Referring to last paragraph the Department authorizes you singly or jointly with interested colleagues to file general notification of outstanding obligations of China to American citizens in general accord with the memorandum enclosed with the Legation's despatch of March 25, 1926.²

KELLOGG

493.11/1381 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, *October 15, 1928—7 p. m.*

[Received October 15—1:45 p. m.]

772. Department's 343, October 9, 6 p. m. In view of the potential influence of radical elements which are disposed to insist upon repudiation of China's obligations, I feel it might play into their hands and indefinitely postpone settlement to address to Nationalist Government at this time a protest along the lines of memorandum enclosed with my despatch of March 25, 1928 [1926]. Subject to the

² Despatch not printed. For text of its enclosure, see memorandum of Mar. 18, 1926, from the American, British, French, and Japanese Ministers to the Chinese Ministry of Foreign Affairs, *Foreign Relations*, 1926, vol. 1, p. 947.

Department's approval, it seems to me preferable to confine myself in a note sent to the Minister for Foreign Affairs, independently of any action by my colleagues, to a general reservation of American rights and the assertion of continuity of governmental responsibility substantially as follows:

"I have the honor to acquaint Your Excellency that it is my understanding that the Nationalist Government intends to issue a short-term loan secured upon that portion of the customs revenues formerly required for the service of the German Boxer Indemnity.

"Inasmuch as customs collections are the sole source of revenue actually available for the satisfaction of a number of American debts and other liquidated claims now in default, I am instructed by my Government to recall the fact that there exists on the part of the Chinese authorities a continuing obligation to ensure the payment of the sums due to American creditors; and I have accordingly to make full reservation of their rights."

MACMURRAY

493.11/1381 : Telegram

The Acting Secretary of State to the Minister in China (MacMurray)

WASHINGTON, October 16, 1928—3 p. m.

351. Your 772, October 15, 7 p. m. Your proposal is approved.

CLARK

893.51/5092 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 25, 1928—11 a. m.

[Received 9:53 p. m.]

792. Cunningham ^a writes me that Sokolsky ⁴ is at present acting in some capacity as a liaison between Yada ⁵ and Soong in regard to obtaining Japan's [approval of?] the levying of the interim surtaxes. Sokolsky states that "there was no difficulty in reaching an agreement for the enforcement of the interim import duties as contained in the counterproposal of the British, Japanese, and Americans in 1926" but that in his opinion stumbling block is the question of arranging for the payment of the unsecured obligations, such as the Nishihara loans.⁶ Yada insists that the Minister of Finance should set apart some definite revenue, such as the customs surtaxes, for the service of those loans, while Soong, though personally not opposed to such a course, desires that the bondholders should get together

^a Edwin S. Cunningham, consul general at Shanghai.

⁴ George E. Sokolsky, an American journalist in China.

⁵ Shichitaro Yada, Japanese consul general at Shanghai.

⁶ Loans by Japanese banking interests to the Chinese Government, 1917-1920.

and determine what revenue should be set aside for this purpose. The opinion was expressed that such an agreement would be easy to reach and would relieve Soong from the responsibility of [countersigning?] revenue for this purpose, an act which would unquestionably invite severe criticism.

MACMURRAY

893.51/5092 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 1, 1928—5 p. m.

366. Your 792, October 25, 11 a. m.

1. It would appear that the Nationalist Government is being asked to perpetuate the policy of hypothecating specific revenues for the payment of specially designated obligations. If there is any likelihood that the Nationalist Government may do this, the Department questions whether the statement made by you to the Minister for Foreign Affairs under the authorization conveyed in the Department's 351, October 16, 3 p. m., will sufficiently have safeguarded the interests of American creditors.

2. Under these circumstances do you consider the time opportune to take up with the Chinese Government the whole body of that Government's financial obligations to American citizens? Knowledge of the attitude of the Chinese Government toward its debts to American citizens would become of great interest if American financial interests were to approach the Department in connection with a proposed loan. It is assumed that any international understanding between the bondholders and the Governments of all the various Powers concerned and the Government of China is out of the question.

3. The Department desires to receive from you by telegraph detailed recommendations regarding action that you think may advantageously be taken on behalf of the general body of American creditors of the Chinese Government.

KELLOGG

893.51/5096 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, November 8, 1928—7 p. m.

[Received November 8—9:20 a. m.]

818. Department's telegram No. 366, November 3 [1], 5 p. m.

1. The requests which are being made of the Nationalist Government to hypothecate specific revenues for the payment of designated

obligations appear to relate to the increased customs revenues which would accrue from the application of the so-called "interim rates". In view of the terms of our treaty of July 25,⁷ it does not seem to me that we are in a position to, or that we can consistently, lay claim specifically to customs revenues for the payment of their obligations. Should it appear, however, that the Nationalist Government intends to allot free customs revenues or any other free revenue to the payment of foreign obligations in a manner which would discriminate against American creditors, we should, of course, protest against such contemplated action and inform the Chinese that we should, in that event, be compelled to bring unfavorably to the attention of the American financial interests concerned any evidence of such discriminatory treaty [*treatment*].

2. As to the question of procedure, I am inclined to think that it would be inadvisable at this juncture for the American Government to approach Nationalist Government as to its attitude toward payment of the whole body of American obligations. The Chinese would in all probability take an education [*sic*] position as, in fact, they have already done so, namely, that they will recognize and be responsible for the payment of all "proper" obligations incurred by former Chinese Governments, at the same time reserving to themselves interpretation of what obligations they deem to be proper. In my reply, it would be productive of better results to await such a time as the Chinese, feeling the pinch of necessity, approach American financial interests and then if necessary to take the position that they cannot hope for American assistance until adequate arrangements are made for the payment of these obligations.

3. I feel moreover that at this time it would be prudent to await the ratification of the tariff treaty by the Chinese before confronting them with any direct issue such as is involved in the question of payment of their obligations to us and of the possible extension of further credit on our part to them. Whereas I do not doubt that the Chinese are disposed to ratify the treaty, they are on the other hand fully aware of the importance which we attach to the nondiscriminatory treatment, and it is not impossible that they might seek to touch on the treaty, delaying ratification as a means of leverage to induce us to modify our attitude in financial matters.

4. Should, however, the Department feel in the present circumstances that the terms of my note to the Minister of Foreign Affairs, to which reference is made, are insufficient to safeguard the interests of American creditors, I see no objection to reinforcing it by a more specific statement of our attitude, and I therefore suggest that the Department authorize me to supplement the previous note by the following:

⁷ *Ante*, p. 475.

"I have the honor to refer to my note of October 19, 1928,⁸ in which reference was made to the intention of the Nationalist Government to issue a short-term loan secured upon a certain portion of the customs revenue and to the existence of a continuing obligation on the part of the Chinese authorities to ensure the payment of the obligations due to the American creditors, and to state that reports have reached me that suggestions are being made that Nationalist Government should hypothecate certain specified portions of hitherto unpledged revenues from the customs or from other sources for the payment of certain designated foreign obligations, hitherto not enjoying such security. I trust that these reports are wholly without foundation; for it is obvious that such a course of procedure would seriously prejudice the interests of creditors not placed upon so favorable a basis. On behalf of the American interests involved I feel it incumbent upon me to bring this matter to your attention and to request an assurance that any policy which may be adopted by the Nationalist Government in these matters will not either in principle or in practice result in any discrimination against the interests of the American creditors concerned."

MACMURRAY

893.51/5096 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 15, 1928—6 p. m.

385. Your 818, November 8, 7 p. m. Department is considering your proposed text of a caveat. Take no action thereon until further instructed.

KELLOGG

493.11/1410 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 12, 1928—6 p. m.

[Received December 12—4:10 p. m.⁹]

871. Legation's October 15, 7 p. m.

1. In reply to the Legation's note of October 19th (text quoted in my 772, October 15, 7 p. m.) I have now received from the Foreign Office a note dated December 4th quoting the Ministry of Finance as follows:

"We have the honor to state that the customs revenues have hitherto been designated for the payment of the Boxer indemnities of the various nations, as well as those foreign loans that have been

⁸ See telegrams No. 772, Oct. 15, from the Minister in China and No. 351, Oct. 16, to the Minister, pp. 532 and 533.

⁹ Telegram in three sections.

actually secured. Your statement that these funds are the only source from which the American loans and other claims may be paid has been found upon investigation to be without foundation. The American loans to, and other claims on, the former Peking Government have already been listed by the former Ministry of Finance for adjusting as unsecured foreign loans, and have absolutely no connection with the remission of the German Boxer Indemnity.

This Ministry will wait until the above-mentioned unsecured foreign loans have been given collective consideration, and will then stipulate a procedure by which they may be handled individually."

2. Reports have formerly been current that in the Sino-Japanese negotiations with regard to the tariff it has been agreed that the Chinese Government will recognize the Nishihara loans and provide for their liquidation beginning in 1929 on the basis of five million annually to be increased at the rate of one million each year thereafter. T. V. Soong is also quoted in press reports as stating that the unsecured debts of other nationalities will have to receive consideration similar to that accorded to the Japanese. Although I am unable to vouch for the authenticity of the foregoing reports, it would seem very likely that some arrangement of this character may be reached in the course of negotiations with Japan.

In order to protect fully our position I feel that some more specific statement of our attitude of the general tenor suggested in my telegram 818, November 8, 1 [7] p. m., should be addressed to the Nationalist Government at this time. I therefore hope that the Department may now be able to inform me as indicated in the Department's telegram 385, November 15, 6 p. m.

MACMURRAY

893.51/5096 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, December 19, 1928—3 p. m.

414. Your 818, November 8, 7 p. m. and 871, Dec[ember] 12, 6 p. m. At your discretion if and when you deem opportune you may send a note with text substantially as follows:

"I have the honor to refer to my note of October 19, 1928, in which reference was made to the intention of the Nationalist Government to issue a short term loan secured upon a certain portion of the customs revenue and to the existence of a continuing obligation on the part of the Chinese authorities to ensure the payment of the obligations due to the American creditors, and to state that reports have reached me that suggestions are being made that Nationalist Government should hypothecate certain specified portions of hitherto unpledged revenues from the customs for the payment of certain designated foreign obligations hitherto not enjoying such security. In this situation, under instructions from my Govern-

ment, I have the honor to request an assurance that any policy which may be adopted by the Nationalist Government in relation to obligations due to foreign creditors will not either in principle or in practice result in any discrimination against the interests of American creditors."¹⁰

KELLOGG

ARRANGEMENTS FOR THE CONTINUED PAYMENT OF THE BOXER
INDEMNITY REMISSIONS FOR CHINESE EDUCATIONAL PURPOSES¹¹

493.11/1333 : Telegram.

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 11, 1928—11 p. m.

[Received June 11—1:45 p. m.]

453. Legation's 1427, March 9th.¹² In the absence of anyone in the Peking Foreign Office having the authority to handle and account for the May installment of the portion of the 1901 indemnity remitted in 1908,¹³ I am holding the Customs check for this fund received by me today, pending the indications of some Chinese governmental organ to transact these matters.

MACMURRAY

493.11/1333 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 15, 1928—1 p. m.

190. Your 453, June 11, 11 p. m.

1. Department does not appear to have received from you receipts for payments to Chinese authorities under either indemnity heading since August 1927 but assumes that receipts have been taken from the Ministry for Foreign Affairs and China Foundation respectively. Your comments are requested.

2. Department apprehends that the withholding of the remissions authorized in 1908 will immediately involve Tsing Hua College and the Educational Mission in the United States in financial difficulties.

3. The Department interprets the Joint Resolution of Congress approved May 25, 1908,¹⁴ as authorizing the President to withhold

¹⁰ A note in these terms was addressed by the Minister in China to the Chinese Minister of Foreign Affairs Dec. 27, 1928 (893.51/5116).

¹¹ For previous correspondence regarding the Boxer Indemnity, see *Foreign Relations*, 1925, vol. I, pp. 935 ff.

¹² Not printed.

¹³ *Foreign Relations*, 1908, pp. 64 ff.

¹⁴ *Ibid.*, p. 65.

the monthly payments of the indemnity remitted thereunder in the manner you suggest. Presumably a permanent arrangement for payments under the 1908 remission should have the approval of the Chinese Government when formed. The Department desires your recommendation in regard to an interim procedure and suggests tentatively the possibility of constituting the China Foundation for the Promotion of Education and Culture the administrator of these funds.

KELLOGG

493.11/1334 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 19, 1928—3 p. m.

[Received June 19—1:55 p. m.]

476. Your telegram No. 190, June 15, 1 p. m.

1. Receipts for September to May inclusive which had been retained in files through oversight were forwarded by pouch leaving June 7th.

2. With a view to obviating embarrassment to Tsing Hua College and the Educational Mission, I have discussed the question rather fully with those best informed in the matter and have let it be known that I should sympathetically welcome any practical suggestion for a provisional arrangement.

3. Board of Directors of Tsing Hua at a meeting June 17th decided to send Dr. Wang, Minister of Foreign Affairs at Nanking, the following telegram:

"In order to enable Tsing Hua College to meet its immediately pressing June obligations, the Board of Directors suggests that you kindly request the American Minister to pay over to the acting president, Mr. Stewart Yui, as an emergency measure, the amount of the June Boxer indemnity remission to be used subject to the approval of the Board."

4. I heartily endorse suggestion thus made. Funds for both Tsing Hua and the Educational Mission were fullest [*sic*] allotted rather unsystematically by the Peking Ministry for Foreign Affairs for expenditure by the president of the college. As the result of long effort to remove these institutions from the pressure of political influences there was constituted last April by order of the Ministry a Board of Directors exercising wide powers particularly as regards budgeting and control of expenditures. It is by this Board, or by the acting president functioning under its control, that the funds accruing from the 1908 remission would naturally be administered pending such readjustments as might be made by a new governmental authority.

5. In spite of the Executive order of December 28, 1908,¹⁵ providing for remission to "The Government of China," I submit that to cover us in making payments in the manner proposed it would seem necessary that the President should amend that Executive order by one authorizing the Secretary of State to have the several remissions paid provisionally to such recipient as might be satisfactory to the Secretary with a view to insuring the employment of these funds for the purpose of the institutions hitherto established.

6. Assuming that this could be arranged I would recommend that you authorize me to support the suggestion of Tsing Hua Board of Directors by a telegram to Dr. Wang urging acquiescence in this proposal without prejudice to any political question involved in order to meet the emergency in the interests of the college and of the Educational Mission.

MACMURRAY

493.11/1334 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 23, 1928—2 p. m.

201. Your 476, June 19, 3 p. m.

1. The Department authorizes you to hand to the Acting President of Tsing Hua College, as an emergency measure pending an arrangement to be arrived at by you with a new governmental authority, the monthly indemnity payments made under the Executive Order of December 28, 1908, provided this procedure has the approval of the Minister for Foreign Affairs of the Nationalist Government. The Department assumes that an officer of the Legation is a member of the Board of Directors of Tsing Hua College as reconstituted in April 1928 and the Department desires that you report any failure to utilize these funds for the support of Tsing Hua College and the Educational Mission in the United States.

2. Amendment of Executive Order of December 28, 1908 will not be necessary if Nationalist authorities approve emergency measure authorized in preceding paragraph.

3. If request of Board of Directors addressed to Doctor Wang is not granted within reasonable time Department will consider your recommendation in paragraph 6, but it deems it to be desirable if possible to avoid intervention by the Legation.

KELLOGG

¹⁵ *Foreign Relations*, 1908, p. 72.

493.11/1335 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, June 26, 1928—6 p. m.

[Received 7:30 p. m.]

496. Your 201, June 21 [23], 2 p. m.

1. I have now received from Dr. C. T. Wang a telegram which, although garbled, apparently suggests that I hand June installment to Mr. Mei Yi-chi who, he states, is now temporarily acting president of Tsing Hua College.

2. I am informed by one of Wang's unofficial representatives here that Mei has been appointed by the Nanking authorities in place of Stewart Yui who was acting president at the time of my 476, June 19, 3 p. m.

3. I have replied to Wang asking clarification of his message and inquiring whether, in case the installment is to be paid to Mei, Wang will "direct that it be expended in the manner now established for support of Tsing Hua and Educational Mission in America."

4. I beg to request Department's instructions whether, in the event of confirmation of Wang's request that the installment be paid to Mei Yi-chi I should pay it over against his receipt, and whether in so doing I would be fully protected under the covering act of Congress and Executive order.

MACMURRAY

493.11/1334 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, June 29, 1928—4 p. m.

209. Your 496, June 26, 6 p. m.

1. Your paragraph 3 approved.

2. For reply to your paragraph 4, see Department's telegram 201, June 23, 2 p. m., entire paragraph 1. Department believes this procedure authorized under the Joint Resolution and Executive Order of 1908 relating to the indemnity remission of that year, but considers it essential that you should receive from the Nationalist Minister for Foreign Affairs before making payment a written request signed by said Minister designating Mei as the payee and subsequently a receipt from Mei.

KELLOGG

493.11/1337: Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, July 16, 1928—6 p. m.

[Received July 16—1:50 p. m.]

539. Department's undated telegram No. 209 [, June 29, 4 p. m.].

1. I have today received from C. T. Wang a letter stating:

"I write this to confirm my recent telegram to the effect that the June installment of Tsing Hua indemnity fund be handed to Mei Yi-chi, the acting president of Tsing Hua College, and also to inform you that I have already given explicit instructions that the money be expended in the manner now established for the support of Tsing Hua and the Educational Mission in America."

2. Since June installment was seemingly written inadvertently for May installment, I am taking up the question of obtaining similar authorization from Wang for the payment to Mei of the May installment, having today paid to him under the above authorization and against his receipt the installment for June.

MACMURRAY

893.42/235

*The American Minister in China (MacMurray) to the Vice Minister of Foreign Affairs in the Chinese Nationalist Government (Y. L. Tong)*¹⁶

PEKING, August 1, 1928.

MY DEAR MR. TONG: Since you called on me last Tuesday to communicate to me in behalf of Dr. C. T. Wang the recent decision of the Nationalist Government with regard to the arrangements for the control of Tsing Hua College, and to ask my approval thereof, I have given considerable thought to the questions arising out of the abolition of the present Board of Directors and the substitution of a Board or Commission to consist of the Minister of Foreign Affairs, the Minister of Education, and the American Minister, as ex officio members, and four educators (two of them to be graduates of Tsing Hua) to be named jointly by the Ministers of Foreign Affairs and of Education.

As I was frank to acknowledge to you in the course of our conversation on the subject, I cannot for my own part but deplore, as a friend of Tsing Hua, the decision to do away with the non-political Board which, as the result of several years of effort, had been established as recently as last spring for the purpose of interposing an

¹⁶ Copy transmitted to the Department by the Minister in his despatch No. 1599, August 6; received September 15.

independent directing body between the College and the vicissitudes of administrative changes in the Government.

As, however, the arrangement for the present Board rests entirely upon a governmental order, and involves no definite agreement with the American Government, I assume that the present arrangement may be altered or abolished by a similar governmental act; and while I appreciate your courtesy in consulting me in the matter, I do not feel that it is within my competence as American Minister to approve or disapprove the decision now taken by the Nationalist authorities.

I appreciate also the spirit that prompted the inclusion of the American Minister, *ex officio*, in the Board which it is now proposed to set up. On careful reflection, however, I cannot but doubt the wisdom of having any American official representation on that Board, and therefore feel unable to accept the directorship offered.

I am [etc.]

J. V. A. MACMURRAY

493.11/1349 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, August 5, 1928—9 a. m.

[Received August 6—9:40 a. m.]

602. 1. Although no official word has yet come either to the Legation or to the Board, it is learned through private advices received from Nanking by a Chinese member, that the Nationalist Government has decided to change the constitution and personnel of the China Foundation for the Promotion of Education and Culture as follows:

"Instead of the Board being a self-perpetuating body, its members are to be appointed by the Government [to] 3-year terms."

2. The following Chinese members are to be dismissed: Y. T. Tsur, recently elected director, W. W. Yen, P. W. Kuo, Wellington Koo and Chang Po-ling. They are to be replaced by C. C. Wu, Sun Fo, Wang Ching-wei, M. Shi Seng and Tsao Yun-siang.

The Department will recall that the joint resolution of Congress authorizing the second remission of Boxer indemnity was passed following explanations to the House Foreign Affairs Committee that arrangements were contemplated by which the remitted funds would be entrusted not to any official agency but to a board of trustees independent of administrative control or interference. The Executive order of July 16th, 1925,¹⁷ was issued only after consideration

¹⁷ *Foreign Relations*, 1925, vol. I, p. 935.

of the constitution of the Foundation, which provided that its Board shall be self-perpetuating and shall have sole power to amend the constitution. It seems clear that if the terms of its constitution are set aside by governmental action, not only is there a violation of the quite clear understanding as to individuals of the agency to which the president would entrust the remitted funds, but the Foundation thus constituted would not be identical with that to which the Executive order authorized the payment of remissions.

3. While anxious to avoid any such unpleasant issue as would be involved in refusing to endorse over to the Foundation the checks paid to me monthly by the Customs, I should not for my part feel warranted in making further payments if the status and identity of the Foundation [are] as reported, and I could not conscientiously recommend that the Executive order be amended or so freely constructed [*construed*] as to authorize payment of the remitted funds to what would in that case be no longer an independent board of trustees but a partisan commission likely to divert the funds from the purposes originally intended by us.

4. Even were we to pay the instalments, however, the American joint treasurer, Bennett,¹⁸ feels that he could not sign any checks for expenditures without prescribed O. K. of the duly elected director; and as local manager of the municipality which holds Foundation's current account and securities, he doubts whether his principals would allow him to honor the signatures of the officers of the Board not elected in accordance with the constitution.

5. In the hope of averting such issues as are likely to arise, I have informally sent word to Wang through Vice Minister Tong that it would be prudent to go slowly and endeavor to find means of arranging matters. This could no doubt be done as the Board has in the past proved if anything rather too complaisant not only in allocating its subventions to institutions in the South and in the North but also in inducing the retirement of members distasteful to the Nationalist element and electing in their places persons known to be acceptable to them. I am however very doubtful of the success of this effort to restrain action upon a decision which I apprehend was taken at the instance of those who meant it as a threat to us.

6. I suggest that more might be accomplished by seeking the good offices of Dr. Sze¹⁹ and Dr. Wu in averting an action which would compel us to take the disagreeable and emphatic alternative of discontinuing the 1925 remissions until the status of the Foundation is restored. It might also prove useful to seek the assistance of Dr. Paul Monroe of Columbia University who was previously instru-

¹⁸ Charles R. Bennett.

¹⁹ Sao-Ke Alfred Sze, Chinese Minister at Washington.

mental in organizing the Foundation and who has considerable influence in Chinese educational circles.

MACMURRAY

893.42/232 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, August 14, 1928—7 p. m.

[Received August 14—1:05 p. m.]

627. 1. C. T. Wang has telegraphed the Legation that Lo Chia-lun will be appointed president of Tsing Hua College and Mei Yi-chi as director of Tsing Hua students in the United States.

2. Lo, who recently has been head of a Kuomintang school in Nanking, is a close adherent of Chiang Kai-shek²⁰ and a favorite of Tsai Yuan-pei.²¹ He graduated from Peking University and had some two years at Columbia.

3. Mei Yi-chi, for some time dean, has latterly been acting president of Tsing Hua.

4. The Minister merely acknowledged Wang's telegram and refrained from expressing either approval or disapproval.

PERKINS

893.42/232a : Telegram

The Acting Secretary of State to the Chargé in China (Perkins)

WASHINGTON, August 21, 1928—6 p. m.

279. Associated Press telegram from Peking August 20 states American Minister declined to serve on Board of Directors, Tsing Hua College. Please explain circumstances.

CASTLE

893.42/233 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, August 24, 1928—1 p. m.

[Received 5:45 p. m.²²]

654. Department's 279 August 21, 6 p. m.

1. Circumstances fully explained in Legation's despatch number 399 [1599], August 6th, ²³ paragraph number 2. The Minister on August 1st sent the following informal note to Y. L. Tong.

²⁰ Generalissimo of the Chinese Nationalist armies.

²¹ Member of the Kuomintang Central Political Council.

²² Telegram in two sections.

²³ Not printed.

[Here follows text of note of August 1, printed on page 542.]

2. In the Legation's despatch number 1599 the Minister states, *inter alia*: "As the reorganization described in my memorandum constitutes a distinctly retrograde step and will inevitably bring the college into Chinese politics, and further since, should the Legation be represented on the proposed Board of Directors, it could not avoid being placed in the embarrassing position of having to assume responsibility without being able to exercise any real influence, I felt constrained to write Mr. Tong as I did, declining the appointment upon the new Board."

4. [3.] This action does not affect the Board of Trustees for the Tsing Hua endowment fund, upon which the Minister remains a member as before.

PERKINS

493.11/1357: Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 7, 1928—6 p. m.

[Received September 7—4:30 p. m.²⁴]

694. Legation's 202 [602], August 5, 9 a. m.

1. Bennett, American treasurer of the China Foundation, has transmitted to the Legation a copy of the following letter, dated August 11th, addressed to him by Tsai Yuan-pei, chairman of the National Educational Council:

"I beg to advise having received an official letter number 3212 from the Secretary, Department of the Nationalist Government, stating:

"We have received the following instructions from the Nationalist Government: "The request of the National Educational Council to revise the regulations governing the Board of Directors of the China Foundation for the Promotion [of] Education and Culture, is hereby acquiesced to: the original Board of Directors of the said Foundation is to be canceled."

We have also received the following instructions: (here follows list of appointees; see legation's telegram above mentioned).

While we shall despatch the relative certificates of appointment and make the instructions public, we quote the instructions for your reference. Enclosure: 14 certificates of appointment.[']

I accordingly advise you of the subject matter and enclose herewith one certificate of appointment. Kindly acknowledge receipt."

2. Bennett comments as follows:

"I do not propose to answer this communication until she has [*it has been?*] indicated whether this illegal certificate is acceptable. So far as I am aware the Chinese members adversely affected by this action have not resigned from the Board of Trustees, and consid-

²⁴ Telegram in two sections.

ering the constitution and bylaws of the Board of Trustees, I question the legality of these new appointments. It is also open to question if this government-appointed board can either legally give a receipt for funds received or legally disburse existing funds."

3. Roger S. Greene, American member, has received a similar letter. In reply to my oral inquiry, he stated that, after waiting some time, he had given notice of his acceptance of the appointment.

4. Since the monthly remittance for the China Foundation has just been received, I request the Department's instruction with regard to the issues raised in the Legation's August 5, 9 a. m.

PERKINS

893.42/234 : Telegram

The Chargé in China (Perkins) to the Secretary of State

PEKING, September 11, 1928—7 p. m.

[Received September 11—1 p. m.]

700. Legation's 627, August 14, 7 p. m.

1. Press reports indicate early arrival and assumption of office by Lo Chia-lun as president of Tsing Hua College.

2. The Department's authorization is requested for the payment to Lo of the August remission check as soon as the Legation shall have been informed in writing by the Minister of Foreign Affairs of the Nationalist Government that Lo's appointment has actually been made effective and has been requested to make such payment to Lo as president.

3. The Department's authorization is further requested for the payment of subsequent remission checks in the same manner.

4. The affairs of Tsing Hua College are at present obscure owing to a struggle which is taking place among several groups to obtain control of the institution. Lo's appointment is said to be resented by the alumni who desire that the president shall not be selected politically, but by the Board of Directors. Recently a group of students living at the college during the summer have forced, by intimidation, the resignation of several professors. Ostensibly this action was motivated by a desire to "reform" the institution and to bring it more into line with the principles of the Kuomintang Party. Kuo Min news item, however, alleges that it was the outcome of a bargain between Lo and the students who desire to avoid the postponed June examinations and to obtain Lo's promise that they will be sent to the United States for study. Mail despatch following.

5. As soon as the situation becomes more stabilized, the Legation will endeavor to report as to the utilization of funds as instructed in the Department's 201, June 21 [23], 5 [2] p. m.

PERKINS

493.11/1368

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] September 21, 1928.

During the course of a conversation with the Chinese Minister today I spoke to him about the difficulties arising from the fact that the Nationalist Government had apparently changed the constitution and regulations governing the Board of Trustees of the China Foundation for the Promotion of Education and Culture who had been named by the President as the Agent of the Chinese Government to receive the 1925 remission of the Boxer indemnity. As a memorandum of what I had to say to him I gave him the attached. Dr. Sze said that he would communicate this to the Minister of Foreign Affairs at Nanking.

N[ELSON] T. J[OHNSON]

[Annex]

Memorandum Handed to the Chinese Minister (Sao-Ke Alfred Sze) by the Assistant Secretary of State (Johnson)

The Department of State has received information from various sources that the Nationalist Government has approved recommendations designed to effect material alterations of the Constitution of the China Foundation for the Promotion of Education and Culture, particularly in the method of filling vacancies on the Board of Trustees. The officers of the American Government have received no official communication from the Nationalist Government regarding these changes. It is necessary to take note of the fact that material alterations in the Constitution of this Board of Trustees will make necessary the consideration of legal questions respecting the authority of the Treasury Department of the United States to continue the payment of that portion of the indemnity the remission of which was authorized in 1925. It is believed that no legal questions will arise if the Constitution of the Board is continued in force and if vacancies are filled in the manner set forth therein.

493.11/1358 : Telegram

The Secretary of State to the Chargé in China (Perkins)

WASHINGTON, September 22, 1928—1 p. m.

324. Your 700, September 11, 7 p. m. Your paragraphs 2 and 3 approved. Legation should, however, inform the Minister for Foreign Affairs that this is to be regarded as an emergency measure pending a formal arrangement.

KELLOGG

493.11/1367a

The Secretary of State to the Secretary of the Treasury

WASHINGTON, September 29, 1928.

SIR: I have the honor to refer to this Department's letter of April 19, 1928,²⁵ informing the Treasury Department that its suggestions relating to the procedure for handling the payments of the Chinese Boxer Indemnity remissions had been communicated to the Chinese Government and had been accepted by it.

A question has now arisen in connection with payment by the American Minister in the future of that portion of the Boxer Indemnity remitted under the terms of the Executive Order of July 16, 1925.²⁶ The Secretary of the Treasury is the officer of this Government authorized and directed by that Executive Order to remit the sums in question. This Department desires, therefore, to lay before the Secretary of the Treasury the question that has arisen and would appreciate an expression of his views.

As will appear from reference to past correspondence and to the receipts for these payments transmitted in this Department's communication of July 26, 1928,²⁵ a check for each remission is made out in favor of the American Minister and is by him endorsed in favor of the Board of Trustees of the China Foundation for the Promotion of Education and Culture, the receipts themselves being signed by the two joint treasurers of the Board. The doubt that has arisen in the mind of the American Minister relates to the present status and identity of the Board of Trustees and has been occasioned by information received by him from different sources to the effect that the present Government of China has by administrative action abolished the constitution under which the Board has functioned since its creation and has ordered that vacancies on the Board shall be filled, not by the members of the Board through election, as provided in the constitution, but by certificates of appointment issued by the Chinese Government. The American Minister reports that Mr. Charles R. Bennett, an American citizen, one of the joint treasurers of the Board of Trustees of the China Foundation, has handed to the American Legation a copy of a letter dated August 11, addressed to him by Mr. Tsai Yuan Pei, Chairman of the National Educational Council, reading in part as follows:

"I beg to advise having received an official letter No. 3212 from the Secretary Department of the Nationalist Government, stating, 'We have received the following instructions from the Nationalist Govern-

²⁵ Not printed.

²⁶ *Foreign Relations*, 1925, vol. I, p. 935.

ment: "The request of the National Educational Council to revise the regulations governing the Board of Directors of the China Foundation for the Promotion of Education and Culture is hereby acquiesced to: the original Board of Directors of the said Foundation is to be cancelled." "

This letter further indicated that certificates of appointment had been issued to fourteen persons as Trustees of the China Foundation, some of these persons having been Trustees formerly, and some of them being new appointees. Mr. Bennett informed the American Minister that he did not propose to answer this communication until it had been determined whether the certificate thus issued was acceptable, and that, taking into consideration the constitution and by-laws of the Board of Trustees, he questioned the legality of the new appointments. He also questioned whether the Board of Trustees thus appointed by the Nationalist Government could legally give a receipt for funds or legally disburse the funds on hand. Moreover, as the manager of the Bank which holds the current account and the securities of the China Foundation, he doubts whether his principals would allow him to honor the signatures of the officers of the Board of Trustees whose election or appointment had not been effected in accordance with the constitution hereinbefore mentioned. The American Minister informed the Department, in conclusion, that he had received a check covering a monthly remittance of the indemnity and he requested the instructions of this Department in regard to the issues raised by this action of the Nationalist Government.

In these circumstances I have the honor to inquire whether the Treasury Department desires that the American Minister shall be instructed to remit to the joint treasurers of the China Foundation future instalments of the Boxer Indemnity remitted under the terms of the Executive Order of July 16, 1925, and accept receipts signed by them on behalf of the reconstituted Board of Trustees, or whether it considers that payment may legally be made only to the Board of Trustees whose members have been appointed or elected in accordance with the constitution herein mentioned and whose duties are performed in conformity with its provisions.

For convenient reference copies of the constitution and Executive Order of July 16, 1925, are transmitted herewith.²⁸

I have [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

Assistant Secretary

²⁸ Constitution not printed. For Executive order, see *Foreign Relations, 1925*, vol. I, p. 935.

493.11/1357 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, September 29, 1928—2 p. m.

329. Your 694, September 7, 6 p. m. Department is hopeful that through conversations now in progress Nationalist Government may be persuaded to revise its action in a manner to avert an issue. Doctor Wu informs Department that though new Board has been appointed, no meeting will be held until February and it is hoped Monroe will in interval go to China to counsel the Nationalist Government that action should be rescinded.

Department is inquiring of Treasury whether you shall continue payments under Executive Order of 1925.

KELLOGG

493.11/1368 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 3, 1928—6 p. m.

[Received October 3—4:14 p. m.²⁹]

744. Department's 324, September 22, 1 p. m.

1. Consul General Cunningham³⁰ telegraphs that a personal letter from C. T. Wang to myself has been received and is being transmitted to the Legation. He [quotes] the text as follows:

"American Minister to China: As Tsing Hua College is in urgent need of money for the opening of the fall term of school, I have the honor to request that you will kindly hand the above-named August and September installments of the Tsing Hua indemnity fund to Mr. Lo Chia-lun, the new president of Tsing Hua College savings.

I have the honor to request further that, beginning from October next, you will please deposit in the Shanghai Commercial and Savings Bank in Shanghai the proceeds from all the forthcoming installments of the money fund to the credit of the Ministry of Foreign Affairs, with the understanding that the money shall be expended solely in the manner now established for the support of Tsing Hua College and the Educational Mission in America. (Signed) Cheng-ting T. Wang."

2. Check for August remission has been paid over to Lo Chia-lun.

3. Unless the Department should instruct otherwise, check for September will be similarly disposed of.

4. Should the Department approve, I propose sending the following reply to Wang:

²⁹ Telegram in two sections.

³⁰ Edwin S. Cunningham, consul general at Shanghai.

"I have already paid over the check for the installment accruing in August as you desired and shall be happy to pay over check accruing during September as requested by you. As regards subsequent checks, since the present arrangement has been understood to be provisional, I shall be glad if you will inform me from month to month in writing, addressed in care of the American consul general at Shanghai, of the bank in Peking authorized to give receipt in your behalf for the current installment."

MACMURRAY

493.11/1378 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, October 12, 1928—7 p. m.

[Received October 12—9:10 a. m.]

769. Legation's 744, October 3, 6 p. m., third paragraph. I have paid to Lo Chia-lun installment for September.

MACMURRAY

493.11/1368 : Telegram

The Acting Secretary of State to the Minister in China (MacMurray)

WASHINGTON, October 15, 1928—6 p. m.

350. Your 744, October 3, 6 p. m.

1. Procedure for August and September instalments approved.

2. The Department considers that the essential features of the arrangement sanctioned by the Treasury should be retained, namely, endorsement of checks in favor of the Ministry of Foreign Affairs and obtaining receipt in the name of that Ministry. On the understanding that these requirements shall be fully safeguarded, the procedure described in your paragraph 4 is approved. Department suggests that undertaking given by Wang regarding expenditure of money (your paragraph 1) might advantageously be embodied in form letter sent each month.

CLARK

493.11/1386

The Secretary of State to the Minister in China (MacMurray)

No. 1035

WASHINGTON, November 12, 1928.

SIR: The Department refers to its telegram No. 329, dated September 29, 1928, 3 [2] p. m., regarding the Board of Trustees of the China Foundation for the Promotion of Education and Culture in

which the statement was made that Dr. Paul Monroe would probably proceed to China in the near future in connection with this question.

You are now informed that Dr. Monroe called at the Department on November 1, 1928, at which time it was ascertained that he intends to leave the United States about the middle of November for China. On his arrival at Shanghai, he will endeavor to arrange with the Nationalist authorities for such changes in the personnel of the Board of Trustees of the China Foundation for the Promotion of Education and Culture as they may desire and that these changes be made in the manner prescribed by the constitution of the Board, i. e. by election. Dr. Monroe will also endeavor to bring about the cancellation by the Nationalist authorities of their order abolishing the constitution of the Board.

Dr. Monroe, in conversation with officers of the Department, inquired whether he would be authorized to inform the Nationalist authorities that if they rescinded the action reported in your telegram No. 602, of August 5, 1928, 9 a. m., payments on the second remission of the Boxer indemnity which are at present understood to be temporarily held, would be resumed. Dr. Monroe was informed in reply that the Department could not give assurances to such effect, but that obviously, if conditions were to return to their original state, it might be supposed that the arrangements with regard to funds would automatically bring about release of the funds. Dr. Monroe expressed the opinion that the present temporary suspension of payments under the Executive Order of July 16, 1925, was a salutary measure.

Dr. Monroe exhibited a copy of a letter received by him from the Chinese Minister at Washington stating that a telegram had been received from the Nationalist Minister of Foreign Affairs to the effect that the latter had recommended to the Nationalist Government the rescinding of that Government's order abolishing the constitution of the Board of Trustees of the China Foundation.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

493.11/1357 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, November 20, 1928—2 p. m.

388. Department's 329 of Sept[ember] 29, 2 p. m. Monroe ready to start November 26. Now receives cable from Greene quoting Tsur saying Monroe should not start until advised as date of meetings is

uncertain. Greene concurs. Inform Department promptly what is the difficulty and whether Monroe should be advised to proceed as planned.

KELLOGG

493.11/1402 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, November 21, 1928—3 p. m.

[Received 6:20 p. m.]

838. Your 388, November 20, 2 p. m. I am informed by Greene that the interested Chinese have been working with a view to getting an arrangement that would preserve the legal continuity of the Board; they believe that the new Minister of Education is favorably disposed towards such arrangement and have in effect received from him intimations that he is disposed to facilitate the matter by issuing what the Chinese members consider necessary—an invitation from the Ministry of Education to the old Board to hold a meeting at which it could reconstitute its own membership in a way to satisfy the Nanking Government. Despite his supposedly friendly attitude however the Minister of Education does not yet find it politically opportune to take the action suggested. Those interested are apprehensive that Monroe's coming at this time might force the issue at an unfavorable moment; they therefore recommend delay but add that they are expecting word from friends at Nanking which may indicate that the time is ripe for him to come.

MACMURRAY

493.11/1407 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, December 11, 1928—7 p. m.

408. Department's 329, September 29, 2 p. m.

1. Reply dated December 5 received from Treasury. Penultimate paragraph quoted below for your guidance:

"The Joint Resolution of May 21, 1924,³¹ authorized the remission to be made by the President, in his discretion, and at such times and in such manner as the President shall deem just. The Executive Order of July 16, 1925, refers specifically to certain correspondence and the receipt by the Department of State of a copy of the constitution of the Board. It seems clear, therefore, that the arrangements for the remission were made on the basis of a mutual understanding

³¹ *Foreign Relations*, 1924, vol. I, p. 554.

between the two governments and that no changes should be made therein without the consent of both parties."

2. For your confidential information Department quotes also last paragraph Treasury letter as follows:

"In the circumstances, therefore, the Treasury does not believe that further remissions should be made except in accordance with the procedure heretofore established or an appropriate modification of the Executive Order of July 16, 1925, with respect to which no opinion is expressed."

KELLOGG

493.11/1415 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, December 13, 1928—5 p. m.

[Received December 14—10 a. m.]

874. Your 408, December 11, 7 p. m. While I have refrained from consulting Tsur as to developments in regard to the China Foundation, I understand from Greene and Bennett that the matter is in a fair way to settlement. It appears that Hu Shih has received from the Nanking educational authorities sufficient assurances to warrant him in having a call issued for all of the old members of the Board to meet on January 4th and 5th at Hangchow at which time it is expected that the unacceptable members of the Board will resign and other members will be elected. It is intended that, along with various unessential amendments to the constitution to be adopted for the purpose of distracting public attention from the main issue, there will be adopted a resolution recommending to the Nationalist Government that it should not insist upon changing the present constitutional method by which the Board perpetuates itself by co-option, upon receiving which recommendation the Nationalist Government is expected to give its approval.

MACMURRAY

CONTINUED NEGOTIATIONS CONCERNING THE FEDERAL TELEGRAPH COMPANY'S CONTRACT WITH THE CHINESE GOVERNMENT³²

893.74/798 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, January 3, 1928—2 p. m.

[Received January 3—11 a. m.]

1. 1. The deputy general manager of British Marconi Company, A. H. Ginman, recently called on me to discuss the radio situation in

³² Continued from *Foreign Relations*, 1927, vol. II, pp. 472-482.

China. He inquired whether I could confirm his understanding that last autumn the Radio Corporation of America had informed representatives of the British Marconi Company that, while the corporation was unwilling that British and French radio interests should complicate the proposed business discussion with Chinese and Japanese representatives by participation therein, the corporation nevertheless recognized in principle the equality of their interests in the radio situation in China and would be prepared to accept a settlement on that basis. Mr. Ginman said that he made this inquiry because, although certain authorities in the Peking Government were anxious that an adjustment be reached with the American and Japanese interests, making possible the constructive and systematic development of radio communications, there was also a group anxious to perpetuate lack of agreement among the foreign wireless interests, and the British Marconi Company and its subsidiary, the Chinese National Wireless Company, had been under considerable pressure from this latter group to supply a large beam radio station. He added that, if there was any prospect of an agreement between all the interests concerned which would give a fair position to the British wireless interests (which he now understood would be acceptable to the Radio Corporation), he was unwilling to be drawn into a continued destructive rivalry among the different national interests concerned.

2. I informed Ginman that, so far as I knew, the Radio Corporation was prepared to have the British and French interests represented by the Mitsui Company in the proposed business conference, but that I was not in a position to give any assurance as to the extent to which recognition would be accorded to such British and French companies.

3. He intimated that he suspected the Japanese might be trying to exclude British and French interests and that perhaps the British Marconi Company might better protect itself and reach a general constructive settlement of the issue if it were free to deal directly with the Radio Corporation. He explained that he understood the freedom of action of the Radio Corporation was circumscribed by certain requirements of the American Government.

4. In replying, I referred to the fact that the American Government had disapproved of a plan for wireless consortium on a monopolistic basis proposed by the Radio Corporation in 1921,³³ but that the American Government did not then and does not now have any interest in the matter beyond desiring an assurance that there should be no monopoly created, and that there should be

³³ See *Foreign Relations*, 1921, vol. 1, pp. 404 ff.

direct radio communication between the United States and China free from the intervention of any third party.

5. He expressed surprise and regret that the various interests concerned had not realized this simple position of the American Government, and stated that in view of it he saw no obstacle to cooperative action, since both the British and the French concerns would be content to forego all claims to monopoly, and he thought the cable interests with which the British and French concerns had a preliminary agreement would concur in this.

6. I asked Ginman why it would not be possible for the British Marconi Company to discuss the matter directly with the Radio Corporation. He replied that the Radio Corporation would have a better occasion for doing this if the position taken by the American Government were definitely made known to the other parties concerned. He asked whether I would be willing to state the attitude of the American Government as frankly to the British and Japanese Ministers if he brought about an informal meeting for the purpose. I replied that I did not feel at liberty to take any independent action regarding possible business arrangements, but that I would be willing to convey his suggestion to the Department and inquire whether, after consultation with the Radio Corporation, the Department wished me to act on it.

7. He stated that he would endeavor for the time being to postpone action with regard to the proposed beam radio station.

MACMURRAY

893.74/800 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, January 9, 1928—8 p. m.

[Received January 9—12:40 p. m.]

17. 1. Apropos of certain current rumors regarding a settlement of the radio issue, Quo Tai-chi, Commissioner of Foreign Affairs, addressed to the consulates [*consulate at?*] Shanghai, December 12th, a note incorporating instructions from the Nanking Government of the following tenor:

"In connection with the radio enterprise, the pseudo government of Peking has entered into agreements first with the Japanese firm of Mitsui and Company and then with the United States Federal Corporation with the result that the problem has become one of complicated and insolvable nature and we are deprived of our rights. The Nationalist Government has never recognized such agreements and in order that it may not be bound by same it is deemed necessary to make an early disavowal whether or not the press report is true and:

"As requested [in?] the above-quoted despatch we hasten to direct that as Commissioner of Foreign Affairs you will immediately file through the American and Japanese consuls general at Shanghai to the American and Japanese Ministers at Peking an emphatic declaration to the effect that in no way will the Nationalist Government be bound by any of the agreements executed on this subject whether or not the report in circulation is true and correct."

2. A note in identic terms addressed to the Japanese consul general.

3. Unless otherwise instructed I propose to concert with my Japanese colleague with a view to instructing our respective consuls general to reply that the Nanking authorities are not competent to invalidate contracts made with the duly recognized Government of China.

MACMURRAY

893.74/800 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, January 9, 1928—6 p. m.

7. Your 17, January 9, 8 p. m. In view of attitude which this Government has from the first taken on the subject of the monopolistic principle involved in Mitsui contract, Department considers it unwise for you to take concerted action with Japanese vis-a-vis announcement made by so-called Nationalist authorities at Shanghai. Department has no other objection to action which you propose to take, but believes that if taken it should direct itself solely to the question of the wireless contract and not generally to all contracts made by the Chinese Government.

KELLOGG

893.74/799

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, January 12, 1928.

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note No. 5 of January 4, 1928,³⁴ and of the *Aide-Mémoire* dated December 3, 1927,³⁵ left at the Department on December 6, 1927, both of which concern the attitude of the Government of the United States toward the proposed formation of an international consortium to conduct the development of radio facilities in China. The inquiry was made whether the Government of the

³⁴ Not printed.

³⁵ *Foreign Relations*, 1927, vol. II, p. 479.

United States is now prepared to endorse the formation of such a consortium and whether it is the view of this Government that negotiations for its formation can be pursued on the basis that no monopoly for any one of the wireless interests concerned shall be recognized and that the maintenance of direct wireless communication between China and the United States shall be guaranteed.

In replying to a proposal for a consortium made by the Japanese Ambassador under date of December 24, 1924,³⁶ the Government of the United States expressed doubt whether such an international arrangement for radio development would be acceptable to the Chinese Government and stated that it desired to be reassured on that point before giving further consideration to the matter. With the same reply there were transmitted statements made by the American radio interests concerned, in which the view was expressed that the complications that would necessarily arise from an attempt to conclude entirely new arrangements with China for the creation and operation of wireless facilities through the instrumentality of a consortium would militate against a practical and helpful solution of the problem by this method. The further view was expressed that many grave difficulties would be avoided if the wireless stations provided for by the Japanese and American contracts were to be completed and brought up to date and thereafter managed separately according to the provisions of the contracts, but coordinated in order to obtain the best operative efficiency, the gross receipts of the stations being pooled and divided on an equitable basis between the different parties concerned. This was described as a "consortium of final results".

The Government of the United States has not had reason to alter its belief that the formation of an international consortium to undertake wireless enterprises in China would not be acceptable to Chinese public opinion or to the future government of China. The practical disadvantages to which reference was made above still appear to exist.

The Government of the United States has no objection in principle to interpose to any operating arrangements that American interests may conclude that do not prejudice direct wireless communications between China and the United States and do not create monopolistic rights in this field of enterprise. For the reasons already set forth, however, it is not prepared to endorse the formation of a wireless consortium on the part of the Powers concerned in the manner suggested by the Japanese Government in the memorandum of December 24, 1924.

³⁶ Memorandum from Japanese Embassy, *ibid.*, 1925, vol. I, p. 890; Department's reply of Feb. 28, 1925, *ibid.*, p. 900.

In the *Aide-Mémoire* of December 3, 1927, reference was made to a conversation held in September last between Mr. Kellaway, Managing Director of the Marconi Company, and General Harbord, President of the Radio Corporation of America. I have the honor to state that in commenting on this conversation to the Department of State the Radio Corporation reported that General Harbord stated that he assured Mr. Kellaway that the Corporation was aware of the interest of the British Marconi Company in the Japanese wireless station at Peking and that there was no intention to exclude the Marconi Company from ultimate participation in arrangements finally made, but that it was believed that negotiations had better proceed between representatives of the Chinese and of the Japanese and American companies, rather than at the time to bring in other foreign interests.

Accept [etc.]

FRANK B. KELLOGG

893.74/803 : Telegram

The Minister in China (MacMurray) to the Secretary of State

[Paraphrase]

PEKING, *January 13, 1928—6 p. m.*

[Received January 13—11:15 a. m.]

27. My No. 1, January 3, 2 p. m. I am informed by Ginman that the Chinese are now pressing him very urgently for action. It is suggested that a decision be expedited as much as possible in this matter.

MACMURRAY

893.74/803 : Telegram

The Acting Secretary of State to the Minister in China (MacMurray)

[Paraphrase]

WASHINGTON, *January 16, 1928—8 p. m.*

19. Your telegrams No. 1, January 3, 2 p. m., and No. 27, January 13, 6 p. m.

1. The following paragraph from the Department's note of January 12, 1928, to the British Ambassador is quoted:

[Here follows the text of the fourth paragraph of the note printed on page 558.]

This may be used by you as you see fit, but you should guard against a possible inference that this Government, in thus stating its position, abandons in any way the existing contract rights of American citizens.

2. Unless it be that Ginman desires the Chinese to infer that this Government favors an international understanding without participation by the Chinese, the Department perceives no reason for

an informal conference in regard to wireless matters between yourself and the British and Japanese Ministers as requested by Ginman. It is asserted by Radio Corporation that Ginman, who now asserts that he suspects the Japanese, was undoubtedly the person who arranged in 1921 joint Japanese, British, and French opposition to the Federal Wireless contract.³⁷

OLDS

893.74/811

*The Minister in China (MacMurray) to the Ambassador in Japan (MacVeagh)*³⁸

PEKING, January 19, 1928.

SIR: I have the honor to acknowledge the receipt of a copy of your despatch No. 710, December 17, 1927, to the Department³⁹ regarding Federal Wireless. I have perhaps been neglectful in failing to inform you that I have had no negotiations or discussions whatever on this subject with any Chinese authorities, beyond informing them of the substance of the conversations with Matsudaira⁴⁰ and Debuchi.⁴¹

I am at a loss to understand the continuing series of Chinese and Japanese press reports elaborately describing interviews that have never taken place. My present surmise is that the controlling groups in Peking and Nanking are alike anxious to throw over all obligations and commitments to both American and Japanese interests and shop around for a variety of small and cheap short-wave stations here and there with a view to getting themselves into a position to dicker among the rival groups. To that end they are trying to create a public sentiment antagonistic to both the American and the Japanese interests by creating a legend that the Americans and Japanese are trying to form an oppressive combination. And it appears to me that the Japanese, not seeing the woods for the trees, and failing to realize that their whole stake in the question (represented by the existing Mitsui station) is likely to be wiped out, are mistakenly attempting to boost their own stock by conveying the impression that they are arranging the whole thing with us behind the backs of the Chinese. If I am right in this conjecture, the Japanese are contributing towards a situation involving a cut-throat competition in which their existing station will not be competent

³⁷ See *Foreign Relations*, 1921, vol. I, pp. 404 ff.

³⁸ Copy transmitted to the Department by the Minister in China in his despatch No. 1364, January 24; received March 3.

³⁹ Not printed.

⁴⁰ Tsuneo Matsudaira, Japanese Ambassador at Washington.

⁴¹ Katsuji Debuchi, Japanese Vice Minister of Foreign Affairs.

to participate and will be left without the wire connections necessary to make it serve any paying commercial, press or political use. My belief is that unless the Japanese in the immediate future (and perhaps it is already too late) rally to the support of the Radio Corporation's proposal to discuss matters on a purely commercial basis in New York, we shall have in China a meaningless and unsystematic tangle in international radio that will take years to straighten out, and will serve no useful purpose. Not even the Chinese (Northern or Southern) will actually profit by it, although they may have the satisfaction of feeling that they have made fools of all the foreigners, and have succeeded in escaping the liabilities they have hitherto incurred.

I have [etc.]

J. V. A. MACMURRAY

893.74/845

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] *March 26, 1928.*

The Japanese Ambassador came to see me this afternoon and referred to the matter of the Federal Wireless contract and to the MacMurray-Debuchi conversations in Tokyo. He had seen me previously in regard to this matter at which time I had promised I would find out from the Radio Corporation their reaction in regard to the matter. I read to the Ambassador the last paragraph of the letter of Manton Davis of the Radio Corporation, dated March 15, 1928.⁴² The Ambassador said that this indicated to him that they were not prepared to accept the memorandum of Mr. Debuchi as a basis for discussion. I said that that seemed apparent, although the letter indicated that at the meeting which they had proposed something over a year ago they were prepared to discuss any proposal or any plan anyone might offer. The Ambassador stated that his Government felt that the two governments should limit the scope of discussions otherwise they could not get anything settled. He said that in view of this situation he felt that his Government would de-

⁴² The last paragraph of the letter reads:

"General Harbord was of opinion that the proposal we made, namely, that the interested parties meet together and discuss any proposal that any one of them might bring forward, whether heretofore made or made at the meeting, was still unanswered. General Harbord had expected that a meeting would be held in New York prior to the meeting of the International Radio Telegraph Conference and then later that duly authorized persons might meet at that Conference but since all these proposals had been apparently rejected, the Radio Corporation itself had nothing new to suggest and he therefore saw no occasion to repeat statements often heretofore made." (893.74/815.)

sire to break off any further discussion of this matter as they were under considerable pressure to settle the matter of their station at Shuangchiao now owned by the Mitsui Company. He pointed out that the Japanese, unlike the Americans, had this station which was an embarrassment on their hands until something was settled and as they could not make any settlement or negotiation with us, they decided to proceed separately. I asked the Ambassador whether the Japanese Government would make any formal reply to our formal communication to them of over a year ago.⁴³ He seemed somewhat surprised that we should expect a reply. He said that perhaps his Government had felt that in view of the informal discussions which had been carried on between himself and Mr. MacMurray on his recent visit here and between Mr. Debuchi and Mr. MacMurray that a reply was not necessary, but that he realized that a reply would be a very proper thing and doubtless they would make one in due course.

He intimated that he regretted very much that the Japanese Government should not desire to negotiate further with us in this matter as they felt that more could be accomplished by cooperation than alone, but that naturally we must understand their position having a station which was not being used.

I said to the Ambassador that this Government did not desire to place any obstacles in the way of the successful accomplishment of any contract which the Japanese may desire to make with the Chinese in regard to wireless communication as long as Americans were free to make contracts on their part with the Chinese; that all we asked was that the right of American citizens to make a proper contract with the Chinese to construct radio stations for communication between the United States and China be protected and outside of this we were not interested; that naturally we recognized that the Japanese should have the same rights in China and we were not disposed to place any obstacles in their way as long as our rights were not jeopardized.

The Ambassador asked when the Secretary would return and I told him he probably would be back about the first of April. He said he thought he would try to see the Secretary and explain to him the situation as his Government would not like to proceed independently in this matter without an explanation.

N[ELSON] T. J[OHNSON]

⁴³ Memorandum of Oct. 28, 1926, to the Japanese Ambassador, *Foreign Relations*, 1926, vol. I, p. 1082.

893.74/819a

The Secretary of State to the President of the Radio Corporation of America (Harbord)

WASHINGTON, April 10, 1928.

SIR: Referring to previous correspondence regarding proposed methods for reaching an understanding between American, Japanese and Chinese interests concerned with the development of radio facilities in China, and with particular reference to discussions arising out of the terms of the Mitsui contract and the contract of the Federal Telegraph Company, I desire to inform you that the Japanese Ambassador called upon me on the morning of April 4, 1928, to discuss the subject.

The Ambassador said that he had been instructed by his Government to consult me formally with regard to what he designated as a memorandum agreement entered into between Mr. MacMurray and Mr. Debuchi in November of last year.⁴⁴ A copy of this memorandum was enclosed in the Department's letter to you dated December 10, 1927.⁴⁵ The Ambassador recalled the fact that he had recently discussed the matter with Mr. Nelson T. Johnson, Assistant Secretary of State, during my absence, and that Mr. Johnson had informed him that advices received from the Radio Corporation seemed to indicate that the Corporation was not prepared to accept Mr. Debuchi's memorandum as a basis for discussion. The reference was to Colonel Davis' letter of March 15 to Mr. Johnson, especially to the last paragraph.⁴⁶

The Ambassador informed me that the Japanese Government approved of Mr. Debuchi's memorandum as a basis for negotiation rather than the proposition contained in the proposal for a conference which the Department transmitted to the Japanese Government on behalf of the Corporation on October 28, 1926.⁴⁷ He admitted that his Government had not replied specifically to this proposal and said that it was his understanding that Mr. Debuchi's memorandum was in fact the Japanese Government's reply to that proposal. I asked the Ambassador whether this meant that the Japanese Government refused to accept the proposal made on October 28, 1926, and he

⁴⁴ The memorandum referred to is apparently Mr. Debuchi's memorandum which was handed to Mr. MacMurray on Nov. 29, 1927. See telegram No. 130, Nov. 29, 1927, from the Ambassador in Japan, *Foreign Relations*, 1927, vol. II, p. 478; see also memorandum of December 19, by the Assistant Secretary of State, *ibid.*, p. 480.

⁴⁵ Not printed.

⁴⁶ For the last paragraph, see footnote 42, p. 562.

⁴⁷ Memorandum to the Japanese Ambassador, *Foreign Relations*, 1926, vol. I, p. 1082.

replied that it did. I asked him whether I was to understand that his Government had decided that the only basis upon which it could enter into any conference with the Radio Corporation was that outlined in Mr. Debuchi's memorandum. He replied that this was the case. I then said that I would inform the Radio Corporation of these facts and obtain from it a definite statement of its attitude toward Mr. Debuchi's proposal. The Ambassador intimated that he desired such a statement.

The Ambassador explained to me that the Japanese Government is under great pressure to find a way out of the embarrassing situation caused by the fact that the Japanese have a station at Peking which is not operating but is costing a great deal of money. He said that it was essential to devise some means of placing this station on an operating basis and, unless the question at issue could be settled in cooperation with the American interests, the Japanese must perforce take separate action with the Chinese. He added that he had been instructed to assure me that in doing so the Japanese Government would not insist upon the maintenance of any monopoly so far as that Government was concerned. I expressed my pleasure at hearing this.

In conclusion, I summarized my understanding of the situation, namely, that the Japanese Government did not assent to the proposal for a conference as set forth in my communication of October 28, 1926, to the Japanese Government, and that the Japanese Government could take part in a conference only on the basis of Mr. Debuchi's memorandum. I said that I would inquire of you whether you assented to the proposal made in that memorandum, or whether you had any other suggestions. The Ambassador expressed himself as satisfied with this.

I am aware that in various conversations and letters the Radio Corporation has already indicated to the Department its attitude toward the various proposals for an adjustment of difficulties rising out of the Mitsui and Federal wireless contracts. Nevertheless, in view of the fact that the Japanese Ambassador has now formally communicated to me the intention of his Government, in case it must conclude that no agreement can be reached with the American interests concerned, to proceed in reference to the Mitsui contract without further consultation with us, I would be glad to receive from you, for transmission to the Ambassador, a formal reply to the question propounded by him in our interview.

I am [etc.]

FRANK B. KELLOGG

893.74/821

*The President of the Radio Corporation of America (Harbord) to
the Secretary of State*

NEW YORK, 25 April, 1928.

[Received April 26.]

SIR: You were good enough under date of April 10, 1928 (your FE-893.74) to inform me of your conversation on April 4, 1928 with the Japanese Ambassador and concerning Chinese wireless matters. You asked for my observations or suggestions with respect to that conversation.

The American Companies interested in the Federal Wireless Contracts with China have long realized how desirable would be international cooperation, especially between Chinese, Japanese and Americans, in the completion of a comprehensive radio system for China and how essential would be such cooperation in the successful working of such a system after it had been completed.

In this realization we suggested long ago that a comprehensive and efficient wireless service could be formed in China by cooperation between the Mitsui and the Federal projects, both completed and brought up to date; that such a system would prove profitable and provide revenues sufficient to pay for such projects; that the American Companies concerned, disposed to enter into such a co-operative arrangement, would be willing to put large sums of their own money to the hazard of the correctness of their beliefs. This proposal seemed to us to protect equally the interests and the dignities of all parties concerned. Our suggestion was communicated to the Japanese in your memorandum of October 28, 1926.

In the same realization and when the suggestions contained in your memorandum of October 28, 1926 did not appear to be acceptable, Mr. Owen D. Young, Chairman of the Board of this corporation, proposed that the Japanese, Chinese and American interests concerned come together for the purpose of attempting to find a business solution, it being understood that the parties would be willing to consider any proposal for a solution that any of them might bring forward; that a proposal theretofore made by the Chinese, the proposals made by the Japanese and those made by the Americans might all be considered and as well any new suggestions that any of the parties might submit during the discussions. This suggestion was communicated on or about October 20, 1927 to the Japanese Ambassador by Mr. Johnson, Assistant Secretary of State.⁴⁸

⁴⁸ See memorandum by the Assistant Secretary of State, Oct. 20, 1927, *Foreign Relations*, 1927, vol. II, p. 476.

You now inform me that none of these suggestions have been found acceptable; that in his conversation with you on April 4, 1928 the Japanese Ambassador referred to Mr. Debuchi's memorandum bearing date November 29, 1927, handed by him to Mr. MacMurray and he said that his Government would be willing for the companies concerned to come together and negotiate on the basis of Mr. Debuchi's memorandum but on no other basis; that the Japanese Ambassador said his Government would not be willing for the companies concerned in the proposed negotiations to discuss any suggested solution any of the parties might bring forward, as had been proposed by Mr. Young, or the specific solution outlined in your memorandum of October 28, 1926 or any other proposal save that one contained in Mr. Debuchi's memorandum.

It would be quite impossible for the American Companies concerned to consent to negotiations into which they would enter pledged in advance to support and maintain the contract rights of the Japanese Company while equally pledged to surrender their own.

The Japanese contract provides for the erection of a radio station and as security for the purchase price it provides for the operation of the station under Japanese control until the purchase price shall have been paid. The station has been erected.

The American contracts provide for the erection of several stations and for joint operation by Chinese and Americans during a limited period and while a part of the purchase price for such stations is being paid; that after the expiration of such period the stations in question shall be turned over to the Chinese unconditionally, subject only to the obligation to pay that part of the purchase price then remaining unpaid.

Mr. Debuchi proposes that the contracts of both parties, Japanese and American, be cancelled and that China resume the rights concerning radio in China which theretofore she may have granted to either Japanese or Americans.

The inequality of this suggestion arises from the fact that the station provided for in the Japanese Contract has been erected, while those provided for in the American Contracts have not been. The cancelation of the Japanese Contract would not cancel the station the Japanese have erected. On the contrary, Mr. Debuchi's proposal contemplates that the Americans shall pledge themselves to contribute equally with the Japanese to a loan which will permit the Chinese to pay for the station the Japanese have erected. Since payment is all that is left to be done under the Japanese Contract and since the monopoly asserted is claimed only as a security for payment and would naturally end when payment had been made, such payment would complete the full performance of the Japanese Contract.

Asked to pledge equal contribution to payment for the Japanese station at Peking, Americans are offered the opportunity through the negotiations to secure, if they may, a new contract to erect a station at Shanghai at cost equal to that of the Japanese station at Peking.

May I point out that conditions in China are not such as to offer large hope that such a contract, even though obtained in the negotiations suggested and from a Government in Peking, could ever be performed at Shanghai. The Government with which negotiations concerning the Peking station must be carried on is not the Government which controls the area in and around Shanghai. May I further point out that the radio art in recent years has undergone rapid development and that the Japanese radio station at Peking, never thought to be technically efficient, is rapidly becoming obsolete and worthless.

I cannot recommend to the American Companies concerned that they agree to surrender their contracts, agree to contribute to the full performance of the Japanese Contract and thereupon enter into negotiations hoping as a result to complete arrangements under which they may somehow find means to erect stations at Shanghai.

I regret very much to be compelled to inform you that we are not able to find in Mr. Debuchi's memorandum any acceptable basis for undertaking negotiations and that in addition to those we have heretofore made, we have no further suggestions to make.

Very respectfully,

J. G. HARBORD

893.74/825

Memorandum by the Assistant Secretary of State (Johnson)

[WASHINGTON,] May 4, 1928.

The Japanese Ambassador came to see me this morning at 10:30, at my request. I explained to him that the Secretary being very much occupied had been unable to see him in order to communicate to him the reply which the Radio Corporation had made to the Secretary's letter concerning the conversation which the Secretary had with the Japanese Ambassador on April 4. I stated that the Secretary had asked me to explain the situation to the Ambassador and that I desired to do so, and I then read to him from General Harbord's letter in the sense of the summary hereto attached, copy of which I am giving to the Ambassador.⁴⁹

I added that the Secretary desired to make clear to the Ambassador that the Radio Corporation of America is a company organized for the profitable operation of radio and that this Government was not in a position to compel it to accept conditions which it did not feel

⁴⁹ Summary not printed; see text of letter, *supra*.

were profitable to it; that the company sincerely felt that the proposition made by Mr. Debuchi was not one which it could accept with profit to themselves. I reminded the Ambassador that in the conversation which he had with the Secretary on April 4, it was conceded that it would be very difficult for anyone to reach any substantial conclusions with the Chinese Government under present conditions in China. The Ambassador said that it was quite true there was no government with which anyone could negotiate for the purpose of reaching any agreement with regard to loans at the present time.

The Ambassador said that he would study the statements made by the Radio Corporation as he felt that perhaps there might be some misunderstanding involved in the matter.

N[ELSON] T. J[OHNSON]

ATTITUDE OF THE UNITED STATES TOWARD ENFORCEMENT OF CHINESE SCHOOL REGULATIONS AGAINST AMERICAN MISSIONARY SCHOOLS

393.1164/74

The Secretary of State to the Minister in China (MacMurray)

No. 600

WASHINGTON, July 26, 1927.

SIR: The Department acknowledges the receipt of the Legation's despatches No. 923 of February 15, 1927, and No. 1028 of May 10, 1927,⁵⁰ regarding the "Regulations Governing Private Schools" issued by the Educational Department of the Cantonese Government and transmitted to the Legation by the American Vice Consul in charge at Swatow. The Legation requests the Department's instructions concerning the attitude to be assumed by the Legation and by consular officers in China in case attempts are made to enforce these or similar regulations on schools conducted by American missionary and educational societies. It is the understanding of the Department that the regulations in question are not uniform throughout China, and also that the missionary and educational groups concerned have been unable to reach a uniform decision regarding the action to be taken thereon, some groups having conformed to the regulations and made application for registration; while others are conducting their schools without registering.

The Department considers that each group should be free to decide for itself whether or not it will conduct its educational work in accordance with local Chinese regulations. On the other hand the fact that the missionary boards are incorporated under American law or are composed of American citizens and, therefore, are under

⁵⁰ Neither printed.

American extraterritorial jurisdiction, would appear to make it optional with the missionary board whether it will comply with Chinese laws and regulations by registering its schools with the Chinese authorities. An attempt on the part of the Chinese authorities to enforce school regulations against an American missionary board without its consent would appear to be contrary not only to those provisions of the treaties referred to in the Department's instruction No. 830 of February 2, 1925,⁵¹ but also to the general extraterritorial provisions as well. Should such an attempt be made and should consular assistance be sought, the consul concerned should make representations to the proper Chinese authorities insisting upon the treaty right of the American institution to exercise its volition in the matter of registration. The Department considers, however, that the Legation and Consulates should refrain from any action with reference to the enforcement of regulations of this character except when their assistance is sought by the missionary or educational group concerned.

It is desired that the foregoing be communicated to the Consular officers in China for their information and guidance.

I am [etc.]

For the Secretary of State:

ROBERT E. OLDS

393.1164 Foochow College/5

The Secretary of State to the Minister in China (MacMurray)

No. 871

WASHINGTON, May 23, 1928.

SIR: The Department refers to despatch No. 71 of February 17, 1928, from the American Consul at Foochow,⁵² copies of which were

⁵¹ The text of this instruction to the Minister in China (393.116/329) is as follows:

"Sir: The Department has received your despatch No. 2578 of November 5, 1924 [not printed], in which you state that a request has been received from Consul George C. Hanson at Harbin for instructions as to whether the East Siberian Union Mission of the Seventh Day Adventists, an American missionary organization, should comply with the regulations of the 'Municipal Administration for the Special Area of the Manchurian Provinces' in connection with the opening of a school by the mission at Imienpo. Reference is also made to the Legation's despatch No. 1519 of August 18, 1921 [not printed], in regard to regulations issued by the Ministry of Education to govern the registration of schools established by foreign missionary societies.

"The Department is of the opinion that American missionary societies are not subject to regulations of the Chinese authorities involving control of the curricula of schools established by them, the exercise of such control being, apparently, inconsistent with the provisions of Article XXIX of the Sino-American Treaty of 1858 [treaty of peace, amity and commerce concluded June 18, 1858, Malloy, *Treaties*, vol. I, p. 220], Article VII of the Sino-American Treaty of 1868 [treaty of trade, consuls and emigration concluded July 28, 1868, *op. cit.*, p. 236] and Article XIV of the Sino-American Treaty of 1903 [treaty as to commercial relations concluded Oct. 8, 1903, *op. cit.*, p. 268].

"I am [etc.]

Charles E. Hughes"

⁵² Not printed.

sent to the Legation. The indicated subject of this despatch was "Destruction by Fire of Foochow College Dormitory", but the topic of principal interest discussed was the effect on American educational institutions of registration in accordance with Chinese regulations.

Upon consideration of the views expressed by the American Consulate at Foochow in the despatch in reference and its enclosures, the Department is inclined to the belief that the registration of American missionary educational institutions with the Chinese authorities in accordance with the terms of regulations issued in different localities in recent years does imply a certain relinquishment of the control of such institutions by American to Chinese citizens. For instance, registration under these regulations often requires that a Chinese citizen or a board of managers predominantly Chinese shall be in control of the school concerned. Moreover, registration also seems to result in conceding to the Chinese authorities a voice in the questions of the continuance or closing of the school and the use of its property.

The Department refers in this connection to its instruction No. 448 to the Legation of March 7, 1927,⁵³ in reference to a tendency noted by the Department on the part of Chinese Christians to assume an independent position in the conduct and management of the affairs of the religious bodies to which they belong, a tendency which a considerable element among the American missionaries seems to consider a normal and desirable development. The Legation will recollect that the Department stated in this instruction that it does not, as a rule, desire to intervene on behalf of American concerns unless the latter are under effective American control and unless such intervention is specifically desired by the persons or organizations concerned.

In the year that has elapsed since March, 1927, information has from time to time come to the attention of the Department warranting the belief that American missionary institutions are generally encouraging increased control of their enterprises in China by the Chinese associated in such enterprises. Coincident with this there appears to be a growing reluctance on the part of some American missionary organizations to invoke or rely upon the official intervention of this Government in such matters as obtaining reparation for losses.

The relations of American missionary institutions in Turkey with the authorities of that country have already undergone considerable change. In China this change appears to be in progress. During this transitional period, when the views and policies of the Chinese and American interests concerned are neither fixed nor uniform, it is impossible for the Department to formulate rules for the guidance

⁵³ *Foreign Relations*, 1927, vol. II, p. 83.

of its officers in China in all cases. The Department would deprecate, for instance, a statement so categorical as the following, contained in a letter dated July 12, 1927, from the Consul at Foochow, addressed to "All Mission Schools, Foochow"⁵⁴ and transmitted with the despatch already referred to:

"Subject to instructions to the contrary, I am prepared to state that any institution registered under the regulations cited is entirely Chinese, and, as such, has no right to the recognition or assistance of the American Government."

It should be noted that this correspondence was not referred to the Department until the covering despatch dated February 17, 1928, was written.

The Department considers that American consular officers when called upon to exercise their good offices on behalf of American missionary institutions, particularly educational institutions registered under Chinese regulations, should exercise the utmost tact and endeavor so far as may be possible to exert a conciliatory influence in such cases of conflict as may arise. The Department is sanguine that the American missionary institutions in China, the Chinese citizens interested therein and the Chinese authorities will be able gradually to arrive at a readjustment of their mutual relations in such matters, for instance, as the registration of mission schools. The Department is, of course, responsible for the oversight of the welfare of American interests in general in China, and it has and it reserves the right to intervene whenever it considers that action in the nature indicated is advisable. With this general reservation, however, the Department considers that American consular officers would be well advised to refrain from any attempt to crystallize prematurely or to influence the course of such changes in the status of American missionary enterprises in China as are taking place with the apparent acquiescence of all the parties concerned. It would be preferable to allow these matters to take their natural course. Until the present treaties between the United States and China are modified by mutual agreement, American missionary institutions in China will be entitled to rely upon such provisions thereof as define their rights and obligations, but if these institutions themselves desire to forego some of the advantages granted to them under the treaties, the Department considers it desirable, within the limitation of what is legally permissible, not to interpose obstacles.

While the Department desires to leave American missionary and philanthropic institutions free to follow such courses in this respect as seem to them most advantageous in the prosecution of their work,

⁵⁴ Not printed.

and while it desires to extend to them every assistance consistent with the course which they elect to follow, it should be made clear to the American institutions concerned that when the control of their enterprises and of their property is by them given to Chinese citizens they must look primarily to the Chinese authorities for protection. Chinese citizens are not amenable to American law nor are they entitled to any of the benefits accruing to American citizens and institutions from the treaties. The American Government is thus estopped from intervening on their behalf. It is assumed that American institutions in making these new arrangements will protect themselves, so far as possible, by forms of contract that will enable them to have recourse to Chinese courts for the remedy of any injuries received. The jurisdiction of American courts, of course, will be asserted over American legal persons and their property, and appropriate assistance will be rendered in cases of denial of justice, but the limitations and modifications which necessarily flow from the transfer of authority must be recognized.

Unless the Legation desires first to make comments in this connection, pertinent portions of the present instruction should be communicated to American consuls in China for their guidance.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

393.1164/98

The Minister in China (MacMurray) to the Secretary of State

No. 1742

PEKING, November 8, 1928.

[Received December 27.]

SIR: I have the honor to enclose copy of Consul General Cunningham's despatch No. 5716, of October 27, 1928, concerning the registration of American missionary educational institutions with the Nationalist authorities.

In this connection, the Department's attention is invited to Consul Adam's despatch to the Legation No. 568, of October 26, 1928,⁵⁵ regarding the seizure by the Chinese authorities of heroin from an American company, copies of which were sent direct from Hankow to the Department.

It is believed that the two incidents reported in these despatches give a distinct forewarning of the difficulties which, from now on, will be increasingly experienced by American interests in China, both business and missionary. The Nationalist officials of today are more endowed

⁵⁵ Not printed.

with enthusiasm for asserting authority and control over foreigners than with experience and judgment. Many of them are men who have heretofore been persons of no importance, who are without any real qualifications for the positions they hold, and who, suddenly finding themselves possessed of unexpected power, are inclined to exercise it unadvisedly and with utter indifference to the rights of foreigners, and with entire disregard of economic consequences to China itself. With such a situation, and with the Central Government exercising only a most nominal control of the provinces, the affording of any real protection to American interests by the Legation and by the Consulates is certain to become exceedingly difficult, if not almost impossible.

I have [etc.]

J. V. A. MacMURRAY

[Enclosure]

The Consul General at Shanghai (Cunningham) to the Minister in China (MacMurray)

No. 5716

SHANGHAI, October 27, 1928.

SIR: With reference to the Legation's circular instruction No. 283 of October 2, 1928,⁵⁶ I have the honor to transmit a copy of a letter dated October 16, 1928, from the President of the University of China,⁵⁶ calling attention to the requirements of the Nationalist Government in regard to the registration of schools, and also a copy of this office's reply to Dr. Rankin.

As intimated in previous correspondence, the requirements for the registration of American schools with the Chinese authorities compels the schools to renounce their American nationality to a large extent and would appear to remove them from the classification of religious institutions. In the event that the University of China desires to file a protest and requests the assistance of this office in resisting registration, a protest will be filed in accordance with the Legation's telegram of December 23, 1:00 p. m., 1927.⁵⁶ Any further precedents or instructions which the Legation considers desirable to transmit would be very much appreciated. It is difficult to know exactly what steps should be taken. The school might be closed as a protest against the requirements of the Chinese authorities but this would render useless a large American investment and it would appear that since citizens of the United States have by treaty the right to maintain schools in China under their own supervision, this would be unfair both to the mission society and to the American contributors who have a vested interest in the particular school.

I am impressed with Dr. Rankin's reasoning as set forth in the paragraph of his letter which states:

⁵⁶ Not printed.

"If China may thus take charge of and control the administration of missionary corporations and private institutions, she may in like manner, as it would seem, take charge of and control every private business of any and every foreigner in China. If she may thus take control of private business, she may through such control destroy the business thus controlled. And thus she may indirectly, but without question, expel every foreigner from her domain, though apparently claiming to maintain a friendly and peaceful relation with other nations."

If American business concerns in China are required to register with the Chinese authorities under the Registration Act which was promulgated on October 29, 1927,⁵⁷ the laws may be changed requiring the president or the head of the concern to be a Chinese, and thereby place American capital under the direct control of Chinese. This fear has long existed in my mind and the minds of many local business men. It is felt that such a fear is well founded and Dr. Rankin's illustration is very apt indeed because if once these firms are registered, the laws may be changed in such a manner as to effect what will be practically a confiscation of American undertakings acquired in a legitimate manner and supported by American capital.

I have [etc.]

EDWIN S. CUNNINGHAM

[Subenclosure]

The Consul General at Shanghai (Cunningham) to the President of the University of China (Rankin)

SHANGHAI, October 27, 1928.

SIR: The receipt is acknowledged of your letter of October 16, 1928,⁵⁷ stating some of the requirements for the registration with the Nationalist authorities of schools supported by church constituencies in western lands. You state that if registration is required, you desire to protest against each and all of the requirements as being contrary to the spirit of amity and good will that should obtain between different nations.

Your letter presents the question in a slightly different light from that in which it has previously been presented. This office desires to extend to those American institutions which seek it, all the protection guaranteed Americans in the Sino-American treaties, which they have a perfect right to demand. It would appear that the attempt of the Chinese authorities to enforce the four requirements mentioned in your letter has no authoritative basis in the treaties and therefore, whenever you request it, a protest will be filed with the Chinese authorities against such registration. It is certain that neither international law

⁵⁷ Not printed.

nor the Sino-American treaties recognize the right to confiscate legitimately acquired property of American citizens in China. If you are approached by the Chinese authorities seeking to require the registration of your institution, and do not desire to comply, this office will be very glad to take up the matter with the Chinese authorities.

It may interest you to have the following authorized statement of the American Minister in regard to the status of institutions which may elect to register with the Chinese Government:

[Here follows text of penultimate paragraph of instruction No. 871, May 23, 1928, to the Minister in China, printed on page 570.]

Very respectfully yours,

EDWARD S. CUNNINGHAM

RESERVATION OF AMERICAN RIGHTS WITH RESPECT TO CHINESE REGULATIONS AFFECTING FOREIGN MISSIONARY PROPERTY

393.1163 Property/1 : Telegram

The Minister in China (MacMurray) to the Secretary of State

PEKING, August 2, 1928—10 a. m.

[Received 9:50 p. m.⁵⁹]

591. 1. The following regulations have been communicated by the Nanking and Shantung Commissioners of Foreign Affairs to Paxton and Price, respectively, with the statement that they have been received from the National Ministry of Foreign Affairs, which, together with the Ministries of Interior and Justice, has drawn them up. The Shantung Commissioner also requested that American missions be at once instructed to report all the properties.

"Provisional regulations governing the lease of land and buildings in the interior by foreign missionary societies.

"Article 1. Any foreign missionary society, which establishes churches, hospitals, or schools in the interior under the provision of the treaties existing between respective countries and China may, in the name of the missionary society, lease land for building purposes or lease or purchase buildings.

"Article 2. Foreign missionary societies which lease land in the interior for building purposes, or lease or purchase buildings, shall submit both to existing Chinese laws, taxes and such as may hereafter be established.

"Article 3. Foreign missionary societies, which lease land in the interior for building purposes or lease or purchase buildings, must, together with the owner of the property, report to the appropriate authorities for approval before the deeds may be considered valid.

"Article 4. In the event that the area of land leased in the interior to a foreign missionary society for building purposes or buildings

⁵⁹ Telegram in two sections.

leased or bought by a foreign missionary society exceeds the area necessary, the appropriate local authorities shall not approve the transaction.

"Article 5. If it is discovered that a foreign missionary society has leased land in the interior or leased or purchased buildings with a view to gaining profits thereby or for commercial purposes, the authorities shall prohibit or cancel such lease or purchases.

"Article 6. Before the enforcement of these provisional regulations, foreign missionary societies should report all land or buildings in the interior already occupied by them to the appropriate authorities. In case the land has already been purchased, such purchase shall only be construed as right of lease in perpetuity.

"Article 7. These provisional regulations shall become effective from the date of official publication."

2. Although, on the surface, these regulations are seemingly not unreasonable, they contain several provisions pregnant with possibilities for difficulties, the principal of which are as follows:

First, in article 2, the Chinese text distinctly indicates that the "foreign missionary societies" and not the land which are to be subject to Chinese law, and while this phrasing may have been due to careless drafting, its effect would be to deprive American missions of their extraterritorial rights in the interior.

Second, in article 3, the clause "for building purposes" would, if strictly enforced, preclude the securing of land for any other objects, such as recreation grounds for schools and agricultural experiment fields.

Third, article 4 would authorize the local authorities, whom past experience has shown to be often hostile and unfair, to block all new work by refusing to permit the acquisition of adequate land.

Fourth, article 5, if arbitrarily interpreted, might not only be used to prevent the conduct of industrial schools, which frequently sell commodities made or raised, but even result in confiscation of existing rights in land.

Fifth, article 6, although less vital, contravenes the right to hold property in fee simple conferred by the Berthemy Convention of February 20th, 1865 (copy of which has just been furnished me by the French Chargé d'Affaires and is being forwarded by pouch).⁶⁰

3. In view of the above considerations the Department's instructions are requested as to the attitude to be taken towards these regulations. It is suggested that the Legation be authorized to inform the Nationalist Government that while willing that American missions

⁶⁰ Not printed; for summary of agreement, see Sir Edward Hertslet, *Treaties, &c., Great Britain and China; and Between China and Foreign Powers; . . . in Force on the 1st January, 1896* (London, 1896), vol. II. p. 711. For a summary by the French Minister in China (Gérard), on Apr. 30, 1895, see France, Ministère des affaires étrangères, *Documents diplomatiques, Chine, 1894-1898* (Paris, 1898), p. 6.

should submit to all reasonable regulations it is unable to recognize these regulations as applicable to American institutions and nationals insofar as they either contravene rights conferred by the treaties or imply a right to confiscate legitimate American interests.

MACMURRAY

393.1163 Property/2 : Telegram

The Secretary of State to the Minister in China (MacMurray)

WASHINGTON, August 7, 1928—6 p. m.

263. Your 591, August 2, 10 a. m. Department concurs generally in your comments in paragraph 2. With reference to fifth comment, however, Department considers that procedure set forth in paragraph 2 of Article 14 of our treaty of 1903⁶¹ is a satisfactory basis for the tenure of property by missions, and it is not disposed to claim further rights in this regard.

Department approves your suggestion in paragraph 3. It anticipates that attitude of various missions toward regulations will not be uniform, and considers that action to be taken by Legation and consulates in specific cases of treaty violation should be in accordance with principles set forth in Department's instruction No. 603 of July 28, 1927.⁶²

KELLOGG

393.1163 Property/25

The Minister in China (MacMurray) to the Secretary of State

No. 1740

PEKING, November 8, 1928.

[Received December 27.]

SIR: Adverting to the Legation's radio message No. 591, of August 2, 10 a. m., concerning the regulations governing the lease of land and buildings in the interior by foreign missionary societies, I have the honor to enclose copy, in translation, of a despatch from the Minister for Foreign Affairs of the Nationalist Government.

It will be noted that, in this despatch, Dr. Wang confines himself to rather vague assurances that the regulations will not adversely affect American missionary interests, and that, consequently, the Legation need have no apprehensions.

I have [etc.]

J. V. A. MACMURRAY

⁶¹ *Foreign Relations*, 1903, pp. 91, 98.

⁶² *Ibid.*, 1927, vol. II, p. 140.

[Enclosure—Translation]

The Chinese Minister for Foreign Affairs (Wang) to the American Minister (MacMurray)

[NANKING,] *October 30, 1928.*

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note of August 9, 1928,⁶³ stating as follows:

"I have the honor to refer to the 'Provisional Regulations Governing the Lease of Land and Buildings in the Interior by Foreign Missionary Societies' which were transmitted to Vice Consul in Charge Paxton by the Nanking Commissioner of Foreign Affairs and to inform Your Excellency that . . . the American Government is unable to recognize the regulations in question insofar as they either contravene rights conferred by the treaties or imply a right to confiscate legitimate American interests."

I have the honor to state that the Nationalist Government regulations of July of this year were promulgated with a view to effecting a uniform procedure, and in order to facilitate inspection and protection. They in no way contravene the provisions of any valid treaty. This matter concerns the regulations governing real property in the interior and is purely a question of internal administration.

The relations between the United States and China have always been very cordial, and in addition, the attitude of the American Missions is exactly the same as that stated by you to the effect that they should submit to all reasonable regulations. As soon as the idea underlying the promulgation of the above mentioned provisional regulations has been clearly explained, my Government profoundly believes that the missions of your country will no longer labor under any misapprehension. My Government should certainly exert itself to protect American citizens in the enjoyment of their legal rights under the treaties; however, while the above mentioned regulations are in force some equitable procedure will certainly be followed in order to avoid the possible appearance of vexatious matters and of cases of partiality. In view of the above I feel sure, Mr. Minister, that any apprehension that you may have felt will now be allayed.

I have [etc.]

WANG CHÊNG-T'ING

⁶³ Complete text of note apparently not transmitted to the Department.

393.1163 Property/27

*The Minister in China (MacMurray) to the Consul at Tsinan (Price)*⁶⁴

PEKING, November 27, 1928.

SIR: I beg leave to acknowledge the receipt of your despatch No. L. 69, of November 19, 1928,⁶⁵ concerning the provisional regulations governing the lease of land and buildings in the interior by foreign missionary societies. It is noted that you renew your suggestion that a complete list of American property in the interior be sent to the appropriate authorities for purposes of record without, however, making reference to the regulations themselves or to the Commissioner for Foreign Affairs' request for such action. You also suggest that a notification along the lines of a circular letter prepared by you, and enclosed in the despatch under acknowledgment, be sent to the American missions in your district.

While the Legation appreciates the difficulties of the Consulate and of the missions concerned in attempting to avoid a recognition of unacceptable regulations instituted by the Nationalist Government, it is felt that it is not at this time advisable to take the action suggested by you, either as regards the sending in of a list of American property or the notifying of American missionaries in the district along the lines suggested by you. A similar state of affairs is existing in practically every consular district in China; and, while the Legation recognizes the force of the arguments advanced by you, it does not desire to institute any system of procedure with regard to the disputed regulations in one consular district that might in any way affect the Department's general policy in a matter which it would seem most appropriate to deal with as a whole. You should, however, continue to keep the Legation fully informed of any developments in the local situation that might justify it in reconsidering its position in the matter.

The present instruction is not designed to preclude your informing any interested missions of the Department's attitude towards these regulations, or to prevent American missions from making a voluntary report to the Chinese authorities concerning the property held by them should they fear that a failure to do so may prejudice the title to such property or otherwise cause them difficulty.

A copy of this instruction has been forwarded to the Department for its information and possible comment.

I am [etc.]

J. V. A. MACMURRAY

⁶⁴ Copy transmitted to the Department by the Minister in China in his despatch No. 1771, Nov. 27, 1928; received Jan. 7, 1929. In instruction No. 1120, Feb. 11, 1929, the Department replied: "Your instruction above referred to has the approval of the Department." (393.1163 Property/30)

⁶⁵ Not printed.

DUAL NATIONALITY OF UNITED STATES CITIZENS OF CHINESE DESCENT

893.012/27

*The Consul General at Canton (Jenkins) to the Minister in China (MacMurray)*⁶⁶

No. 680

CANTON, April 6, 1928.

SIR: I have the honor to refer to Consul Huston's despatch of March 16, 1928,⁶⁷ concerning a newspaper report respecting the promulgation by the local authorities of regulations affecting Chinese seeking dual nationality, and to enclose a translation of a despatch dated March 24, 1928, from the Commissioner of Foreign Affairs at Canton. It will be observed that this despatch quotes a recent decision of the Political Council and encloses certain provisional regulations in regard to the status of Chinese seeking or enjoying foreign nationality. These appear to be identical with the text forwarded in Consul Huston's despatch.

This Consulate General will take no action in this matter pending the receipt of instructions from either the Department or the Legation.

I have [etc.]

DOUGLAS JENKINS

[Enclosure—Translation]

The Chinese Commissioner of Foreign Affairs at Canton (Chu Chao Hsin) to the American Consul in Charge at Canton (Huston)

[CANTON,] March 24, 1928.

SIR: In connection with certain provisional regulations submitted by me respecting certificates of expatriation, I have the honor to advise you that I am in receipt of a communication from the Canton Branch of the Political Council to the following effect:

"Adverting to the report that while Chinese, either born in foreign countries or holding a foreign citizenship, are often found to seek for benefit of their own by taking advantage of a dual citizenship, pending the promulgation of the law ruling citizenship by the Nationalist Government, for prevention of taking such citizenship and of diplomatic complications therefor, it is imperative to draw up some provisional regulations to rule the issuance of such certificates in order to facilitate recognition and check against this corrupt practice, the Commissioner concerned is hereby notified that the regulations in question have been revised and passed at the 86th Session of this Council. For information, a copy of the said document is enclosed herewith."

⁶⁶ Copy transmitted to the Department by the consul general in his despatch No. 1104, Apr. 7; received May 7.

⁶⁷ Not printed.

Besides writing to the Commissioners of Foreign Affairs at Kiungchow, Swatow and for Yanchow, Limchow and Luichow Area, I have the honor to send a copy of the regulations for your information.

With compliments.

CHU CHAO HSIN

[Subenclosure—Translation]

Chinese Provisional Regulations Governing the Issuance of Certificates of Expatriation in Kwangtung and Kwangsi Provinces

1. Certificates of Expatriation will be issued by the Office of Foreign Affairs for Canton.

2. The Consuls of the Foreign Powers at various places shall be notified by the Commissioner of Foreign Affairs for Canton that Chinese claiming foreign citizenship shall not be permitted to apply for registration at foreign consulates without the production of a certificate of expatriation.

3. Chinese, who have been given the certificate to take a foreign citizenship, are only permitted to trade in treaty ports, and must dispose at once of their property, if any, in the interior, so as to prevent trouble that may arise from the Treaty under which they are entitled to certain special rights.

4. A list showing persons, who have been given the certificates of Expatriation to apply for foreign citizenship, should be made out monthly by the Office of Foreign Affairs for Canton for information of the Provincial Government and that of the various official organs.

5. Certificates of this sort, applied for by persons at the Foreign Bureau at Chao Mei District, Kiungchow Island and for Yam Chow, Lim Chow and Lui Chow Area shall be issued by the Office of Foreign Affairs for Canton for unification of matter. The Consuls of the various Powers at different ports can apply for such certificates on behalf of the applicants concerned.

6. These regulations shall be applied to the issuance of such certificates in Kwangsi Province.

7. These regulations shall be effected on the date of approval of the Canton Branch of the Political Council.

893.012/30

*The Consul General at Shanghai (Cunningham) to the Minister in China (MacMurray)*⁸⁸

No. 5502

SHANGHAI, May 18, 1928.

SIR: I have the honor to transmit a copy of a communication dated December 31, 1927, from the Commissioner for Foreign Affairs con-

⁸⁸ Copy transmitted to the Department by the consul general in his despatch No. 5441, May 18; received June 11.

cerning dual nationality, and a copy of this office's reply dated May 12, 1928, for appropriate consideration.

The question of dual nationality has been considered by the Consular Body as may be seen by item 9 of the Minutes of the Consular Body Meeting of January 18, 1928.⁶⁹ At that meeting it was decided that each Consul would handle the question of dual nationality independently. At the same time, various members of the Consular Body were of the opinion that a local arrangement should be made whereby the question of nationality of Chinese should be determined in the first instance by the Judge of the Provisional Court and if any representative of a foreign power was not satisfied with the decision, it would then become a diplomatic question.

I have [etc.]

EDWIN S. CUNNINGHAM

[Enclosure 1—Translation]

The Chinese Commissioner of Foreign Affairs at Shanghai (Quo Tai-chi) to the American Consul General at Shanghai (Cunningham)

[SHANGHAI,] December 31, 1927.

SIR: I have the honor to quote the following communication received from the Provisional Court of International Settlement, Shanghai:

"In the civil and criminal cases in which jurisdiction is taken by this Court, controversy often arises out of the question of the nationality of the litigants. In a majority of cases, the point at issue is as follows:

"The litigant's father is a Chinese citizen but the litigant himself was born or has resided for a certain period in foreign territory obtaining double nationality after he returns to China and is surreptitiously registered with a foreign Consulate.

"In case of litigation, such a person never fails to claim, by way of protest, that he is not a Chinese citizen. Among the latest cases of this nature may be mentioned that of Hsieh Hui-ch'uan (an American citizen by naturalization) and those of Ch'en Chung-chi, Teng Chih-yang, Ch'en Wei-sung, Hsi Yang-kao and Yen Lai-hsien (Portuguese subjects by naturalization). It is because of the dispute over nationality that these cases dragged along for a long while. If such controversy should be decided by Chinese law, these litigants would naturally be recognized as Chinese citizens in the same way as their fathers since the Law of Naturalization is based upon the principle of consanguinity. Unless and until they have secured consent and received certificates from the Ministry of the Interior, they are not authorized by law to become foreign citizens or subjects even by naturalization. According to foreign laws, however, such litigants, born or domiciled in foreign countries and registered with foreign Consulates, are recognized as citizens or subjects of the countries in which they were born or domiciled and are entitled to their privileges. This contention is not without ground.

⁶⁹ Not found in Department files.

"In the opinion of this Court, dispute over nationality interferes with legal proceedings to a large extent and the result would be unpleasant unless a proper solution be worked out and definite arrangements made previously with the various Consuls concerned. This letter is transmitted in the hope that your office will suggest to the Consular Body that, for the guidance of both parts [*parties?*], a satisfactory arrangement be made as to the manner in which persons of double nationality who are already registered with foreign Consulates should be dealt with (e. g. steps be taken to ascertain if their registration is effected before or after promulgation of the Chinese Law of Naturalization and whether or not such registration is valid) and as to the manner in which future applications for registration should be restricted (e. g. no registration should be effected at any foreign Consulate unless the permit issued by the Ministry of the Interior is produced).

"Cases involving questions of this character are held in abeyance and the hope is entertained that the matter may be taken up at your earliest convenience."

It appears that in the days of the Mixed Court the number of civil and criminal cases in which complications had arisen out of the question of nationality was by no means small and that, in a majority of such cases, proceedings were delayed by the dispute over nationality. The request of the Provisional Court that the matter be taken up with the appropriate authorities so that satisfactory arrangements may be made as to the manner in which persons of double nationality who are already registered with foreign Consulates should be dealt with and the manner in which future applications for registration should be restricted, is based upon a motive worthy of consideration. Besides communicating with the other authorities at Shanghai, I write to request that you consider the question and let me have a reply.

With my compliments,

QUO TAI-CHI

[Enclosure 2]

The American Consul General at Shanghai (Cunningham) to the Chinese Commissioner of Foreign Affairs at Shanghai (Quo Tai-chi)

SHANGHAI, May 12, 1928.

SIR: I have the honor to refer to your despatch dated December 31, 1927, embodying a communication from the Shanghai Provisional Court in regard to the question of jurisdiction over persons having dual nationality. It was stated that litigants who have been born or have resided for a time in foreign territory obtain dual nationality after they return to China and are surreptitiously registered at a foreign Consulate. This statement can not be correctly applied in the case of those persons having both Chinese and Amer-

ican citizenship, for it is impossible for any person to register himself surreptitiously at this Consulate General. The case of Wai Yuen Char (Hsieh Hui Chuan) was mentioned as an illustration of a Chinese who had been naturalized as an American citizen. This statement is likewise incorrect, inasmuch as Mr. Char is an American citizen by virtue of his birth within the United States. Furthermore, Chinese are not naturalized as American citizens.

It seems altogether likely that the difficulties caused by this question arise chiefly from the conflict of citizenship laws and regulations of our several countries. On this account it is well-nigh impossible to enter into any local arrangements of a general nature which will satisfactorily cover all cases of dual citizenship. It will be readily seen that American Consuls have no authority whatsoever to refuse consular registration to any American citizen who produces sufficient proof of his citizenship; and as Chinese are not naturalized as American citizens, there is never any occasion for requiring applicants to produce a permit issued by the Ministry of the Interior allowing them to surrender their Chinese nationality. It thus seems to be apparent that the chief difficulty in connection with cases of dual Chinese and American citizenship is due to the fact that Chinese law requires Chinese citizens to secure a permit from the Ministry of the Interior before they are allowed to surrender their Chinese citizenship, while American law gives American citizenship to all persons except those with a diplomatic status who are born in the United States. Naturally each country has framed its own laws, regardless of those made by other countries. Also the question is more acute and causes more difficulties in China than elsewhere because of the existence here of extraterritoriality. However, the only solution for this difficulty appears to be to take up each case as it arises and to settle it on its merits, for as long as a conflict of laws exists the executive officers of each government are powerless to change these laws. It is therefore felt that in cases of dual Chinese and American citizenship each country will have to continue dealing with the matter from its own point of view, and here in Shanghai the courts of each country will continue to exercise jurisdiction over such persons, whenever they are able to do so.

It is very much regretted that no better solution of this difficulty can be suggested, but this Consulate General would be very glad to consider any suggestions or proposals that you may care to put forward, keeping in mind the facts elucidated above.

Accept [etc.]

EDWIN S. CUNNINGHAM

893.012/27

The Secretary of State to the Consul General at Canton (Jenkins)

WASHINGTON, May 22, 1928.

SIR: In reply to your despatch No. 1104 of April 7, 1928,⁷⁰ respecting certain provisional regulations in regard to the status of Chinese who have a dual nationality and who, under the new regulations of the Chinese authorities at Canton, are required to submit certificates of expatriation issued by such authorities as a condition precedent to their applying for registration as citizens or subjects of a country other than China to which they owe allegiance, you are informed that when persons who owe allegiance to both China and the United States apply for registration or passports they should be encouraged to submit the certificate of expatriation referred to in the provisional regulations above mentioned. However, as there is no authority under the laws of the United States for requiring the obtention of a certificate of expatriation, you should not make it a condition that such a certificate be submitted by a person having both Chinese and American nationality who applies for registration or for a passport.

I am [etc.]

For the Secretary of State:

WILBUR J. CARR

893.012/32

*The Acting Secretary of State to the Minister in China
(MacMurray)*

No. 973

WASHINGTON, August 31, 1928.

SIR: The Department has received your despatches, No. 1521 of May 31, 1928, and No. 1524 of June 2, 1928,⁷¹ together with their enclosures, relating to the dual nationality of American citizens of Chinese origin.

With reference to your despatch No. 1521, there is enclosed for your information a copy of the Department's instruction of May 22, 1928, to the American Consul General at Canton, China.⁷² You will observe that the Department has not instructed the Consul General that American citizens of Chinese origin must have certificates of expatriation from the Chinese authorities before being registered in American consulates but has expressly stated that the Consul General "should not make it a condition that a certificate (of expatriation) be submitted by a person having both Chinese and American nationality who applies for registration or for a passport." It is

⁷⁰ Not printed.⁷¹ Neither printed.⁷² *Supra*.

believed that the Department's instruction to Canton is consonant with the view expressed in your despatch No. 1521.

With reference to your despatch No. 1524, in which you refer to despatch No. 5502 of May 18, 1928, from the American Consul General at Shanghai addressed to the Legation, a copy of which latter despatch together with its enclosures has been received in the Department,⁷³ it is suggested that you transmit to Mr. Cunningham, for his information and guidance, a copy of the Department's instruction of May 22, 1928, addressed to the American Consul General at Canton. The Department concurs in general in the views expressed by Mr. Cunningham in his communication of May 12, 1928, addressed to the Commissioner of Foreign Affairs for Kiangsu, [at] Shanghai, a copy of which was enclosed with Mr. Cunningham's despatch No. 5502.

I am [etc.]

For the Acting Secretary of State:

NELSON TRUSLER JOHNSON

⁷³ *Ante*, p. 582.

COLOMBIA

PROTECTION OF INTERESTS OF AMERICAN OIL COMPANIES IN COLOMBIA¹

821.6363/359a : Telegram

The Secretary of State to the Minister in Colombia (Piles)

[Paraphrase]

WASHINGTON, February 13, 1928—6 p. m.

7. Interested parties have called the Department's attention to Decree 150, issued on January 28, regulating the petroleum law of 1927. These regulations appear to impose extremely burdensome conditions on American oil companies; and the Department has been told that if these regulations are strictly enforced, they may render it impossible for American oil companies to operate in Colombia.

Please report to the Department on this subject immediately, briefly by telegraph and in detail by mail. In your discretion you may informally discuss the matter with the Colombian authorities and point out the unfortunate effect which the petroleum law and regulations may have upon the development of the petroleum industry in Colombia. In this connection you may say that the Department has been receiving protests from some of the American companies affected, and that it is giving the matter very careful consideration.

KELLOGG

821.6363/360 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, February 14, 1928—4 p. m.

[Received 6:05 p. m.]

10. Department's 7, February 13, 6 p. m. The regulations are extremely burdensome and impose unheard-of conditions on all oil companies. The oil companies have been advised by Colombian lawyers that the decree is illegal and unconstitutional. The oil

¹ For correspondence concerning the Barco concession, see pp. 603 ff.

companies will shortly institute proceedings before the Council of State to have the decree declared void. I do not think it advisable for me to do anything for the present. Full particulars are being sent by mail.

FILES

821.6363/360 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, February 18, 1928—7 p. m.

9. Your 10, February 14, 4 p. m. The Department has noted your statement that you do not think it advisable to do anything for the present. However, the Department feels that, unless you are firmly convinced such action would have an unfortunate effect, it would be highly advisable for you to discuss personally and confidentially with the President of Colombia the whole subject of the new oil regulations, in order that the Colombian Government may fully appreciate the serious effect which these regulations may have on American companies operating in Colombia and on the Colombian petroleum industry generally, and that the Colombian Government may fully understand that the Department is giving this matter very serious consideration.

In the course of your discussion you should invite attention to the following considerations:

1. American companies interested in petroleum development in Colombia believe that the new oil regulations contain features which are unworkable, impracticable, and not contemplated or authorized by the petroleum law, and that they are also in contravention of the Constitution of Colombia.

2. The companies interested contemplate asking the Council of State to suspend the application of this decree at least until such time as the constitutionality of the decree may be passed upon by the Supreme Court of Colombia. In view of this contemplated action which the American companies are taking upon the advice of their attorneys and representatives here and in Colombia, it is believed that much good might be accomplished if the President would decide voluntarily to set aside the regulations or to modify them so as to remove the features which the companies think impracticable and in violation of the property rights guaranteed by the Colombian Constitution.

3. The regulations appear to go much beyond the terms of the law. For instance there is no provision in the law requiring an application for a drilling permit upon private land, and to support an application for a permit the applicant must submit proof of title to the land satis-

factory to the Minister of Industries. All those holding land in fee in tracts of which the area exceeds 500 hectares and is less than 2500 hectares are required to submit their titles to the Minister of Industries before November 23, 1928 showing private ownership in them prior to January 1, 1874, and if the area of the tract exceeds 2500 hectares the owner is required to submit his title papers, however great their antiquity. It will be very difficult and perhaps in some cases impossible for the owners of Spanish grants in Colombia to produce the original titles issued by the Government of Spain.

4. The regulations vest the Minister with authority to pass upon private titles, and his ruling is to be binding until the judicial power resolves otherwise. The purpose of this is to change the burden of proof in respect to private ownership of land. Under the substantive law of Colombia, the one in possession of land under a recorded deed is presumed to be the owner until the contrary appears, and the Supreme Court of Colombia has held that this rule is binding even upon the Nation; that is to say, if the Nation sues a private person in possession of land for its recovery, the Nation must prove a superior title to that of the person in possession. However, if the owner of land goes into court as a plaintiff, the burden of proof would be upon him. Of course there is no authority in the Constitution or laws of Colombia which permits the Executive Power to change the rules of substantive law.

5. The regulations requiring the filing with the Minister of Industries of all private maps and geological data would seem to be inconsistent with the guarantee in the Constitution for the protection of private papers. You may, however, consider it inadvisable to mention this fact at the present time.

6. You should point out that the new Petroleum Law increases the production tax to double what it was under the previous law. Most of the areas held by foreign companies are in the zone which, under the new law, would pay a 16% royalty. If there should be added to this royalty the 10% payable to the owner of the land, it would make a burden which the oil companies could not bear.

7. You may also say to the President that the American oil companies wish to cooperate with his Government in a friendly, liberal and constructive spirit. They wish in good faith to contribute and assist in the development of the country, and they particularly desire to have the good will and cooperation of the Government to the end that the two forces may work in harmony. They want a practical law, with workable regulations, which will assure them a fair return upon their investments, which are very large. They have expended their money freely in carrying on the work of exploration for petroleum, and many of them have already lost very considerable sums. But

they have faith in the country, and if the Government will give them proper support and assistance they will develop an industry there that will add very substantially to the wealth, prosperity and progress of the country.

8. You may say to the President that it would be considered a just and helpful act if he were promptly to suspend the decree embodying the regulations under the Petroleum Law, at least until such time as the Supreme Court shall have passed upon the validity of both the law and the decree. The Department has been assured that in case the President shall suspend the decree no proceedings will be brought in respect to it before the Council of State.

9. The Department has been given to understand that in Colombia itself there is very considerable dissatisfaction with the decree and the law, and that all the members of the Cabinet save two have resigned in consequence.

KELLOGG

821.6363/362 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, February 20, 1928—10 a. m.

[Received 12:45 p. m.]

12. Department's 9, February 18, 7 p. m. Before cabling my 10, February 14, 4 p. m., had conference with American oil representative who agreed I should not then act. However, since receiving Department's telegram and in hope of having decree suspended without action, shall have strong, frank, friendly joint talk with President and Minister of Foreign Affairs as soon as possible, as all now agree I may accomplish much thereby. Immediate strong cable from Colombian Minister to his Government would, in my opinion, greatly aid us. Rumored resignation of Cabinet not confirmed.

PILES

821.6363/363 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, February 21, 1928—6 p. m.

10. Your 12, February 20, 10 a. m. and 13, February 20, 5 p. m.^{1a} Colombian Minister, who has been attending Habana conference, is not expected in Washington before March 1st. In these circumstances you should not delay your interview with the President.

KELLOGG

^{1a} Not printed.

821.6363/364 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, February 22, 1928—9 a. m.

[Received 12:15 p. m.]

14. Conferred with President and Minister of Foreign Affairs February 21, 3 p. m. [They?] intimated they would like informal memorandum points Department's telegram 9, February 18, 7 p. m. Is there any objection? Unfortunately home papers published oil company's objections and a way [*sic*] which are repeated to unfriendly press here.

PILES

821.6363/364 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, February 23, 1928—6 p. m.

11. Your 14 February 22, 9 a. m. No objection to furnishing informal memorandum covering points given in our 9 February 18, 7 p. m. If possible should suggest that local press be informed that this is purely a legal matter and that the steps being taken are merely directed to expediting judicial determination. All that the United States is doing is to make an informal suggestion that the decree be suspended until the Supreme Court can review certain technical points involved in the petroleum law, about which there may well be an honest difference of opinion.

KELLOGG

821.6363/366 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, February 24, 1928—4 p. m.

[Received 11 p. m.]

16. Department's 11, February 23, 6 p. m. Lawyers here say Department incorrectly informed as they are trying avoid litigation especially in Supreme Court where years might ensue irrespective of entry final decree. Besides, Congress would take no action during litigation. They wish decree suspended until Congress meets and passes law replace Emergency Law 85 [84?]. Their complaint principally against decree. So far no mention made of my visit to President. Think better say nothing. I disclaimed all interference in Colombian affairs and confined myself to unconstitutionality of law, etc. Colombian Government understands our position and I am not worried. Prominent Colombians are protesting against decree to the President and leading lawyers submitting to him briefs against it as he asked me to have them do.

PILES

821.6363/390 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, May 15, 1928—11 a. m.

[Received 3:15 p. m.]

29. Press reports Minister of Industry has sent circular telegram to Governors and Intendants, categorically instructing them to carry out provisions of Petroleum Decree Number 150 with respect to drilling without Government permit. Same telegram stated to call the attention of notaries and magistrates to their duties under decree, such as forwarding to the Minister of Industry copies of all contracts celebrated in the last 10 years and in future (see article 15), adding that Minister is prepared to impose penalties for infractions stipulated in decree. Matter will have my careful attention.

PILES

821.6363/392 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, May 17, 1928—11 a. m.

[Received 2 p. m.]

31. My telegram No. 29, May 15, 11 a. m. I am in possession of official copy of circular telegram which is substantially same as reported in the press. Am likewise informed Governor of South Santander, in compliance, has instructed mayor of Puerto Wilches to carry out provisions of Decree 150, especially concerning drilling without permit, with respect to Gulf properties nearby.

Department will recall under Colombian law injunction does not exist and sole recourse other than Executive action by the President is through suspension of law or decree by Council of State constituted by Law 130 of 1913, *Diario Oficial* No. 15123. Although Council of State has not acted as a whole, three petitions for suspension have been denied by individual councilors and circular telegram in question was issued immediately after denial of third petition. I consider matter of utmost gravity, involving large losses through stopping of drilling activities of American companies and probable subsequent seizure of millions of dollars of American property. Have arranged for interview with the President on tomorrow morning to urge suspension of decree as already requested by me under Department's instruction and in companies' memorial to him last February.

PILES

821.6363/392 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, May 17, 1928—7 p. m.

22. Your 31 May 17, 11 a. m. Department approves your taking up the matter with the President and desires you to hand him a memorandum textually as follows:

"The attention of the Government of the United States has been called to Law 84 of 1927 and Decree 150 of January 28, 1928, and to action taken thereunder in relation to the operation in Colombia of petroleum enterprises in which American nationals are interested. The American interests concerned believe that the application of certain parts of the aforementioned measures would seriously interfere with their legitimate activities and call in question the title to their properties. It further appears that Colombian citizens have laid before the highest judicial authorities of Colombia for determination the question whether certain portions of the aforementioned measures are constitutional.

Since it appears that the application of these measures will work serious inquiry [*injury?*] to American interests, the American Minister has been instructed by the Secretary of State of the United States urgently to request the Colombian Government to suspend the application of the measures in question until their constitutionality can be duly considered by the appropriate authorities of Colombia.

The American oil companies earnestly desire to cooperate with the Colombian Government in good faith to contribute to the constructive development of the natural resources of Colombia. In view of the very large investments these companies have already made in Colombia, the Government of the United States feels that it is only just that further consideration be given to these measures before the effort is made to place them in effect."

You should supplement the foregoing with vigorous oral representations following the lines of Department's 9, February 18, 7 p. m.

Telegraph result of your representations and also concerning attitude of your colleagues of countries whose nationals are interested in petroleum development in Colombia.

KELLOGG

821.6363/393 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, May 19, 1928—5 p. m.

[Received 8:30 p. m.]

32. Department's 22, May 17, 7 p. m., my 31, May 17, 11 a. m. President will suspend action as requested in the Department's memorandum until final decision of Supreme Court. Prefers, however, to suspend it on petition of company interested, which I have asked lawyers to file

Monday next. Decree will be suspended about Tuesday. President accordingly has returned my memorandum. President and Minister for Foreign Affairs were attentive. Full particulars by mail.

PILES

821.6363/394 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, May 23, 1928—8 p. m.

[Received May 24—6:58 a. m.]

33. Department's 22, May 17, 7 p. m., and my 32, May 19, 5 p. m. Minister for Foreign Affairs has just informed me President will study Ministry of Industry's report on Decree 150 and advise decision tomorrow morning. Decree apparently has not been suspended.

PILES

821.6363/393 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

[Paraphrase]

WASHINGTON, May 25, 1928—1 p. m.

24. Your telegram 32, May 19, 5 p. m. If, when you receive this telegram, the President has not carried out the assurance which he gave you that the decree would be suspended, you are instructed immediately to return the memorandum to him, and you will not withdraw it again unless the Department authorizes you to do so.

KELLOGG

821.6363/398 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, May 26, 1928—5 p. m.

[Received 7 p. m.]

36. Department's telegram No. 24, May 25, 1 p. m. Today I returned the memorandum in person to the President. He stated that the Ministry of Industry contends that the decree should not be suspended as a whole and wishes time to present a report, [omission?] declaring the President now has and will consider carefully on Monday and hopes to issue an order next Tuesday which will embody his personal views.

PILES

821.6363/401 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, June 2, 1928—11 a. m.

[Received 2:50 p. m.]

40. Decree 150 officially suspended yesterday afternoon pending decision by Supreme Court and Council of State concerning constitutionality of decree and Law 84. Preamble to suspending decree states Law 84 still in effect so that documents showing ownership of lands must be presented pending court decision to the contrary.

PILES

821.6363/443 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, August 24, 1928—11 a. m.

[Received 1:10 p. m.]

79. House of Representatives recently appointed a committee to inquire through Colombian Minister in Washington whether Colombians had reciprocal rights under our Constitution and laws "to acquire concessions to exploit petroleum in the United States, especially in the State of Delaware" and to make a thorough study as soon as possible of the Andian and Tropical concessions, especially documents pertaining to transfer of latter in 1919 for the purpose of "defending the interests of the Republic."

[Paraphrase.] From a strictly confidential and thoroughly reliable source, I have learned that the President and the Ministry of Industry have instructed the committee to make every effort to discover some possible basis whereby the aforesaid concession could be declared forfeit, and that with regard to Tropical's concession such basis might be found on grounds of novation, in view of the changes which were made at the request of the Government at the time of transfer of the concession to Tropical. [End paraphrase.]

PILES

821.6363/461 : Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

BOGOTÁ, September 19, 1928—2 p. m.

[Received September 20—1:29 a. m.]

96. Minister of Industry yesterday presented to Congress his 1928 *Memoria*, which constitutes in large part an attack on the Tropical Oil, Andian Pipe Line, and United Fruit Companies. It contains the following:

1. Unfavorable contrasts of living conditions of Colombian and American employees of the Tropical.

2. Insinuations that the Tropical and Andian are cheating the Government in their production and transportation statistics through inter-connecting storage tanks and Government's lack of means to check company statistics (see confidential despatch number 1300 of April 16th²).

3. Insistence that Andian should transport all of the Government's royalty oil free of charge.

4. "In justice it should be procured that the State be a real co-owner of the pipe line."

5. The Tropical's offer of 95 cents per barrel for Government's royalty oil of last semester 1926-1927 and first semester 1928 (none of which has Minister of Industry yet elected to take) is unacceptable.

6. The Government recognizes the right of private banana planters to industrial independence from the United Fruit Company and should "extract [*extricate*?] them from the circle of iron [with] which the American company has surrounded them."

MATTHEWS

821.6363/478 : Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

Bogotá, September 28, 1928—11 a. m.

[Received 1:10 p. m.]

110. The Senate committee unanimously approved article 2 of petroleum bill with following addition:

"Therefore the competent authority may decree on petition of a legitimately interested party the expropriations necessary for the exercise and development of said industry."

MATTHEWS

821.6363/486 : Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

Bogotá, October 1, 1928—6 p. m.

[Received October 2—2:02 a. m.]

116. Legation's 79, August 24, 11 a. m., and 108, September 27, 4 p. m.³ *Espectador* tonight states that Investigation Committee has rendered report to Congress in which it finds that De Mares concession and its transfer to Tropical Oil involved irregularities on

²Not printed.

³Latter not printed.

the part of Executive power which make both transactions null and void. The committee terminates report with a bill of three articles, passage of which it recommends to Congress. This bill reads as follows in translation:

"The Congress of Colombia decrees:

Article 1. The contract celebrated between Señor Robert de Mares, the Tropical Oil Company and the Minister of Public Works, registered in Public Document Number 3,329, before third notary, Bogotá, August 25, 1919, is hereby disapproved.

Article 2. The Government is authorized to celebrate with the Tropical Oil Company a contract for the exploitation of the petroleum deposits existing in the zone described in the public document referred to in the previous article, subject to the legal provisions governing in the premises.

Article 3. This law shall become effective from the date of its approval of Congress."

[Paraphrase.] I have been informed that the committee held numerous conferences with the Minister of Industry and presumably the foregoing bill has his approval and the President's. Paradoxically, the President was a Cabinet member at the time of transfer of the concession in 1919, and the transfer received his consideration and written approval. [End paraphrase.]

MATTHEWS

821.6363/487: Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

Bogotá, October 1, 1928—8 p. m.

[Received 11:49 p. m.]

117. My 116, October 1, 6 p. m. I have just been informed that *Espectador's* information is correct and report was read in House of Representatives this evening, creating much excitement. Only one member of the committee did not sign the report. He stated that he has information which will make cancelation Tropical concession even more imperative. After heated debate, including extravagant statements to the effect that this billion dollar concession would now return to Government, action was postponed until Wednesday, when aforesaid member is to present his report.

Tropical representative has given out statement expressing company's surprise at such action after investing millions in good faith in a concession approved by the present President in 1919, adding that only the courts may effect cancelation of concession.

MATTHEWS

821.6363/488 : Telegram

*The Chargé in Colombia (Matthews) to the Secretary of State*⁴

Bogotá, October 2, 1928—3 p. m.

[Received 11:49 p. m.]

118. My 117, October 1, 8 p. m. *El Tiempo* alone publishes text of committee's report, covering almost three full pages. It is significant that this journal is very close to Minister of Industry. Report attempts to show that:

1. Concession which was declared forfeited in 1909 because of failure to begin work within stipulated time would not have revived in 1915 had not original copies of two ministerial resolutions been missing from dossier studied by the Minister of Public Works and Cabinet in 1915. First of these resolutions issued March 1911 merely postponed decision on revocation of resolution of forfeiture because De Mares had not yet produced sufficient evidence to show existence of *force majeure* to warrant revocation. Second resolution issued June 1911 declined to recognize De Mares' capacity (*persona*) to represent concessionaires on technical grounds and stated that therefore resolution of forfeiture was still in effect. (The report admits that an unauthenticated copy of the former resolution was in that dossier and that the second had been published in the *Diario Oficial* of July 1, 1911. Presumably the 1915 Cabinet must have been aware of its existence. The Tropical has long known of these so-called missing resolutions but considered them entirely unimportant and irrelevant.)

2. In view of aforesaid missing documents and the fact that De Mares did not really prove the existence of *force majeure* preventing initiation of work, which was the stated cause of revival of concession, said revival in 1915 was entirely illegal.

3. Since said revival was illegal and concession was therefore no longer existent, its transfer to the Tropical in 1919 was without legal value. "The Government limited itself to considering the convenience or inconvenience for the country of permitting Sr. de Mares to transfer his contract to the Tropical" and did not undertake to establish whether or not the contract legally existed.

4. Even had the Government decided that it did legally exist in 1919, the modifications introduced at that time (incidentally, all of them at the request of and in favor of the Government) made congressional approval necessary for its validity under Law 75 of 1913.

5. Since in 1921 the Government expressly stated that period of the concession was to run from 1921 and since formal notification of beginning work was filed in 1916, either the Government violated the Constitution (Legislative Act No. 3, article 4, last paragraph), Law 75 of 1913, and clause 12 of the transfer, by proroguing the concession for five additional years or it celebrated a new contract in 1919 "even more arbitrarily violating the Constitution and the Law".

Therefore the committee strongly recommends passage of bill,

⁴ Printed from confirmation copy received from the Embassy at Bogotá with letter of Oct. 7, 1940.

quoted my 116, and asserts powers of Congress under Law 68 of 1870 to cancel contract which it has not approved. There is no word of criticism of Tropical's fulfillment of its contractual obligations in the whole report.

My foregoing summary is necessarily brief but I believe it contains the essence of the lengthy report.

El Tiempo, in leading editorial which I have reason to believe was written or at least inspired by Minister of Industry, accepts the committee's report at its face value, emphasizing one particular phrase thereof with reference to missing documents: "There does not exist a concession to exploit petroleum, but the basis for a criminal suit." Referring to statement of Tropical representative, reported my 117, editorial urges and warns Tropical to choose the smoother path by negotiating a new contract with the Government rather than judicial procedure, which is complicated and where its position would be very weak in view of committee's report.

MATTHEWS

821.6363/489 : Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

BOGOTÁ, October 3, 1928—4 p. m.

[Received October 4—2:12 a. m.]

119. My 118, October 2, 3 p. m. The minority member of Investigation Committee in his report, brief statement of which is published in *El Tiempo*, recommends passage of bill ordering Attorney General to proceed before September courts "in defense of the Nation's interests" and stipulating certain bases for new contract with Tropical (both impractical and highly disadvantageous to the company), upon the acceptance of which by the company the Attorney General is to end his activities in the prosecution of any suit. Should Congress appear to favor his bill I shall cable more in detail. The majority report does not appear to have [met?] with very favorable reception outside of Government circles and passage of the bill recommended therein is somewhat doubtful.

The press is quiet. *Espectador* favors report but is pessimistic of possibility of successfully proceeding against powerful Tropical. *Debate* questions congressional jurisdiction but urges calm and thorough study.

MATTHEWS

821.6363/490 : Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

BOGOTÁ, October 4, 1928—2 p. m.

[Received 5 p. m.]

120. My 119, October 3, 3 [4] p. m. House of Representatives discussed but took no definite action upon either majority or minority report yesterday and a motion citing Minister of Industry to appear and give his views was left pending for today's session. If Minister of Industry senses an unfavorable reaction to both bills he may reverse his position and not push either of them.

Only paper commenting emphasizes seriousness of question and doubts the wisdom of showing the world that Colombian contracts in which much foreign capital is invested are mere frauds of Colombian state and that its ministers act in bad faith.

Pedro Juan Navarro, member of the committee, made violent attack on Tropical in House of Representatives, asserting that company knew of documents and therefore acted in bad faith. . . .

MATTHEWS

821.6363/492 : Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

BOGOTÁ, October 5, 1928—11 a. m.

[Received 3:15 p. m.]

121. My 120, October 4, 2 p. m. Owing to death of ex-President Gonzalez Valencia, Congress took no action upon committee reports yesterday. *Nuevo Tiempo* this morning states Tropical has invested large sums and worked in good faith developing Colombian petroleum industry and since it was organized only in 1919 no blame is attachable to it for previous irregularities. Hence to make it suffer consequences thereof would be unjust. The silence of other papers and *El Tiempo's* failure to give report further editorial comment is significant as indicating unfavorable reaction of public. The reports may be referred to Permanent Hydrocarbon Committee of the House of Representatives for further study, which would leave matter in the air, unsatisfactory from Tropical's point of view.

[Paraphrase.] I am reliably informed that the Minister of Industry yesterday requested the Congressman who had introduced the motion summoning him to appear, to withdraw the said motion. He stated that he did not desire to go before Congress on that matter. Since the Congressman refused to withdraw his motion, the Minister of Industry will probably appear today. [End paraphrase.]

MATTHEWS

821.6363/493 : Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

BOGOTÁ, October 6, 1928—11 a. m.

[Received 4:19 p. m.]

122. My 121, October 5, 11 a. m. House of Representatives yesterday voted down motion citing Minister of Industry to appear and state Government's attitude on the reports, knowing his desire not to appear. Discussion in first reading of bills advocated in both majority and minority reports will be continued today. Bills were attacked in House of Representatives as blackmailing the Tropical, as being unconstitutional, and as showing the world the bad faith of Colombian Government. Reaction of this nature appears to be growing and chances of passage of bills diminishing. There also seems to be a feeling of uneasiness as to what our Government might do if either bill is passed. The Government will therefore probably not press the matter. . . .

MATTHEWS

821.6363/507 : Telegram

The Chargé in Colombia (Matthews) to the Secretary of State

[Paraphrase]

BOGOTÁ, October 18, 1928—11 a. m.

[Received 3:40 p. m.]

130. My telegram No. 127, October 11, 11 a. m.,⁵ and previous correspondence. I have been reliably informed that the Minister of Finance proposed to the Council of Ministers that the Government issue a statement that it considers the Tropical Oil Company concession a valid one; that the proposal was defeated, the majority favoring a policy of silence.

Yesterday the Minister of Industry called in the Tropical Oil Company representative and intimated that nothing further would be heard of the investigation committee reports if the Tropical Oil Company would accept his interpretation of clause 5 of the contract as implying the Government's right to royalty of refined products in quantity equal to that derived from 10 percent of the crude petroleum production (which the Tropical Oil Company estimates to be the equivalent of 30 percent gross crude production). The Tropical Oil Company interprets this to be an admission of defeat by the Minister of Industry of the attempt to cancel the concession. The Committee reports and bills advocated therein will probably be

⁵ Not printed.

referred to the Permanent Committee on Hydrocarbons. This will mean shelving them temporarily, but will permit the revival of the question at any time by the next Congress.

MATTHEWS

821.6363/554 : Telegram

The Minister in Colombia (Caffery) to the Secretary of State

BOGOTÁ, December 16, 1928—5 p. m.

[Received December 17—12:40 a. m.]

189. Legation's 130, October 18, 11 a. m., first sentence, second paragraph. Controversy over royalty which has been going on over two years settled yesterday by Government's accepting amount offered by the company as full price of crude petroleum royalty without [*with?*] the following proviso, however: "But as the Government is not in agreement with the company as to the interpretation of clause 5 it expressly reserves the right to submit protocol to the judicial authorities"; and both parties agree that if the Government submits the matter to the courts they will abide by the decision.

CAFFERY

**GOOD OFFICES OF THE DEPARTMENT OF STATE IN BEHALF OF
AMERICAN INTERESTS IN THE BARCO PETROLEUM CONCESSION**

821.6363 Barco/64

The Carib Syndicate, Limited, to the Secretary of State

NEW YORK, January 5, 1928.

SIR: We beg to enclose herewith a brief memorandum setting forth the facts and circumstances under which the Carib Syndicate, Limited feels warranted in laying the case of the so-called "Barco Concession" before the State Department with a view to such action in the matter as may appear appropriate.

The Barco Concession was granted by the Government of the Republic of Colombia to General Virgilio Barco in 1905. As is fully explained in the attached memorandum, American interests acquired the Concession in 1918.

Since that date, American interests have held control and exercised rights of ownership over said concession, this control and ownership being continuous and undisputed until February 3, 1926, when the Colombian Government, through its Department of Industries and over the signature of the President of Colombia, declared the Concession forfeited for alleged causes almost in their entirety antedating

1918. The Concession was declared forfeited notwithstanding the fact that the Colombian Government had expressly approved and joined in the transfer of the Concession to American interests in 1918 and had taken advantage of the occasion of that transfer to exact substantial changes in some of the terms of the Concession. Furthermore, the terms of the declaration of forfeiture are in direct conflict with the contention of the Colombian Government as set forth during its boundary dispute with Venezuela. At that time the Colombian Government, in its formal case to the Swiss Arbitral Board, pointed to and stressed the Barco Concession and the fact that it was then, and had been since 1905, in full force and effect. The Barco Concession is located in territory which, prior to 1922, was claimed by the governments of Colombia and Venezuela. The territory was awarded to Colombia by the Swiss Arbitral Board in 1922 and undisputed possession given to Colombia under the Swiss demarkation and survey completed in 1925.

Not only are the alleged grounds of forfeiture, as set forth in the Resolution of the Colombian Government, baseless, but also the Colombian Government has denied and is denying justice by its continued failure to take any action, either adverse or favorable, on the Company's memorial filed on March 16, 1926, in strict accordance with Colombian law, asking for reconsideration of the resolution of forfeiture. It would appear that the Colombian Government has consumed the period since March 16, 1926, in a vain effort to find some plausible arguments to refute those contained in the Memorial. Further attention is called to the fact that, although the declaration of forfeiture of the Concession was issued by an administrative branch of the Government and has not even become final before that branch by reason of the Company's appeal and protest for reconsideration, nevertheless the Colombian Government, contrary to Colombian Law, has forcibly ejected geological parties sent to the Concession by the Company.

The Company realizes that the Barco Concession matter is one of importance to the Colombian Government, not only because of the value which the Concession may ultimately prove to have, but also because of the fact that the terms of its resolution of forfeiture might be seized upon by Venezuela as furnishing grounds for requesting a reopening of the boundary question by showing that some of the arguments advanced before the Boundary Arbitral Board were advanced in bad faith. Almost two years have elapsed since the presentation of the Company's Memorial of protest and no reply has yet been received. Acquiescence in further delay might be looked upon in Colombia as a sign of submission to the confiscatory policy of the Colombian authorities or as an indication of inability to secure that assistance from the Department of State which is now the only effec-

tive means of obtaining a decision from the Colombian Government.

In submitting this letter and the annexed memorandum and supporting documents,⁷ the Department of State is respectfully requested to consider whether, for the protection of American interests, it can appropriately communicate to the Colombian authorities a request for an early and definite reply to the Memorial of March 16, 1926, in which the reconsideration of the declaration of forfeiture was requested. All possible means of securing such a reply, which can properly be employed by the Company, have been exhausted. Further delay will constitute a complete denial of justice. We therefore trust that the Department will be in a position promptly to communicate to the Colombian Government a firm request for an early answer to the Memorial of March 16, 1926.

A. H. BUNKER
President

[Enclosure]

*Memorandum on the Barco Concession*⁸

(1) In 1905 General Virgilio Barco, a citizen of Colombia, was granted a fifty year concession by the Colombian Government to exploit petroleum and certain other mineral resources in an extensive area in the Department of Santander on the Venezuelan border. In 1918 a Colombian company, "Compania Colombiana del Petroleo", was organized by American interests, to take over the concession. The transfer of the concession was formally approved by the Colombian Government which was fully aware that the Colombian Company in question was controlled through stock ownership by American nationals. At the present time the stock of this Colombian company is owned by the Colombian Petroleum Company, a Delaware corporation. The stock of the latter company is in turn controlled as to 75% by the Gulf Oil Corporation of Pennsylvania, through its subsidiary, the South American Gulf Oil Company, and as to approximately 25% by the Carib Syndicate, Limited, through its subsidiary, the Carib Company of Maine.

(2) This memorandum is presented by the Carib Syndicate, Limited.

(3) American interests first became financially interested in the Barco Concession as a result of a trip which General Barco made to the United States in 1917 for the purpose of interesting American capital and disposing of the Concession. General Barco then recognized that neither his own nor other financial and technical resources

⁷ Supporting documents not printed.

⁸ Annexed documents not printed and all citations to them have been omitted.

available in Colombia were adequate for the future extensive development of the concession. In fact by 1914 he had expended the larger part of his private fortune in developing the Concession and he then made a determined effort to interest American capital. At that time he entered into an option contract with a Mr. Frank Keyser, but the latter failed to take up the option. In 1917, however, during the General's visit to the United States, as mentioned above, he commenced negotiations with Mr. C. K. McFadden, then Chairman of the Executive Committee of the Carib Syndicate, Limited and an option contract was concluded at Washington on January 26th of that year. General Barco received \$10,000 down and an additional \$90,000 was to be paid if Mr. McFadden or his assigns elected to take over the concessionary rights within a period of 180 days. Also, General Barco under the option contract reserved to himself the right, under certain conditions, to 15% of the gross production of the concession. The Carib Syndicate, Limited, thereupon offered to H. L. Doherty & Company a 75% interest in the rights acquired from General Barco, retaining a 25% interest which the Carib Syndicate has held continuously since that time. The Doherty interests then sent a party to Colombia and caused careful investigations to be made of the concession and the petroleum possibilities of the area and on May 23, 1917, informed Carib Syndicate, Limited, of their acceptance of the proposition.

(4) A Colombian company, "Compania Colombiana del Petroleo" was then formed to take over the concession from General Barco and carry forward the work of development; and the Delaware Company referred to above in paragraph (1) was organized to hold the stock of this Colombian Company. Thereupon final payment was made to General Barco pursuant to the terms of the original option contract with Mr. McFadden.

(5) The transfer of the concessionary rights of General Barco was recorded in a public document entitled "Deed Three Hundred and Thirty-one" to which the Colombian Government, General Barco and "Compania Colombiana del Petroleo" were parties. This Deed, concluded at Bogota, April 3, 1918, contains the full consent and approval of the Colombian Government to the transfer of the concession and embodies certain changes in the Government's favor which were required as a condition of its assent.

(6) It is pertinent to emphasize that the Colombian authorities in 1918, prior to according their approval and consent to the transfer, gave the most careful consideration and painstaking study to all the facts and circumstances. In the granting of its consent and approval and in the changing of certain of the terms of the concession, the Government specifically recognized, and so stated in the Deed of Transfer,

that the concession was at that date in full force and effect, to quote the words of the Minister of Hacienda, who then reported on the matter, "this concession which is in force". Furthermore, the Government, in the transfer, exacted a bond to guarantee the performance of the obligations undertaken by the "Compania Colombiana del Petroleo".

(7) The foregoing is set forth for the purpose of showing the facts of American ownership at the time of the approval of the transfer of the concession to "Compania Colombiana del Petroleo" in 1918. In this connection it is to be particularly noted that General Barco solicited American assistance, that he received a substantial payment for the transfer of his rights while reserving to himself valuable privileges and that it was with full knowledge of all the foregoing facts that the Colombian Government approved the transfer.

(8) On February 2, 1926, a resolution declaring the concession forfeited was issued by the Minister of Industries over the signature of the President and on the 16th of that month "Compania Colombiana del Petroleo" was notified to this effect. The Declaration of Forfeiture was based upon an alleged failure to comply with the terms and conditions of the concession: (1) that General Barco had not presented, within the prescribed period of one year, plans of the region to be exploited; (2) that he had not commenced the exploitation within the prescribed period of three years; (3) that the work performed in the territory had not been scientifically conducted; and (4) that the Government had never received the stipulated participation in the concession.

In almost their entirety the alleged causes of forfeiture relate to obligations to be performed prior to the transfer of the concession to "Compania Colombiana del Petroleo" in 1918. These alleged grounds of forfeiture are fully met in the answering Memorial of March 16, 1926 which is mentioned below, but it may be well briefly to deal with them at this point.

(9) As respects the first cause of forfeiture, attention is called to the fact that not only did the Colombian Government attempt to go back of 1918 for this excuse, but also, by resolution issued October 27, 1906 by the Ministry of Public Works and Development (then performing the present duties of the Ministry of Industries), the Government acknowledged "receipt of the plan presented in fulfillment of that stipulated in Article 2nd of the contract with Mr. Virgilio Barco". As respects the second and third causes of forfeiture, the evidence shows that General Barco did commence exploitation within the term allowed by the concession and that the work from that time up to the present has been done with the degree of scientific skill permitted by the situation. Attention is called to the statements of various Ministers, numerous Memorials and supporting affidavits of private individuals attached to the Company's Memorial of March 16, 1926. In

this connection, again it must be noted that the Colombian Government, notwithstanding its approval of the transfer in 1918 and the changes to its own benefit in the terms of the concession itself at that time, attempts to establish causes of forfeiture long prior to 1918.

(10) Finally, it is even more significant to emphasize that Colombia, in submitting its case to the Swiss Arbitral Board in the matter of the Colombia-Venezuelan boundary dispute (decided in 1922 and made effective in 1925), then pointed to and stressed the fact that the Barco Concession was in full force and effect in order to prove Colombia's claim to that portion of the disputed territory in which the concession in its entirety is located. The region was claimed by Venezuela prior to the Arbitral Award. Consequently, Venezuela prohibited the transportation of machinery and equipment through Venezuela to the concession, a ruling which as yet has not been revoked. In refuting the claim of Venezuela to this particular territory, the Government of Colombia, in presenting its case to the Swiss Arbitral Board, referred to the petroleum deposits discovered by General Barco "*who secured from the Government of Colombia the permit to exploit it and devoted himself to this exploitation more than fifteen years, employing in it his modest resources,*" . . . , and then added "*Now a company has commenced to exploit those beds on a much larger scale.*" The company referred to is the "Compania Colombiana del Petroleo". After mentioning difficulties caused the concessionnaire by the Government of Venezuela in connection with the importation of drilling machinery, the Colombian case further stated, "That was the first time after the granting of the concession of exploitation to General Barco several years ago that the Government (Translator's Note—of Venezuela) made any pretension to those beds which the aforesaid Barco '*had not ceased to exploit, a fact patent to all the world,*' in fact, this concession had been published from the outset in the *Diario Oficial* of Colombia." (Translation from page 166 of the answer of the Republic of Colombia, 1920). (Italics—ours).

(11) The fourth ground for the declaration of forfeiture may be disposed of by the fact that, as General Barco was, and the Company has been, prevented by circumstances beyond their control from producing and marketing oil in commercial quantity, there was no net profit (under the original terms of the concession) nor gross production (under the terms of the concession as changed in 1918 in order to meet the then demands of the Government prerequisite to its consent and approval of the transfer) on which to pay any percentage to the Government, and, consequently, no breach of the terms of the concession could possibly be established on this score. In this connection attention is called to the reports of the various Colombian Ministers as set forth in Deed Three Hundred and Thirty-One.

(12) During the period from 1918 to 1926, "Compania Colombiana del Petroleo" took such steps as were possible to exploit the concessionary rights. It constructed camps, made geological surveys and did such drilling as it could with the limited amount of machinery which it was able at the outset to get to the concession through Venezuela before the above mentioned prohibition by Venezuela of this transportation. (Transportation through Venezuela is the only feasible practical method of getting machinery to the concession.) These activities are proved by annexed affidavits. At no time has the Company ceased occupation of or abandoned the territory, and at present maintains two occupied camps on the concession. The Company is not allowed to do any development work, and, although the Resolution of Forfeiture was issued by an administrative branch and has not even become a final administrative, much less judicial, ruling under Colombian Law, the Colombian Government has forcibly ejected the Company's geologists from the property and prohibited such work. The status of the development work on the concession is shown in the annexed report of the Colombian Government's Inspector of Petroleum, who visited the concession in 1926, shortly after the Decree of Forfeiture and at the instance of the Colombian Congress.

(13) In considering all phases of the case and the equities of the respective positions, it is reasonable to emphasize that the Compania Colombiana del Petroleo, in acquiring its rights to the concession and in the development thereof including extensive geological surveys, has expended in good faith more than \$1,900,000, for which there has not been one dollar of return, the Colombian Government allowing the Company to make these expenditures through a period of eight years following the transfer of 1918. Even now the cost of maintenance and other administrative expenses to the Company is running at \$9,000 monthly while the delay on the part of the Government of Colombia is continuing.

(14) On March 16, 1926 and within the prescribed period, "Compania Colombiana del Petroleo" submitted a memorial which contains a convincing answer to the arguments of the Decree of Forfeiture. The refutation is generally by reference to official documents of the Colombian Government. The memorial, which under Colombian law had to be filed within thirty days of notification of the Decree, remains unanswered although nearly two years have now elapsed. An administrative decree of forfeiture is not final under Colombian law until the Government has acted upon the protest filed by the concessionnaire. Again and again representatives of the Company in Bogota have made oral representations but except for unfulfilled promises have received no reply to the memorial.

(15) The representatives of the Company in Bogota have exhausted all possible means at their disposition in urging upon the Colombian Government a reconsideration of its position. Further delay in endeavoring to bring the matter to the Colombian Government's attention through the channels of the American Government might only be interpreted in Colombia as a sign of weakness or of lack of real interest on the part of the Company or as an indication that the American Government was not disposed to support the American interests concerned. In either case delay would only lead the Colombian Government to believe that they could indefinitely postpone any reply to the Company's Memorial and thus effectually deprive the Company of its rights.

JANUARY 5, 1928.

821.6363 Barco/65 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, *January 12, 1928—5 p. m.*

2. The American interests in the Barco concession have requested the assistance of the Department in procuring a reply to their memorial of March 16, 1926. They state that all possible means of securing a reply, which can properly be employed by them, have been exhausted and they feel that any further delay will constitute a denial of justice.

The Department is inclined to share their belief that it is necessary to take some step of a definite character to terminate this long delay and feels that this moment is favorable to take up the question with the Colombian Government . . .

You are instructed therefore immediately to address a formal note to the Minister for Foreign Affairs reading textually as follows:

"Pursuant to instructions from my Government I have the honor to invite Your Excellency's attention to the fact that a memorial submitted on March 16, 1926 by the Compania Colombiana del Petroleo to the President of the Republic and the Minister of Industries, requesting a reconsideration by Your Excellency's Government of the resolution of forfeiture of February 2, 1926, remains unanswered.

Without expressing any opinion at this time on the merits of this case, my Government desires me to enquire whether the Government of Colombia will not without further unnecessary delay make reply to the communication addressed to it by the Company concerned."

Follow developments carefully and report by telegraph.

KELLOGG

821.6363 Barco/69 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, January 18, 1928—11 a. m.

[Received 8:30 p. m.]

2. Department's 2, January 12, 2 [5] p. m. Minister of Foreign Affairs answered my note, saying in effect that the memorial requesting reconsideration of the resolution referred to was submitted by Compania Colombiana del Petroleo; that the Department erred in instructing action I took if the company is a Colombian corporation, which it is. In personal conversation with him yesterday I stated that I understood all stock of the company except three directors' shares was owned by Colombian Petroleum Company, a Delaware corporation. He replied that they knew nothing of the stockholders. I then inquired whether a petition in intervention by that company would not avoid his objection. He will submit this to the President upon his return within a week and advise me. If the Department thinks advisable I will informally feel them out on possibility of our getting together and effecting friendly settlement, that further delay or possible litigation may be avoided. . . .

PILES

821.6363 Barco/70 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, January 24, 1928—6 p. m.

5. Your 2, January 18, 11 a. m. You should explain to the Minister of Foreign Affairs that your Government was, of course, aware of the fact that the company is a Colombian corporation, but that since practically all of the company's stock is held by American citizens the latter have a very real interest at stake, and the Government of the United States perceived no impropriety in those circumstances in inquiring through you at the instance of the stockholders whether the courtesy of a reply to a memorial which had lain unanswered for 22 months might not shortly be expected.

The Department approves of your taking the action suggested in the penultimate sentence of your telegram under reference.

KELLOGG

821.6363 Barco/71 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, January 24, 1928—8 p. m.

[Received January 25—12:15 a. m.]

6. My 2, January 19[18], 11 a. m. On said visit Minister of Foreign Affairs was satisfied, when I explained American stock ownership, that no impropriety was intended. He seems however of opinion that something possibly should be of record showing this ownership but on this would advise me later. He informed me today that those having matter in charge say that record under consideration is immense but agree render decision within four months. He will urge earlier decision. Will also discuss with President penultimate sentence of my said telegram which seems to appeal to him.

PILES

821.6363 Barco/80 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, March 17, 1928—1 p. m.

13. Report briefly by cable present status of Barco case and endeavor to expedite decision promised within a month, as reported in your 11, February 17, 4 p. m.⁹

KELLOGG

821.6363 Barco/86 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, April 1, 1928—11 a. m.

[Received April 2—1:30 a. m.]

24. The Foreign Minister informed me that the President was willing to settle the Barco controversy through him and me as soon as possible, that he had no proposition to make but desired the company to submit to me through the Department its best proposal . . . Immediate action, therefore, is highly desirable. I think that the Colombian Government will rely largely upon what I say, so I hope that the company will make offer as liberal as it consistently can. Until a settlement is concluded the strictest confidence must be maintained. It is hoped, therefore, that the Department will seriously impress upon the company the necessity of seeing that there be no leak here or else—

⁹ Not printed.

where of a pending settlement as publicity probably would be disastrous. Please cable the name of the company's representative here with whom I may consult in strict confidence. I have not said a word to anyone so far.

PILES

821.6363 Barco/88 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

Bogotá, April 2, 1928—5 p. m.

[Received April 3—7:33 p. m.]

25. My 24, April 1, 11 a. m. I regard it extremely important that the company immediately send Mr. Jordan Herbert Stabler to Bogotá with full power to act, as I have been given to understand that his presence here would greatly facilitate a settlement. He is close friend of the Foreign Minister, who desires to talk with him. I feel confident that the matter can be satisfactorily settled within a month or so.

PILES

821.6363 Barco/87 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

[Paraphrase]

WASHINGTON, April 3, 1928—6 p. m.

16. Your telegram No. 24, April 1, 11 a. m. The officials of the companies concerned here have expressed their gratification at the indications of progress in the Barco matter. They say that their Bogotá representatives, Messrs. Anderson and Folsom, or either of them, are fully authorized to deal with any phase of this matter, and may be consulted in the fullest confidence. The companies feel that, considering the nature of the questions which the Colombian Government might raise, progress would be greatly facilitated through direct contact between their representatives and Colombian officials. The companies are prepared to work for a settlement with the greatest despatch and preserving complete confidence.

Possibly you could facilitate an amicable adjustment by bringing the Colombian authorities and the companies' representatives together. You will appreciate that the interest of the Department in the matter is limited to its desire to protect the American interests involved from any possible violation of their legal rights. No responsibility can be

assumed either by the Department or you for negotiations of a purely business character, and you should avoid participating in discussions of royalty bases, problems as to disputed boundaries, et cetera. If the company, to facilitate the matter of adjustment, should contemplate any change in the terms of the concession or otherwise, the details of such modifications should be adjusted by negotiations between the companies' representatives and the Colombian authorities.

KELLOGG

821.6363 Barco/89 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, April 5, 1928—7 p. m.

17. Your 25, April 2, 5 p. m. Department is informed the company is arranging to have Stabler proceed to Bogotá as soon as possible. In the meantime the company hopes that negotiations looking to a settlement of the controversy may be initiated and be well on the way to successful conclusion by the time Stabler arrives.

KELLOGG

821.6363 Barco/90 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, April 9, 1928—6 p. m.

18. Department's 17, April 5, 7 p. m. The Department considers it highly important that the concession should be restored and the decree of forfeiture withdrawn as an act of justice and fair dealing before any changes in the terms of the concession are agreed upon, and that any adjustments which may be made should be recognized as applying to a concession to which the right and title of the companies is not questioned. For the Colombian Government to restore the concession as compensation for changes in the terms thereof would place the companies in the position of tacitly recognizing the validity of the decree of forfeiture in return for a new concession and paying a price for the restoration of property wrongfully withheld from them. This would set a very unfortunate precedent in the case of other concessions which the Colombian Government might desire to revise in the future.

KELLOGG

821.6363/411 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, July 2, 1928—4 p. m.

[Received July 3—12:15 a. m.]

53. In view of the Minister of Industry's delay in proceeding with the Barco matter I took Mr. Stabler, at his request, to see the President on June 29. The President stated that he had instructed the Minister of Industry to proceed actively with conferences with Mr. Stabler, and that if no agreement was reached, he would then attempt to find a solution and call them together for a talk with him personally. On the afternoon of June 28 the Minister of Industry saw Mr. Stabler and presented a proposal which was telegraphed to New York involving no revocation of caducity decree and including submission of a new contract to Congress. The company categorically rejected the proposal as impossible. I understand that copies of these telegrams have been furnished the Department. Because of this situation . . . I feel that a further word to the President from the Department indicating its desire to have a settlement reached while Mr. Stabler is here would be of material assistance.

PILES

821.6363 Barco/105 : Telegram

The Acting Secretary of State to the Minister in Colombia (Piles)

[Paraphrase]

WASHINGTON, July 3, 1928—3 p. m.

33. The Department has been shown Mr. Stabler's telegram No. 28, June 29, and the company's telegram No. 14, June 30,¹¹ in reply. The Department wishes you to obtain an interview with the President at which Mr. Stabler may be present, and tell the President that the Department has learned with regret of the position taken by the Minister of Industries in this matter. When the Government of Colombia invited Mr. Stabler to go to Bogotá the Department had hoped that it was disposed seriously to discuss a settlement of the matter with him. The Department is exceedingly disappointed that now, two months after the arrival of Mr. Stabler in Bogotá, no progress apparently has been made toward a settlement. Mr. Stabler's prin-

¹¹ Transmitted in letter of June 30, 1928, from Wm. T. Wallace, 21 State Street, New York, to Assistant Secretary of State White; not printed. (821.6363 Barco/103.)

cipals have advised the Department that Mr. Stabler will probably be obliged to leave Bogotá in a few days. The Department very much hopes that the matter can be arranged before his departure because the Department would much prefer that an agreement be reached by direct negotiations between the Colombian officials and Mr. Stabler rather than through diplomatic negotiations which will be necessary if the matter is not settled before Mr. Stabler's departure. The Department considers that the resolution cancelling the concession is not justified and that the proper course for the Government of Colombia would be to rescind the degree, and that pending such action proposals for modifying the concession are untimely.

CASTLE

821.6363 Barco/106 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

Bogotá, July 5, 1928—4 p. m.

[Received July 6—12:50 a. m.]

54. This afternoon I showed the President a paraphrase of the Department's 33, July 3, 3 p. m. The President said that the matter was one which had been inherited from a previous administration, was exceedingly complicated, and required much time for study; that if the Government of the United States felt it was a fit subject for diplomatic representations, to proceed to make them, but that he himself felt that the Government of the United States had no cause for complaint, and that while there was still recourse to the Supreme Court, he could see no basis for diplomatic intervention. I replied that I much preferred to see the matter settled through direct negotiations with Mr. Stabler, and I asked if and when such a settlement could be reached. The President replied . . . reiterating the necessity for careful study, and said that a simple rescission of the caducity decree alone was impractical. The President promised to call the Minister of Industry tomorrow and inquire regarding the status of the negotiations.

Mr. Stabler is cabling his principals that three days ago he requested an interview with the President through me in accordance with the latter's suggestion if an *impasse* was reached with the Minister of Industry, but up to now he has received no appointment, and he plans to depart next week unless some progress is made.

PILES

821.6363 Barco/108 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, July 16, 1928—10 a. m.

[Received 12:45 p. m.]

57. Stabler left Bogotá yesterday because of the President's failure to grant the interview requested by the Legation on July 3 (see my No. 54, July 5, 4 p. m.), or to make any reference to my request for such interview, and in view of the complete lack of progress in the negotiations. Stabler had also requested a farewell interview with the Minister of Industry, but the latter similarly made no appointment to see him.

PILES

821.6363 Barco/107 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

[Paraphrase]

WASHINGTON, July 16, 1928—12 noon.

37. Your telegram No. 54, July 5, 4 p. m., second sentence. With reference to the President's statement that there was still recourse to the Supreme Court, the attorneys for the oil company stated that it was their understanding that the matter could not be taken to the Supreme Court by the Colombian Government, and could only be taken by the company when the decree of expropriation had been confirmed, and that the matter, therefore, was still an administrative one. The Colombian Government has not confirmed the decree and it has not answered the company's memorial of more than two years ago. The Department has asked the Government to answer the memorial, which apparently the Government is not going to do. There have been no indications that the Government will confirm the decree of expropriation. The matter still appears to be one which can now be settled only through administrative action. The Colombian Government has prohibited the company from operating the concession, and unless it takes action administratively, the company is prevented from making use of its property. Please cable the Department whether this sets forth the situation correctly, and if it does, you may tell the Foreign Minister and/or the President that it is the feeling of the Department that this is a matter eminently subject to diplomatic action.

KELLOGG

821.6363 Barco/109 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, July 17, 1928—noon.

[Received 10 p. m.]

58. I consider the situation to be as set forth by the Department in its 37, July 16, 12 noon.

It is my opinion that the Government will take no action thereon unless pressed. The Foreign Minister is ill. I am trying to see the President and will cable immediately thereafter.

PILES

821.6363 Barco/113 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, July 19, 1928—5 p. m.

[Received 10 p. m.]

59. The Department's telegram No. 37, July 16, 12 noon. The President agrees that recourse cannot be had to the courts unless the expropriation decree is confirmed. He said that he had no desire to damage the company but earnestly wished to bring about a satisfactory settlement if this could be done; that the Minister of Industry had promised to submit to him and to take up with Mr. Folsom not later than next week the Minister's rulings, propositions, etc., looking to a prompt adjustment of all matters; that if a settlement could not be reached, the questions at issue would then be decided so as to permit the Council of State to assume jurisdiction. The President was hopeful of a settlement being reached.

Mr. Folsom informed me that the Council of State could have no jurisdiction in the matter whatsoever.

PILES

821.6363 Barco/110 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, July 19, 1928—6 p. m.

38. Your telegram 58, July 17, noon. Please present to Minister for Foreign Affairs a note reading as follows:

"I am directed by my Government to call your attention again to the serious situation in which the American companies interested in the Barco concession are left by the continued failure of the Colombian

Government to reply to the memorial submitted by the Compania Colombiana del Petroleo on March 16, 1926, requesting reconsideration of the decree of the Government declaring the concession forfeited. On January blank, 1928, I sent you, under instructions of my Government, a note calling attention to the long period of time which had elapsed since the presentation of the memorial, and inquiring whether the Government of Colombia would not, without further unnecessary delay, make reply to the memorial. On February 17, (verify date), you informed me that a decision would be rendered within a month, perhaps less than 20 days. Five months have elapsed since that statement was made. Again, on March 22, I was advised by the President that a decision would be rendered in a short time. In spite of these assurances, the memorial remains unanswered.

On April 1, you assured me of the desire of the Colombian Government to settle the matter at an early date by negotiation, and in that connection suggested that the companies send a special representative to Bogota. In pursuance of this suggestion, a representative of the companies was sent to Bogota, and remained there over two months, but was not given an opportunity to carry on serious negotiations with the competent officials.

Needless to say, the continued delay in replying to the memorial mentioned is causing continued losses to the American interests concerned, who are not only prevented from proceeding with the development of the concession, but are unable to make plans for the future.

My Government earnestly desires to be informed what action the Colombian Government proposes to take in the matter."¹²

Please verify and fill in proper dates in note. If Minister for Foreign Affairs is still away, make necessary changes. Leave copy of note with President and endeavor to convince him by an informal oral statement of the importance of having the memorial answered as soon as possible.

KELLOGG

821.6363 Barco/115 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

Bogotá, July 20, 1928—5 p. m.

[Received 10:45 p. m.]

60. Department's 38, July 19, 6 p. m. Today is Colombian national holiday. President will not return Bogota until Monday by which date Minister for Foreign Affairs will probably be up. I shall deliver note and endeavor to see President then.

PILES

¹² In telegram No. 40, July 27, 6 p. m., p. 621, the Secretary of State instructed the Minister in Colombia to strike out the last two paragraphs of the note and to substitute quoted part contained in telegram 40.

821.6363 Barco/116 : Telegram

*The Third Secretary of Legation in Colombia (Matthews) to the
Secretary of State*

[Paraphrase]

BOGOTÁ, July 20, 1928—6 p. m.

[Received 10:45 p. m.]

For the personal and confidential information of the Chief of the Division of Latin-American Affairs.

I trust, under the existing unusual circumstances, that you will pardon this carefully considered personal message regarding the Barco case. From the last part of the Department's telegram No. 33, July 3, 3 p. m., it is my understanding that the Department takes the position in effect that a denial of justice has already occurred, and that the matter cannot now justly be referred to the court. If this be the case, I feel strongly that the only action, if any, which would result from a delivery of the note quoted in the Department's telegram No. 38, July 19, 6 p. m., would be to force the President to confirm the decree of expropriation; and make the situation vastly more difficult, with the matter then necessarily thrown into court for years with no decision. I feel certain that the President will not rescind the expropriation decree unless he is forced to do so by a strong definite demand to that end, especially in view of the present political attacks on his administration.

MATTHEWS

821.6363 Barco/117 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

[Paraphrase]

WASHINGTON, July 23, 1928—noon.

39. Department's telegram No. 38, July 19, 6 p. m. In view of telegram July 20, 6 p. m., from Matthews, if it is your feeling that it would be unwise to present the note until you have exchanged views with the Department, you may hold the note and cable your reasons and suggestions for modifying it.

KELLOGG

821.6363 Barco/118 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, July 23, 1928—6 p. m.

[Received 11 p. m.]

61. Department's telegram No. 39, July 23, noon. I concur fully in the opinions expressed in Matthews' telegram, especially as to the action, if any, which is likely to result from presentation of the note.

Mr. Stabler informed the Colombian Government that if it failed to come to an agreement with him, no further direct negotiations with the company would ensue. If the company's position is to be maintained, and if Matthews' interpretation of the Department's position, as set forth in Department's telegram No. 33, July 3, 3 p. m., is correct, it is my opinion that we should diplomatically, but firmly, insist that the expropriation decree be revoked and the concession returned within a specified time. This is particularly important, as the Minister of Industry told Messrs. Stabler and Folsom, as they informed me, that in its present form Bravo's decree of expropriation is not sustainable in court.

The representatives of the company here concur fully in the above.

PILES

821.6363 Barco/119 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, July 27, 1928—6 p. m.

40. After a careful examination of the decree and the Company's memorial in the Barco case the Department is satisfied that the former is unjustified. You will therefore strike out the last two paragraphs beginning "Needless to say" of the note contained in the Department's 38, July 19, 6 p. m., and substitute the following:

"Needless to say the delay of the Government in taking the action requested in the memorial mentioned is causing continued losses to the American interests concerned, who are not only prevented from proceeding with the development of the concession, but are unable to make plans for the future.

My Government having carefully examined the decree and the memorial of the Company is convinced that the decree was unjustified and should be rescinded forthwith and the Company allowed to resume possession under the concession. It would then be possible for the Company to negotiate with the Government regarding possible changes in the terms of the concession which might be mutually acceptable."

[Paraphrase.] If you concur, you will present note in this form to the Foreign Minister. At the same time you will present the case

informally to the President and leave a copy of the note with him. You may, in your discretion, make oral reference to the opinion expressed by the Minister of Industry as set forth in your telegram No. 61, July 23, 6 p. m., that the decree is not sustainable in its present form. During your interview with the President the Department suggests that you emphasize the point that if the grounds stated in the decree are not sufficient to sustain it, as appears to have been admitted both by the Minister of Industry and the President, then obviously the only proper course is to annul the decree. If you consider it advisable, you may also refer to the position taken by the Colombian Government with respect to the territory covered by the concession in connection with the arbitration of the Colombia-Venezuelan boundary. [End paraphrase.]

KELLOGG

821.6363 Barco/122 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, July 30, 1928—4 p. m.

[Received 8:55 p. m.]

62. Department's 40, July 27, 6 p. m. Delivered note to Minister of Foreign Affairs today. He expressed approval of its contents. Impossible to see President today but hope to have interview tomorrow.

PILES

821.6363 Barco/123 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, August 1, 1928—6 p. m.

[Received 9:10 p. m.]

63. Department's 40, July 27, 6 p. m. I had an interview with President this afternoon and left with him a copy of note. I referred to opinion of Minister of Industry that decree is not sustainable and to Colombia-Venezuelan arbitration and urged rescission of decree. He seemed impressed and promised a decision early next week.

PILES

821.6363 Barco/126 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGORÁ, August 5, 1928—4 p. m.

[Received August 6—4:03 a. m.]

64. President signed a resolution comprising 40 typewritten pages yesterday afternoon confirming forfeiture of Barco concession. After reciting history of concession and admitting that there are grounds for argument on causes of forfeiture in Bravo resolution he makes certain new additional points which he says prove justice of forfeiture. These points are the following and primarily apply to concession since 1918:

1. That company did no work in years 1923, 24 and 25, as obligated under terms of concession and if work of any sort was done it was merely preparatory and not "explotacion." (Under terms of concession while "trabajos" must be continuous there is no requirement that "explotacion" be continuous.) Furthermore, that concession may be forfeited if "trabajos" cease for three months and that company abandoned "trabajos" for three years.

2. That there was no *force majeure* to prevent company's fulfilling contract, as company alleged, for the following reasons:

(a) That necessary machinery and materials could have been introduced through Colombian territory by roads which the company should have built.

(b) That Venezuelan Government did not prevent passage of said materials over its territory as is proved by shipments as far as Encontrados and that Venezuelan Government merely required that they be passed through Colombian customs at border.

(c) That since there is a customs in Cucuta, materials could have been brought there; therefore it was not an act of Venezuelan Government but the nature of the country known when concession was negotiated, and the difficulties of which were not impossible to overcome, which prevented company from importation of materials.

(d) That the Colombian Government's willingness to open custom-house at Rio de Oro is not evidence of the existence of *force majeure* but merely shows Government desire to be of assistance.

(e) That there was no suspension of traffic on Lake Maracaibo and the fact that material was brought to Encontrados proves this.

(f) That company has not judicially proved existence of *force majeure*.

Resolution terminates with the statement that the concessionaire either carried on "explotacion" and did not pay Government royalty, thus violating clause 6 of the concession or did not carry on statement ex-concessionaire [*stated explotación?*], thus violating clause 3. This last argument especially is a sophism, for under original concession Government royalty was 15 percent net and Barco's "explotacion" produced no net profits and concession was changed in 1918 to provide

for Government royalty of 5 percent gross production and company does not maintain that there has been actual production (explotacion) since that date but merely continuous work (trabajos).

Failure resolution to make definite commitment concerning original resolution of forfeiture is apparently intended to avoid difficulties with Venezuela and a contradiction of the position taken before Swiss arbitrator.

[Paraphrase.] The representative of the company is convinced from the phraseology of the resolution that it was drafted by the President himself, that it shows the President's careful study, and that it is self-evident that its preparation must have been under way for over a month. The resolution has been given to the press, but it has not yet been presented to the representative of the company. In Government circles it is considered as an open defiance of the United States. It is understood that at the Cabinet meeting where the resolution was approved, there was little or no discussion, and that the only ministers who voted against approval were the Minister of Finance and the Foreign Minister, the Minister of Public Works being absent. It is also understood that before the resolution was issued the President asked at least two judges of the Supreme Court whether the resolution could be sustained, and that both judges said it could.

The press is unanimous and enthusiastic in its approval of the resolution.

The representative of the company is cabling verbatim the concluding portion of the resolution. [End paraphrase.]

FILES

821.6363 Barco/130 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, August 11, 1928—1 p. m.

41. Your 64 and 65, August 5 and 6.¹³ Address a note to the Foreign Office reading as follows:

"My Government directs me to say that it notes with much concern that the recent resolution of the Colombian Government in the case of the Barco concession, refusing a petition for revocation of the resolution of forfeiture of February 2, 1926, materially departs from the causes of forfeiture set up in the original resolution, namely, that a map of the territory in question was not submitted within one year and exploitation was not begun within three years from the date of the concession, and advances and relies upon new grounds alleged to support such decree of forfeiture, which new grounds the concessionaire has had no opportunity to answer. While it was

¹³ Latter not printed.

doubtless necessary for the Colombian Government, in view of its approval of the transfer of the concession in the year 1918, that is, long after the causes of forfeiture alleged in the decree had arisen, to avoid reliance upon such causes, this obviously furnished no sufficient reason for endeavoring to support the same decree upon distinctly different grounds.

My Government assumes that in view of the action of the Colombian Government in attempting to justify the cancellation of the concession upon new grounds, the concessionaire has a 'period of 30 days from the publication in the *Diario Oficial* of the recent resolution within which to present a new memorial addressed to and answering said alleged new grounds. It is hoped and expected that the Colombian Government will confirm this assumption.

My Government was surprised at the action of the Colombian Government in issuing the recent resolution without replying to the Legation's note of July 30. Because of the urgent character of the matter discussed above an early reply to this communication is requested."

KELLOGG

821.6363 Barco/132 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

Bogotá, August 11, 1928—noon.

[Received 5:45 p. m.]

66. I have been advised in formal note of Minister of Foreign Affairs dated August 10 that "the National Government issued on August 4 a resolution by which it does not consent to rescind the resolution of forfeiture of the Barco concession issued by the Minister of Industry under date of February 2, 1926."

Press comments concerning resolution have temporarily ceased. Minister of Foreign Affairs has been summoned to inform Congress today if, and why, he invited Stabler to come to Bogotá. His resignation appears probable.

PILES

821.6363 Barco/133 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

Bogotá, August 12, 1928—6 p. m.

[Received August 13 (?)—1:25 a. m.]

67. It has been thought of late that the Minister for Foreign Affairs might be sacrificed in the political airing of the Barco matter unless he could extricate himself. Seemingly in order to do this, I regret to say as I regard him a real friend of the United States, according to

the press he made the following statement in Colombian Senate yesterday:

1. That in answer to my note as instructed by the Department's No. 2, January 12, Colombian Government replied that a foreign government had nothing to do with the matter since it concerned a Colombian company and that "the Colombian Government considered and considers that in this affair the very respectable North American Government has no concern."

2. That I "spoke with Minister for Foreign Affairs concerning a representative or lawyer of the company and the Minister for Foreign Affairs consulted the President who gave him instructions to say verbally to the Yankee plenipotentiary that, as the Barco concession was a matter under litigation, the Government saw nothing inconvenient in conversing or exchanging ideas with the person designated by the interested parties but under no circumstances with officials of the Government of the United States."

3. That two days before Mr. Stabler arrived I requested Minister for Foreign Affairs to present him to the Minister of Industry in order to avoid delay. That he did so but at no time thereafter did he speak with Minister of Industry concerning Mr. Stabler. "Therefore Mr. Stabler did not come to the country called by the Colombian Government."

Minister of Industry eventually supported the Minister for Foreign Affairs.

The facts insofar as I am concerned are absolutely to the contrary of what the Minister for Foreign Affairs stated, as my telegrams to the Department show. I did not know that the Minister for Foreign Affairs knew Stabler nor did I know Stabler's connection with Gulf until the Minister's son Carlos came to the Legation and said that his father and Stabler were bosom friends and knowing Stabler's connection with Gulf his father wished Stabler to come to Bogotá with authority to act. This request I verified with the Minister for Foreign Affairs before cabling the Department about Stabler's coming. The Minister for Foreign Affairs made no mention of his friendship with Stabler in Congress nor of his request that he come to Bogotá.

Minister of Industry added: "There is much talk of how and why Mr. Stabler came but they do not take into account why and how he left."

Department's 41, August 11, just received. The note will be sent tomorrow morning.

FILES

821.6363 Barco/134 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, August 15, 1928—2 p. m.

42. Your 67, August 12, 6 p. m. The Department is gravely concerned over your report that the Colombian press quotes the Minister for Foreign Affairs as having made certain statements to the Colombian Senate which, as you point out, are contrary to the facts. The Department does not feel that this incident can be allowed to pass unnoticed. The Department desires you, therefore, to address a note to the Minister for Foreign Affairs referring specifically to the press reports mentioned in your telegram under acknowledgment and saying: "I feel that I should inform Your Excellency of my understanding of the facts in this case." You should then clearly state the facts with regard to the request of the Minister for Foreign Affairs that Mr. Stabler visit Bogota exactly as they occurred.

You should also say: "I fear an erroneous impression may have been left by the reference to my note to Your Excellency and to Your Excellency's reply, without any reference being made to our subsequent conversation in which I explained to Your Excellency that my Government was of course aware of the fact that the Company concerned is a Colombian corporation, but that since practically all of the Company's stock is held by American citizens the latter have a very real interest at stake, and the Government of the United States perceived no impropriety in those circumstances in inquiring through you at the instance of the stockholders whether the courtesy of a reply to a memorial which had lain unanswered for 22 months might not shortly be expected." (See Department's 5, January 24, 6 p. m., and modify the above in accordance with the actual conversation which you had with the Minister for Foreign Affairs following the Department's instructions). You should also remind the Minister for Foreign Affairs that when you explained the American stock ownership he was satisfied that no impropriety was intended. (See your 6, January 24, 8 p. m.)

KELLOGG

821.6363 Barco/136 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

Bogotá, August 16, 1928—2 p. m.

[Received 4:30 p. m.]

68. I have just received from Minister for Foreign Affairs a note dated August 14 which reads as follows in translation:

"I have the honor to reply to Your Excellency's esteemed note dated yesterday in which Your Excellency makes some observations relative to the resolution of forfeiture of the Barco concession issued by the National Government the 4th day of the present month.

The Government of Colombia regrets not to admit the interference (tiene la pena de no admitir la ingerencia) of the Honorable Legation in a controversy of administrative character arisen between the Colombian Government as contracting party and an entity of private law. It is solely for the latter to make use of the resources that Colombian laws offered [*afford*] it, both in accord with the general principles of international law and in conformity with the express and definite stipulations of the contracts celebrated by it with the Government of the Republic."

The note referred to in the Department's 42, August 15, 2 p. m., will be sent this afternoon. With respect to last paragraph Department's telegram, I am also referring to a note February 2nd sent at the request of Minister for Foreign Affairs as a matter of record explaining American stock ownership and his note acknowledging it without comment.

PILES

821.6363 Barco/140 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

Bogotá, August 17, 1928—noon.

[Received 4:30 p. m.]

69. Press reports Minister of Foreign Affairs in Senate yesterday afternoon repeated with emphasis previous statements that I requested the Colombian Government to receive Mr. Stabler and that latter was not called by Colombian Government. He denied charges that he and the President had worked behind the back of Minister of Industry or that there had been any "intervention" on the part of our Government, saying that he replied to my first note "in a somewhat violent manner." He again made no reference to subsequent negotiations. The Minister of Industry speaking on same subject made among others following statements:

1st. That although the interested company may have thought to negotiate an arrangement to revalidate the concession in return for

some concessions, the thought of the Government was quite the contrary. The Executive in hearing the proposals of the interested party proceeded on the following basis: to maintain the forfeiture and once this right of the Nation was guaranteed some agreement might be reached.

2. "I hardly had occasion to hear Mr. Stabler and the country now knows what his pretensions were, which if necessary I can explain to the Senate in secret session."

3. "When Stabler said he had been called by the Government, I consulted the President, who instructed me to say 'it is not true and you can deny it; nobody called Stabler.' When I told Stabler this he passed on to other matters. There was therefore no fault on the part of my colleague (Minister for Foreign Affairs) but an excess of ardor on the part of the third party (Stabler)."

Press makes no comment today on foregoing.

PILES

821.6363 Barco/144 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

Bogotá, August 20, 1928—11 a. m.

[Received 1:12 p. m.]

72. Resolution of August 4 confirming decree of forfeiture Barco concession has been published *Diario Oficial* dated August 17.

Company representative has been privately informed by an official of Ministry of Industry that when he is officially notified of resolution of August 4 he is to be told that no new memorial of company concerning Barco will be accepted.

PILES

821.6363 Barco/146 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

Bogotá, August 21, 1928—2 p. m.

[Received 5 p. m.]

73. My numbers 67, August 12, 6 p. m., and 69, August 17, noon, and Department's 42, August 15, 2 p. m.

Minister for Foreign Affairs called on me and stated he had been misquoted by the press and sent me in support thereof a copy of the *Anales* of the Senate of the session of August 11. These *Anales*, which are brief summaries of the proceedings of the Senate, contain only a brief paragraph concerning the remarks of the Minister for Foreign Affairs in reply to questions whether negotiations had been carried on between the Government and Morrell¹⁴ and whether the

¹⁴ Presumably Albert Richard Morrell, attorney-in-fact of the *Compañía Colombiana del Petróleo*.

present administration had continued the negotiations at my suggestion to the Minister for Foreign Affairs. The paragraph reads as follows in literal translation:

"The Minister for Foreign Affairs stated that the first part, i. e., relative to Mr. Morrell, is true but that the second is not as the fact is that the Government rejected the intervention of the American Legation because the matter involved a Colombian company and suggested only that if the holders of the concession wished to renew negotiations they should appoint a representative with full powers in Bogotá."

On the basis of the foregoing he desires me to expunge from my note my statement of the facts concerning Mr. Stabler's visit to Bogotá and has requested me to send this telegram. Full particulars with respect to his wishes are being forwarded by hydroplane upon receipt of which I hope the Department will instruct me.

PILES

821.6363 Barco/149 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

Bogotá, August 22, 1928—4 p. m.

[Received 7:45 p. m.]

76. My 72, August 20, 11 a. m. Company representative was officially notified of Barco resolution yesterday afternoon by a solicitor of the Ministry of Industry. Latter also stated that he had been instructed by Minister of Industry to inform said representative privately and unofficially that Minister of Industry and other members of the Government considered recent resolution as merely confirming and explaining (aclaradora) decree of 1926 and that no new memorial of the company would be acted upon if presented. In answer to query he said that no official written inquiry on the part of company as to whether new memorial could be presented would be answered. Solicitor also said he personally thought Government considered matter settled and that if it went to Supreme Court no decision would be handed down during present administration.

PILES

821.6363 Barco/147 : Telegram

The Acting Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, August 23, 1928—2 p. m.

44. Your 73, August 21, 2 p. m. In view of the fact that a misunderstanding concerning the action of the Colombian Government in requesting the presence of Stabler in Bogotá seems to exist in the

public mind, if not in Government circles and in Congress, and since your action in expunging a part of your note might later be misconstrued, the Department believes it is best that an accurate statement of the facts as you understand them should remain on the files of the Foreign Office for future reference. You are accordingly instructed not to withdraw your note or any part thereof without further definite instructions following the receipt of your mail report.

CASTLE

821.6363 Barco/150 : Telegram

The Acting Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, August 25, 1928—noon.

45. Your 76, August 22, 4 p. m. Request Company's representative immediately to inform you in writing what transpired and exactly what was said by the Solicitor of the Ministry of Industry when Company's representative was notified of Barco resolution.

Upon receipt of this communication you should immediately address a note to the Minister for Foreign Affairs stating that you have been informed of certain statements made by the Solicitor of the Ministry of Industry and that you desire that this information which you have received should appear officially on the record of the case. You should then quote in full the letter from the Company's representative. Make no further comment. Send Department copy of your note.

WHITE

821.6363 Barco/156 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, August 27, 1928—9 a. m.

[Received 11:33 a. m.]

81. Department's 45, August 25, noon. Company's representative has written statement ready, but now feels he must obtain authority from his principals before delivering it to me. He has telegraphed principals situation in detail.

PILES

821.6363 Barco/156½ : Telegram

The Acting Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, August 28, 1928—6 p. m.

46. On account of Folsom's telegram to his company latter prefers not to instruct him to make written statement. Accordingly take no further action on instructions contained in Department's 45, August 25, noon.

CASTLE

821.6363 Barco/160 : Telegram

*The Minister in Colombia (Piles) to the Secretary of State*¹⁵

BOGOTÁ, August 29, 1928—2 p. m.

[Received 4:20 p. m.]

83. Department's 45, August 25, noon, and 46, August 28, 6 p. m. In order to have record complete would not following solve the difficulty and avoid possible embarrassment to company? Have company representative officially inquire in writing of Minister of Industry whether a new memorial would be acceptable. If Minister of Industry should not reply or should reply negatively, company would probably have no objection to furnishing Legation with written statement reporting such reply or failure to reply. Legation has suggested to Folsom that he inquire by cable of his principals with respect to foregoing.

PILES

821.6363 Barco/169 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, September 11, 1928—2 p. m.

53. Deliver the following note textually to the Minister for Foreign Affairs:

"I did not fail to communicate Your Excellency's note of August 14 to my Government and I am now instructed by the Secretary of State to say in reply that the United States Government is much surprised that the Colombian Government, contrary to the procedure customary between friendly nations, declines to answer a straightforward question of fact and attempts to deny to a friendly Government the right to make inquiries on behalf of the interests of its nationals.

¹⁵ Two notations on this document in the handwriting of Assistant Secretary of State White read as follows:

"Shown to Mr. Stabler. F. W."

"Mr. Stabler said the company thought it best to take no action and would instruct Folsom accordingly. F. W."

My note of August 13, to which your note under acknowledgment is in reply, requested perfectly proper information on behalf of American citizens interested in the Barco concession as to whether the concessionaire would be allowed a period of 30 days within which to present a new memorial addressed to and answering the alleged new grounds advanced in the recent resolution of the Colombian Government. My Government considers that it is perfectly within its rights under international law in extending reasonable and necessary assistance and protection to American citizens interested in a Colombian corporation of which they own over 95 per cent of the stock. Furthermore, my Government feels that a very considerable loss has been suffered by the American interests involved through the long delay by the Colombian Government in answering the petition of the Compañia Colombiana del Petroleo dated March 16, 1926, and that more serious losses are threatened through the refusal of the Colombian Government to state definitely whether this Company is entitled to file a new petition answering the new grounds set forth in the recent resolution of the Colombian Government confirming its decree of February 2, 1926.

My Government has requested nothing of the Colombian Government that it would be unwilling in a similar case to grant to Colombian or other foreign interests in the United States, and cannot permit the refusal of the Colombian Government to deal with this matter in the manner usual in intercourse between friendly nations to cause my Government to desist from according such assistance and protection to American citizens as may seem proper and necessary. Accordingly my Government will continue to follow with interest the further progress of this case."

KELLOGG

821.6363 Barco/225

The Minister in Colombia (Caffery) to the Secretary of State

Air Mail No. 1

BOGOTÁ, November 22, 1928.

[Received December 7.]

SIR: In accordance with the Department's telegraphic instruction No. 79 of November 16, 5 P. M., and with reference to the Legation's telegram No. 174 of November 21, 4 P. M.,¹⁶ I have the honor to transmit herewith by air mail a copy and translation of the reply of the Colombian Foreign Minister to the Legation's note No. 829 of September 15,¹⁷ with respect to the Barco case.

I have [etc.]

JEFFERSON CAFFERY

¹⁶ Neither printed.

¹⁷ In accordance with telegraphic instruction No. 53, Sept. 11, 2 p. m., *supra*.

[Enclosure—Translation]

*The Colombian Minister for Foreign Affairs (Uribe) to the
American Chargé (Matthews)*

BOGOTÁ, November 16, 1928.

MR. CHARGÉ D'AFFAIRES: I have the honor to refer to the esteemed note of the Honorable Legation, dated September 15th last, in which this Ministry was informed that the Government of the United States of America learned with much surprise that the Government of Colombia, contrary to the procedure customary between friendly nations, refuses to answer a concrete question and attempts to deny to a friendly government the right which it has to obtain information with respect to matters of interest to its nationals.

As this Ministry is convinced that on this as on all occasions it has been guided by the precepts of international law and courtesy and mutual consideration due between friendly nations, you will permit me to recall some of the antecedents which motivated my note of August 14th last.

In its communication of January 13th of the present year the Legation reminded this Ministry that a memorial presented to His Excellency, the President of the Republic, and the Ministry of Industries by the Compañía Colombiana del Petróleo, in which the Government of Colombia was petitioned to reconsider a resolution of forfeiture relative to the Barco Concession, had remained without answer. The Honorable Legation added that without expressing any opinion for the moment on the merits of the case, it desired to inquire whether the Colombian Government would not reply without further delay to the memorial referred to.

The following day upon having received the aforesaid note, namely the 14th of January last, this Ministry replied to the Honorable Legation that if the Compañía Colombiana del Petróleo to which the note referred, was the same company constituted by public document No. 37, authorized before the 4th Notary of the Circuit of Bogotá, the Department of State had erred in giving instructions to His Excellency, the Minister of the United States of America to inquire of the Chancellery the result of private negotiations which a Colombian Company might have undertaken before the National Government.

That note established from that time on the idea of the Government of Colombia with respect to the interference of the Honorable Legation of the United States in matters which, having to do with private rights, should be treated solely before the Courts of the Republic, for which all means except diplomacy are open.

That decision which faithfully interprets National opinion and which far from separating the two nations will promote a more

frank and cordial friendship between them, was expressed to your distinguished predecessor in my note of August 14th last, which I now have the honor to reaffirm to you with the request that you kindly make it known to the Government of the United States of America.

I avail myself [etc.]

CARLOS URIBE

GOOD OFFICES OF THE DEPARTMENT OF STATE TO PROTECT THE INTERESTS OF THE UNITED FRUIT COMPANY IN COLOMBIA

321.1154 United Fruit Company/1 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

WASHINGTON, March 12, 1928—7 p. m.

12. The Department is today informed by the representative of the United Fruit Company that this firm is experiencing certain difficulties with the Government of Colombia with regard to the Company's irrigation projects in that country, due to a resolution recently issued by the Minister of Industry which prohibits the Company from taking water from certain rivers. Acting in accordance with this resolution the Land Commissioner is said to have entered upon the land of the Company and to have destroyed certain property. The Company states that it has been pressing for a judicial termination of the matters in controversy and feels that this action on the part of the Government of Colombia is unwarranted.

The Department understands that you are thoroughly familiar with the case and that you have unofficially endeavored to bring about a satisfactory settlement thereof.

The Department desires you to discuss this matter again informally with the appropriate authorities and if you find the facts in the case to be substantially as set forth above you are instructed officially to request the Colombian Government to postpone further action in the matter until the controversy can be judicially determined upon its merits.

KELLOGG

321.1154 United Fruit Company/7 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

BOGOTÁ, June 20, 1928—2 p. m.

[Received 4 p. m.]

48. Department's telegram 12, March 12, 7 p. m. Minister of Industry presented in secret session of House of Representatives a "most important" bill declaring all irrigation canals which, in the opinion of the Government are necessary to provide water for differ-

ent sections of country, of public utility and authorizing Government to contract loans or open extraordinary credits in budget for acquisition of such canals without requiring consent of Council of State. Payment of loan and construction of other necessary works to be made through tax on properties irrigated. Bill aimed at irrigation system of United Fruit Company and was approved in first reading. Its passage uncertain.

PILES

321.1154 United Fruit Company/9 : Telegram

The Secretary of State to the Minister in Colombia (Piles)

[Paraphrase]

WASHINGTON, June 25, 1928—7 p. m.

31. Your telegram No. 48, June 20, 2 p. m. The proposed legislation reported in your telegram has also been brought to the attention of the Department by the United Fruit Company, which called attention to the difficulty of growing bananas under a system of irrigation that is nationalized and under the control of, and operated by, the Government of Colombia.

You are instructed to watch developments closely and to report thoroughly and promptly to the Department by telegraph. In the opinion of the Department it might have a beneficial effect if you would informally advise the Minister for Foreign Affairs that you have been instructed to follow the progress of this measure and report on the probable effect on American interests in Colombia of such proposed legislation. Although the Department does not feel that any protest would be justified at present, it hopes that no legislation will be passed which would result in injustice or discrimination against the large American investments in irrigation works in Colombia.

KELLOGG

321.1154 United Fruit Company/11 : Telegram

The Minister in Colombia (Piles) to the Secretary of State

[Paraphrase]

BOGOTÁ, June 28, 1928—11 a. m.

[Received 3:25 p. m.]

51. Department's telegram No. 31, June 25, 7 p. m. In conversation with the Minister for Foreign Affairs I strongly presented matter along lines suggested. He is going to explain to the President our interest in the present situation and do all that he can

to prevent the passage of legislation which is regarded as highly detrimental to American interests. The bill is still in House committee.

FILES

[In despatch No. 579, September 18, 1929, the Minister in Colombia reported that: "Neither the irrigation problem (which formed the subject of the Department's telegram No. 12 of March 12, 7 P. M., 1928) nor the land problem of the United Fruit Company has ever been satisfactorily settled, although for over a year the company's petitions have been pending before the Council of State without a decision." (321.1154 United Fruit Company/14.)]

**ARRANGEMENT BETWEEN THE UNITED STATES AND COLOMBIA
RESPECTING THE STATUS OF SERRANA AND QUITA SUEÑO BANKS
AND RONCADOR CAY, EFFECTED BY EXCHANGE OF NOTES APRIL
10, 1928 ¹⁸**

Treaty Series No. 760½

The Colombian Minister (Olaya) to the Secretary of State

[Translation]

No. 352

WASHINGTON, April 10, 1928.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Colombia, duly authorized by his Government, proposes to His Excellency the Secretary of State of the United States the conclusion, by exchange of notes of the following agreement respecting the status of Serrana and Quita Sueño Banks and Roncador Cay, situated in the western part of the Caribbean Sea, that is to say, that whereas both Governments have claimed the right of sovereignty over these Islands; and whereas the interest of the United States lies primarily in the maintenance of aids to navigation; and whereas Colombia shares the desire that such aids shall be maintained without interruption and furthermore is especially interested that her nationals shall uninterruptedly possess the opportunity of fishing in the waters adjacent to those Islands, the *status quo* in respect to the matter shall be maintained and the Government of Colombia will refrain from objecting to the maintenance by the United States of the services which it has established

¹⁸ For correspondence relating to this subject, see section entitled "Boundary Disputes: Colombia and Nicaragua," vol. I, pp. 701 ff.

or may establish for aids to navigation, and the Government of the United States will refrain from objecting to the utilization, by Colombian nationals, of the waters appurtenant to the Islands for the purpose of fishing.

ENRIQUE OLAYA

Treaty Series No. 760½

The Secretary of State to the Colombian Minister (Olaya)

WASHINGTON, April 10, 1928.

SIR: The undersigned, the Secretary of State, has the honor to acknowledge and take cognizance of a note of this date from the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Colombia, stating that having been duly authorized to take such action on behalf of the Colombian Government, by His Excellency the Minister of Foreign Affairs for Colombia, he proposes the conclusion by exchange of notes of the following agreement respecting the status of Serrana and Quita Sueño Banks and Roncador Cay, situated in the western part of the Caribbean Sea, that is to say, that whereas both Governments have claimed the right of sovereignty over these Islands; and whereas the interest of the United States lies primarily in the maintenance of aids to navigation; and whereas Colombia shares the desire that such aids shall be maintained without interruption and furthermore is especially interested that her nationals shall uninterruptedly possess the opportunity of fishing in the waters adjacent to those Islands, the *status quo* in respect to the matter shall be maintained and the Government of Colombia will refrain from objecting to the maintenance by the United States of the services which it has established or may establish for aids to navigation, and the Government of the United States will refrain from objecting to the utilization, by Colombian nationals, of the waters appurtenant to the Islands for the purpose of fishing.

The arrangement set forth in the Minister's note is satisfactory to the Secretary of State who understands such arrangement to be concluded by this exchange of notes.

Accept [etc.]

FRANK B. KELLOGG

**DISAPPROVAL BY THE DEPARTMENT OF STATE OF PARTICIPATION
OF AMERICAN CONSULAR OFFICERS IN JOINT REPRESENTATIONS
TO AUTHORITIES OF FOREIGN GOVERNMENTS**

702.0021/2

The Secretary of State to the Consul at Cali (Chapman)

WASHINGTON, September 29, 1928.

SIR: The Department has received your despatch No. 12, dated August 29, 1928,¹⁹ reporting the organization of a consular corps at Cali. It is noted that a committee has been appointed to draft a memorial to the Governor of the Department of Valle, to be signed by all members of the Corps, requesting the Governor to apprise the proper authorities at Bogotá of the deficiencies of the authorities at Buenaventura²⁰ and the desire of the corps to have steps taken to remedy them.

In general, the Department does not approve of the participation by American consular officers in joint representations to authorities of foreign governments, except in very special circumstances and after the Department has granted specific authority in each case. An exception to the latter rule might be made in the presence of circumstances constituting an emergency, as, for example, when foreign lives and property are in actual and imminent danger and it is the judgment of the officer that immediate joint action is necessary.

It is desired that consular officers reserve complete liberty of action at all times and the Department considers that in general the prestige and effectiveness of the Service can best be maintained by independent action.

It is suggested that your conduct as member and Dean of the Consular Corps at Cali should conform with the foregoing.

I am [etc.]

For the Secretary of State:

FRANCIS WHITE

BOUNDARY DISPUTE WITH NICARAGUA

(See volume I, pages 701 ff.)

¹⁹ Not printed.

²⁰ Immigration and customs authorities.

CUBA

PROPOSAL BY CUBA THAT THE COMMERCIAL CONVENTION BETWEEN THE UNITED STATES AND CUBA, SIGNED DECEMBER 11, 1902, BE REVISED¹

611.3731/285

The Secretary of State to the Cuban Ambassador (Ferrara)

WASHINGTON, *June 13, 1928.*

EXCELLENCY: I have the honor to refer to Your Excellency's note of December 15, 1927,² proposing certain tentative bases for the possible revision of the reciprocity treaty of 1902.³

This important subject has been receiving the earnest consideration of the Government of the United States since it was brought up by the Cuban Government over two years ago. In order that all phases of the subject might be examined in the light of all the pertinent facts, the United States Tariff Commission, as Your Excellency is aware, has been making during the past two years a detailed study of the history, operation and effects of the treaty. In November, 1926, Ambassador Crowder transmitted to your Government a copy of a preliminary analysis prepared by the Commission.⁴ I now transmit for the information of your Government copies of the report which has just been completed, entitled "The Effects of the Cuban Reciprocity Treaty of 1902".⁵

The tentative proposals set forth in Your Excellency's note of December 15, 1927, and the annexes thereto have been carefully studied by the interested branches of the Government of the United States. These proposals, which are much more favorable to Cuba than to the United States, appear to be based upon the assumption that the reciprocity treaty has operated and now operates more to the advantage of the United States than of Cuba. The report of the Tariff Commission, however, clearly indicates that such is not the case. Accordingly, when the proposals of the Cuban Government are examined in the light of that report, it does not appear on what basis they can be justified.

¹ Continued from *Foreign Relations*, 1927, vol. II, pp. 503-518.

² *Ibid.*, p. 508.

³ *Ibid.*, 1903, p. 375.

⁴ Not printed.

⁵ Washington, Government Printing Office, 1929.

I shall not take this occasion to discuss the subject at greater length, since I am sure that the Cuban Government will desire to re-examine the matter in the light of the full data contained in the report of the Tariff Commission.

Accept [etc.]

FRANK B. KELLOGG

611.3731/289

The Cuban Ambassador (Ferrara) to the Secretary of State

[Translation]

WASHINGTON, June 19, 1928.

MR. SECRETARY: I have the honor to acknowledge receipt of Your Excellency's courteous Note No. 611.3731/225 [285], of the 13th instant, relative to certain tentative bases for a possible revision of the Treaty of Commercial Reciprocity of 1903 [1902]. I am forwarding the Note to my Government for its consideration.

Subject to further consideration of these questions, the Government of Cuba continues to maintain its opinion that the present Treaty does not answer the reciprocal interests of the two countries as it ought to do.

I avail myself [etc.]

ORESTES FERRARA

611.3731/288

The Secretary of State to the Ambassador in Cuba (Judah)

No. 170

WASHINGTON, June 23, 1928.

SIR: By instruction No. 21 of January 12, 1928,⁶ you were informed that as soon as the report of the United States Tariff Commission regarding the operation of the Reciprocity Treaty between the United States and Cuba, a copy of which was included for the Embassy's files, should be communicated to the Cuban Government the Embassy at Habana would be apprised of that fact.

With a note of June 13, 1928, replying to the Cuban Ambassador's note of December 15, 1927, a copy of which was also enclosed with the instruction of January 12, corrected copies of the Tariff Commission's report were handed to the Cuban Ambassador in Washington.

There are forwarded herewith for the confidential information of your Embassy a copy of the note of the 13th instant to the Cuban Ambassador⁷ and a copy of the corrected report of the Tariff Commission.

The following paragraphs are added for the Embassy's further strictly confidential information:

⁶ Not printed.

⁷ *Ante*, p. 640.

When the note was handed to the Cuban Ambassador, occasion was taken to say that there appears to be little chance of a revision of the treaty, and that if the question were re-opened, it is not impossible that Congress would take action looking toward an arrangement less favorable to Cuba than the present arrangement.

As to the general effects of the treaty, it was pointed out that under the treaty the proportion of American consumption of sugar supplied by Cuba has grown from about 32% in 1901-04 to about 60% at present. During the period since the treaty was signed, Cuban sugar production has increased nearly five fold, and Cuba has been given a practical monopoly of the sugar import trade of the United States.

Regarding the disappearance of the price differential which during earlier years operated in favor of Cuban sugar, the observation was made that such a temporary advantage is of an unusual nature in the operation of reciprocity treaties; and that its disappearance was due to the rapid progress of the Cuban sugar industry so that it could supply all the import requirements of the United States.

I am [etc.]

For the Secretary of State:

FRANCIS WHITE

**EXTENSION OF CREDIT FOR \$50,000,000 TO THE CUBAN GOVERNMENT
BY THE CHASE NATIONAL BANK**

837.51/1265

Memorandum by the Acting Economic Adviser (Livesey)

[WASHINGTON,] May 3, 1928.

Ambassador Judah on his recent visit to the Department left for its files the attached copy of the Cuban Department of Public Works' statement of November 1927^{*} showing the revenues collected on account of the Public Works Special Fund by months and years from July 1925 through November 1927. The total collections are shown as \$36,038,724.14, a monthly average of \$1,315,330.60 and an annual average of \$14,997,228.80. The statement shows the detail of the collections of each revenue created for the fund. These details do not appear to have been previously available to the Department as the accounts of the Special Fund are not included in the Cuban budget accounts of which the Department receives detailed monthly extracts.

It is notable that the law of July 15, 1925, establishing the fund included a provision that:

"The Executive will adopt the methods and procedures it may deem most effective; but at no time shall they be contracted in such a man-

^{*} Not printed.

ner that the total annual amount to be paid, in whole or in part, can not be covered within each fiscal year, from the nominal income calculated for that year, from the special fund created by this Law for such works in order that it will not be necessary to issue certificates of indebtedness or other documents of a similar nature for the payment of obligations contracted, it being understood that the Executive shall be authorized to enter into all contracts deemed convenient, within said four years, provided that in carrying same out, the above-mentioned conditions are strictly adhered to, even if the mentioned contracts have to be fulfilled after the four years."

In February, 1927, however, the Republic of Cuba contracted for the issue of certificates representing and constituting

"the irrevocable and incontestable contract obligation of the Republic to pay the principal amount hereof and interest thereon . . .^{8a} without right of reduction or counter claim for any reason whatsoever, such payments being secured . . . by a first preferential right to 90 per centum of the normal revenues . . . to be derived from the taxes and economic resources specified in the Public Works Law of July 15, 1925."

On March 31, 1928, the embassy reported that the Government of Cuba was negotiating for a \$20,000,000 revolving credit similar to the credit extended by the Chase National Bank. On April 16 it reported that the Government had increased the amount of the proposed credit to \$25,000,000 and a day or two later proposed a further increase of \$7,000,000. On May 2 it telegraphed that the Secretary of the Treasury had requested bids for a credit of \$40,000,000 to \$50,000,000 to be submitted May 12.

F[REDERICK] L[IVESEY]

837.51/1267

The Chargé in Cuba (Curtis) to the Secretary of State

No. 227

HABANA, May 3, 1928.

[Received May 7.]

SIR: Referring to the Embassy's despatch No. 183 of April 16, 1928,⁹ and my telegram No. 62 of May 2, three p. m.,⁹ I have the honor to transmit herewith the Spanish text and English translation of an invitation, dated April 28, 1928,⁹ which yesterday reached local bankers, to submit bids on their own behalf or that of their home offices for the further financing of the Central Highway project to the amount of not less than forty nor more than fifty million dollars. It will be seen that from the text of the communication the bidders are

^{8a} The omissions in this paragraph are indicated in the original memorandum.

⁹ Not printed.

desired to consider the operation as a simple advance to the contractors of sums which the Government is subsequently to receive from the normal estimated revenues during the last four years of the operation of the Public Works plan of July 15, 1925, it evidently being intended that the bankers' security shall lie in some sort of lien on the revenues of the last four years cited. The bidders are to draft their proposals for such an "advance", drawing up their own terms, which shall be submitted for the consideration of a board comprised of the Secretaries of Treasury and Public Works, the bids to be opened at three p. m. on May 12, 1928.

The authority (?) to call for bids without resort to general advertising is found in Article 282 of the Contract for the construction of the Highway, entered into between the Cuban Government and Warren Brothers, the sixth paragraph of that article permitting the contractor to make proposals concerning necessary additional financing. Theoretically, I understand, such proposals as shall now be made by banking entities will be considered as made in conjunction with Warren Brothers under its contractual authority. The English text of this contract is available to the Department by reference to the Embassy's despatch No. 193 of April 17, 1928.¹⁰

As to the security for the projected "advance" of funds, it will be observed that the invitation makes specific mention of the fact that use has already been made of the special revenues to accrue during the fiscal year 1930-1931 for the carrying out of the contract with the Chase National Bank of New York. It will be recalled from that contract, the text of which was transmitted with the Embassy's despatch No. 1893 of March 5, 1927,¹⁰ that by Article 9 the Government pledged to the Bank, as security for principal and interest, a first preferential right to ninety per cent of the normal revenues, estimated at \$18,000,000, for the period from July 1, 1930 to June 30, 1931 and if said revenues should not be sufficient, the same preferential right in each subsequent fiscal year for the balance of the ten year period which the special Public Works taxes are to run. The Government also pledged a preferential right to ninety per cent of the estimated normal revenues to be derived each fiscal year during the intervening period from July 1, 1927, to June 30, 1930, as a special guarantee of payment of interest accruing in each such intervening year. Likewise the last paragraph of Article 282 of the Warren Brothers' contract allocates to that Company as security forty per cent of the special revenues accruing under the Public Works Law.

From the above, it is evident that not only are the revenues for the fiscal year 1930-1931 pledged to the Chase Bank but also, in a contingent manner, the revenues are encumbered for the years prior

¹⁰ Not printed.

and subsequent to that year. This being the case, any banking institution which bids upon the suggested financing, if it accepts the revenues from the last four years of the taxes as security for the "advance", must do so subject to the prior rights thereon of the Chase Bank or must discover some means to cause that bank to relinquish its lien on those revenues. It may be that it is contemplated paying off the Chase loan from the sum to be derived from the anticipated credit of forty to fifty million dollars, so liquidating in entirety the mortgage held by the Chase Bank.

In this general connection, it should be asserted that during the month of April the Government commenced to draw for the first time against the ten million dollar Chase credit. Slightly in excess of one and one half million dollars has thus far been so drawn, leaving a balance as of today of approximately eight and a half million. . . .

When the Chase credit was under process of negotiation—a credit smaller but analogous in nature to the advance now solicited—the Department sent to the Embassy a telegraphic instruction, No. 147 of December 11, two p. m., 1926,¹¹ by which the Embassy was authorized to inform the President that the Government of the United States did not raise any objection to the proposed financing or request the Cuban Government formally to consult the United States in the premises, this stand being taken in view of the constructive purpose of the loan, and the relatively improved financial condition of Cuba. It is respectfully requested that the Department indicate whether it is desirous of adopting the same attitude with regard to the present financing.

In formulating its attitude, it is recommended that the Department study my despatch No. 223 of today's date concerning the financial condition of the Cuban treasury.¹¹ From that despatch it will be evident that instead of reflecting a relatively improved financial condition, as was the case at the time the Department's above cited telegram was drafted, the Government revenues are falling off seriously and give promise of declining further before improving. With a continuation of the economic crisis a deficit of considerable size looms as probable for the present fiscal year. The receipts from the special Public Works taxes, on the other hand, are being maintained satisfactorily at approximately \$17,000,000 per annum and it is, of course, on these revenues and not the general budget that the projected credit is predicated; although the state of the treasury should not be lost sight of.

In closing, it should be remarked that, in view of the Department's telegraphic instruction No. 147 of December 11, two p. m., 1926, in which it was stated that consultation on the Chase credit was not requested, I am not surprised that the President did not consult the Embassy before addressing the banks on April 28. I am, however,

¹¹ Not printed.

considerably surprised that he should have permitted that step to have been taken at all when one considers his repeated assurances that no further financing would be undertaken. Particularly categorical was his statement, as quoted in my despatch No. 2425 of December 17, 1925 [1927],¹² that:

"There will be no loan made by Cuba during my administration. If any bill is passed by the Congress providing for a loan, I shall veto it. If any loan bill is approved by the President, it will be by my successor and not by me."

and his assertion, paraphrased in despatch No. 162 of March 31, 1928,¹² to the effect that the Government was not going to make any loan, that the special Public Works taxes were bringing in more money than had been anticipated and that he would have enough money from this source to complete his program of public works.

I have [etc.]

C. B. CURTIS

837.51/1263

The Secretary of State to the Chargé in Cuba (Curtis)

No. 143

WASHINGTON, May 5, 1928.

SIR: The Department has received your telegram No. 62, May 2, 3 p. m., and your despatches No. 162 and No. 183 of March 31, 1928, and April 16, 1928, respectively,¹³ regarding the desire of the Cuban Government to negotiate a further credit in connection with the Public Works Special Fund.

You are instructed to call on the Cuban Department of State and to discuss the matter informally, pointing out that in view of the public call for bids, it is expected that requests for information and a statement of the Department's views in the matter will be received by the Department. The Embassy has kept the Department informed in considerable detail regarding Cuban public finances but the Department lacks information regarding the present plans of the Cuban Government, the purpose of and the reason for the proposed financing, its relationship to the public works program, the actual progress of the execution of that plan, and whether it is to be modified or accelerated. It is possible that in connection with the contemplated financing the Cuban Government may have prepared connected studies which it will not find inconvenient to place at the disposal of the Department for its information.

It is not desired that you base your remarks on the Platt Amend-

¹² Not printed.

¹³ None printed.

ment or the Treaty of 1903¹⁴ but there should be no appearance of avoiding discussion thereof. In case the question of the Department's attitude in this connection is raised, you may refer to the Department's attitude in December 1926 (Department's telegram No. 147, December 10 [11], 1926¹⁵) but you should state that you have no instructions in the matter.

The Department notes in a press despatch from Habana mention of "the \$10,000,000 loan made by the Chase National Bank, which is supposed not to have received Washington's approval". The Chase National Bank consulted the Department in December 1926 and in February 1927 and was informed that the Department offered no objection to its financial arrangement with Cuba. The press despatch also states that the \$10,000,000 loan "has been exhausted, and revenues are not coming up with public works requirements". You may in your discretion call to the attention of the Cuban Department of State the publication in the United States of reports of this kind which are likely to lead to inquiries addressed to the Department. The Department also expects that American bankers would consult it before committing themselves to a financial transaction of this kind.

I am [etc.]

For the Secretary of State:

FRANCIS WHITE

837.51/1272 : Telegram

The Chargé in Cuba (Curtis) to the Secretary of State

HABANA, May 14, 1928—2 p. m.

[Received 4:40 p. m.]

67. Department's instruction number 143, May 5, last paragraph. Three proposals for public works financiering submitted May 12 respectively by National City Bank through the contractors, Chase National Bank and a syndicate headed by First National Bank of Boston. Texts of the proposals follow in tomorrow's pouch.^{15a} Award expected May 16.

CURTIS

¹⁴ *Foreign Relations*, 1904, p. 243.

¹⁵ Not printed.

^{15a} Texts not printed.

837.51/1278 : Telegram

The Ambassador in Cuba (Judah) to the Secretary of State

HABANA, May 24, 1928—2 p. m.

[Received 4:17 p. m.]

73. For White.¹⁶ Your letter of May 17th¹⁷ says that you told Ferrara¹⁸ Embassy was instructed to inform the Cuban Government that we expected to be consulted by it about the public works loan. I find that Department's instruction No. 143 May 5th said to point out informally that the Department expected to receive requests for information and a statement of its views. The Cuban Government was so informed orally but literally, no mention being made of the source from which the requests were expected. Statement of public works revenues informally requested that day has not been received. Does the Department wish me to say formally it expects to be consulted by the Cuban Government and shall I ask officially for statement of the revenues, et cetera?

No new developments on loan yet. President unwell and has gone to Isle of Pines until next Monday.

JUDAH

837.51/1278 : Telegram

The Secretary of State to the Ambassador in Cuba (Judah)

WASHINGTON, May 25, 1928—7 p. m.

90. Your 73, May 24, 2 p. m. Chase National Bank has inquired whether Department sees any objection to the credit arrangement it has proposed to Cuba.

You may leave with the Cuban Secretary of State an appropriate memorandum stating that you have been instructed, in view of the consultation of the Department by an interested American bank, to renew the Embassy's request for information regarding revenues, et cetera, which will enable the Department to act on the matter in full knowledge of the facts of the situation.

KELLOGG

¹⁶ Francis White, Assistant Secretary of State.

¹⁷ Not found in Department files.

¹⁸ Cuban Ambassador.

837.51/1283

The Ambassador in Cuba (Judah) to the Secretary of State

No. 280

HABANA, May 28, 1928.

[Received May 31.]

SIR: I have the honor to acknowledge receipt of your telegram No. 90, May 25, 7 PM., in regard to the proposed new financing by the Government of Cuba, and to enclose herewith a copy of a memorandum which I this morning presented to the Acting Secretary of State in this matter.

The Acting Secretary of State told me that he would take the matter up with President Machado today.

I have [etc.]

NOBLE BRANDON JUDAH

[Enclosure—Memorandum]

The American Ambassador (Judah) to the Cuban Acting Secretary of State (Fernandez)

HABANA, May 28, 1928.

The American Ambassador has today been directed to inform the Cuban Government that one of the American Banks which has submitted a bid in connection with the proposed new financing under the general plan of the law of July 15, 1925, has consulted the Government of the United States to ascertain whether that Government has any objection to the credit arrangement which this Bank has proposed to the Government of Cuba.

In view of this inquiry, the American Ambassador has been instructed to renew his request, heretofore orally made, to the Secretary of State of Cuba, that his Government be furnished with the information respecting this proposed financing which will enable it to act on the matter with full knowledge of the facts of the situation.

For this purpose, it is therefore requested that the Government of the United States be furnished with information in connection with this proposed new financing, covering the following points:

1. The amount of the proposed financing.
2. The purpose and the reason for the proposed financing.
3. The sources of revenue to be hypothecated for the service of the proposed financing.
4. The amounts which these sources of revenue have produced in recent years.
5. The amounts which it is conservatively estimated these sources of revenue will yield in the future.
6. The amounts of the ordinary revenues of the Cuban Government during recent years, exclusive of the sources of revenue to be hypothecated for the service of the proposed financing.

7. The amounts of the ordinary disbursements of the Cuban Government during recent years, exclusive of disbursements made from the sources of revenue to be hypothecated for the service of the proposed financing.

8. Any other facts showing whether or not the use of the special sources of revenue to be hypothecated for the servicing of the proposed new financing will leave the ordinary revenues of the Cuban Government sufficient to defray its ordinary disbursements.

It is possible that, in connection with the proposed new financing, the Government of Cuba may have prepared connected studies which it will not find inconvenient to place at the disposal of the Government of the United States for this purpose.

837.51/1285 : Telegram

The Ambassador in Cuba (Judah) to the Secretary of State

HABANA, June 2, 1928—10 a. m.

[Received 11:10 a. m.]

81. For White. Official decree accepting Chase Bank's bid for \$50,000,000 financiering issued last night.

JUDAH

837.51/1293

The Ambassador in Cuba (Judah) to the Secretary of State

No. 306

HABANA, June 14, 1928.

[Received June 19.]

SIR: Referring to my telegram No. 90, June 12, 11 AM,¹⁹ I have the honor to send herewith the original memoranda, and translations thereof, handed to me on June 12 by Acting Secretary of State Fernández, in response to my informal request of May 25, 1928, for data in connection with the new fifty million dollar financing, the bid for which by the Chase Bank was accepted by the Cuban Government.

I also call your attention to my despatch No. 305 of June 13, 1928,¹⁹ covering the proposals for the budget for the fiscal year 1928-29. You will see that, in the President's Message, he requests the authority of Congress to take from otherwise unpledged treasury funds, or from the Special Public Works Fund, such amounts up to a limit of seven million dollars as may be necessary to make up the amounts of any budgetary items for which general revenues are not available.

I have [etc.]

NOBLE BRANDON JUDAH

¹⁹ Not printed.

[Enclosure—Memorandum—Translation]

The Cuban Acting Secretary of State (Fernandez) to the American Ambassador (Judah)

HABANA, May 29, 1928.

Report for the State Department²⁰ in order that it shall in turn report to the American Ambassador with data, as requested by him, in relation with the proposed financing of the public works by the Government of Cuba.

1.—Amount of the proposed financing:

From forty to fifty million dollars.

2.—The purpose and reason for the proposed financing.

To intensify the public works in accordance with what is provided in Article 10 of the Law of July 15, 1925.

3.—The sources of revenue which shall be pledged for the service of the proposed financing.

Only 90% of the estimated revenues of the Public Works Plan during the years 1931 to 1935 in accordance with the plan of November 10, 1926.

4.—The amounts which said sources of revenue have produced in recent years:

In the year 1925–1926 they produced \$13,627,905.96; in 1926–1927 they produced \$16,366,551.70 and in 10 months of the year 1927–1928, \$15,102,271.04.

The estimates for those years in accordance with the aforementioned plan of November 10 were for 1925–1926 \$10,000,000; 1926–1927 \$16,000,000 and 1927–1928 \$16,000,000.

5.—The amounts that it is prudently estimated that said sources of revenue will produce in the future:

From 1928–1929 to 1934 to 1935, both inclusive, at the rate of \$18,000,000 per annum in accordance with the estimate of receipts of the aforementioned plan of November 10, 1926. A greater revenue has been estimated commencing in 1928–1929 because it is estimated that by that time all the proceedings for the collection of all the taxes of this special fund will be in proper working order.

6.—The amounts of ordinary revenues of the Cuban government during recent years, aside from the sources of revenue to be pledged for the service of the proposed financing:

In the year 1925–1926 \$87,398,173.93; 1926–1927 \$80,344,818.95 and in 10 months of 1927–1928 \$69,635,596.36. These sums do not include the sources of revenue which are to be pledged for the proposed financing.

7.—The amounts of the ordinary disbursements of the Cuban govern-

²⁰ The Cuban Department of State.

ment during recent years, aside from the disbursements made out of receipts which are to be pledged for the service of the proposed financing:

In 1925-1926, \$87,347,161.32 plus \$51,000 extraordinary redemption of the bonds of the Interior Debt of 1905, made out of the surplus of the budget of that year.

In 1926-1927, \$81,698,105.89 there being a deficit of \$1,354,774.78 caused by excesses in the budget assignments, specially in "Veterans' Pensions" which amounted to \$682,242.19. In 1927-1928, 10 months \$65,903,218.53.

8. All the other data which show whether or not, the use of the special sources of revenue which are to be pledged for the service of the new financing will leave sufficient ordinary revenue of the government for the meeting of its regular disbursements:

The financing operation that is projected does not in any manner affect the regular revenue of the Cuban government sufficient to meet its ordinary disbursements inasmuch as said operation is secured solely and exclusively by 90% of the receipts corresponding to the years 1931 to 1934 (4 years of the Special Public Works Fund, Law of July 15, 1925 and in accordance with the Plan of November 10, 1926).

Is it possible that in connection with the proposed new financing the Cuban government may have prepared connecting data which said government does not deem it proper to place at the disposal of the Government of the United States?

Gazettes are attached which include the receipts of the budgets of the years 1925-1926 and 1926-1927 which correspond to questions 6 and 7 as well as of the movement of receipts and disbursements of the Special Public Works Fund corresponding to the years 1925-1926 and 1926-1927; there is also attached the data ²¹ which served as the basis for the requesting of the proposed financing.

837.51 Chase National Bank/7

The Secretary of State to the Chase National Bank

WASHINGTON, June 20, 1928.

SIRS: With reference to letters of Messrs. Rushmore, Bisbee and Stern ²² addressed to the Department under dates of May 22 and June 14, 1928, ²³ regarding your interest in negotiating a credit arrangement with the Cuban Government, I beg to inform you that, in the light of the information at hand, the Department desires to offer

²¹ Not printed.

²² Legal firm, New York.

²³ Neither printed.

no objection to this proposed financing on the terms and conditions set forth in the Supplemental Agreement enclosed with the above-mentioned letter of June 14.

You of course appreciate that, as pointed out in the Department's announcement of March 3, 1922,²⁴ the Department of State does not pass upon the merits of foreign loans as business propositions nor assume any responsibility in connection with such transactions, also that no reference to the attitude of this Government should be made in any prospectus or otherwise.

I am [etc.]

For the Secretary of State:

FRANCOIS WHITE

Assistant Secretary

837.51 Chase National Bank/8 : Telegram

The Secretary of State to the Ambassador in Cuba (Judah)

WASHINGTON, June 20, 1928—5 p. m.

107. Your despatches Nos. 305²⁵ and 306, June 13 and 14, 1928. Department has informed Chase National Bank it will not object to its financing proposal. Bank presented the matter as urgent since agreement is not binding until ratified by Cuban Congress.

Please present the following memorandum to the Secretary of State:

"The Government of the United States, after careful consideration of the information regarding the Cuban financial situation transmitted to it through the American Embassy in Havana in response to the memorandum presented to the Acting Secretary of State of the Cuban Government, May 28, 1928, and of the draft 'Supplemental Agreement between the Republic of Cuba and Chase National Bank of the City of New York relating to Financing Payments to Contractors under Public Works Law' does not desire to raise any objection to the increase in the public debt of Cuba involved in the execution of the latter contract."

You may indicate orally to the Secretary of State and to the President that, inasmuch as the Cuban Government's memorandum of May 29, 1928, states that the purpose and reason for the proposed financing are to intensify the public works in accordance with Article 10 of the law of July 15, 1925, an unfortunate impression would be produced were the Special Public Works Fund drawn upon even temporarily to meet ordinary expenses of the Cuban Government

²⁴ *Foreign Relations*, 1922, vol. I, p. 557.

²⁵ Not printed.

during the time the latter is financing its public works program under its agreements with the Chase National Bank.

KELLOGG

837.51 Chase National Bank/13

The Ambassador in Cuba (Judah) to the Secretary of State

No. 320

HABANA, June 25, 1928.

[Received June 28.]

SIR: Referring to your telegraphic instruction No. 107 of June 20, 1928 in connection with the new Chase Bank financing, and after further consideration of the last paragraph thereof in regard to what I may communicate orally to the Secretary of State and to the President, I have the honor to state that I have come to the conclusion that it is better not to make this oral communication at this time, unless you wire me to the contrary.²⁶

In the first place, we have not sought to attach any conditions to our approval of the new loan, and we are now in the position of having supervised but not having interfered. In the second place, the budget as submitted to Congress by President Machado with permission to him to use general funds or funds from the Public Works taxes up to \$7,000,000 for general budget expenses was approved by the Senate last week prior to the receipt of your telegraphic instruction No. 107. If the budget is amended as to this \$7,000,000 in the House, it would give rise to considerable talk and our interference at least guessed at.

There is no question in my mind but that the Cuban Government will be forced to use at least a large part of \$7,000,000 of Public Works taxes to cover its \$83,000,000 budget for the next fiscal year. It will have to do it either directly or indirectly because the general revenues will certainly not meet the budget. In such case our verbal objection made now would be tacitly ignored and Cuban finances would probably be in such shape that we would not want to make formal objection.

It is true that the Cuban Government is going to start at once to finance its public works program under its agreement with the Chase National Bank but the Chase Bank has no lien upon the Public Works taxes until the fiscal year of 1930-1931. If prior to the making up of the budget for the next fiscal year you think the situation is such that there should be a strong objection made to the Cuban Government using Public Works taxes for its general expenses, we could make either a formal or an informal objection prior to the making up of the budget in April and May, 1929.

I have [etc.]

NOBLE BRANDON JUDAH

²⁶ No such instruction was sent.

**SUGGESTION OF CUBA THAT A METEOROLOGICAL STATION BE
ERECTED ON SWAN ISLANDS JOINTLY BY THE UNITED STATES,
CUBA, GREAT BRITAIN, AND MEXICO ²⁷**

811.0141 Sw 2/100

The Secretary of State to the Ambassador in Cuba (Judah)

No. 109

WASHINGTON, March 31, 1928.

SIR: The Department has received your despatch No. 127 of March 21, 1928,²⁸ with further reference to the proposal of the Cuban Government that the Governments of Cuba, Great Britain, Mexico and the United States jointly maintain a meteorological station at Swan Islands. The Department notes that the Government of Great Britain has informed the Cuban Government that it is not interested in the project, and that the Mexican Government has failed to respond to the Cuban overtures. It is further noted that the Cuban Government now proposes that Cuba and the United States jointly undertake the installation of the station, sharing equally in the expense thereof, provided that this Government has no objection. Should this plan be carried out the Cuban Government recommends that opportunity should not be closed for Mexico eventually to share in the expense of the undertaking. As an alternative the Cuban Government invites any other suggestions which this Department may care to make with regard to the financing of the installation and maintenance of the station.

The original proposal of the Cuban Government to establish a meteorological station at Swan Islands was duly submitted to the appropriate Departments of this Government. While it appeared to be the consensus of opinion that the installation of the station is highly desirable, it was felt that the station, if installed, should be solely at the expense and under the control of the United States Government. No decision has as yet been reached, however, regarding the Department of this Government which should install the station and under which the station should function.

Please informally advise the Cuban authorities that this Government is much interested in the Cuban proposal for the establishment of a meteorological station at Swan Islands and that the matter has been brought to the attention of the appropriate Departments of this Government in an effort to reach a decision as to the manner in which the installation and maintenance could be effected, and the necessary appropriations secured therefor. It is hoped that a definite reply can be made to the Cuban Government in the near future.

I am [etc.]

For the Secretary of State:

FRANCIS WHITE

²⁷ Continued from *Foreign Relations*, 1927, vol. II, pp. 530-538.

²⁸ Not printed.

811.0141 Sw 2/103 : Telegram

The Secretary of State to the Ambassador in Cuba (Judah)

WASHINGTON, April 19, 1928—6 p. m.

76. Department's instruction 109, March 31, and previous correspondence concerning the establishment of a meteorological station on Swan Island.

You may inform the Minister for Foreign Affairs that the appropriate Department of this Government is giving active consideration to the establishment of a meteorological station and light at Swan Island in the near future. It may be difficult to obtain the consideration of Congress at this late date for the establishment of a permanent station during the coming summer, but it is still possible that arrangements may be made for a temporary station during the next cyclonic season. In any case, if such a station is established, the meteorological observations available will be freely supplied to Cuba, Mexico and other countries which might find them valuable.

While the United States deeply appreciates the offer of the Cuban Government to share the expense of this station, it will not be necessary to ask the Cuban Government to do so. In the past this Government has consistently taken the position that the full expense for the maintenance of meteorological stations should devolve upon the Government having sovereignty over any particular location.

KELLOGG

811.0141 Sw 2/109

The Cuban Ambassador (Ferrara) to the Secretary of State

[Translation]

WASHINGTON, June 4, 1928.

EXCELLENCY: The cyclonic disturbances which generally occur around Swan Island, with effects which are felt in Cuba, constitute a serious danger to navigation in those regions, where the lack of radio-electric communications renders difficult the protection of shipping and human life.

My Government desires to know whether that of Your Excellency would be inclined to grant permission for a Cuban concern, to be determined hereafter, temporarily to establish a radiotelegraphic station at Swan Island at its own expense as regards installation and maintenance, until the United States may decide to establish one there and as long as the United States may have no objection to its operation.

This would largely improve the conditions of navigation referred to above, and the safeguarding of human life would be made much more effective.

I venture to ask Your Excellency kindly to advise me, after the subject has been studied, of the decision which may be arrived at, so that I may transmit it to my Government.

I avail myself [etc.]

ORESTES FERRARA

811.0141 Sw 2/112

The Secretary of State to the Cuban Chargé (Rodriguez)

WASHINGTON, August 1, 1928.

SIR: Referring to your Embassy's note of June 4, 1928, and to this Department's reply of June 25, 1928,²⁹ with regard to the proposed establishment of a meteorological station at Swan Island, I am pleased to inform you that definite arrangements have now been completed whereby meteorological reports are being received from Swan Island and will continue to be received until October 30, 1928. It is understood that this period includes the principal season of cyclonic disturbances in that region during this year.

The Chief of the Weather Bureau of the United States Government has already advised the director of the meteorological service of Cuba that reports are again being received from Swan Island and that these reports will be made available to his Department.

The possibility of permanently establishing the meteorological station at Swan Island during 1929 is now being taken up with the appropriate Departments of this Government, and I shall be pleased to inform you as soon as there may be further information available in the premises.

Accept [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

²⁹ Latter not printed.

CZECHOSLOVAKIA

NATURALIZATION TREATY BETWEEN THE UNITED STATES AND CZECHOSLOVAKIA, SIGNED JULY 16, 1928

711.60 f 4/3

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 394

PRAGUE, *March 14, 1923.*

[Received April 6.]

SIR: With reference to the Department's Instruction No. 100 of January 4th ¹ ultimo regarding a proposed naturalization treaty with Czechoslovakia ² I have the honor to enclose the copy of a Note from the Foreign Office stating that the Czecho-Slovak Government is ready to accept the text of such a treaty which had been transmitted in compliance with the Department's Instruction No. 71 of September 5, 1922.¹

There appears to be some doubt in the mind of the legal advisors of the Foreign Office with regard to the final meaning of the law of September 22 by which alien women no longer acquire our citizenship on their marriage to Americans.³ I am therefore writing to enquire if in the Department's opinion any change in the text of the treaty has been made necessary by virtue of this new law.

The point raised by the Foreign Office regarding the last paragraph of Article I, seems to be irrelevant and may be due to an incomplete knowledge of a foreign language. Lately in discussing the legal points of the proposed extradition treaty with a high official of the Ministry of Justice I discovered that the insurmountable objection he had raised to our officials assisting the Czechoslovak officers of the law came from his translation of the word "assist" as being present, in the French sense.

A slight clarification of no particular importance is also proposed for Article II.

I shall now await the Department's final instructions with regard to the Treaty.

I have [etc.]

LEWIS EINSTEIN

¹ Instructions not printed.

² Draft treaty not printed; it was the same, *mutatis mutandis*, as the treaty signed by the United States and Bulgaria, Nov. 23, 1923, except that the fifth (and last) paragraph of article I is omitted and article II altered with regard to summonses to military service.

³ 42 Stat. 1021.

[Enclosure—Translation]

The Czechoslovak Minister for Foreign Affairs (Beneš) to the American Minister (Einstein)

No. 31.651/III-1 ai 1923

PRAGUE, February 28, 1923.

MR. MINISTER: The Ministry for Foreign Affairs has the honor to acknowledge receipt of your Note No. 273 of January 30, 1923.

Having received the opinion of the competent Ministry relative to the Naturalization Treaty, the Ministry for Foreign Affairs has the honor to inform you that the Czechoslovak Government accepts the text proposed by Your Excellency. It would be pleased, however, if the question concerning the citizenship of women married since September 22, 1922—the date when the law relative to the citizenship of women came into effect—with citizens of the United States of America and who do not acquire by this marriage the citizenship of their husbands could be settled at an early date.

As to the details, it is to be noted that the last paragraph of Article I of the draft in question concerns only the United States of America, for there are no subjects in Czechoslovakia who are not at the same time citizens. It would therefore be desirable to modify the said paragraph in this sense, or better still, to defer consideration of this article until the final draft.

The last sentence of Article II might perhaps be more clear if it were drafted according to Article 2 of the Bancroft Treaties⁴ about as follows:

“Except in cases when, according to the laws of the country of origin, the penalty might be abolished owing to the statutes of limitation or for any other reason.”

The Ministry for Foreign Affairs takes advantage [etc.]

For the Minister:

I. WELLNER

711.60 f 4/3

The Secretary of State to the Minister in Czechoslovakia (Einstein)

No. 130

WASHINGTON, July 26, 1923.

SIR: The Department has received your despatch No. 394 of March 14, 1923, in reply to its instructions Nos. 71 and 100 of September 5, 1922, and January 4, 1923,⁵ concerning a proposed naturalization treaty between the United States and Czechoslovakia. It appears

⁴ Convention signed July 19, 1868, with Baden; Malloy, *Treaties*, 1776-1909, vol. I, p. 53.

⁵ Neither instruction printed.

that the Czechoslovak Government has expressed a willingness to sign the proposed treaty, with certain modifications. The principal modification suggested relates to the change in the nationality laws of the United States effected by the married women's citizenship act of September 22, 1922, under which alien women no longer acquire American nationality by marriage to American nationals nor by the naturalization of their husbands as American nationals, and American women no longer lose their American nationality by marrying aliens provided the latter are eligible to naturalization in this country.

The second change suggested relates to the question of the liability of a naturalized citizen to punishment for an offense committed against his country of origin prior to emigration. In the draft submitted by the Department, Article II read as follows:

"Article II. Nationals of either country, who come within the purview of Article I, may, upon returning to the country of their former nationality, be tried and punished in accordance with the laws thereof for offenses committed before they emigrated, but not for the act of emigration itself; saving always the limitations established by the laws of the original country or any other remission of liability to punishment."

It is proposed by the Czechoslovak Government to amend Article II by the substitution for the last clause of a clause reading as follows:

"Except in cases when, according to the laws of the country of origin, the penalty might be abolished owing to the statutes of limitation or for any other reason."

The Czechoslovak Foreign Minister in his note of February 28, also calls attention to the last paragraph of Article I of the draft treaty in which it is stated that:

"The word 'national', as used in this convention, means a person owing permanent allegiance to, or having the nationality of, the United States or Czechoslovakia, respectively, under the laws thereof."

The Foreign Minister in this relation observes in his note of February 28th, that there are no subjects in Czechoslovakia who are not at the same time citizens, and suggests that it would be desirable to modify this passage or to defer consideration of this Article until the final draft.

In view of the change made by the Act of Congress of September 22, 1922, in the status of alien women who marry American nationals and of American women who marry aliens eligible to naturalization in this country, the Department agrees that it is desirable to make a change in Article I of the proposed treaty by the insertion of a paragraph reading as follows:

"The word, 'naturalized', refers only to the naturalization of persons of full age, upon their own applications, and to the naturaliza-

tion of minors through the naturalization of their parents. It does not apply to acquisition of nationality by a woman through marriage."

As to the definition of the word "national" contained in the fourth paragraph of Article I, I may say that the Department sees no necessity for making a change in it. On the other hand, it seems desirable to have a clear understanding as to the meaning of this word in the treaty. The definition as it now stands by no means involves an admission by the Government of Czechoslovakia that there are nationals of Czechoslovakia who are not citizens thereof.

As it is necessary, in view of the married women's citizenship act, to make a change in Article I of the treaty and as the Czechoslovak Government has suggested other changes, it occurs to the Department that it might be well to submit a new draft of the treaty, and a copy thereof is enclosed herewith.⁶ This draft is similar in phraseology to drafts which are being submitted to governments of other countries. It has been drawn with a view to making some of the provisions more definite than those contained in the former draft,⁷ particularly in Article II, which relates to the right of either country to punish its former nationals who have obtained naturalization in the other country, for offenses committed against the former prior to the time when they established their residence in the latter. In the new draft treaties submitted to other countries no statement is made in Article II concerning cases in which there may be a remission of liability to punishment under statutes of limitation or any other provisions in the laws of the country of origin. In formulating the new drafts it was assumed that such remission would be granted as a matter of course. For the sake of uniformity this statement has likewise been omitted from the enclosed draft.

You will please bring this draft to the attention of the appropriate authorities, and suggest its substitution for the original draft. However, if, after you have fully explained the matter, the Czechoslovak authorities state that they prefer to continue negotiations upon the basis of the original draft, you will please inform the Department and the matter will be given further consideration.

In presenting this matter again to the Czechoslovak authorities, you will please express the gratification of this Government that the Government of Czechoslovakia sees its way clear to the conclusion of a naturalization treaty between the two countries. The Department is confident that the conclusion of such a treaty will be mutually beneficial, by preventing controversies in individual cases and will greatly serve to promote free and friendly intercourse between the two countries.

I am [etc.]

CHARLES E. HUGHES

⁶ Not printed; it is almost identical with the treaty signed Nov. 23, 1923, with Bulgaria, *Foreign Relations*, 1923, vol. I, p. 464.

⁷ Not printed.

711.60 f 4/8

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 1093

PRAGUE, August 20, 1926.

[Received September 7.]

SIR: I have the honor to refer to the Department's instruction No. 130 of July 26, 1923 and to other pertinent correspondence bearing on the proposed naturalization treaty between the United States and Czechoslovakia.

The Legation is in receipt of a *note verbale* from the Czechoslovak Foreign Office, dated as of April 30, 1926, in which comments are made and further considerations regarding the text of the draft are set forth. This note is hereby submitted in original French and translation, for consideration and action by the Department.

I have [etc.]

For the Minister:

JOHN STERETT GITTINGS

[Enclosure—Translation *]

The Czechoslovak Ministry for Foreign Affairs to the American Legation

No. 20860/26-II/5

The Ministry for Foreign Affairs had the honor during the year 1924 to set forth orally to the Legation of the United States the point of view of the Czechoslovak Government regarding the project of a Convention bearing on certain questions of nationality to which the Legation's Note No. 406 of August 25, 1923 has particular reference. The Czechoslovak Government has examined this projected Convention in detail, with the intention of reaching an agreement which should avoid as far as possible questions of nationality which might arise between Czechoslovakia and the United States. Indeed, if no attempt is made to resolve such conflicts, they may inevitably provoke, on the part of the authorities of a State upon whose territory there resides a person who at once is a national of two States, measures against such a person under two laws.

A detailed analysis of the articles, which is to be set forth herein, will show that the Czechoslovak Government, desiring to eliminate such conflicts, was obliged, in order to take up the project presented by the American Government, to face the eventual question of making certain important and essential modifications of Czechoslovak legislation. The importance to Czechoslovak legislation of the Convention now in preparation is enough to make it clearly understandable why

* File translation revised.

the Czechoslovak authorities who are working on it are obliged to give it very special attention. Nevertheless, the Czechoslovak Government has decided to make such modifications to its present legislation in the hope that it might be of real utility to Czechoslovak citizens as well as to American citizens, and only for those persons who in good faith have the intention of establishing themselves upon the territory of one or the other of the Contracting States and of fulfilling their civic duties. The Legation's note of September 30, 1922, No. 196, constitutes for the Ministry of Foreign Affairs a guarantee that this end will be attained. The Legation has seen fit to declare in the name of its Government to the Czechoslovak Government that "there is no intention of conferring American nationality upon aliens unless they intend in good faith to reside in the United States and fulfill the obligations of citizenship. In other words, my Government has no desire or intention of countenancing the action of aliens who may obtain naturalization certificates only as a convenience, to enable them to evade the just demands of the countries from which they come while continuing to reside therein. Where the facts and circumstances of any case indicate that naturalization was obtained with such a purpose in view, proceedings may be instituted under Section 15 to cancel the naturalization *ab initio*."

In view of these considerations, the Czechoslovak Ministry for Foreign Affairs takes the liberty of communicating herewith to the Government of the United States its views touching the various stipulations of the Convention being prepared (I), and on the other hand drawing its attention to certain questions which, in the opinion of the Czechoslovak Government, are closely related to the subject in question (II).

I

The Ministry for Foreign Affairs first states that it consents that the introduction to the proposed Convention insist on the fact that the clauses of this Convention should apply to those cases where nationality has been acquired by a person of the other State "by reasonable processes of naturalization within any territory under its Sovereignty." Such naturalization is considered by the Ministry for Foreign Affairs to mean the acquisition of a new nationality, which results from consent of the physical person acquiring it, and assumes that certain ties attach the said person to his or her new State. In general these bonds or ties shall be constituted by the domicile founded *animo manendi*, and existing for some little time. The Ministry for Foreign Affairs believes that paragraph 5 of Article I of the Convention takes the idea of nationality in the same sense when it says "the word 'naturalized' refers only to the naturalization of persons of full age, upon their own applications."

As to the other clauses of the Convention in preparation, the Ministry for Foreign Affairs takes the liberty of making the following remarks:

ARTICLE I

PARAGRAPH 3

The Czechoslovak Government approves the proposed stipulation and also desires that, if Czechoslovakia should be in a state of war with any other nation, the clauses of paragraphs 1 and 2 of the first article should cease to be enforced during the period of the war. Thus, in such event Czechoslovak nationals would not lose their Czechoslovak nationality by reason of their American naturalization. Nevertheless the Czechoslovak Government begs to suggest that this principle be expressly set forth in the 3rd paragraph more or less as follows: "In case one of the Contracting Powers should be at war with a third State, the above stipulations of the present article shall cease to be in force for the duration of that war."

As an explanation of the proposed text of paragraph 3 of Article I, the Czechoslovak Government begs to remark that Czechoslovak legislation has as yet no analogous regulation, this legislation being founded on principles quite different from those set forth in paragraphs 1 and 2 of Article I of the proposed treaty. If it is desired that the paragraphs in question have weight in relations with the United States, the Czechoslovak Government desires at the same time that it should be established that the clauses of paragraphs 1 and 2 of this article should cease to be effective in time of war. Otherwise Czechoslovak legislation would be obliged to enact a special regulation similar to that comprised in paragraph 3.

PARAGRAPH 4

The Czechoslovak Government, returning, regarding this paragraph, to the request which it has already made to the United States Legation, begs it to point out whether there exists a difference between a person "owing permanent allegiance to . . ." and one "having the nationality of . . ." The Ministry for Foreign Affairs believes there is no difference whatever between these two conceptions. In both instances there would always be meant persons attached by the tie of nationality to the State in question.

If there should be occasion to differentiate between a person "owing permanent allegiance to . . ." and one "having the nationality of . . .", the Government wishes to remark that the idea of permanent allegiance is foreign to Czechoslovak legislation as far as nationality of a physical person is involved. It therefore does not seem sound to make use of this formula as regards Czechoslovakia.

PARAGRAPH 5

The Czechoslovak Government understands that the purpose of this paragraph of Article I is to specify who are nationals of the Contracting States in the light of paragraphs 1 and 2 of Article I and in what circumstances these dispositions are applicable thereto. Thus, if "the word naturalized refers only . . ." is applied to certain persons who act in a certain way, this implies that "the dispositions of paragraphs 1 and 2 of Article I apply only to the naturalization of persons of legal age . . . etc." The Czechoslovak Government begs to propose that the definitive text of the Convention in preparation should set forth clearly the purpose of this paragraph.

Minors

(First sentence of paragraph 5)

Regarding the conception of what constitutes a minor, the proposed text of Article I does not specify what should be understood by the term, with the result that the legislation of each of the Contracting Parties is left free to determine its meaning. In Czechoslovak law a minor is every citizen not yet having attained the age of 21, provided he or she has not been previously declared of age. The Ministry for Foreign Affairs believes that United States legislation contains a stipulation fully analogous to that just set forth. The Ministry feels that, thanks to this stipulation, conflicts concerning nationality are not to be feared, but such conflicts would be inevitable should the age limit for minors not be clearly fixed by the laws of the two countries. The Ministry for Foreign Affairs desires to call the attention of the United States Government to this point, and leaves it to that Government to decide whether it would not be preferable to define, in the text of the Convention itself, which persons they are who have not attained their majority.

Regarding the naturalization of minors (to which this passage of the draft alludes and which occurs *ipso facto* by the naturalization of their parents), the Czechoslovak Government ventures to say that this clause ought probably to be interpreted in this sense that every minor, being, like his or her parents, of American or Czechoslovak nationality, loses that nationality by the mere fact of the naturalization of the parents and becomes, simultaneously and conjointly with the parents, a national of the other Contracting State. Therefore, no other conditions are required, for the naturalization of minors, than the valid naturalization of their parents.

Should the United States Government interpret the dispositions in question in the manner outlined above, the Czechoslovak Government believes it is right to point out that it would be useful to specify

likewise the conception of "parents." Parents of a minor comprise necessarily two persons, but it is not likely that solely the naturalization of the father, or of the unmarried mother, can exercise, within the meaning of the phrases in preparation, an *ipso facto* influence on the nationality of the minor. The expression "parents", employed in the first sentence of paragraph 5 of Article I, would then signify that it is alone the naturalization of the father, or of the unmarried mother, which decides. Obviously this clause may be interpreted in another sense, namely, that the naturalization of the parents includes *ipso facto* that of a minor child only when certain other conditions regarding the naturalization of minors have been fulfilled. Such other conditions, again, may be different in each of the two Contracting States. Regarding these special conditions, it appears that United States legislation requires that the minor establish himself or herself in the United States at the same time as the parents, or that such domicile be acquired at least prior to the age of 21. Now, Czechoslovak legislation regarding minors who lose their nationality when the fathers become naturalized in the United States does not invariably correspond to the above-set-forth principle of American law. Inasmuch as the American and Czechoslovak laws are not in accord regarding conflicts which might arise in certain cases bearing on the nationality of minors, it would be possible for a minor, through the naturalization of the parents, to be a citizen of both States, or to lose the old without acquiring the new nationality.

Should the United States Government interpret the dispositions in question in the manner just outlined, the expression "parents" would naturally need no further definition. Czechoslovak and American legislation would each independently decide which of the two parents should settle, by their naturalization, that of the minor. If this view is not held, the Czechoslovak Government would consider it advisable that the dispositions in preparation concerning minors should be taken into account. It is evident, in the case at hand, that the Czechoslovak authorities (needing to know whether the minor acquiring Czechoslovak nationality has at the same time lost that of the United States, or vice versa) would be obliged to reckon with pertinent American legislation. The American authorities would probably be forced, in analogous instances, to take account of Czechoslovak laws.

In view of the foregoing, the Government of the Czechoslovak Republic begs the Government of the United States to be good enough to define in what sense these dispositions of the draft Convention concerning the naturalization of minors should be interpreted. In case a difference should continue to subsist, in the clauses, regarding the naturalization of minors in the United States and in Czecho-

slovakia, the Czechoslovak Government would beg the United States Government to be good enough to inform it of the conditions on which are based, in American law, the loss of nationality by a minor as a consequence of his father's naturalization in Czechoslovakia. On its side the Czechoslovak Government ventures to inform the United States Government that the conditions under which a minor may gain or lose Czechoslovak nationality by reason of the father's naturalization in the United States, have been established by Czechoslovak legislation as follows:

Minors generally acquire Czechoslovak nationality upon the naturalization of their fathers.

If the father loses Czechoslovak citizenship, his minor children generally lose it too, provided, however, they have not attained the age of 17 and are not consequently restricted in their freedom of change by the laws on recruiting.

In this connection the Czechoslovak Government ventures to remark that the establishing of a minor's nationality would be greatly facilitated if the official document conferring nationality on the parents should expressly mention the persons who, by that act, become naturalized forthwith. The Czechoslovak Government desires to point out that documents conferring or withdrawing Czechoslovak nationality mention generally and in a specific manner the names of persons gaining Czechoslovak citizenship through collective naturalization. The Czechoslovak Government would, therefore, be grateful if the United States Government were to inform it whether the American "certificate of naturalization" may, to the same end, bear likewise the names of minor children naturalized simultaneously with their father.

The Wife

The naturalization of the wife should be looked at from two angles: one, that which concerns the influence of the husband's naturalization on the married woman's nationality; the other, the effect of a marriage-contract when made with a husband who is a national of the other Contracting Party.

Regarding the first point, the Ministry for Foreign Affairs would like to remark that, in principle, by Czechoslovak legislation the wife acquires or loses, in Czechoslovakia, Czechoslovak nationality according as the husband acquires or loses this nationality.

The Ministry for Foreign Affairs believes that, on this point, United States legislation is likewise based on the principle of collective naturalization.

But the mere fact that American nationality is not accorded contrary to the laws of the State of origin, in cases where the wife con-

tinues to live in her native country while the husband is in America where he becomes naturalized, alone perhaps prevents an extensive application in American legislation of this principle.

If the laws of the two Contracting States are based, in this instance, on the same principles, then the Ministry for Foreign Affairs supposes that the projected dispositions of paragraph 5 of Article I are (as regards the nationality of the wife) the expression of these principles. Otherwise, conflicts of nationality would necessarily arise from the contradictions existing between the dispositions of the Convention and the legislation of the State. Obviously this is not the desire of the authors of the project. The Czechoslovak Government, therefore, interprets the dispositions of Article I, paragraph 5 (concerning the nationality of the wife), to mean that the naturalization of the husband in the other Contracting State carries with it *per se* that of the wife, who thus loses her original nationality.

The Czechoslovak Government is of the opinion that this interpretation of paragraph 5, Article I of the projected Convention is substantiated by the expression "the naturalization of their parents", employed in Article I in connection with minors. It is apparent that the simultaneous naturalization of the father and of the mother is recognized. For a minor to obtain the nationality of one of the Contracting States it suffices, as said before, that the father or the unmarried mother be naturalized. If Article I says "the naturalization of their parents", this indicates probably that the naturalization of the father includes *per se* that of the mother. The Ministry believes that the words "upon their own application" (paragraph 5, "persons of full age") should be interpreted in this sense: namely, that the formal consent of the wife must be added to the request of the husband seeking naturalization. Naturalization of the husband, therefore, cannot occur (according to Article I) without bringing about simultaneously that of the wife and in conformity with her express desire. The Czechoslovak Government willingly admits that the naturalization of the husband should act upon that of the wife, but on condition that the wife herself may make her will count. Experience shows that the acquisition of a foreign nationality by a husband often causes difficulties to the wife when the two are living apart. Such difficulties will cease to exist if the projected dispositions which grant a common nationality to the couple take into account also the desire of the wife to acquire her husband's nationality.

As regards the second point bearing on the wife, the last sentence of paragraph 5 of Article I of the draft stipulates that the dispositions of this article (on the consequences of naturalization within one Contracting State in connection with the nationality of a citizen of the other Contracting Party) are not to apply to marriage or to the contract

of marriage. By this clause the wife does not lose her former nationality by marrying a citizen of the other Contracting State. This clause probably emanates from the principle that marriage does not confer another nationality on the wife, and it apparently results from the American law of September 22, 1922.

It is well to state that, contrary to this point of view, Czechoslovak legislation is based (as regards the effects of marriage on the wife's nationality) on the principles held up to now by nearly all nations; that is to say, a woman of Czechoslovak nationality loses that nationality by the mere fact of marrying an alien. As a result of the divergence between the two sets of laws, a woman of Czechoslovak origin loses, by marrying an American citizen, her Czechoslovak nationality without acquiring that of her husband, for, in order to acquire American nationality, she is obliged to become naturalized in the United States. It might be remarked at this point that, if there is question here of a negative conflict between United States and Czechoslovak legislation, then the provisions of the aforementioned law of September 22, 1922, bring the two legislations into positive conflict: An American woman, by reason of her marriage with a Czechoslovak, does not lose her American nationality, although by the same fact she acquires Czechoslovak nationality.

As regards the theoretical conflict of American with Czechoslovak legislation which has been treated above, this may be resolved according to Section 2 of the law of September 22, 1922. By this clause, a foreigner married to an American acquires American nationality only after having resided a certain length of time in United States territory. On this point the Ministry for Foreign Affairs would appreciate being informed by the United States Government whether American legislation does in fact, in every case, permit a Czechoslovak woman married to an American citizen to establish herself upon United States territory, in the Hawaiian archipelago, Alaska, or Porto Rico for the purpose of fulfilling the conditions requisite for the acquisition of American nationality.

The Ministry for Foreign Affairs ventures to ask this question because it considers that the purpose of the projected convention is to remove all germs of possible difficulties concerning citizenship rights, which might arise in Czechoslovak legislation. The Czechoslovak Government believes it would be well, in the case where a Czechoslovak woman loses her nationality through marriage to an American, to give such woman full possibility of acquiring the nationality of her husband. The Czechoslovak Government would be obliged if the United States Government should confirm the understanding that a Czechoslovak woman marrying an American citizen without the continental United States (namely, in Hawaii,

Alaska, or Porto Rico) may in every instance establish herself on United States territory, including Hawaii, Alaska or Porto Rico, and remain there during the period of time required by American legislation for a woman married to a citizen of the United States to acquire American nationality.

ARTICLE II OF THE PROJECT

The principle which proclaims that naturalization may not have retroactive effect undergoes, in the proposed article, a double modification. By the act of naturalization, both expatriation itself ("Original Act of Naturalization") and the failure to obey orders concerning obligatory military service cease from being ultimately punishable. In the latter contingency, ultimate immunity from punishment includes the period which commences at the moment the national establishes himself bona fide within the territory of the other State.

As to immunity from punishment for expatriation itself, the Ministry for Foreign Affairs has the honor to inform the Legation that Czechoslovak legislation gives nationals of the Czechoslovak State the right to expatriate themselves freely.

In this sense paragraph 110 of the Czechoslovak Constitution of February 29, 1920 stipulates that the right to emigrate shall not be restricted except by a law. This law, to which the Constitution refers, is that of February 15, 1922 (No. 71 of the Compilation of Laws and Decrees). In paragraph 2 it is expressly stipulated: "Emigration is free within the limits of the law in force." The Government can, by decree and for any determined country, forbid or restrict emigration in cases where the lives, liberty, or property of the emigrants might be seriously menaced, or where this measure might be necessary to protect the material or moral interests of the emigrants. Further, the Ministry of Social Welfare, in accord with the other competent Ministries, can restrict emigration to certain travel routes which are of easier control by the State and better suited as regards the public interests and those of the emigrants. Restrictions on emigration due to military obligations are established by the recruiting law and by the decrees promulgated in conformity therewith. Czechoslovak citizens not of legal age who do not emigrate with their father require an authorization from the officials charged with the care of minors. This regulation does not apply to minors over 18 who emigrate beyond Europe; but the said authorities may prevent emigration if the circumstances, notably the nature of the minor's occupation abroad, should perchance be dangerous to his or her health or morals. Furthermore, minors, male and female, under 16 years of age, may not emigrate without their

father or mother unless it is proved that they are to be accompanied to their destination by responsible persons over 24.

The following persons also may not emigrate:

a) Those who are being sought by justice for crime, misdemeanor or infraction of law, those sentenced to prison, those against whom a warrant of arrest has been issued or who have been summoned to court;

b) Parents who leave behind them at home children under 16 without having previously assured their permanent protection;

c) Persons who by reason of advanced age, illness, or bodily infirmity are unable to work, unless it can be shown that their subsistence is assured in the country to which they emigrate;

d) Those who, after their expenses of travel are paid, might arrive at the country of destination without resources;

e) Those who are forbidden entry by law in the country to which they wish to immigrate.

Infractions of these rules are punishable by a term of imprisonment up to 3 months or by a fine of 50,000 Czechoslovak crowns. This punishment may be inflicted by the administrative authorities only, in conformity with paragraphs 37 and 38, II, of the above law. The prison term may be applied together with a fine to the maximum of 20,000 Czechoslovak crowns. However, only certain actions bearing on emigration shall be considered as crimes or misdemeanors subject to prosecution in accordance with paragraphs 33-35 of the law in question; e. g., emigration-propaganda (paragraph 33), misleading of minors (paragraph 34), and white slave trade (paragraph 35), but not emigration itself.

If, therefore, in conformity with Article II of the projected Convention, freedom from punishment for expatriation itself is guaranteed, the Ministry for Foreign Affairs believes that, insofar as Czechoslovak legislation is concerned, it is thereby established that a former Czechoslovak national when naturalized may not be subject to punishment for infraction of the aforementioned legal prescriptions.

As to the already-cited second category of stipulations of Czechoslovak legislation whose infraction, as a result of American naturalization, ceases to be punishable in the case of Czechoslovak nationals, the Ministry for Foreign Affairs wishes to point out to the Legation that, in view of Czechoslovak legislation, there should be taken into consideration the stipulations of paragraphs 47 to 51 of the Recruiting Act of March 19, 1920 (No. 193 in the Compilation of Laws and Decrees), according to which a person who does not obey the order to enter active military service commits a breach of law. Under the terms of paragraph 183 of the Military Penal Code (No. 19/1855 of the old Austrian Code), such avoidance of

military service may become the crime of desertion, if the person called to active duty remains away from his army corps (group or any other establishment) with the intention of permanently avoiding his military obligation. By the terms of Article II of the proposed Convention, it is established that a national of the Czechoslovak State when naturalized in the United States shall not be prosecuted for desertion should he fail to obey the order to enter military service, according to Czechoslovak law, if the said crime or misdemeanor is committed after he is bona fide established in the United States, and this even though he might not be an American citizen at the moment of violating the law and would, therefore, still be, according to the proposed Convention, a Czechoslovak citizen in every sense.

While, therefore, the Czechoslovak Government admits, in the two instances cited, that the naturalization of its nationals in the United States may have a retroactive effect and from a penal point of view may exempt such persons from Czechoslovak laws in force, it nevertheless does not conceal its belief that this point seems to it the chief practical effect of the projected Convention. As a result, Czechoslovak legislation to begin with is thereby affected; and the application of Article II, from a practical point of view and because of conditions existing in the legislation of the two High Contracting Parties, imposes obligations on the Government of the Czechoslovak Republic alone.

The Czechoslovak Government has decided to modify its legislation in important ways in order to maintain good relations between the United States and Czechoslovakia. This concession proves how desirous it is that application of Article II of the Convention should not be the source of any difficulty. It is in this spirit that the Czechoslovak Government takes the liberty of reminding the United States Government of the following facts:

The application of the Convention will, in Czechoslovakia, have a primary effect on the minor authorities. It is, therefore, necessary that, as soon as the two stipulations of the Convention are agreed to, those authorities should have the most precise instructions. From the point of view of this executive administration, the Czechoslovak Government wonders whether the text, now in preparation, of the stipulations of Article II does not leave a measure of uncertainty as to exactly when the naturalized Czechoslovak citizen shall have in good faith established his residence in America.

The Czechoslovak officials who must in the first instance decide the moment at which the nationals are established bona fide in America obviously cannot ascertain this accurately except after special inquiries more or less drawn-out and detailed.

Bearing in mind this uncertainty, if the proposed text of Article II of the projected Convention is to define, in a way efficacious for the needs of the officials in question, the period when (from the penal point of view) the exemption in stipulations aforementioned of Czechoslovak legislation begins being effective, the Czechoslovak Government ventures to propose that, in Article II of the projected Convention, this period be clearly fixed and that a stated number of years be mentioned.

Inasmuch as for naturalization the United States requires five years, and Conventions now in force between the United States and other nations (similar to that being prepared with Czechoslovakia) have taken five years as a basis, the Czechoslovak Government proposes that a period of five years be likewise established in Article II here in question, and that, from the beginning of this period, the Czechoslovak national naturalized in the United States be, in these respects, exempted from the operation of Czechoslovak laws. The content of Article II would, therefore, read somewhat as follows:

“Nationals of either of the two (Contracting) States, as defined in Article I, shall not, upon their return to the territory of the State of which they were formerly nationals, be prosecuted or punished for expatriation or for having failed, prior to their naturalization, to answer summonses to military service which had been served upon them during five years preceding their naturalization.”

Regarding Article II of the proposed Convention, the Czechoslovak Government takes the liberty of remarking that it is well aware that as a consequence of the present text of Article II as drawn up by the United States Government it would be possible to reduce the time-period after which the naturalized former Czechoslovak national should be exempt from the Czechoslovak statutes mentioned earlier.

This would also be the case should his or her bona fide residence be established in the United States before the lapse of the five years directly preceding naturalization. The Czechoslovak Government has the honor to assure the United States Government that it will make every effort, in conformity with Article II, to proceed as liberally as possible in regard to such former nationals as have violated the aforesaid regulations before the time-period in question of five years but whose bona fide residence can be proved. In such event it is obvious that the Czechoslovak authorities should have indisputable proofs of such residence. On the other hand, in cases where the five-year period immediately preceding naturalization is applicable, no attestation will be required and every former Czechoslovak national naturalized in the United States will be exempt from enforcement of the Czechoslovak laws bearing on the points above mentioned, without the necessity of furnishing any other proof of naturalization.

ARTICLE III OF THE PROJECT

The purpose of this article, in the opinion of the Czechoslovak Government, is primarily to prevent the naturalization of persons who have not sufficient cause for emigration.

The Czechoslovak Government suggests that the expression "renoncer à la naturalisation" be supplemented by "perdre la naturalisation."

The Czechoslovak Government has the honor to communicate to the United States Government, in regard to the dispositions of this article, that a former Czechoslovak national naturalized in the United States may never, if he should lose his American citizenship for any cause whatsoever, re-acquire Czechoslovak nationality.

As regards the language in which the Convention shall be drawn up, the Czechoslovak Government takes the liberty of offering the following:

"The present Convention, drawn up in English and in Czech, both texts being authoritative, shall be ratified by the High Contracting Parties in conformity with their respective constitutions and shall come into force on the day of ratification, which shall take place at Washington as soon as possible.

"The present Convention shall remain in force for 10 years. If neither of the High Contracting Parties states its intention of denouncing it one year before the end of the above-mentioned period, it will remain in force and will not terminate until a year after one or the other of the High Contracting Parties shall have denounced it."

II

1. The Czechoslovak Government, after having made in (I) all its remarks regarding the stipulations of the Convention in question, has the further honor to propose to the United States Government that there should be reciprocally reported the names of persons who have become naturalized in each of the two States. This suggestion, although somewhat outside the scope of the questions of nationality covered by the proposed Convention, has nevertheless a direct bearing on the stipulations of Article III for the following reasons:

As has been already said, the burden of putting this Convention into effect will fall, in Czechoslovakia, on the lower officials and—with regard to males liable to Czechoslovak military service—on the military authorities. Inasmuch as these keep the registers of persons of Czechoslovak nationality subject to military service, they will play a very important role in the carrying out of this Convention. In connection with the proposed Convention, Czechoslovak nationals will remain there registered as long as they have not proved, as set

forth in the Convention stipulations, that they have acquired American nationality.

Experience has sufficiently shown that it is not always easy to prove that one has acquired nationality in another State; and, as a result of the time necessary for this, the person concerned may in the meanwhile be exposed to numerous hardships.

The Czechoslovak Government, therefore, believes, due to its past experience, that troubles of this nature could be largely avoided if it were to be promptly informed of the naturalization in another State of its nationals. The appropriate lower authorities who keep the registry of Czechoslovak male nationals thus could, without difficulty and without awaiting a moment of urgent need, take the necessary steps regarding the military obligations of such persons. The mere fact of the authorities being notified at the time of naturalization in another State would eliminate on the one hand inevitable misunderstandings among subordinate officials and on the other hand any unpleasant experiences for the persons having acquired a foreign nationality.

The Czechoslovak Government begs to say that, to this end, it caused to be included in the Nationality Conventions made between Austria and Czechoslovakia (No. 107 of the Compilation of Laws and Decrees of 1921, Art. 16) and between Germany and Czechoslovakia (No. 308 of the Compilation of Laws and Decrees of 1922, Art. 13) a paragraph according to which the two parties agree that thereafter before either grants its nationality to nationals of another State and as long as such action is not based on provisions of the Peace Treaties, such naturalization will not take place until the other State shall have released its nationals from all bonds or liens to itself.

Bearing in mind the stipulations so different in principle, in the existing state of things, of the Convention in question, the Czechoslovak Government has the honor to communicate to the United States Government that in its opinion, as regards relations with the United States, both these principles would be satisfactorily provided for if each Contracting Party should engage itself to notify the other State of the names of naturalized persons as soon as naturalization has been effected. As concerns naturalization of American nationals in Czechoslovakia, the Czechoslovak Government would be pleased if the United States Government should agree that the competent Czechoslovak authorities might send direct to the United States Legation in Prague copies of the pertinent decrees. If the United States Government for its part has not much interest in being accurately informed as to the naturalization of its nationals in Czechoslovakia and does not request that such a list be supplied from time to time, the Czechoslovak Government begs to say, for

itself, that in view of its legislation it is deeply interested in the naturalization of its nationals in the United States. It would, therefore, be grateful if the United States Government would furnish it such a list, even though that country should not care for reciprocal treatment.

In regard to the technical carrying out of this plan, the object would, in the opinion of the Ministry for Foreign Affairs, be attained without the least difficulty if the Czechoslovak Legation in Washington should be authorized to establish direct contact with the "Board [*Bureau?*] of Naturalization" there.

2. With direct bearing on the questions here discussed, the Czechoslovak Government, before concluding, would like to state that even after conclusion of the Convention, conflicts resulting from *jure soli* and *jure sanguinis* will remain unsolved. According to its legislation, the Czechoslovak Government considers under *jure sanguinis* that the children born in United States territory of Czechoslovak nationals are Czechoslovak nationals and does not, therefore, recognize their American-acquired *jure soli* nationality.

The Czechoslovak Government takes advantage of these exchanges for the adjustment of the naturalization question here at issue to say to the United States Government that it would be happy if means could be found at the same time to settle the conflicts due to *jure soli* and *jure sanguinis*.

The Ministry for Foreign Affairs takes this occasion to renew to the Legation of the United States of America the assurance of its high consideration.

PRAGUE, April 30, 1926.

711.60 f 4/9

The Secretary of State to the Minister in Czechoslovakia (Einstein)

No. 457

WASHINGTON, May 13, 1927.

SIR: The Department has received your despatch No. 1244 of March 28, 1927,⁹ in regard to the proposed naturalization treaty between the United States and Czechoslovakia.

Careful consideration has been given to the note from the Czechoslovak Foreign Office of April 30, 1926, a translation of which accompanied your despatch No. 1093 of August 20, 1926, and this Government is prepared to agree to most of the changes suggested therein. The proposed changes will be considered seriatim.

⁹ Not printed.

ARTICLE I, PARAGRAPH 3

This Government agrees in the main to the proposed change, but suggests a modification in the phraseology. The right of a national of either country to obtain naturalization abroad should not be denied merely because the other country happens to be at war.

ARTICLE I, PARAGRAPH 4

No objection is seen to the omission of the phrase "owing permanent allegiance to", since it is regarded as equivalent to the other phrase "having the nationality of", in the same paragraph.

ARTICLE I, PARAGRAPH 5

Minors

(First sentence of paragraph 5)

In order to make the meaning of this sentence clearer and more definite, it may be changed to read as follows:

"The word 'naturalized' refers to the naturalization of a person over twenty-one years of age, granted upon his own application, while he is permanently residing within the country of naturalization, and to the naturalization of a person under twenty-one years of age through the naturalization of a parent, provided such person has acquired a permanent residence within the country of naturalization".

In this relation it may be pointed out that, under the law of this country (Section 5, Act of March 2, 1907¹⁰), a minor does not acquire naturalization through the naturalization of a parent unless he is residing permanently in the United States at the time of his parent's naturalization or takes up a permanent residence in this country after his parent's naturalization and before he has reached the age of twenty-one years.

With regard to the use of the plural form, "parents", in the original draft, it may be observed that the plural was used not for the purpose of including both father and mother, but merely to make the word correspond with the word "persons". It is understood that the proposed paragraph would cover the case of children naturalized through the naturalization of either a father or a widowed mother. It would also cover the case of naturalization through the naturalization of a divorced mother having custody of the minor children, if the law of the country of naturalization should make provision for such naturalization.

¹⁰ 34 Stat. 1228, 1229.

As to the proposal of the Czechoslovak Government that the certificate of naturalization of a parent should expressly mention the other persons naturalized through the naturalization of the bearer, you are informed that this does not seem to be practicable under the existing law of this country. While Section 4, Paragraph 2 of the Naturalization Act of June 29, 1906,¹¹ provides that the petition of a person applying for naturalization shall state the name of his wife and, if he has children, the name, date and place of birth and place of residence of each child living at the time of the filing of the petition, and while the names of the wife and children are inserted in the naturalization certificate, such insertion cannot be regarded as proof of their naturalization. The effect of the naturalization of a husband upon his wife will be mentioned further on in this communication. As to the minor children, the statements inserted in the naturalization certificate, upon the strength of the statements contained in the petition, cannot be regarded as decisive of their citizenship. In this relation it may be pointed out that the names of minor children are inserted in the certificate whether or not they have taken up their residence in the United States and thus acquired naturalization through the naturalization of the parent.

The Wife

The provision of the treaty concerning married women was intended to indicate that the nationality of a married woman was in nowise to be affected by the treaty, but was to be determined solely by national legislation. This was made necessary by the provisions of the Act of September 22, 1922, to the effect that an American woman marrying an alien does not thereby lose her American nationality (unless her husband was [*is?*] ineligible to citizenship) and that an alien woman marrying an American citizen does not thereby acquire American citizenship. This should be pointed out to the Czechoslovak Government and the effect of marriage on a woman's citizenship status under American law both before and after the Act of September 22, 1922, should be explained.

It is further pointed out by the Czechoslovak Government that if the clause relating to married women is to be interpreted as indicating that the wife does not lose her former nationality by marrying a citizen of the other contracting country, which provision is apparently based on the law of September 22, 1922, then the provisions of this law are in conflict with Czechoslovak legislation and an American woman by reason of her marriage with a Czech does not lose her American citizenship, although through such marriage she acquires Czechoslovak nationality. That there is such a conflict is, of course, evident, but the

¹¹ 34 Stat. 596, 597.

only means of removing it would be by a change in the law of one of the countries. In this connection, the Czechoslovak Government asks to be informed whether in case of marriage of a Czechoslovak woman to an American citizen she would be able to establish herself in the United States for the purpose of fulfilling the conditions requisite for the acquisition of American nationality. In this relation it should be answered that such women would apparently be entitled to a non-quota status under Section 4 (a) of the Immigration Act of 1924¹² if their husbands were residing in the United States, and that after taking up a permanent residence in the United States or certain of its possessions they might be naturalized after a residence of one year therein as provided for in Section 2 of the married women's citizenship act of September 22, 1922,¹³ which is as follows:

"That any woman who marries a citizen of the United States after the passage of this Act, or any woman whose husband is naturalized after the passage of this Act, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

"(a) No declaration of intention shall be required;

"(b) In lieu of the five-year period of residence within the United States and the one-year period of residence within the State or Territory where the naturalization court is held, she shall have resided continuously in the United States, Hawaii, Alaska, or Porto Rico for at least one year immediately preceding the filing of the petition."

The objection advanced by the Czechoslovak Government to the inclusion of the phrase, "but not by the act of emigration itself" in Article II of the draft treaty is appreciated, and this Government is willing to agree to its omission. As to the second change proposed in this Article, while this Government would prefer the original provision, it is willing to agree to the change proposed by the Czechoslovak Government, according to which former Czechoslovak citizens who have obtained naturalization as citizens of the United States shall not be liable to punishment for offenses committed within a period of five years immediately preceding their naturalization. Accordingly, this Government agrees entirely to Article II, as amended by the Czechoslovak Government.

ARTICLE III

This Government agrees in the main to the change proposed by the Czechoslovak Government, but suggests that instead of the expression "lose naturalization" the idea be expressed more definitely

¹² 43 Stat. 153, 155.

¹³ 42 Stat. 1021, 1022.

by using the words, "to have lost the nationality acquired through naturalization".

This Government agrees entirely to the proposal to have the treaty drawn up in both the English and Czech languages, and to extend the period for the notice of denunciation from six months to one year.

As to the suggestion of the Czechoslovak Government that this Government agree to inform it concerning the naturalization of Czechs in this country, I may say that, while no objection to this proposal is seen in principle, this Department has been informed by the Department of Labor, which has supervision of naturalization, that it is not practicable to carry it out.

In the latter part of its memorandum the Czechoslovak Government suggests the inclusion in the proposed treaty of a provision for the settlement of conflicts in cases of persons born in either country of parents who are nationals of the other and who are themselves nationals of the one country "*jure soli*" and nationals of the other country "*jure sanguinis*". This Government has been concerned for many years with the question of the settlement of cases of dual nationality, and is in full sympathy with the desire of the Czechoslovak Government to find a way of settling conflicts of this nature. However, the problem involves difficult questions of a practical as well as legal character, and requires very careful consideration. For the settlement of these cases special legislation will probably be required. Moreover, this Government, if it is to enter into agreements with foreign countries for the settlement of cases of dual nationality would prefer that such agreements, if possible, should be uniform in character, or at least based upon uniform principles. This subject has been receiving especial consideration by the Department in recent years, with a view to deciding upon a satisfactory principle for the settlement of these cases, and any suggestions which the Czechoslovak Government may see fit to make concerning this subject will be appreciated. However, it does not seem desirable to postpone the conclusion of a naturalization treaty until it may become possible to reach an agreement in regard to the solution of cases of dual nationality.

Enclosed herewith is a re-draft of the proposed treaty of naturalization embodying the amendments proposed by the Czechoslovak Government in so far as this Government is able to agree to them.¹⁴

I am [etc.]

FRANK B. KELLOGG

¹⁴ Not printed.

711.60 f 4/11

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 1496

PRAGUE, March 2, 1928.

[Received March 21.]

SIR: With further reference to my Despatch No. 1312 of June 7th, ultimo [*sic*], enclosing the copy of a note addressed to the Minister for Foreign Affairs transmitting the proposed naturalization treaty between the United States and Czechoslovakia.¹⁵ I have the honor to transmit the copy of a note which I have received from the Foreign Office on this subject.¹⁶

The Czechoslovak Government, as the Department will observe, raises no objection to concluding a naturalization treaty on the basis of the proposals contained therein but it points out that such a convention will not solve the difficulties occasioned by the differences in legislation in the citizenship of women as affected by their marriage. Whereas an American woman marrying a Czechoslovak acquires a dual nationality, a Czechoslovak woman marrying an American would for a time remain without nationality of any kind.

It is further pointed out that the proposed convention does not solve the conflict of principles between *Jus Sanguinis* and *Jus Soli*. Also the Czechoslovak Government feels a particular interest in being informed about every case of naturalization of its citizens in the United States. In the absence of such knowledge a Czechoslovak would be regarded as liable to perform his military duties. The Department is therefore asked to reconsider this question in order to avoid future difficulties and the suggestion is made that if other means cannot now be found, the Courts where citizenship is granted should be asked to warn naturalized parties that in their own interest they ought to advise the Consulate or Legation of their former country of the change in their status.

The Czechoslovak Government is also very ready to examine any further suggestions which the American Government may see fit to make regarding the question of establishing certificates of birth.

I trust that the Department will be good enough to instruct me as to its wishes regarding the further negotiation of this treaty.

I have [etc.]

LEWIS EINSTEIN

711.60 f 4/11

The Secretary of State to the Chargé in Czechoslovakia (Gittings)

No. 531

WASHINGTON, April 16, 1928.

SIR: The Department acknowledges the Legation's despatch No. 1496 of March 2, 1928, concerning the negotiation of a naturalization

¹⁵ None printed.¹⁶ Not printed.

treaty between the United States and Czechoslovakia. It appears that the Czechoslovak Government is willing to conclude a treaty upon the basis of the original draft submitted by this Government with the changes which have been agreed to, although it would prefer to include in the treaty provisions for the settlement of the existing conflicts between the laws of the two countries concerning the nationality of married women and the nationality of persons born in either country of parents having the nationality of the other. The Department has also noted the desire of the Czechoslovak Government to have an arrangement made under which it may be informed in each case of the naturalization of a Czechoslovak national in the United States.

The Department fully appreciates the fact that the proposed treaty will not furnish a solution of the difficulties arising from conflicts of the laws of the two countries concerning married women and persons born with dual nationality. However, it does not seem desirable to postpone the conclusion of the proposed treaty for the adoption of agreements covering these subjects. While it is hoped that such agreements may be found possible, the matter will require very careful study and may necessitate changes in the laws of this country. Nevertheless, as stated in the Department's last instruction concerning this subject¹⁷ and in your Legation's note of June 7, to the Czechoslovak Foreign Minister,¹⁸ the Department will be glad to consider any concrete suggestions which the Czechoslovak Government may see fit to make for the termination of dual nationality. The same may be said with regard to the existing conflicts of the laws concerning married women.

If the Czechoslovak Government is willing you will, therefore, proceed to sign the treaty, a draft of which was enclosed with the Department's instruction No. 457 of May 13, 1927. For this purpose full powers and directions concerning the form of the treaty will be sent to you.¹⁸

Copies of your Legation's despatch of March 2, and its enclosures¹⁹ are being sent to the Secretary of Labor, with a request that the Department of Labor consider the possibility of complying with the suggestion of the Czechoslovak Foreign Office with regard to the matter of having Czechoslovak nationals who obtain naturalization in this country advised by officials of this Government to notify the Czechoslovak Government of their naturalization.

I am [etc.]

For the Secretary of State:

WILBUR J. CARR

¹⁷ No. 457. May 13, 1927, p. 676.

¹⁸ Not printed.

¹⁹ Enclosures not printed.

711.60 f 4/12

The Secretary of State to the Minister in Czechoslovakia (Einstein)

No. 536

WASHINGTON, May 7, 1928.

SIR: The Department refers to its instruction of April 16, 1928, particularly the last paragraph thereof, in which you were informed that the Secretary of Labor was being advised of the suggestion of the Czechoslovak Foreign Office with regard to having officials of this Government notify Czechoslovak nationals who obtain naturalization of the advisability of informing the Czechoslovak Government of their change of nationality.

The Department is just in receipt of a letter of April 26, 1928, from the Department of Labor²⁰ in which it is stated that the Commissioner of Naturalization is preparing an instruction to his field officers to notify Czechoslovak nationals who obtain naturalization that in their own interest they should make known to the Legation or Consulate of their former country the fact of a change in their nationality. You may so advise the Czechoslovak Government.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

Treaty Series No. 804

*Treaty Between the United States of America and Czechoslovakia,
Signed at Prague, July 16, 1928*²¹

The United States of America and the Czechoslovak Republic, being desirous of reaching an 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 its territories, 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:

Lewis Einstein, Envoy Extraordinary and Minister Plenipotentiary of the United States to Czechoslovakia

and

The President of the Czechoslovak Republic:

Kamil Krofta, Envoy Extraordinary and Minister Plenipotentiary,

Who, having communicated to each other their full powers, found to be in good and due form, have agreed upon the following Articles:

²⁰ Not printed.

²¹ In English and Czechoslovak languages; Czechoslovak text not printed. Ratification advised by the Senate, Jan. 26, 1929; ratified by the President, Feb. 14, 1929; ratified by Czechoslovakia, Sept. 14, 1929; ratifications exchanged at Washington, Nov. 14, 1929; proclaimed by the President, Nov. 14, 1929.

ARTICLE I

Nationals of the United States who have been or shall be naturalized in Czechoslovak territories shall be held by the United States to have lost their former nationality and to be nationals of Czechoslovakia.

Reciprocally, nationals of Czechoslovakia who have been or shall be naturalized in the territories of the United States shall be held by Czechoslovakia to have lost their former nationality and to be nationals of the United States.

The foregoing provisions of this Article shall not be applicable to a national of either country who obtains naturalization in the other while his country is at war.

The word "national", as used in this convention, means a person having the nationality of the United States or Czechoslovakia, respectively, under the laws thereof.

The word "naturalized" refers to the naturalization of a person over twenty-one years of age, granted upon his own application, while he is permanently residing within the country of naturalization, and to the naturalization of a person under twenty-one years of age through the naturalization of a parent, provided such person has acquired a permanent residence within the country of naturalization.

ARTICLE II

Nationals of either of the Contracting States naturalized as provided in Article I, shall not, upon their return to the territory of the country of which they were formerly nationals, be prosecuted or punished for expatriation or for having failed, prior to their naturalization, to answer summonses to military service which had been served upon them within a period of five years preceding their naturalization.

ARTICLE III

If a national of either country, who comes within the purview of Article I, shall renew his residence in his original country without the intent to return to that in which he was naturalized, he shall be held to have lost the nationality acquired by naturalization.

The intent not to return may be held to exist when a person naturalized in the one country shall have resided more than two years in the other.

ARTICLE IV

The present Convention, drawn up in English and Czechoslovak, both texts being authoritative, shall be subject to ratification by the High Contracting Parties in conformity with their respective con-

stitutions, and shall become operative immediately upon the exchange of ratifications, which shall take place at Washington as soon as possible.

The present Convention shall remain in force for ten years. If neither of the High Contracting Parties states its intention of denouncing it at least one year before the end of the above-mentioned period, it will remain in force and will not terminate until a year after one or the other of the High Contracting Parties shall have denounced it.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate at Prague, this 16th day of July 1928.

[SEAL]	LEWIS EINHSTEIN
[SEAL]	Dr. K. KROFTA

711.60 f 4/19

The Chargé in Czechoslovakia (Gittings) to the Secretary of State

No. 1660

PRAGUE, *October 30, 1928.*

[Received November 12.]

SIR: I have the honor to refer to the Department's Instruction under date of May 7, 1928, No. 536, regarding the Naturalization Treaty and with particular reference to the second paragraph, in which it is stated that the Department of Labor has advised the Department of State "that the Commissioner of Naturalization is preparing an instruction to his field officers to notify Czechoslovak nationals who obtain naturalization that in their own interest they should make known to the Legation or Consulate of their former country the fact of a change in their nationality. You may so advise the Czechoslovak Government."

The Legation at once communicated the above information to the Ministry for Foreign Affairs and is now in receipt of a Note from the Foreign Office (a copy of which together with a translation is herewith enclosed)²² in which the Czechoslovak Government feels it will be more advantageous to all parties concerned if the Commissioner of Naturalization were to notify the Czechoslovak Legation at Washington when a Czechoslovak citizen becomes a citizen of the United States. The Legation believes this would be a more direct and certain manner of advising the Czechoslovak Government of the change of status of its citizens than leaving the duty of notification to the individual himself. If the naturalized citizen should fail to notify

²² Not printed.

the nearest Czechoslovak Consul or Legation, and should visit Czechoslovakia, then the military authorities of this country would be ignorant of the change of citizenship and the same old difficulties of having the man arrested, his passport taken from him, and being drafted into the service of the Czechoslovak Army would occur.

The suggestion offered by the Foreign Office therefore appears to be the one which would give the Czechoslovak officials current and certain information as to each case where naturalization takes place and would obviate the difficulties affecting American citizens that now almost invariably occur.

I have [etc.]

JOHN STERETT GITTINGS

TREATIES OF ARBITRATION AND CONCILIATION BETWEEN THE UNITED STATES AND CZECHOSLOVAKIA, SIGNED AUGUST 16, 1928

711.60 f 12A/2 : Telegram

*The Acting Secretary of State to the Minister in Czechoslovakia
(Einstein)*

WASHINGTON, *March 27, 1928—6 p. m.*

12. The Department handed the Minister of Czechoslovakia on March 27, a draft of a proposed treaty of arbitration between the United States and Czechoslovakia. The provisions of the draft operate to extend the policy of arbitration enunciated in the Arbitration Conventions concluded in 1908 between the United States and several other countries.²³ The language of the draft is identical in effect with that of the arbitration treaty recently signed with France²⁴ and with the draft arbitration treaties already submitted to other governments in the general program for the extension of these principles.

The Department also handed to the Minister draft of treaty of similar purport to the so-called Bryan treaties.²⁵

The text of these proposed treaties will be forwarded in the next pouch.²⁶

OLDS

²³ For index reference to the treaties of 1908, see *Foreign Relations*, 1908, p. 832; 1909, p. 676.

²⁴ *Post*, p. 810.

²⁵ For index references to the Bryan treaties, see *Foreign Relations*, 1914, p. 1130; 1915, p. 1328; 1916, p. 1007.

²⁶ Draft treaties not printed; they were the same as the signed treaties, pp. 688 and 690.

711.60 f 12A/5 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, June 11, 1928—2 p. m.

[Received 2:45 p. m.]

42. Minister of Foreign Affairs spoke to me about the draft of treaty of arbitration transmitted by you to the Czechoslovak Minister at Washington on March 27 ultimo. He is prepared to sign this as it stands but would prefer to substitute [for?] the word "equity" in article one, first paragraph, last line, the words "international law" as equity conveys a different connotation under their law. He does not however insist on this. He is willing to sign such a treaty either at Prague or at Washington in accordance with your preference.

EINSTEIN

711.60 f 12A/6 : Telegram

The Secretary of State to the Minister in Czechoslovakia (Einstein)

WASHINGTON, June 27, 1928—5 p. m.

28. Your 42, June 11, 2 p. m. Department is gratified that the Minister of Foreign Affairs is prepared to sign the Treaty of Arbitration as it stands. The treaties already signed with France, Germany, Italy, Finland and Denmark²⁷ contain the word "equity" used precisely as in the draft submitted to Czechoslovakia. It is not believed that differences in existing definitions of equity are ground for concern. Without undertaking to state a definition, it may be of interest to remark that Webster's New International Dictionary uses such defining language as "equality of rights; natural justice or right"; and "any body of legal doctrines and rules" developed similarly to those of the English Chancery Courts "to enlarge, supplement or override a system of law which has become too narrow and rigid in its scope, especially that developed by the Roman praetors into the *jus honorarium*." Thus, even in English the definition is by no means confined to the jurisprudence of the Chancery Courts.

I desire to sign all of the treaties of this group, and I much prefer that signature take place here. Exchange of ratifications might be at Prague.

KELLOGG

²⁷ For texts of treaties with Denmark, Finland, France, and Germany, see pp. 720, 806, 816, and 867; and with Italy, see vol. III, p. 102.

711.60 f 12A/7 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, July 11, 1928—11 a. m.

[Received 11:25 a. m.]

54. Your 28, June 28 [27], 5 p. m. Minister for Foreign Affairs tells me that he is instructing Czechoslovak Minister in Washington to sign arbitration treaty in the form desired by you.

EINSTEIN

Treaty Series No. 781*Arbitration Treaty Between the United States of America and Czechoslovakia, Signed at Washington, August 16, 1928*²⁸

The President of the United States of America and the President of the Czechoslovak Republic

Determined to prevent so far as in their power lies any interruption in the peaceful relations that have always existed between the two nations;

Desirous of reaffirming their adherence to the policy of submitting to impartial decision all justiciable controversies that may arise between them; and

Eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the Powers of the world;

Have decided to conclude a treaty of arbitration and for that purpose they have appointed as their respective Plenipotentiaries

The President of the United States of America:

Mr. Frank B. Kellogg, Secretary of State of the United States of America; and

The President of the Czechoslovak Republic:

Mr. Zdeněk Fierlinger, Envoy Extraordinary and Minister Plenipotentiary of the Czechoslovak Republic at Washington;

Who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

²⁸ In English and Czechoslovak languages; Czechoslovak text not printed. Ratification advised by the Senate, Dec. 18, 1928 (legislative day of Dec. 17); ratified by the President, Jan. 4, 1929; ratified by Czechoslovakia, Feb. 28, 1929; ratifications exchanged at Prague, Apr. 11, 1929; proclaimed by the President, Apr. 12, 1929.

ARTICLE I

All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to an appropriate commission of conciliation, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907,^{28a} or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

The special agreement in each case shall be made on the part of the United States of America by the President of the United States of America by and with the advice and consent of the Senate thereof, and on the part of Czechoslovakia in accordance with its constitutional laws.

ARTICLE II

The provisions of this treaty shall not be invoked in respect of any dispute the subject matter of which

(a) is within the domestic jurisdiction of either of the High Contracting Parties,

(b) involves the interests of third Parties,

(c) depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine,

(d) depends upon or involves the observance of the obligations of Czechoslovakia in accordance with the Covenant of the League of Nations.

ARTICLE III

The present treaty 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 Czechoslovakia in accordance with its constitutional laws.

The ratifications shall be exchanged at Prague as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless

^{28a} *Foreign Relations*, 1907, pt. 2, p. 1181.

and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate in the English and Czechoslovak languages, both texts having equal force, and hereunto affixed their seals.

Done at Washington the sixteenth day of August in the year of our Lord one thousand nine hundred and twenty-eight.

[SEAL] FRANK B. KELLOGG

[SEAL] ZD. FIERLINGER

Treaty Series No. 782

*Conciliation Treaty Between the United States of America and
Czechoslovakia, Signed at Washington, August 16, 1928*²⁰

The President of the United States of America and the President of the Czechoslovak Republic, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their Plenipotentiaries:

The President of the United States of America:

Mr. Frank B. Kellogg, Secretary of State of the United States of America; and

The President of the Czechoslovak Republic:

Mr. Zdeněk Fierlinger, Envoy Extraordinary and Minister Plenipotentiary of the Czechoslovak Republic at Washington;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

Any disputes arising between the Government of the United States of America and the Government of Czechoslovakia, of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the High Contracting Parties do not have recourse to adjudication by a competent tribunal, be submitted for investigation and report to a permanent International Commission constituted in the manner prescribed in the next succeeding Article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

²⁰ In English and Czechoslovak languages; Czechoslovak text not printed. Ratification advised by the Senate, Dec. 20, 1928; ratified by the President, Jan. 4, 1929; ratified by Czechoslovakia, Feb. 28, 1929; ratifications exchanged at Prague, Apr. 11, 1929; proclaimed by the President, Apr. 12, 1929.

ARTICLE II

The International Commission shall be composed of five members, to be appointed as follows: One member shall be chosen from each country, by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments, it being understood that he shall not be a citizen of either country. The expenses of the Commission shall be paid by the two Governments in equal proportions.

The International Commission shall be appointed within six months after the exchange of ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

ARTICLE III

In case the High Contracting Parties shall have failed to adjust a dispute by diplomatic methods, and they do not have recourse to adjudication by a competent tribunal, they shall at once refer it to the International Commission for investigation and report. The International Commission may, however, spontaneously by unanimous agreement offer its services to that effect, and in such case it shall notify both Governments and request their cooperation in the investigation.

The High Contracting Parties agree to furnish the Permanent International Commission with all the means and facilities required for its investigation and report.

The report of the Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the High Contracting Parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each Government, and the third retained by the Commission for its files.

The High Contracting Parties reserve the right to act independently on the subject matter of the dispute after the report of the Commission shall have been submitted.

ARTICLE IV

The present treaty 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 Czechoslovakia in accordance with its constitutional laws.

The ratifications shall be exchanged at Prague as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless

and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate in the English and Czechoslovak languages, both texts having equal force, and hereunto affixed their seals.

Done at Washington the sixteenth day of August in the year of our Lord one thousand nine hundred and twenty-eight.

FRANK B. KELLOGG [SEAL]
ZD. FIERLINGER [SEAL]

**REPRESENTATIONS TO THE CZECHOSLOVAK GOVERNMENT FOR
INCREASE IN CONTINGENT ALLOWED FOR IMPORTATION OF
AMERICAN AUTOMOBILES**

660f.116 Auto/13

The Secretary of State to the Minister in Czechoslovakia (Einstein)

No. 502

WASHINGTON, *January 12, 1928.*

SIR: The Department has received your despatch number 1434 of December 12, 1927,⁸⁰ on the subject of the Czechoslovak contingent system as applied to importations of automobiles and trucks.

With reference to your request for instructions whether you should press for the entire or partial abolition of such restrictions upon trade, the Department perceives no ground upon which this Government can properly insist upon the abolition of the contingent system. The Legation should avoid any threat of retaliatory measures to that end.

You may, however, argue informally against continued restrictions upon American trade with Czechoslovakia, especially restrictions affecting the importation of automobiles and trucks. You may informally point out the misunderstanding to which the contingent system gives rise as a result of the more or less arbitrary apportionment of import quotas among the various exporting countries and the consequent inability of each country definitely to assure itself that its commerce has in fact been accorded equitable treatment. As the Czechoslovak authorities no doubt have had occasion to observe, the administration of such a system gives rise to frequent disputes.

On November 8, 1927, a convention on Import and Export Prohibitions and Restrictions was signed at Geneva by a number of countries, including Czechoslovakia. In the event that the obligations imposed by this convention are accepted by Czechoslovakia and the United States it may ultimately afford relief from the import restrictions now imposed by Czechoslovakia. For your confidential information, the

⁸⁰ Not printed.

Government of the United States is now in the course of determining its attitude toward the convention.³¹

The Legation should, however, devote its attention primarily to obtaining a suitable contingent for American cars, rather than attempting to bring about the complete abolition of the contingent system. The contingent of 530 cars, which it is understood is all that is now available to American automobile manufacturers for the current year, obviously is wholly inadequate to the needs of the American motor industry. In this connection, the Department is enclosing a copy of a letter written by Mr. S. D. Briggs, European Director of the Chrysler Sales Corporation, which has been transmitted to the Department by the Washington Representative of the National Automobile Chamber of Commerce.³²

The *modus vivendi* of October 29, 1923, between the United States and Czechoslovakia³³ provides that 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. Should the Czechoslovak authorities seek to justify a refusal to increase the American contingent on the ground that the terms of the *modus vivendi* would require only that the United States be given a contingent equal to that granted the most favored nation, you may bring the following considerations to their attention.

The contingent system involves in practice the more or less arbitrary division of the trade in a given article among the various countries supplying the article in question. The decision of governmental authorities is thereby substituted for the economic factors which normally would determine the distribution of the trade among the exporting countries. In this respect the contingent system differs from the usual method of regulating trade by means of customs duties. The levying of a customs duty on a given article, applicable alike to the commerce of all countries, does not disturb the relationship existing between the different countries supplying the article in question, to the relative disadvantage of the country which occupies the leading position in the production and trade in that article. The latter may feel assured that the same factors which have given it a leading position among the foreign countries supplying the market in question will enable it to retain that relative position even after the import duty has been imposed.

With the contingent system, on the other hand, the situation will be radically different unless the authorities who allot the contingents among the various exporting countries give due regard to the relative

³¹ Vol. I, p. 336. Signed by the United States on Jan. 30, 1928.

³² Not printed.

³³ *Foreign Relations*, 1923, vol. I, pp. 873 ff.

position which each exporting country might normally be expected to occupy in supplying the article in question. If this consideration is not taken into account, the contingent system will operate to the serious disadvantage of particular countries.

Thus, if the United States might normally be expected to obtain the largest share of Czechoslovakia's import trade in automobiles, the allotting of the same contingent to the United States as to other countries would result in a more serious curtailment of the market for American cars than that for automobiles manufactured elsewhere. Consequently, American manufacturers would not, in effect, receive equal treatment with those of France, or other countries, if the contingents allotted to France and the United States were exactly the same.

The normal share of the United States in Czechoslovakia's automobile import trade is not, of course, a matter which can be determined with precision. Although the fact that this country occupies the leading position among the countries of the world in automobile manufacturing and trade gives rise to the natural presumption that its leadership in this field also extends to the trade of Czechoslovakia, it must be recognized that such a conclusion would not necessarily be valid. The position of the United States in the Czechoslovak market obviously will be subject to influences peculiar to that particular market, such, for example, as the competitive advantage enjoyed by the automobile manufacturing countries of Europe in consequence of their proximity to Czechoslovakia.

A more accurate indication of the share of the trade which, in the absence of the artificial restrictions imposed by the contingent system, each country might now be expected to enjoy, is afforded by statistics showing the share of the trade in any given article which each country has enjoyed in the past. Inasmuch as the circumstances which influence the course of trade are subject to change, it appears that the latest available statistics afford a better indication of the share of the trade which each country might now be expected to obtain than those for previous years.

However, the use for this purpose of recent statistics of actual importations is open to some objection on the ground that the operation of the contingent system itself may have placed American manufacturers in a different relative position in the Czechoslovak market than they otherwise would occupy. Accordingly, any conclusions which might be reached on the basis of import statistics alone, would properly be subject to modification in the light of any other available information which might indicate in a general way the demand for American as compared with other foreign cars in Czechoslovakia, such, for example, as the relative number of applications for import licenses

filed by importers of American and other foreign cars, if such information is obtainable.

It is suggested that the Legation, in consultation with the Commercial Attaché, ascertain what evidence along the lines above indicated may be adduced to show that, if the trade in automobiles were subject only to normal economic influences, the United States would now occupy the leading position in the Czechoslovak market. If you consider such a contention well founded you should point out that this consideration should be taken into account by the Czechoslovak authorities to the end that the special hardship which the contingent system would otherwise impose upon American automobile manufacturers may so far as possible be avoided.

In discussing this matter with the Czechoslovak authorities you may make it clear that the principal objection to the contingent system does not arise from the fact that the products selected for licensing include those of greatest importance in the export trade of the United States to Czechoslovakia. The position you should take is rather that when any article has been subjected to import restrictions the relative position which the United States might normally be expected to occupy among the foreign countries supplying the article should so far as possible remain undisturbed.

The above position is in harmony with the provisions of paragraph four of Article VII of the draft treaty of friendship, commerce and consular rights, which was transmitted to you with the Department's instruction of May 5, 1927.⁴⁴ The Department will be glad to have a report from you concerning the status of the proposed treaty and the possibility of proceeding with negotiations.

It is understood that some American cars, or cars assembled from American parts, are imported into Czechoslovakia from certain foreign countries, including Germany and Belgium. The Department is not informed whether such cars have been charged against the German or the Belgian contingent, respectively, or against that of the United States. The Department will be glad to have such information as you are able discreetly to obtain on this subject. In particular the Department desires to be informed as to the extent of the importations of cars assembled from American parts in foreign countries, the principle upon which the Czechoslovak authorities determine the contingent to which such cars are to be charged, and the contingent allotted to countries in which such cars are assembled.

For your confidential information, the Department has instructed the American Minister at Warsaw to inform the Polish Government, which maintains a contingent system similar to that in force in Czechoslovakia, that cars manufactured in Denmark from American parts

⁴⁴ Draft treaty not printed. For text of instruction, see *Foreign Relations*, 1927, vol. II, p. 542.

entering Poland on Danish certificates of origin are regarded as properly chargeable against the Danish rather than the American contingent.³⁶ According to information furnished the Polish Government by the Government of Denmark, over 50 per cent of the value of automobiles assembled by the General Motors Company in Denmark is added in that country. You should not take any similar action, however, without specific instructions.

With reference to the large importations into Czechoslovakia in recent years of automobiles and trucks from Trieste, the Department is informed that these consist largely, if not entirely, of Ford cars. The Ford Motor Company maintains what is termed a "service plant" at Trieste in which are performed the final operations necessary in preparing the cars for use. The Department is informed that the operations performed in Trieste represent only a very small portion of the final cost of such cars and could not properly be regarded in any sense as destroying their identity as an American product. It is understood that these cars are credited in the official statistics of Czechoslovakia as coming from Italy, but are regarded by the Czechoslovak authorities as American cars from the standpoint of import licenses. If the foregoing statement is correct, importations of Ford cars from Trieste may properly be included in any import statistics which you may submit to the Czechoslovak authorities as evidence of the importance of the position which American cars occupy in the automobile import trade of Czechoslovakia. On this basis the Department is informed that the number of cars imported in 1926 from the United States and from Trieste, which were presumably largely or entirely of American origin, amounted to approximately 2300 passenger cars and trucks, or about 50 per cent of the total number of cars imported into Czechoslovakia.

I have [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

660f.116 Auto/14

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 1479

PRAGUE, February 11, 1928.

[Received March 7.]

SIR: In reply to the Department's Instruction No. 502 of the 12th ultimo regarding the subject of the Czechoslovak contingent system as applied to importations of automobiles and trucks, I have the honor to state that the arguments which the Department advances

³⁶ See telegram No. 58, Dec. 8, 1927, to the Minister in Poland, *Foreign Relations*, 1927, vol. II, p. 622.

against the restrictions upon American cars have all been repeatedly utilized in the past by the Commercial Attaché and myself.

The firm intention of the Czechoslovak automobile manufacturers who have a determining voice in the policy of the Ministry of Commerce is to restrict the number of our cars and an eloquence and persuasiveness far greater than my own would hardly meet with more success than have attended the Legation's best efforts unless accompanied by the hint of possible retaliation. Mr. Baldwin, the Commercial Attaché, a copy of whose letter to me in reply to the Department's request, I enclose,³⁶ concurs in this opinion. I may also state that the French who are close allies to the Czechoslovaks have told me on frequent occasions that they are unable to obtain any import or tariff concession in this country without offering a corresponding reward or threatening a punishment. In their negotiations for a new commercial treaty they are in fact demanding the abolition of the contingent system. I am informed by the French Commercial Attaché at Prague that the Czechs have offered to reduce the duty on cars if they in turn would waive their demand for the removal of the contingent but he thought it doubtful if his Government would be disposed to accept this offer as they are desirous of doing away with the entire contingent system.

The Department also asks for a report concerning the status of the proposed treaty of friendship, commerce and consular rights. I am informed that the Czechoslovak Government will very shortly send me their reply to the draft transmitted by the Legation.

I have [etc.]

LEWIS EINSTEIN

660f.116 Auto/1

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 1501

PRAGUE, March 6, 1928.

[Received March 22.]

SIR: With further reference to my several despatches Nos. 1434 of December 12, 1927, and 1491 of February 21, 1928,³⁷ regarding the restriction in the importation of our cars, I have the honor to report that in a talk I had with the Minister of Commerce Dr. Peroutka, I took occasion to congratulate him on the resolute stand Czechoslovakia was making in its tariff negotiations with Poland by demanding the total abolition of the contingent system. (In the impending negotiations with France for a new commercial treaty, which are soon to begin in Paris, the French are likewise making the same demand from the Czechs, although they may be satisfied with a higher contingent which will carry out the present needs of their export trade.)

³⁶ Not printed.

³⁷ Neither printed.

In the course of our talk, Dr. Peroutka told me that he was granting license importations for 500 additional American cars. I thanked him for this as an auspicious beginning but remarked that it would be far from exhausting our requirements. He told me that he was meeting with the strongest opposition from the manufacturers but intimated that later he might be able to grant us more.

I have [etc.]

LEWIS EINSTEIN

660f.116Auto/14 : Telegram

The Acting Secretary of State to the Minister in Czechoslovakia (Einstein)

WASHINGTON, March 15, 1928—5 p. m.

9. Your despatch 1491, February 21.^{37a} Commercial Attaché telegraphed Commerce Department March 7 that 500 additional automobile import licenses secured with possibility of further increase later. Department is in touch with automobile interests who are interested in such developments. Legation should keep Department directly in touch with situation and in particular report promptly and fully to the Department concerning any cases of actual or apparent discrimination.

OLDS

660f.116Auto/22 : Telegram

The Chargé in Czechoslovakia (Gittings) to the Secretary of State

PRAGUE, March 20, 1928—5 p. m.

[Received March 20—1:05 p. m.]

21. Department's No. 9, March 15, 5 p. m. It now appears that information was premature because no licenses actually granted yet. I am requesting expedition and will promptly inform Department. Full report by mail.

GITTINGS

660f.116Auto/2 : Telegram

The Secretary of State to the Chargé in Czechoslovakia (Gittings)

WASHINGTON, March 23, 1928—6 p. m.

10. Department understands from Legation's despatch 1501, March 6, that Czechoslovak Government definitely promised to grant licenses for importing 500 additional American automobiles. Before receiving your 21, March 20, 5 p. m., Department, on the strength of

^{37a} Not printed.

advices received, had informed Automobile Chamber of Commerce to that effect. The information was thereupon circulated to members of that body.

You should at once bring the situation to the attention of the Minister of Commerce, referring to his statement reported despatch 1501 and urging that the licenses actually be made available at the earliest practicable moment. It would appear advisable to point out the action taken by the Department and by automobile association, stating that if there should now prove to be any difficulty about obtaining these licenses, a most unfavorable reaction will undoubtedly be created.

Report briefly by telegram and fully by mail explanation of Czechoslovak Government's failure to act on assurances reported to have been given.

Keep Department closely informed by telegraph.

KELLOGG

660f.116Auto/4 : Telegram

*The Acting Secretary of State to the Chargé in Czechoslovakia
(Gittings)*

WASHINGTON, March 24, 1928—6 p. m.

11. Your [*Department's?*] 10, March 23, 6 p. m. Automobile representatives have been advised that Czechoslovak Government has now fixed import quota at sixty-three American cars monthly. In connection with representations pursuant to Department's 10 you should state that fixation of quota on a monthly basis works considerable hardship both because of inflexibility and seasonal character of demand which is concentrated in spring months. You may add that American automobile interests have again made strong representations.

OLDS

660f.116Auto/7 : Telegram

The Chargé in Czechoslovakia (Gittings) to the Secretary of State

PRAGUE, March 28, 1928—4 p. m.

[Received March 28—1:40 p. m.]

26. My cipher telegram 23, March 24, 4 p. m.,³⁸ and pertinent telegrams. Written note just received from Minister of Commerce asserts that an extra allowance of licenses over the regular 800 will be granted and to such extent as not to make worse former practice: for March

³⁸ Not printed.

84 licenses, for April 140, with subsequent seasonal tendencies taken into consideration. As regards distribution among makes, the experience of previous years would be followed. Minister of Commerce stated in conversation I had when advancing American position that he was doing the utmost he could just now.

GITTINGS

660f.116Auto/8 : Telegram

The Chargé in Czechoslovakia (Gittings) to the Secretary of State

[Paraphrase]

PRAGUE, March 28, 1928—5 p. m.

[Received March 28—3:15 p. m.]

27. Legation's telegram 26, March 28, 4 p. m. The Commerce portfolio is sought by the National Democrats, Czech chauvinists. In the present Cabinet situation, with the Prime Minister ill, President Masaryk would be embarrassed, I am reliably informed, if the Minister of Commerce (who has confidence in the President) should be ousted on some such issue as the quota. The Minister, who is friendly to our interests, might be succeeded by one less friendly. May I respectfully suggest that the quota now granted be accepted under the existing circumstances as the maximum concession obtainable, since further insistence would now seem fruitless, might cause ill will and embarrass more lasting American interests. I recommend the acceptance of this partial compliance, while reserving the broader issues involved for our concentrated efforts at a more opportune time. This view is concurred in by the Consul General.

GITTINGS

660f.116Auto/10 : Telegram

The Acting Secretary of State to the Chargé in Czechoslovakia (Gittings)

WASHINGTON, March 29, 1928—7 p.m.

13. (1) Department construes first sentence of your 26, March 28, 4 p.m., as meaning that total licenses for this year will at least equal those granted in preceding years, which were according to your 23 March 24, 4 p.m.,³⁹ 1500 in 1927 and 1600 in 1926, and that this arrangement supersedes the 1000 indicated in the last sentence of your 23, March 24, 4 p.m.

³⁹ Not printed.

(2) You should inquire of Minister of Commerce whether his statement means that not less than 1600 licenses will be granted for current year. It may be well before mentioning matter to Minister of Commerce to verify above figures. You should also inquire concerning contemplated quotas for remainder of year, and express hope for reasons set forth in Department's 11, March 24, 6 p.m., that in allotting quotas special care be taken to conform to seasonal requirements of dealers.

(3) Your 27, March 28, 5 p.m. Department notes your suggestion concerning inadvisability of further insistence at this time on larger contingent. However, it is important that you should carefully avoid any commitment as to acceptability of present quota.

OLDS

660f.116Auto/11 : Telegram

The Chargé in Czechoslovakia (Gittings) to the Secretary of State

PRAGUE, April 2, 1928—1 p.m.

[Received 3:58 p.m.]

28. Your telegram 13, March 29, 7 p.m., and previous. Instructions carried out. Minister of Commerce himself has orally given me the following figures:

For the year November 5, 1925, to November 5, 1926, 1480 licenses were granted for American automobiles. Of these 800 were the original quota. The Minister said that excess of that year was unusual. He had just entered office and it brought down upon him wrath of the local manufacturers. From November 5, 1926, to November 5, 1927, Czechoslovakia granted American automobiles 1254 licenses. Of this number 800 were the original quota. From period from November 5, 1927, to November 5, 1928, there will be in all 1300 licenses. Of these 800 are the quota allowance and 500 extra have been provided for. This 500 begins March 1, 1928. Between November 5, 1927, and March 7, 1928, 744 licenses were issued. These were all drawn from the regular quota of 800, the remaining 56 quota licenses being granted subsequent to March 7, 1928.

Regarding these additional 500 licenses Minister of Commerce said that they had been provided for by [apparent omission] accord and that this could be considered assured. Of this 500 extra there were issued in March 84. For April the Minister said he had already signed 145. The allotment for May was not yet known but he thought it might approximate 120. The allotments for the remaining months are not determinable so far in advance except that he said they would of course be lower. The Minister remarked that

monthly allotments and distribution among other dealers were based on two principles, one, regard for seasonal requirements, and, two, fulfilling in so far as possible needs of individual makes and individual local agents. He said that there were about 40 importers of American cars here. He added that monthly allotment and distribution were averaged up by a committee and were based on requests of automobile importers as balanced against quota. This committee makes its decisions towards the end of the month when the applications are all received and he himself does not know far in advance what the allotment or distribution is to be.

The Minister gave me the following figures of the total number of licenses issued to foreign countries for the year 1926-1927, November to November. France 507, Italy 692, Germany 303, Austria 340, United States 1254.

Minister stated as representing his purely personal hope that something further might be granted later in the year. He also expressed a hope that the convention on licensing at Geneva in July might be beneficial to American automobile interests. Commercial Attaché commenting on these figures separately, await his cable.

GITTINGS

660f.116Auto/15

The Secretary of State to the Chairman of the United States Tariff Commission (Marvin)

WASHINGTON, April 13, 1928.

SIR: In order that the Tariff Commission may give consideration to the question whether the restrictions of the Government of Czechoslovakia upon the importation of automobiles are imposed in such manner as to constitute a discrimination against the commerce of the United States within the meaning of Section 317 of the Tariff Act of 1922,⁴⁰ I beg to bring the following facts and considerations to your attention:

The Czechoslovak Government has established a so-called "contingent" system which limits the number of automobiles to be imported from any country. It appears from the information in the Department's possession that that system as now administered results in the more serious curtailment of American trade in automobiles than that of other exporting countries.

In a telegram dated April 2, 1928, the Legation at Prague reports that according to information received from the Czechoslovak Minister of Commerce, the total number of licenses for the importation of

⁴⁰ 42 Stat. 858, 944 ff.

automobiles issued to the several exporting countries for the year 1926-27 (November to November) were as follows:

France	507
Italy	692
Germany	303
Austria	340
United States	1254

The Legation had previously informed the Department that a contingent of 800 cars is specified in the Czechoslovak commercial treaties, notably those negotiated with France and Italy, and pointed out that as this number satisfies their present requirements, no effort has been made by these States to increase it. It will be noted that those countries did not utilize the entire quota available to their exporters.

The Legation has stated further, however, that the success of American cars in the Czechoslovak market during the preceding two years has been such that far more than the number for which import licenses are available could be sold if the necessary licenses could be obtained. The contingent of 800 cars which had been allotted to the United States for the current year is reported to have been exhausted on February 15, 1928. The Commercial Attaché at Prague reported on February 21 that American dealers will request 1000 additional licenses for the purposes of the immediate future toward a total of at least 2500 licenses estimated as required to the end of the contingent year November 5, 1928. In contrast with these requirements, the Czechoslovak Minister of Commerce has just informed the American Chargé d'Affaires at Prague that there will be in all 1300 licenses issued for American cars for the current contingent year.

Further information on this subject may be obtained from the Legation's despatches of February 11 and February 21, 1928,⁴¹ copies of which were transmitted to you with the Department's letter of March 15, 1928.⁴²

It appears from the information set forth above that whereas the contingents allotted to France and certain other countries are more than sufficient to satisfy the needs of automobile exporters in those countries, the American contingent, though larger in absolute amount, is inadequate to care for the demand for American cars and thus does not satisfy the needs of American automobile manufacturers. There is apparently some analogy between the allotment of contingents without careful reference to the relative position which the various exporting countries might normally be expected to occupy

⁴¹ Latter not printed.

⁴² Not printed.

in supplying a given market, and the levying of discriminatory import duties. The levying of a non-discriminatory customs duty on a given product does not disturb the relationship existing among the various countries supplying the article in question. The country which occupies the leading position in the production and trade in that article may feel assured that, even though the absolute amount of its exports to the country in question may be reduced in consequence of the imposition of the duty, the same factors which have given it a leading position among the foreign countries supplying that market will enable it to retain its relative position even after the import duty has been imposed. A discriminatory duty, however, will disturb the above relationship and, although the country whose product is discriminated against may continue to occupy the leading position among the exporting countries supplying the market, its relative position among the exporting countries will be less favorable than that which it otherwise would occupy.

The effect of the Czechoslovak contingent system upon American trade in automobiles, as above set forth, appears to be similar to that which would result from the application of discriminatory import duties to American automobiles, and the Department of State will appreciate receiving the comment of the Tariff Commission on the matter. Since the spring and early summer months are those in which the automobile trade is most active, your consideration of the matter at your earliest convenience would be greatly appreciated.

I am [etc.]

FRANK B. KELLOGG

660f.116Auto/19

*The Chairman of the United States Tariff Commission (Marvin) to
the Secretary of State*

WASHINGTON, May 1, 1928.

MY DEAR MR. SECRETARY: The Tariff Commission has given consideration to the request in your letter of the 13th instant (EA 660f. 116/15), concerning Czechoslovakia's restriction upon the importation of automobiles.

From the facts reported to the Department by the Legation at Prague it appears that the European countries exporting automobiles to Czechoslovakia, notably Italy, France, Austria, and Germany, are unable to sell in that country as many cars as they are permitted to enter: whereas the demand for American cars is so great that a much larger number could be sold than are allowed to be imported. Italy and France, for example, sold only 692 and 507 respectively during the quota year ended November, 1927, though their quotas were 800 each. On the other hand, it is reported that the contingent of 800 cars which

had been allotted to the United States for the current quota year ending November next was exhausted on February 15, and that import licenses for the year will be limited to 1300, although at least 2500 American cars could be sold within that period. In other words, the contingent system of Czechoslovakia as currently applied restricts the sale of American cars in that market and does not in fact restrict the sales of French and Italian cars. The difference between the treatment which Czechoslovakia accords to the United States on the one hand, and to France and Italy on the other, is therefore not merely a difference in the degree of restriction, but in effect is a difference of kind—a restriction as contrasted with freedom to import greater numbers than are actually sold.

Czechoslovakia has an unquestionable right to restrict imports which compete with domestic production. The United States can scarcely object on the ground that such restriction is accomplished not only by import duties but by the less common method of limiting the number of cars to be imported. But when the total cars allowed entry are apportioned among the various exporting countries in such manner that the trade of the United States is seriously restricted while that of several other countries is in fact left without restriction, there is a manifest interference with equal competitive conditions and a plain denial of equal treatment, restricting the market for American cars through government action just as truly as would a discriminatory import duty.

Section 317 of the tariff act of 1922 provides for possible action against any country which

“discriminates in fact . . . directly or indirectly, by law or administrative regulation or practice, by or in respect to any . . . classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country.”

The words “in fact”, “indirectly”, and “by any practice” clearly indicate the intent of Congress to go beyond a mere formal equality of treatment and to comprehend every sort of action which affects unequally the similar products of different foreign countries so as to place the commerce of the United States at a real disadvantage, regardless of the forms under which the disadvantage may be concealed.

The commission does not ignore the argument that the Government of Czechoslovakia discriminates in favor of the United States by admitting in practice roughly twice as many American cars as French or Italian cars. This departure from formal equality in the number of import licenses allowed to each producing country seems rather to constitute an admission on the part of Czechoslovakia that a mere formal equality does not satisfy the equities of the case. The

formal discrimination in favor of the United States mitigates, but does not essentially change, the real disadvantage arising from the limitation which Czechoslovakia imposes upon the importation of American cars while imposing no restriction in fact upon like imports from certain other countries. It is therefore apparent that the effect of the apportionment in question is, in the words of the statute, a limitation, restriction, or prohibition which places the commerce of the United States at a disadvantage compared with the commerce of other foreign countries.

It should be observed, however, that in cases where the sales restriction or disadvantage in competition results from unequal apportionment of import quotas, the foreign government may be in a position to remove the inequality without removing the restriction, and therefore without improving the competitive position or sales prospect of the American article in that market. In the present instance for example, the Czechoslovak government might contrive to remove the unequal treatment complained of without increasing the import quota for American cars. This might be done either by reserving a larger proportion of the total sales in that country for the domestic automobile industry and reducing the import quotas of all countries, or by reducing the existing treaty quotas several hundred cars annually so that the import prohibition beyond the permitted number would become operative also against other countries besides the United States. Such a revision of quotas might avoid the charge of unequal treatment within the terms of section 317, but would not improve the position of American cars because no more would be admitted than before.

It will always be difficult and often impossible to secure equal treatment for all countries in cases where the inequality or the disadvantage in competition results from unequal apportionment of import quotas rather than from discriminatory duties. Even after the unequal import restriction has been adjusted so as to be operative also against other foreign countries, the revised quotas might still involve a more severe restriction against the American article than against the similar products of competing countries. A severe restriction upon American cars and a light restriction upon European cars would still be unequal treatment; but where the inequality is a matter of degree, it is practically impossible, in view of the shifting and changing fortunes of a given commodity in a given market, to so apportion the respective quotas from season to season as to assure exact equality of treatment to all parties. As a matter of fact, any quota system is fundamentally incapable of establishing and maintaining such equal competitive conditions as most-favored-nation treaties are designed to secure to the parties thereto.

While therefore, in the opinion of the commission, the import restrictions in question are imposed in such manner as to constitute unequal treatment, placing the commerce of the United States at a disadvantage compared with the commerce of other foreign countries within the meaning of the statute, there may be a question whether the public interest would be served by applying retaliatory measures in a case of this kind where the unequal treatment complained of might be removed without improving the competitive position of the American product or enlarging its market in that country. The commission understands that existing quotas are fixed by treaty; but those treaties are terminable on short notice and in any case can always be amended by mutual agreement, for which express provision is made in Article 29 of the treaty of 17 August, 1923, between Czechoslovakia and France.⁴³

Respectfully,

THOMAS O. MARVIN

660f.116Auto/20

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 1549

PRAGUE, May 7, 1928.

[Received May 28.]

SIR: With further reference to the Legation's despatches regarding the difficulties attending the importation of our motor cars, and the increased allowance over the contingent of 500 cars of which I had informed the Department in my Despatch No. 1501 of March 6th, ultimo [*sic*], I have the honor to state that an arrangement had been made by the late Minister of Commerce Dr. Peroutka by which this additional importation was to be divided monthly with proper regard to the seasonal requirements. An allowance of 124 cars had been established for the month of May but before this could be ratified by the Minister, he had resigned from the Cabinet and his place was filled by Mr. Novak (see Legation's Despatch No. 1541 of April 30, 1928⁴⁴) who began by holding the import licenses in suspense.

As over two hundred of our cars were waiting at the customs at Prague for the official permission the matter became urgent. I therefore called on the new Minister along with the Commercial Attaché, Mr. Baldwin, and asked for the issuance of these licenses. Minister Novak not only granted my request for the May allotment but anticipated the licenses for June, so that the 200 will at once be freed. He also told me he would consent to forestalling to an earlier date

⁴³ League of Nations Treaty Series, vol. XLIV, pp. 21, 41.

⁴⁴ Not printed.

the licenses which mature later. I asked for more licenses but he expressed regret that he could not grant these at the present time, owing to the negotiations which are still to take place in Paris over the new Commercial Treaty with France in connection with the importation of French cars. Any advantage granted us, he said, would at once be claimed by the French. He held out hope, however, that later on he would consent to additional licenses which might again be granted against next year's contingent. His manner was very conciliatory. I have for years kept up very friendly personal relations with the new Minister and I believe he will go as far as he dares to satisfy reasonable requests so long as he can do so without bringing undue trouble on himself.

From my French colleague, I understand that the French have met with the greatest difficulties in connection with their motor cars. They were unable to obtain any reduction in the present tariff and they hardly expect more than an increase in their contingent allowance from 800 to 1000 cars. The French Minister spoke to me with no little bitterness of the difficulty of their negotiations and the subordination of the Ministry of Commerce to the selfish demands of the manufacturers.

The fact that we have been able to secure relatively more favorable terms with respect to our motor car contingent over and above any strict treaty right and better than those enjoyed by France has made me unwilling so far to press for the abolition of certain unfair restrictions. There is, for instance, the incidence of the road tax which is aimed at our cars and penalizes them because of their higher cylindrical content, also certain lower valuations are granted to Austrian makes on a reciprocal basis and regulations prohibit the use of foreign cars as taxicabs. Yet I fear lest any pressure for the removal of these hindrances at this time when the authorities seem well disposed would be a tactical mistake and only result in a far stricter application of the contingent. Under existing circumstances we should in fact have more to lose than to gain by such insistence. The dealers are able to sell our cars even at prices three times as high as in the United States and their main problem today is one of import licenses. If later the contingent system were to be abolished or if new difficulties were to be placed in the way of the importation of our cars, I would then propose to protest against the practices aimed to restrict the use of American cars in Czechoslovakia.

I have [etc.]

LEWIS EINSTEIN

660f.116Auto/24

The Minister in Czechoslovakia (Einstein) to the Secretary of State

No. 1606

PRAGUE, July 23, 1928.

[Received August 6.]

SIR: In my Despatch No. 1434 of December 12th⁴⁵ ultimo [*sic*], I had the honor to convey to the Department the difficulties which I anticipated in connection with the future importation of our motor cars as soon as the immediate contingent had been exhausted. Owing to the increased demands for our cars the crisis has now arisen in a more acute form than ever before. The 200 additional import licenses hitherto granted against next year's contingent are quite insufficient for our needs.

At the personal request of the Minister of Commerce, made to me at the time of granting the 200 licenses, I had refrained from pressing for an increased contingent pending his negotiations with the French. The latter had asked for an increase as well as for a reduction of the import duties, but were able to obtain only trifling concessions and these with the greatest difficulty. My French colleague, Mr. Charles-Roux, told me that his Government would have been unwilling to sign the commercial convention⁴⁶ if it had not been that the failure to do so would have obliged them to exact higher customs duties on Czechoslovak products than on German.

After these negotiations were over it seemed unwise for me to press for a higher contingent at Prague while our delegates at Geneva⁴⁷ were demanding the entire removal of this system. I had to wait for a few days until the Economic Conference had ended. Since then I have taken up the matter repeatedly and in different ways in close cooperation with the Commercial Attaché, Mr. Baldwin whose untiring efforts in behalf of our cars deserve the warmest commendation.

A delegation of the native representatives at Prague of American firms lately called to ask for the Legation's assistance in helping them to obtain import licenses for some 500 American cars and trucks now at the Prague customs and some 400 more ordered, paid for and due to arrive before August 1st. I have suggested to them a course of action both with respect to the publicity of their case and the nature of the assistance which they should ask from the firms in the United States which they have expressed themselves as desirous to adopt.

⁴⁵ Not printed.

⁴⁶ Treaty of July 2, 1928, between France and Czechoslovakia, League of Nations Treaty Series, vol. xcix, p. 105.

⁴⁷ For correspondence regarding Second International Conference for the Abolition of Import and Export Prohibitions and Restrictions, Geneva, July 3-19, 1928, see vol. I, p. 366.

I have also called on the Minister of Commerce in their behalf. The latter proposed to grant 300 additional licenses against next year's contingent but said that for the time, he could now do no more.

My next visit was therefore on Dr. Beneš with whom I left Note No. 1145 (see enclosure)⁴⁸ which contains a complete statement of our case. Dr. Beneš although personally sympathetic to a more liberal treatment declared that he was in a minority of one to the Cabinet and that he would be obliged to consult his colleagues who held the so-called economic portfolios. The present situation depended on domestic politics and in the latter the manufacturers and the farmers had reached a working agreement based on reciprocal high protection.

I told Dr. Beneš that I had hitherto prevented the local dealers from beginning a press campaign on the iniquity of the present situation in which they intended to ask why the Government should forego 20 million crowns revenue in duties and taxes for the sake of a few manufacturers who were working overtime and did not need this protection. Dr. Beneš told me that he himself would welcome seeing such an attack. For tactical reasons, the Commercial Attaché who is in close touch with the dealers has advised these not to begin this, at least during the development of the negotiations.

I have asked the Minister for Foreign Affairs, pending the removal of the contingent system in 1930, to establish a quota for our cars which would be based on some definite relation between local production and imports. Dr. Beneš has promised to do his utmost to secure better terms for our cars, but he did not hide from me the difficulty of securing these from a cabinet so largely under the influence of the manufacturers.

My recent action is as far as the Legation can go and if it is not efficacious the Department will have to suggest stronger measures and instruct me as to its wishes.

I have [etc.]

LEWIS EINSTEIN

660f.116Auto/26 : Telegram

The Secretary of State to the Minister in Czechoslovakia (Einstein)

[Paraphrase]

WASHINGTON, August 14, 1928—7 p. m.

39. Your despatch No. 1606, July 23. The efforts of the Legation to obtain import licenses for additional automobiles are approved. An immediate abandonment of the contingent system cannot, of course,

⁴⁸ Not printed.

in view of the agreement recently reached at the Geneva conference,⁴⁹ be appropriately urged, yet the inequitable allotment thereunder of licenses is a proper subject for energetic representations. The quotas of other countries exporting automobiles have, so the Department understands, more than sufficed heretofore to satisfy their requirements. The apportionment of quotas in such a way that United States trade is restricted seriously, while the trade of several other countries in fact is unrestricted, is discrimination which you should emphasize.

KELLOGG

660f.116Auto/27 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, August 27, 1928—3 p. m.

[Received 3:50 p. m.]

67. Your 39, August 14, 7 p. m. Note from Foreign Office with trade statistics reiterates contention that Czechoslovakia although obliged to grant only contingent equal to treaty provisions has exceeded this by issuing 1300 licenses this year. It states that the workers organizations fear the consequences of removing restriction on imports particularly as metal industries have been affected by foreign customs barriers and the skilled labor from these finds employment in motors. Protection is compared to the emigration quota in America. Further arguments are presented showing the balance of trade favors the United States and mention is made of prohibition as preventing various Czechoslovak exports. To show its good will, the importation of one hundred and eighty cars is authorized credited against next year's contingent. Copy of note forwarded by next pouch.⁵⁰

[Paraphrase.] As I have already emphasized the points given in Department's 39 and made vigorous representations, for the present I am of opinion that nothing further can be accomplished through ordinary argument, though American automobiles may be imported still in dribblets. Any increased admission of American motors must depend on steps being taken in Washington. [End paraphrase.]

EINSTEIN

⁴⁹ Vol. I, p. 336.

⁵⁰ Not printed.

660f.116Auto/32 : Telegram

The Secretary of State to the Chargé in Czechoslovakia (Gittings)

WASHINGTON, October 4, 1928—6 p.m.

44. Your despatch 1627, August 28.⁵¹ Unless you perceive objection, you are instructed to address the following note to the Czechoslovak Government:⁵²

[Paraphrase.] Ground for the request in your note dated July 17 to the Czechoslovak Foreign Office⁵³ that the American automobile quota should be based on domestic production is not perceived by the Department. Discontinuance of representations on that basis is desired. You are referred to instruction No. 502, January 12.

In discussions with Czechoslovak officials, should you deem it advisable or necessary to name a figure regarded by the United States as satisfactory for the next contingent year's quota, you may use your own judgment, formed from trade estimates of the prospective demand during the coming years of consumers in Czechoslovakia for American automobiles. Officials of the Department of Commerce have suggested tentatively the figure of 4,000 for the contingent year 1928-29, but this figure is given you merely for your consideration as a basis. Cable promptly the figure which you present and the Czechoslovak Government's offer in return prior to making any indication of acceptance. It is considered more important now that the request for enough licenses on this year's automobile contingent be complied with, so that the accumulation of cars which have arrived already at the customs or are arriving may be cleared up. [End paraphrase.]

KELLOGG

660f.116Auto/36 : Telegram

The Chargé in Czechoslovakia (Gittings) to the Secretary of State

PRAGUE, October 13, 1928—1 p.m.

[Received October 13—9:45 a.m.]

74. Your telegram No. 47, October 11, 5 p.m.⁵⁴ Note as amended therein has been presented today. Reference to road tax was left in note. Every effort will be made to achieve results.

GITTINGS

⁵¹ Not printed; see telegram of Aug. 27, 3 p. m., *supra*.

⁵² For the note, as slightly revised after telegraphic correspondence, see p. 714.

⁵³ Note not printed; but see despatch No. 1606 of July 23, from the Minister in Czechoslovakia, p. 709.

⁵⁴ Not printed.

660f.116 Auto/37

The Chargé in Czechoslovakia (Gittings) to the Secretary of State

No. 1650

PRAGUE, October 15, 1928.

[Received October 29.]

SIR: I have the honor to refer to the Legation's telegram No. 74, of October 13, 1 p. m., and to previous telegrams recently exchanged regarding the automobile contingent situation in Czechoslovakia. As stated in that telegram, I presented this Note, as amended, to the Foreign Office on the same day. Two other small changes were the alteration of "to" to "of" (second line of first paragraph), and the substitution of "the Legation" for "I" (Page 3, lines 19-20), both for obvious reasons, and the former being for the sake of clearness. Copies of the Note as delivered are herewith enclosed.

The feeling of the Legation regarding the specific reference to Austria and to customs undervaluations have already been set forth telegraphically; and the Legation is pleased that the Department agreed. Aside from the difficulty of proof, etc., it may well be that Austria has a perfectly proper claim to this particular consideration, based on the Peace Treaties. The few Austrian cars sold here in no way affect, today, the American situation.

Elimination of the not strictly germane road tax feature was also considered but this was not referred to Washington because it had no harmful aspect. The Department's reply giving the option to remove it, showed that it also had the same thought in mind. But the Legation retained that feature, feeling that after all it did not present the objectionable features of the other, and that, since it was based on legislation which would necessarily take time to work out, the first step might as well be made without further delay.

Matters of customs discriminations can be taken up at a later date, or opportunely in conversation as occasion may arise. But it is obvious that the main issue today is greater import latitude. Even if American cars were now on the free-list, no real relief from the present trouble is possible as long as their admission continues to be denied or limited. As the Department knows, American automobiles, despite the other handicaps, could be sold in much greater numbers than heretofore, if they were permitted entry.

The Department's various instructions will be carefully followed, and everything possible will be done. The Department will be kept fully informed by telegraph as occasion arises.

I have [etc.]

JOHN STERETT GITTINGS

[Enclosure]

*The Chargé in Czechoslovakia (Gittings) to the Czechoslovak
Minister for Foreign Affairs (Beneš)*

No. 1188

PRAGUE, October 12, 1928.

EXCELLENCY: I have the honor to inform Your Excellency that the Note of the Czechoslovak Government dated August 22, 1928,⁵⁵ on the subject of import licenses for American automobiles has been transmitted to my Government which after due consideration has instructed me to reply thereto as follows:

It is noted that the Czechoslovak Government having regard for the domestic automobile industry and considerations affecting the labor employed therein is disposed to maintain the system of licensing for the further period contemplated in the agreement reached at the recent Geneva Conference for the abolition of import and export prohibitions and restrictions. In view of that agreement the Government of the United States hastens to make it entirely clear that it has no intention of urging the complete abolition of these restrictions before the expiration of the period agreed upon.

The present interest of the Government of the United States in this matter relates to the manner in which the contingent system is administered. The first conference on import and export restrictions last November enunciated the principle that insofar as such a system is maintained an equitable allotment of quotas is essential. The allotment of quotas by the Czechoslovak Government has not in the opinion of my Government conformed to that principle in respect of importation of American automobiles. The licensing system now in force applies with particular severity against the United States for the reason that quotas allotted other manufacturing countries fully satisfy or exceed their requirements, whereas the quota allotted the United States, even though greater in respect of the absolute number of licenses granted, has nevertheless remained chronically inadequate and uncertain. To instance the discrimination against American cars, my Government understands that in the last contingent year for which figures are available no country other than the United States exhausted its contingent whereas the American quota was fully utilized and many hundreds of additional licenses over and above those granted could have been utilized at any time. The limitations thus imposed interfere more seriously with the ability of American manufacturers to satisfy the demand in Czechoslovakia for American automobiles than they do in the case of automobile manufacturers in any other country.

⁵⁵ Not printed. See telegram No. 67, Aug. 27, 1928, from the Minister in Czechoslovakia, p. 711.

I have been instructed once more to appeal to Your Excellency's Government for the fixation of a quota for American automobiles that will remove this discrepancy between the treatment accorded as to importation of automobiles from the United States and that accorded as to importation from other countries. The Government of the United States does not now ask unrestricted liberty of importation for American automobiles although it might be justified in doing so in view of the treatment accorded other countries. It asks, however, as a matter of fairness and comity that a definitely more liberal attitude toward American automobiles be adopted by the Czechoslovak Government than has heretofore been shown.

My Government has viewed with growing concern not only the above mentioned difficulties to which American trade in automobiles has been subjected but also the adoption of other measures which tend to aggravate the situation such as the road tax provisions which as drawn bear far more heavily on cars of the type manufactured in the United States than on those of the type manufactured in European countries. The latter provisions create a discrimination similar to that of the former luxury tax with respect to which the Legation made representations on behalf of my Government which tax was repealed for the purpose of removing precisely this difficulty. My Government considers that the matters above discussed represent a situation which is inconsistent with cordial trade relations between the two countries and it therefore requests that the Czechoslovak Government reconsider the position taken in its Note under reference and specifies [*specifically*] that an adequate number of licenses be allowed under the contingent for the current year to care for American cars now held in the Czechoslovak customs, that greater import latitude be granted during the time that the contingent system remains in force by according an equitable contingent for American automobiles and that the application of road tax be modified so as to place American automobiles on an equal footing with those imported from other countries. My Government further requests in the interest of greater stability in the conduct of this trade and to obviate further discussion between the two Governments that an indication be given before the beginning of the next contingent year what import latitude will be granted during the year.

Accept [etc.]

JOHN STERETT GITTINGS

660f.116Auto/40 : Telegram

The Chargé in Czechoslovakia (Gittings) to the Secretary of State

PRAGUE, November 24, 1928—noon.

[Received November 24—10:15 a. m.]

79. Regarding automobile contingent situation. Does Department wish me to file written protest against delay in answering last note? If so, please instruct and outline. Fault lies with Ministry of Commerce, and with all due allowances I feel the delay now approaches point of discourtesy, not to mention further injury to automobile business due to continued uncertainty. Commercial Attaché agrees with this and reports only about 100 licenses issued so far since November 5, beginning of new contingent year; also several hundred cars held in customs.

GITTINGS

660f.116Auto/42 : Telegram

The Secretary of State to the Chargé in Czechoslovakia (Gittings)

WASHINGTON, November 30, 1928—6 p. m.

52. Your 79, November 24, noon. You should inquire by formal note when reply may be expected to the note of October 12. In so doing you may refer particularly to this Government's request that, in the interest of greater stability in the conduct of this trade, an indication be given before the beginning of the new contingent year what import latitude will be allowed during this year. You may state that inasmuch as the new contingent year has already begun and since doubt and uncertainty continue to surround the making of plans or commitments by the commercial interests affected, this Government ventures to hope that the Czechoslovak Government will recognize the appropriateness of an early and favorable decision in this matter. Keep Department fully advised.

KELLOGG

660f.116Auto/46 : Telegram

The Minister in Czechoslovakia (Einstein) to the Secretary of State

PRAGUE, February 2, 1929—noon.

[Received February 2—9:10 a. m.]

13. Legation's despatch No. 1689, December 6, 1928.⁵⁶ Foreign Office note informs Legation confidentially that American motor contingent will be increased from 800 to 1500 cars. Kindly refrain from publicity.⁵⁷

EINSTEIN

⁵⁶ Not printed.

⁵⁷ American automobile interests were given permission to receive this information in confidence; telegram 17, Feb. 28, 1929, from the Chargé in Czechoslovakia to the Secretary of State (file No. 660f.116 Auto/53).

DENMARK

TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND DENMARK, SIGNED JUNE 14, 1928

711.5912 A/3

The Secretary of State to the Danish Minister (Brun)

WASHINGTON, *March 22, 1928.*

SIR: I have the honor to transmit herewith for the consideration of your Government and as a basis for negotiation a proposed draft of a treaty of arbitration between Denmark and the United States.¹ The provisions of this draft operate to extend the policy of arbitration enunciated in the convention signed at Washington May 18, 1908² (which expired by limitation on March 29, 1914) and are identical in effect with the provisions of the arbitration treaty signed between the United States and France on February 6, 1928, a copy of which is also enclosed.³

You will observe that Article I of the treaty with France does not appear in the draft submitted herewith. Its language was borrowed from the language of the Treaty for the Advancement of Peace signed in 1914,⁴ and some question having arisen as to whether the new treaty affected the status of the Treaty of 1914, the matter has been resolved in the case of France by an exchange of notes⁵ recording the understanding of both Governments that the earlier conciliation treaty was in no way affected by the later arbitration treaty. In order to obviate further questions of this nature, however, it seems desirable to avoid the incorporation in subsequent arbitration treaties of any portion of the language of the earlier conciliation treaties, and I have therefore eliminated Article I of the French treaty and amended Article II (which is Article I of the draft transmitted herewith) by substituting for the words "the abovementioned Permanent International Commission"

¹ Not printed.

² *Foreign Relations*, 1909, p. 239.

³ *Post*, p. 810.

⁴ *Foreign Relations*, 1915, p. 380.

⁵ *Post*, p. 819.

the words "the Permanent International Commission constituted pursuant to the treaty signed at Washington, April 17, 1914".^{5a}

I feel that by adopting a treaty such as that suggested herein we shall not only promote the friendly relations between the Peoples of our two countries, but also advance materially the cause of arbitration and the pacific settlement of international disputes. If your Government concurs in my views and is prepared to negotiate a treaty along the lines of that transmitted herewith, I shall be glad to enter at once upon such discussions as may be necessary.

Accept [etc.]

FRANK B. KELLOGG

711.5912 A/12

The Minister in Denmark (Dodge) to the Secretary of State

No. 464

COPENHAGEN, April 19, 1928.

[Received May 8.]

SIR: Referring to my Despatch No. 453 of the 16th instant,⁶ relative to the proposed Arbitration Treaty between the United States and Denmark, I have the honor to confirm my telegram sent this afternoon⁶ stating that the Foreign Minister, Dr. Moltesen, had informed me that a telegram was despatched last evening to the Danish Minister in Washington, Mr. Brun, advising him that the Danish Government agreed to sign the Treaty of Arbitration as proposed by the Government of the United States except for a few necessary technical modifications to exclude Iceland from its provisions since it would be necessary to negotiate a separate Treaty with that Government which is now independent. My telegram added that I was also informed that full powers were being mailed to Mr. Brun to sign the proposed Treaty.

In conversation to-day regarding this matter, Dr. Moltesen repeated, what I reported in my Despatch No. 453, above referred to, namely that Denmark would have preferred a Treaty of Arbitration with less limitations like her Treaty with France⁷ (Despatch No. 131 of April 4, 1927⁶) or with most of the European countries. However he had agreed to sign the proposed Treaty because he understood that the United States was not disposed to introduce modifications in the draft since it was proposed to negotiate similar Treaties with a number of other Governments. Mr. Brun would mention his Government's preference to the Secretary of State and although he, Dr. Moltesen, knew that in the circumstances this preference could have no effect, he desired to make his Government's wish known so that he might eventually

^{5a} *Foreign Relations*, 1915, p. 276.

⁶ Not printed.

⁷ Treaty of July 5, 1926, League of Nations Treaty Series, vol. LXXI, p. 455.

inform the Rigsdag that everything possible had been done to obtain a less limited Treaty. The Rigsdag would undoubtedly be disappointed that a less limited Treaty could not be agreed upon.

Regarding the technical modifications above mentioned to exclude Iceland from the dispositions of the Treaty, Count Reventlow, Director General of the Foreign Office, subsequently explained to me that owing to Iceland's independence, the Treaty with Denmark could not include Iceland but a separate Treaty would have to be negotiated through the Danish Foreign Office which would transmit it for the decision of the Government at Reykjavik. This Government was quite differently disposed towards Arbitration and other Treaties than the Danish Government and usually, except for Treaties with the Scandinavian countries, thought it unnecessary to have them. However it was inclined to be more favorably disposed towards Treaties with the United States and he thought that it was quite likely to view favorably a Treaty similar to the proposed one with Denmark. The negotiations however might take some time owing to the distance of Reykjavik from Copenhagen.⁸ The actual modifications in the text of the Treaty would consist in eliminating the words "two nations", or other expressions referring to the contracting parties and substituting the words "the United States and Denmark", so as to eliminate any question of the inclusion of Iceland.

I have [etc.]

H. PERCIVAL DODGE

Treaty Series No. 784

Treaty Between the United States of America and Denmark, Signed at Washington, June 14, 1928⁹

The President of the United States of America and His Majesty the King of Denmark and Iceland

Determined to prevent so far as in their power lies any interruption in the peaceful relations that have always existed between the United States and Denmark;

Desirous of reaffirming their adherence to the policy of submitting to impartial decision all justiciable controversies that may arise between the two countries; and

Eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have

⁸ A treaty of arbitration with Iceland was signed on May 15, 1930 (Department of State Treaty Series No. 828).

⁹ In English and Danish; Danish text not printed. Ratification advised by the Senate, Dec. 18, 1928 (legislative day of Dec. 17); ratified by the President, Jan. 4, 1929; ratified by Denmark, Mar. 12, 1929; ratifications exchanged at Washington, Apr. 17, 1929; proclaimed by the President, Apr. 17, 1929.

eliminated forever the possibility of war among any of the Powers of the world;

Have decided to conclude a new treaty of arbitration enlarging the scope and obligations of the arbitration convention signed at Washington on May 18, 1908, which expired by limitation on March 29, 1914, and for that purpose they have appointed as their respective Plenipotentiaries

The President of the United States of America: Mr. Frank B. Kellogg, Secretary of State of the United States;

His Majesty the King of Denmark and Iceland: Mr. Constantin Brun, His Majesty's Envoy Extraordinary and Minister Plenipotentiary at Washington; who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

ARTICLE I

All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to the Permanent International Commission constituted pursuant to the treaty signed at Washington April 17, 1914, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907,^{9a} or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

The special agreement in each case shall be made on the part of the United States of America by the President of the United States of America by and with the advice and consent of the Senate thereof, and on the part of Denmark in accordance with its constitutional laws.

ARTICLE II

The provisions of this treaty shall not be invoked in respect of any dispute the subject matter of which

(a) is within the domestic jurisdiction of either of the High Contracting Parties,

(b) involves the interests of third Parties,

^{9a} *Foreign Relations*, 1907, pt. 2, p. 1181.

(c) depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine,

(d) depends upon or involves the observance of the obligations of Denmark in accordance with the Covenant of the League of Nations.

ARTICLE III

The present treaty 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 Denmark in accordance with its constitutional laws.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate in the English and Danish languages, both texts having equal force, and hereunto affix their seals.

Done at Washington the fourteenth day of June, one thousand nine hundred and twenty-eight.

FRANK B. KELLOGG	[SEAL]
C. BRUN	[SEAL]

REPRESENTATIONS BY DENMARK AGAINST DISCRIMINATION IN TONNAGE DUTIES LEVIED AGAINST DANISH VESSELS IN AMERICAN PORTS

811.841/294

The Danish Minister (Brun) to the Secretary of State

J. No. 60.D.b/1

No. 158

WASHINGTON, June 3, 1926.

SIR: With reference to the question of the tonnage duties which Danish vessels are required to pay in ports of the United States, last mentioned in the note from your Department of March 10, 1925,¹⁰ I have the honor to state as follows:

I duly laid before the Danish Government the note of February 20, 1924 from Mr. Secretary of State Hughes,¹⁰ as well as my reply to him in my note (No. 44) of February 25, 1924¹⁰ to the substance of which no answer has been received from your Department. Meantime the Danish Foreign Office has given new and very earnest consideration to the matter and, as a result, I am directed to advise you, that the Danish Government is unable to agree with the Government

¹⁰ Not printed.

of the United States in the opinion that Danish vessels entering the United States from Danish ports, are properly subject to the payment of the six cent tonnage rate provided for in Section 36 of the Act approved August 5, 1909,¹¹ as set forth in the Note of Mr. Hughes of February 20, 1924.

In this respect I am instructed to observe, that the 2 cent rate accorded to vessels from Norway and Sweden can not, in the opinion of the Danish Government, in any possible way be considered as a consequence of any geographical zone established for the purpose of encouraging navigation between neighbouring countries, but is very clearly a particular favor granted to another nation in respect of commerce and navigation, to which Denmark therefore becomes entitled in virtue of Article I of the treaty with the United States of April 26, 1826.¹²

The geographical zone as defined by Section 14 of the Act of June 26, 1884 as amended,¹³ and by Section 36 of the Act of August 5, 1909, included "any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the Coast of South America, bordering on the Caribbean Sea, or Newfoundland," and is no doubt an expression for the desire to encourage trade and navigation between the United States and its nearest neighbours in the Western hemisphere, a policy which was not infrequent in former days and for instance was adopted also by Norway in the beginning of the 19th century. But the extension of the privilege of the 2 (or 3) cent rate to Norway and Sweden could not possibly be considered as an application of the same geographical principle. It was clearly an act granting a special favor to Norway and Sweden, and the history of the case shows, that the Government of the United States felt itself under an honorable obligation to grant this favor to Norway and Sweden in return for the similar favor which Norway and Sweden had granted to the United States in 1828.

It may also be pointed out that the Order of October 4, 1909 from the U. S. Commissioner of Navigation to the Collector of Customs in New York very distinctly proves, that the arrangement is not of geographical nature, but is in the nature of a favor to a particular country (Sweden-Norway). The Order extends the 2 cent rate to vessels of Sweden and Norway (and vessels of the United States) from any port in Sweden and Norway but adds that in the case of a vessel of any other nationality arriving from Sweden or Norway, the Collector may telegraph the Bureau for instructions.

This addition would appear to be unnecessary, if the arrangement were of geographical nature, and is therefore not to be found in Sec-

¹¹ 36 Stat. 11, 111.

¹² Hunter Miller (ed.), *Treaties and Other International Acts of the United States of America*, vol. 3, p. 239.

¹³ 23 Stat. 53, 57.

tion 36 of the Act of August 5, 1909. The addition is on the other hand natural when the nature of the arrangement as a special favor to particular nations (Sweden-Norway) is remembered, the question of the application thereof to other nations being then dependent upon the treaties existing with such nations.

The same may be said of the original order of April 9, 1892 which only instructed the Collectors of Customs to apply the then lowest rate (3 cents) to Norwegian and Swedish vessels, in accordance with the claim advanced by the Swedish-Norwegian Government, and thereby proves, that the arrangement was meant as a special favor to a particular country and not as an application of any geographical zone system.

In the note of Mr. Secretary of State Hughes of February 20, 1924 it is furthermore said (on page 3) "nor is it contended that Danish vessels arriving in the United States from Norwegian and Swedish ports only are charged more than the two cent rate."

In reply to this point it may be said that it is correct that in the argumentation of the matter here under discussion the Danish Government has not until now put the contention forward that Danish ships from Norwegian or Swedish ports are charged more than the two cent rate in the United States, but the Danish Government believes nevertheless to be in possession of evidence to the effect that such is the case.

In these circumstances I have been directed to again represent to you, that the Danish interests involved in this matter are very considerable, and that the Danish Government attaches great importance to a favorable solution of the question and furthermore ventures to expect that the Government of the United States will be pleased to cause a decision to be arrived at as soon as may be found possible, in view of the fact that the case has now been pending for more than 13 years, it having been first submitted by me in a note to Mr. Secretary of State Bryan of April 19 [18?], 1913.¹⁴

Our contention is that, in virtue of the most favored nation treatment, Danish vessels arriving in the United States from Danish ports should be granted the favor accorded to Norwegian and Swedish vessels arriving from ports in Norway and Sweden, and it may here be added that, whereas Norway and Sweden had granted a similar favor to American vessels, there is in the case of Denmark no occasion for any such reciprocal concession, as Danish law does not discriminate against American navigation interests by any geographical zone system for the imposition of tonnage dues. The only guaranty that might be required in return would in our opinion be, that the Danish Government should sign a declaration to the effect, that no such geographical

¹⁴ Not printed.

zone system exists in Danish law, if desired supplemented with the undertaking not to alter the Danish law on this point.

I am finally instructed to advise you that, in case the United States Government should not now be able to see its way to admit the justice of our claim, the Danish Government reserves to itself to propose to the American Government to have this purely juridical question settled by arbitration, with the understanding that Denmark would in such case also claim refund of all previously paid tonnage dues in excess of the 2 cent rate, where only the 2 cent rate should have been applied.

I have [etc.]

C. BRUN

811.841/294 : Telegram

The Secretary of State to the Minister in Norway (Swenson)

WASHINGTON, October 4, 1926—4 p. m.

11. Telegraph Department regarding tonnage duties assessed in Norwegian ports, stating whether such duties are uniform and, if not, what rates of duties are assessed against American vessels as compared with rates assessed against other foreign vessels and Norwegian vessels.

KELLOGG

811.841/294 : Telegram

The Secretary of State to the Minister in Denmark (Dodge)

WASHINGTON, October 4, 1926—4 p. m.

34. Telegraph Department regarding tonnage duties, if any, assessed in Danish ports. If duties are assessed state whether they are uniform and if not what rates are assessed against American vessels as compared with rates assessed against other foreign vessels, and Danish vessels. This information desired in consideration of the contention of the Danish Government that in view of Article I of the Treaty with Denmark of 1826, Danish vessels arriving in the United States from Danish ports should be accorded the benefit of the minimum tonnage duty of two cents per ton provided for in the Federal Statutes, which has been accorded Norwegian vessels from Norwegian ports under the provisions of Article 8 of the Treaty with Norway of 1827.¹⁵

KELLOGG

¹⁵ Miller, *Treaties*, vol. 3, pp. 283, 288.

811.841/298 : Telegram

The Minister in Norway (Swenson) to the Secretary of State

OSLO, October 5, 1926—noon.

[Received 3:15 p. m.]

23. Referring to the Department's No. 11, October 4, 4 p. m. Tonnage duties in Norwegian ports are uniform for all countries including Norway.

SWENSON

811.841/299 : Telegram

The Minister in Denmark (Dodge) to the Secretary of State

COPENHAGEN, October 5, 1926—5 p. m.

[Received October 6—5:50 a. m.]

40. Your 34, October 4, 4 p. m. Shipping Board agent, Baltic and White Sea conference, and Commercial Attaché state that tonnage duties are assessed in Danish ports, but that they as well as all other charges are same for Danish and all foreign including American ships except at four relatively unimportant docks at Copenhagen, rarely used by foreign ships, privately owned and not subject to government control, at which all foreign ships must pay fifty percent additional charge.

DODGE

811.841/294

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

WASHINGTON, October 18, 1926.

SIR: I have the honor to refer to this Department's letters of February 16 and March 10, 1925, and to your Department's letter of April 17, 1925 (131200-N),¹⁶ concerning the tonnage duties to be assessed against Danish vessels arriving in the United States, and to enclose for your information a copy of a note that has been received from the Danish Legation at this capital under date of June 3, 1926,¹⁷ in further relation to this matter. In this note the Danish Government reiterates its contention that in view of the fact that Norwegian vessels arriving in the United States from Norwegian ports are granted the benefit of the two cent tonnage rate provided for in the Act approved August 5, 1909, Danish vessels arriving in the United States from Danish ports, under the provision for most-

¹⁶ None printed.

¹⁷ *Ante*, p. 722.

favoured-nation treatment in Article I of the Treaty of 1826 between the United States and Denmark, should be accorded the benefit of the two cent tonnage rate. It will be observed that the Legation states that if this Government does not admit the contention of the Danish Government, the Danish Government reserves the right to propose that the matter be settled by arbitration with the understanding that Denmark in such a case would also claim refund of all previously paid tonnage dues in excess of the two cent rate where only the two cent rate should have been assessed.

Inasmuch as Norwegian vessels now enjoy the two cent rate by virtue of Article VIII of the treaty of 1827 with Norway, and in view of the provisions of Article I of the Treaty of 1826 with Denmark, the Department finds difficulty in answering the contention of the Danish Government. Upon reconsideration of the whole matter, the Department has reached the conclusion that unless this Government is prepared to grant the two cent rate to Danish vessels from Danish ports, it will be necessary to abrogate the Treaty of 1827 between the United States and Norway, under Article VIII of which Norwegian vessels arriving in the United States from Norwegian ports have been granted the benefit of the two cent rate, unless a new treaty supplanting the existing treaty is concluded with Norway at an early date.

I may state that on August 13, 1925, the Department submitted to the Norwegian Government the draft of a proposed Treaty of Friendship, Commerce and Consular Rights, which by its terms was to supersede the Treaty of 1827.¹⁸ This draft contained no provisions corresponding to the provisions of Article VIII of the Treaty of 1827. The Department, however, has no assurance that the new Treaty will be signed in the near future and in view of the urgency of the long standing controversy with Denmark, the Department feels that it will be necessary to take effective steps to remove the discrimination which exists against Danish vessels, either by granting these vessels the two cent rate or by withdrawing the preferential treatment from Norwegian vessels, which entails the denunciation of the Treaty of 1827 with Norway.

Please inform the Department at your earliest convenience whether, in view of the considerations herein set forth, your Department perceives any objection to the abrogation of the Treaty of 1827 with Norway.

I have [etc.]

FRANK B. KELLOGG

¹⁸ See vol. III, pp. 593 ff.

411.59 M 73/13

*The Chief of the Division of Western European Affairs (Castle) to
the Under Secretary of State (Grew)*

[WASHINGTON,] *October 21, 1926.*

MR. GREW: The Danish Minister came in to see me by appointment this morning concerning two cases which he tells me his Government considers of vital importance.

The second case was that of tonnage dues and the claim of Denmark that, because Norwegian ships paid only 2 cent dues the United States ought to extend this rate to Denmark as a right under the Danish American Treaty. The Minister said he had been writing about this for thirteen years and had never had from anyone a satisfactory statement of the Department's position. I told him that I should be glad to discuss the matter with him very frankly on condition that I could consider our talk absolutely confidential. The Minister said he could guarantee this. I then said I felt myself that this Government had made an initial error in ever granting the 2 cent rate to Norway, that this had been done many years ago, however, and that I thought it unfortunate that the matter had been allowed to drag along endlessly. I told the Minister that we might well stand firmly on our legal arguments but that this still would be getting us nowhere. I said that to grant the Danish contention would be unthinkable as it would throw the door wide open to many other nations which, although having as much claim as Denmark, had yet made no claims, presumably because they did not consider the claim sound. I then told him that in my opinion there were only two courses open, to abrogate either the Norwegian or the Danish treaty. The Minister said it would seem a little unfair to him to abrogate the Danish treaty, and I said that I personally was induced to agree since the trouble all came from a clause in the Norwegian treaty. I told him that one or the other of these courses was under serious consideration, that we had not yet decided definitely what course to take and that this was the reason why my conversation was of necessity confidential. The Minister said that he was immensely grateful, that it was the first clear cut statement he had had and that although abrogation of the treaty would put an end to Danish hopes of securing the low tonnage rate he would be thankful to have one of the most troublesome questions between the two countries permanently out of the way.

W. R. C[ASTLE]

811.841/302

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

WASHINGTON, November 3, 1926.

SIR: The Department has received your letter of the 18th ultimo, your reference number So 811.841/294, enclosing a note from the Danish Legation of this capital in which it is contended that in view of the fact that Norwegian vessels arriving in the United States from Norwegian ports are granted the benefit of the two-cent tonnage rate provided for in the Act approved August 5, 1909 Danish vessels arriving in the United States from Danish ports should be accorded the benefits of the same rate.

Norwegian vessels now enjoy the two-cent rate by virtue of Article VIII of the Treaty of 1827 with Norway and your Department has reached the conclusion that unless this Government is prepared to grant the two-cent rate to Danish vessels from Danish ports, it will be necessary to abrogate the Treaty of 1827 between the United States and Norway.

Inasmuch as the terms of our Treaty with Denmark and of the laws of the United States do not permit the extension to Danish vessels entering ports of the United States from Denmark the benefit of the two-cent tonnage rate, this Department perceives no objection, so far as Article VIII is concerned, to the abrogation of the Treaty of 1827 with Norway.

Respectfully,

STEPHEN DAVIS

811.841/311

The Secretary of State to the Danish Minister (Brun)

WASHINGTON, March 26, 1927.

SIR: I have the honor to acknowledge the receipt of your note of March 3, 1927,¹⁹ in further relation to the rates of tonnage duties collected on Danish vessels as compared to the rates collected on Norwegian vessels in the ports of the United States.

The matter of tonnage dues on Danish and Norwegian vessels has been receiving the consideration of the Department of State in conjunction with other authorities of the Government. I take pleasure in informing you that it is the view of the authorities of the Government concerned with the matter that, without regard to the merits of the contention advanced by your Government that Danish vessels are entitled under existing treaties to treatment no less favorable

¹⁹ Not printed.

than the treatment accorded to Norwegian vessels in the ports of the United States, it is desirable to terminate the present system under which Danish vessels pay a higher rate of tonnage dues than Norwegian vessels pay.

It is hoped that a solution which will be satisfactory to your Government can be adopted soon after the convening of the Congress in December next.

Accept [etc.]

FRANK B. KELLOGG

811.841/313

Memorandum by the Assistant Secretary of State (Castle)

[WASHINGTON,] April 12, 1927.

The Danish Minister came to ask me the meaning of the note of March 26th from the Department concerning tonnage dues charges on Danish vessels. He said he was not absolutely certain, but that he supposed the note meant that we were negotiating a new treaty with Norway which would do away with the discrimination in tonnage dues. I told him that I thought this supposition was entirely correct and that I could assure him that this new treaty with Norway would definitely do away with the discrimination.

The Minister said that he felt he should say that the note in question was not, in his opinion, an answer; that his Government still reserved the right to make the claim for the refund of what he considers a discriminatory and unfair tonnage rate charged Danish ships. I told him that, of course, his Government had a perfect right to make any claim it wished, but that I could not advise him as to what consideration would be taken of the claim.

W. R. C[ASTLE]

811.841/328

The Danish Minister (Brun) to the Secretary of State

J.No.60.D.b/1

No. 15

WASHINGTON, February 14, 1928.

SIR: I have the honor to refer to previous correspondence relative to the rates of tonnage duties collected on Danish vessels as compared to the rates collected on Norwegian vessels in the ports of the United States, lastly your note of March 26, 1927, and to state as follows:

In your said note of March 26, 1927 you were good enough to say, that it was the view of the authorities of the United States Government concerned with the matter that, without regard to the merits of the contention advanced by the Danish Government that Danish vessels are entitled under existing treaties to treatment no less favora-

ble than the treatment accorded to Norwegian vessels in the ports of the United States, it was desirable to terminate the present system under which Danish vessels pay a higher rate of tonnage dues than Norwegian vessels pay, and that it was hoped that a solution which would be satisfactory to the Danish Government could be adopted soon after the convening of the Congress in December 1927.

A copy of your said note was by me laid before the Danish Minister of Foreign Affairs by a report of April 13, 1927. The Minister of Foreign Affairs has again given earnest consideration to the case and has now directed me to advise you, that the Danish Government appreciates the recognition of the Danish standpoint in the matter, to which your said note gave expression, but can not in your note see a complete reply to our contention in the case. In this respect I beg to point out, that the Danish point of view was again fully set forth and argued in the note which I had the honor to address to you on July [*June ?*] 3d, 1926, and that on page 6 I again stated our contention to be, that in virtue of the most favored nation treatment, to which we are entitled pursuant to the treaty of April 26, 1826, Danish vessels arriving in the United States from Danish ports should be granted the favor with regard to tonnage dues accorded to Norwegian (and Swedish) vessels arriving from ports in Norway (and Sweden).

To this contention your reply of March 26, 1927 does not appear to give the expected satisfaction, and I may add that the anticipation in your note of a satisfactory solution to be adopted by the Congress, which has been understood to be the ratification of a new treaty with Norway abolishing the privileged position of Norway in this matter, has not yet been fulfilled and would only partly meet the Danish claim in so far as the position of Danish and Norwegian vessels in ports of the United States would thereafter presumably be equal in the future.

Our claim is, however, that we have from the beginning had and still have the right to equal treatment with Norway in this matter, and this is the question with regard to which I have in the last paragraph of my note of July [*June ?*] 3, 1926, in conformity with instructions received, declared that the Danish Government reserves to itself to propose to the United States Government to have it settled by arbitration, if the United States Government should not now, when so many years have elapsed since the question was first submitted by me, be able to see its way to admit the justice of our claim.

I therefore have the honor to ask, that you will be so good as to reconsider the matter, and that our right to equal treatment with Norway may be fully recognized and satisfaction given to our claim.

I have [etc.]

C. BRUN

811.841/333

*The Danish Minister (Brun) to the Assistant Secretary of State
(Castle)*

J.No.60.D.b/1

No. 41

WASHINGTON, April 9, 1928.

DEAR MR. SECRETARY: Shortly before your recent trip to Bermuda, from which I understand that you have now returned, you were good enough to say that you would cause a reply to be sent me in the matter of tonnage duties on Danish vessels in American ports.

My last note was dated February 14, 1928, and considering the many years this case has been pending and the very complete arguments which have been submitted on behalf of the Danish Government, I presume that I am justified in believing, that all officials concerned have now come to a definite conclusion in the matter.

I anticipate that this conclusion will confirm the Danish point of view and would indeed appreciate if I could now be so informed.

Believe me [etc.]

C. BRUN

811.841/333

The Secretary of State to the Danish Minister (Brun)

WASHINGTON, April 14, 1928.

SIR: I have the honor to acknowledge the receipt of your note of April 9, 1928, in reference to previous correspondence regarding the rates of tonnage collected on Danish vessels in the United States.

The entire matter is being given careful study and consideration by the Department with a view to the preparation of a reply in the near future.

Accept [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

[On March 19, 1929, the Legation was informed that Danish vessels entering the United States from Danish ports were properly subject to the payment of the six-cent tonnage rate provided for in section 36 of the act of August 5, 1909.]

PROPOSED RECIPROCAL EXTENSION OF FREE IMPORTATION PRIVILEGES TO CONSULAR OFFICERS OF THE UNITED STATES AND DENMARK

659.11241/5

The Secretary of State to the Minister in Denmark (Dodge)

No. 90

WASHINGTON, April 5, 1928.

SIR: There is enclosed a copy of despatch No. 2861 dated February 14, 1928, from the American Consul General at Copenhagen²⁰ concerning the extension of the privilege of free importation to American and Danish Consular Officers in the country of the other under the provisions of the Convention of 1826 between the United States and Denmark.²¹

Articles 8 and 10 of the Convention are as follows:

"Art. 8. To make more effectual the protection which the United States and His Danish Majesty shall afford, in future, to the navigation and commerce of their respective Citizens and subjects, they agree mutually to receive and admit Consuls and Vice-Consuls in all the ports open to foreign commerce; who shall enjoy in them all the rights, privileges and immunities of the Consuls and Vice-Consuls of the most favoured nation, each contracting party, however, remaining at liberty to except those ports and places, in which the admission and residence of such Consuls may not seem convenient."

"Art. 10. It is likewise agreed that the Consuls and persons attached to their necessary service, they not being natives of the country in which the Consul resides, shall be exempt from all public service, and also from all kind of taxes, imposts and contributions, except those which they shall be obliged to pay, on account of commerce, or their property, to which inhabitants, native and foreign, of the country in which such Consuls reside, are subject, being in everything, besides, subject to the laws of the respective States. The Archives and papers of the Consulate shall be respected inviolably, and, under no pretext, whatever, shall any magistrate seize or in any way interfere with them."

Article 27 of the Consular Treaty between the United States and Germany²² is as follows:

"Art. XXVII. 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 incumbency thereof; provided, nevertheless, that no article, the importation of which is prohibited by the

²⁰ Not printed.

²¹ Miller, *Treaties*, vol. 3, p. 239.

²² *Foreign Relations*, 1923, vol. II, pp. 29, 43.

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."

You are instructed to bring this matter to the attention of the appropriate Danish authorities stating that in view of Article 10 of the Treaty of 1826 between the United States and Denmark it is the opinion of this Government that Consular Officers of the respective countries are entitled to the privilege of importing articles for their personal use free of duty, not only upon arrival and return from leave, but also at any time during their official residence and that it is hoped that the Danish Government can see its way to an understanding of this nature which it is believed can only redound to the benefit of the Consular Officers of both countries without causing an appreciable loss of revenue in either case.

You will please add that moreover on the basis of the most favored nation clause in the Treaty between the United States and Denmark, this Government is prepared to extend to Danish Consular Officers the privileges of Article 27 of the Treaty with Germany provided similar treatment is accorded American Consular Officers assigned to Denmark.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

659.11241/6

The Chargé in Denmark (Paddock) to the Secretary of State

No. 551

COPENHAGEN, July 21, 1928.

[Received August 8.]

SIR: I have the honor to acknowledge the receipt by the Legation on April 20th last of the Department's Instruction No. 90 of April 5, 1928, enclosing a copy of despatch No. 2861 dated February 14, 1928, from the American Consul General at Copenhagen concerning the extension of the privileges of free importation to American and Danish Consular Officers in the country of the other under the provisions of the Convention of 1826 between the United States and Denmark.

As directed in the above mentioned Instruction, the Legation at once brought this matter to the attention of the Foreign Minister in a note embodying the substance of the same. I have since at intervals inquired of the Director General of the Foreign Office, Count Reventlow, as to when a reply to the Legation's communica-

tion on the subject might be expected, and on each occasion he has told me that the matter was under consideration and that a reply would be made as soon as possible. In response to a further inquiry Count Reventlow has to-day referred me to the chief of the Political Division of the Foreign Office, Mr. Engell, with whom I have just had an interview. Mr. Engell now informs me that the matter has been receiving very careful consideration and that he hopes that the Foreign Office will shortly be able to make a definite reply. As regards an interpretation of the privileges granted to consular officers under Articles 8 and 10 of the Convention of 1826, Mr. Engell stated that in his opinion the extension of the right to free importation hinges on the meaning of the word "imposts" in Article 10, and that the Danish equivalent for that word as it appears in the Danish text could hardly be taken to include customs duties but would more properly signify internal taxes or contributions, which would also appear to be its meaning from the Danish context. He did not, however, maintain that the Danish text should necessarily govern. He stated that if the Department's interpretation of the Articles of the Convention were accepted, it would mean that the present Danish law and regulations must be revised, since they provide specifically that exemption from payment of customs duties shall apply only to foreign diplomatic officers, and he added that if the Department's present interpretation were correct, it would appear that the Danish fiscal authorities had been wrong in collecting duty on articles heretofore imported by American consular officers. This, he told me, would be a very delicate question for the Foreign Office to take up with the fiscal authorities for a number of reasons. . . .

With regard to the proposal that our Government would be prepared to extend to Danish Consular Officers the privileges of Article 27 of the Treaty between the United States and Germany, on the basis of the most-favoured-nation clause in the Treaty between the United States and Denmark and provided similar treatment were accorded American Consular Officers assigned to Denmark, Mr. Engell stated that any such provision would likewise require a revision of the existing Danish fiscal law and regulations, or the enactment of a new law. I mentioned, of course, that such a provision would obviously be to the advantage of the Danish service, since the number of Danish Consular Officers in the United States is considerably in excess of the number of American Consular Officers in Denmark, and since I believed too that our customs duties were as a rule higher than those in Denmark. He said that this was appreciated and that the Foreign Office would be very pleased to make such an arrangement as suggested if it were possible to obtain

the approval of their fiscal authorities without detriment to the Danish foreign service, but that he was not certain that this could be done. In conclusion Mr. Engell again stated that the matter was receiving most careful consideration by the Foreign Office and that a reply would be made to the Legation as soon as practicable.

I have [etc.]

GORDON PADDOCK

659.11241/6

The Secretary of State to the Minister in Denmark (Dodge)

No. 115

WASHINGTON, September 17, 1928.

SIR: The Department has received the Legation's despatch No. 551, of July 21, 1928, in further relation to the question of the extension of the privileges of free importation to American and Danish consular officers in the country of the other under the provisions of the Convention of 1826 between the United States and Denmark, and has duly noted the statements concerning this matter.

It observes that Mr. Engell, Chief of the Political Division of the Foreign Office, is of the opinion that the extension of the right to free importation hinges on the meaning of the word "imposts" in Article 10, and that the Danish equivalent for that word could hardly be taken to include customs duties but would more properly signify internal taxes or contributions. It is also observed that he did not maintain that the Danish text should necessarily govern.

The word "imposts", used in the Treaty between the United States and Denmark of 1826, at that time appears to have had a more restricted meaning than at present and the courts appear to have considered the word "imposts" as the equivalent of "duty on imports", as in a decision rendered by the United States Supreme Court in 1827 in the case of *Brown v. Maryland*, 25 U. S. (12 Wheat.) 419, 437, the court stated that "an impost, or duty on imports, is a custom or a tax levied on articles brought into a country, and is most usually secured before the importer is allowed to exercise his rights of ownership over them, because evasions of law can be prevented more satisfactorily [*certainly*] by executing it while the articles are in its custom [*custody*]." The meaning of the word appears to have been extended later to cover every species of tax or contribution not included under the ordinary term "taxes and excises". In the case of the *Pacific Insurance Company v. Soule*, 74 U. S. (7 Wall.) 433, 445, the court stated, "Impost' is a duty on imported goods and merchandise. In a larger sense, it is any tax on importation [*or imposition*]. Duties and imposts were properly intended to comprehend every species of tax or contribution not included under the ordinary term 'taxes and

excises'." Bouvier's Law Dictionary defines the word "imposts" as follows: "Taxes, duties, or impositions. A duty on imported goods and merchandise. . . ." ^{22a}

You are instructed informally to advise Mr. Engell of the definitions and legal interpretation of the word "imposts" which are authoritative in the United States. In this connection you will also draw Mr. Engell's attention to the fact that under the wording of Article 10, consuls and persons attached to their service are exempted from "all kinds of taxes, imposts, and contributions", and state that in your Government's estimation, it would seem most unlikely that three words having the same meaning should have been used in the drafting of this Article, and that it would seem obvious that it was intended by the use of the word "impost" to include customs duties in the exemptions provided for.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, JR.

659.11241/7

The Danish Minister (Brun) to the Secretary of State

J. No. 3.J.a/1 (3)

No. 152

WASHINGTON, October 24, 1928.

SIR: With regard to the extension of the privilege of free importation to Danish and American Consular officers in the country of the other, the American Chargé d'affaires a.i. at Copenhagen on April 25, 1928, at your direction, addressed to the Danish Minister of Foreign Affairs a note of which a copy is herewith enclosed.²³

In the last paragraph of this note it is stated that on the basis of the most favored nation clause in the Treaty between Denmark and the United States, the American Government is prepared to extend to Danish Consular officers the privileges of Article 27 of the Treaty with Germany, provided similar treatment is accorded American Consular officers assigned to Denmark.

In order to be able to examine and reply to this proposition, it would be necessary for the Danish Government to learn, how the said Article 27 of the Treaty with Germany should be interpreted with regard to importations other than, "all furniture, equipment and supplies intended for official use in the consular offices." The description used in the said article with regard to these other importations is as follows: "the privilege of entry free of duty of their baggage

^{22a} Omission indicated in the original instruction.

²³ Not printed.

and all other personal property, whether accompanying the officer to his post or imported at any time during his incumbency thereof".

The question arises whether the expression "all other personal property" is to be understood to include all articles or commodities of whatsoever kind intended for their personal use or for the use of the members of their household and suites, as is the case with regard to diplomatic officers, or whether it is to be understood to refer only to such articles as furniture, household goods and personal effects, but not to include articles of consumption or similar things.

In these circumstances I have the honor to ask you to be so good as to advise me, how the expressions referred to above should be understood in the proposed agreement between the Danish and American Governments.

I have [etc.]

C. BRUN

659.11241/7

The Secretary of State to the Danish Minister (Brun)

WASHINGTON, November 5, 1928.

SIR: I have the honor to acknowledge the receipt of your note of October 23 [24], 1928, enclosing a copy of a note dated April 25, 1928, addressed to the Danish Minister of Foreign Affairs by the American Chargé d'Affaires ad interim at Copenhagen concerning the extension of the privilege of free importation to American and Danish consular officers in the country of the other under the provisions of the Convention of 1826 between the United States and Denmark. You inquire as to the interpretation by the two Governments concerned of the words "all other personal property" as contained in Article 27 of the Treaty between the United States and Germany.

I have the honor to inform you in reply that under the provisions of Article 27 of the Treaty between the United States and Germany, American and German consular officers in the country of the other, their families and suites, may import free of duty articles or commodities of whatsoever kind for their personal use except articles, the importation of which is prohibited by the laws of either country. On the basis of the most favored nation clause in the Treaty between the United States and Denmark this Government is prepared to extend to Danish consular officers assigned to the United States on conditions of reciprocity this privilege as well as the others mentioned in Article 27 of the Treaty between the United States and Germany.

Accept [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

659.11241/9

The Minister in Denmark (Dodge) to the Secretary of State

No. 695

COPENHAGEN, December 20, 1928.

[Received January 22, 1929.]

SIR: I have the honor to acknowledge the receipt on October 5th last of your Instruction No. 115, File No. 659.11241/6, dated September 17th, last, in further relation to the question of the extension of the privileges of free importation to American and Danish Consular Officers in the country of the other under the provisions of the Convention of 1826 between the United States and Denmark.

Upon the receipt of your instruction I had an interview with Count Reventlow, Director General of the Foreign Office, whom I advised of its substance. Count Reventlow informed me that this question of the extension of free importation privileges to American and Danish Consular Officers was still receiving the earnest consideration of the Ministry of Finance to whom the new information now furnished by my Government concerning the meaning of the word "imposts" would be communicated. He would also continue to give this matter his consideration. Count Reventlow then requested me to discuss the matter with Mr. Nørgaard, the new Director of the Protocol, to whom such matters had now been transferred. I immediately called upon Mr. Nørgaard, who had only just taken up his new duties and whom I found entirely ignorant of the question. I explained it fully to him and left with him a copy of the material portion of your Instruction No. 115. Mr. Nørgaard appeared to be considerably interested in the matter which he admitted would have even greater practical benefits for the Danish than the American Consular Officers. He promised to bring this last communication on the subject to the attention of the proper authorities of the Ministry of Finance and to do what he could to hasten a satisfactory decision by them.

During the next two months both Mr. Paddock, during my absence on leave, and I continued enquiring at reasonable intervals regarding the decision of the Ministry of Finance. The answer was always that no decision had yet been made but that the matter was still receiving earnest consideration. Finally a few days ago during a conversation with Count Reventlow, I again brought up this subject. Count Reventlow replied that he could only give me the same reply. I thereupon stated my surprise that the matter should require such prolonged study, especially as it was more beneficial to Denmark than to the United States. Count Reventlow fully admitted this and declared that if the Foreign Office could settle this matter alone, it would have done so favorably to my Government's proposal long ago. He then re-

peated several of the arguments already reported in Mr. Paddock's Despatch No. 551 of July 21st last. The question, since it concerned customs duties, was one mainly for the Ministry of Finance which was always very much averse to touching anything concerning this subject. This was mainly because whenever a question of customs duties was touched, it inevitably gave rise to a large number of demands for further changes. The Foreign Office was consequently obliged to act with great prudence and tact if it wished to obtain a favorable decision in a matter of this kind from the Ministry of Finance. If the Foreign Office attempted to force a decision of the Ministry of Finance on this question, the decision would practically certainly be contrary to the extension of the free importation privilege. The best way to obtain the consent of this Ministry was to let it take its time.

I then reminded Count Reventlow that my Government considered that this question was covered by the Convention of 1826 and had submitted strong evidence in support of its view. Count Reventlow replied that his Government, after much consideration, had decided that it could not accept this view and would soon send me a communication giving its reasons. I asked whether he could not mention them to me briefly but he replied that he was unable to at the moment. He added that he regretted the delay, which under the circumstances was inevitable, if the refusal of the Ministry of Finance was to be avoided, and repeated that the Foreign Office was strongly in favor of a reciprocal arrangement such as that proposed in your Instruction No. 90 of April 5th last. However, it was still uncertain whether it would be able to obtain the consent of the Finance Ministry to conclude such an arrangement.

While adding that I shall continue to make enquiries at the Foreign Office at reasonable intervals regarding this matter and that I shall do whatever I can to expedite a favorable decision, I have [etc.]

H. PERCIVAL DODGE

DOMINICAN REPUBLIC
BOUNDARY DISPUTE WITH HAITI

(See volume I, pages 706 ff.)

741

ECUADOR

EXTENSION BY THE UNITED STATES OF "DE JURE" RECOGNITION TO THE GOVERNMENT OF ECUADOR¹

822.01/64a : Telegram

The Secretary of State to the Minister in Ecuador (Bading)

WASHINGTON, August 13, 1928—7 p. m.

24. Please deliver the following note to the Minister for Foreign Affairs:

"I have the honor to inform Your Excellency that I have received instructions to say that my Government has observed with much satisfaction the progress which the Republic of Ecuador has made during the three years and more which have elapsed since the *coup d'état* of July 9, 1925, and the tranquillity which has prevailed in Ecuador during that period. Confident that the regime of Dr. Ayora represents the majority of the Ecuadorean people and is both capable and desirous of maintaining an orderly internal administration of the country and of scrupulously observing all international obligations, the Government of the United States is therefore pleased to extend to it as from this date full recognition as the Government *de jure* of Ecuador."

Telegraph immediately day and hour of delivery of this note.

KELLOGG

822.01/65 : Telegram

The Minister in Ecuador (Bading) to the Secretary of State

QUITO, August 14, 1928—7 p. m.

[Received August 15 (?)—10:55 a. m.]

33. Department's No. 24, August 13, 7 p. m. Note delivered August 14th, 4:30 p. m.

BADING

¹ For withholding of recognition by the United States of the revolutionary government in Ecuador, see *Foreign Relations*, 1925, vol. II, pp. 64 ff.

EGYPT

PROPOSED CHANGES IN THE REGIME OF THE MIXED COURTS IN EGYPT¹

783.003/7

The Chargé in Egypt (Winship) to the Secretary of State

No. 146

CAIRO, December 23, 1927.

[Received January 23, 1928.]

SIR: I have the honor to report that the question of the modification of the Capitulations was pigeon-holed last March by Lord Lloyd² mainly because of the organized newspaper campaign launched against foreign influence in Egypt by its supporters in the native press, and in particular by *El Siyasa*, the Liberal Constitutional Organ. However, when Sarwat Pasha, an important leader of this party, became Prime Minister an immediate change in the tone of the paper was apparent, and it became possible to discuss Capitulatory questions without the accompaniment of newspaper outcries.

Conversations during the Summer, especially in London, encouraged Sarwat in the hope of realizing certain modifications with guarantees, and while he still favors this plan, the Wafdists continue to demand the complete abolition of the Capitulations.

The Egyptian Government is very anxious to call a congress, to be held in the Spring of 1928, in Cairo, to review and perhaps reorganize the entire system, and recently a note was drawn up inviting each country to appoint delegates. Pressure from Italy and France, fearing abolition of the Capitulations, and from The Residency urging moderation, has, I understand, caused a change of plan.

A note is now in preparation outlining Egypt's hopes and aspirations, as well as the interest taken in the protection and welfare of foreigners in the country. It complains that the Capitulatory institutions hinder the progress of the country, and expresses the Government's desire to reconsider the question of the Capitulations with a view to having them replaced by an institution more in harmony with modern times. The immediate request will cover, it is thought, very much the same points as outlined in a memorandum left by me in the

² For previous correspondence concerning the Mixed Courts in Egypt, see *Foreign Relations*, 1927, vol. II, pp. 555 ff.

¹ British High Commissioner in Egypt.

Near Eastern Division of the Department of State last May.⁵ These points are:

Reconsideration of the Mixed Civil Code, giving more latitude to the Egyptian Government in drafting laws affecting all persons in Egypt; and extension of the competence of the Mixed Courts in all matters dealing with the sale of narcotics, the white slave trade, and fraudulent trading;

The creation of a new Chamber in the Mixed Court of Appeals, to be made up of three instead of five judges; and to hear urgent cases in which a judgment has been given in the first instance by only one judge;

An amendment making the office of President or Vice President of the Mixed Tribunal open to an Egyptian; and modifying the rules for the choice of Presiding Judges of the Mixed Court of Appeal and the other Courts;

Abolition of the rule which prevents the Egyptian Government from granting decorations to Mixed Court Judges.

It is now thought that these points will be mentioned in the note, which will also invite the Powers to express their views and send delegates to a Congress. The exact procedure to be taken is not known, however, but it would seem evident that something on the subject will be forth-coming early in the new year.

I have [etc.]

NORTH WINSHIP

883.05/266 : Telegram

The Chargé in Egypt (Winship) to the Secretary of State

CAIRO, December 30, 1927—1 p. m.

[Received December 30—9:13 a. m.]

14. Minister of Foreign Affairs has addressed a circular note to Capitulatory Legations presenting six points for modification of Mixed trials [*Courts*] practically the same as those outlined in my memorandum left in the Department last May⁵ and requesting acceptance before January 31. If observations or changes are desired to be made in proposed modifications, the note proposes an international commission to be called in Cairo in February with an Egyptian Government official as President. Despatch No. 146, submitted on the subject. Copy of note with proposed text of article 12 with observations, will go forward in this week's pouch. There is no indication other powers will accept points in full but it is believed they will agree to discuss them at an international congress.

WINSHIP

⁵ Not printed.

883.05/270

The Chargé in Egypt (Winship) to the Secretary of State

No. 150

CAIRO, December 30, 1927.

[Received January 23, 1928.]

SIR: I have the honor to refer to my cable of even date and to enclose herewith a copy of a Circular Note, in duplicate, addressed on December 25th to all the Legations in Cairo, containing proposals for the modification of the Mixed Courts, set forth in six points, and accompanied by a proposed new text for Article Twelve of the Code Civile Mixte.

Despatch No. 146, of December 23, last, contemplated this Note, but at that time it was believed that it would not be issued until England had agreed to adhere. Its appearance before the settlement of the Anglo-Egyptian Alliance question, and before The Residency had given its promise to approve the points as presented, is regarded as an indication that the conversations over the Alliance are not going too well, and that this Note was rushed out to divert the attention of Parliament from questions of greater moment.

The fact is that Australia has objected to the proposed terms of the Alliance, as outlined in my despatch No. 127, of November 28, 1927,^o on the ground that British ways of communication will be endangered by the withdrawal of troops to the east bank of the Canal, and too much freedom of action will be accorded Egypt. The Wafdists feel that the Alliance proposed does not go far enough in giving them complete independence; they are apparently willing to wait in the hope of gaining more generous terms at a later date.

Egypt, therefore, now seeks an international commission through which to air her grievances against foreign influence, and, in the presence of an international body to try to push through the acceptance of the Six Points proposed in the modification of the Mixed Courts programme, pave the way for a future commission to discuss the revision of the Capitulations, and to eventually abolish the system altogether.

It is understood, already, that in conformity with her present policy England will be more indulgent than the other European Powers in supporting the Egyptian demands,—but the abolition or reorganization of the Capitulatory System is not even to be discussed.

That England is not prepared to accept these Six modifications there is no doubt, in fact I have every reason to believe that the reply

^o Not printed.

to the Circular Note will be made along the following lines, and be presented at the Congress by starting the discussion at this point :—

Acceptance of points No. 1 and No. 2, with the reservation that all orders of the Procureur Général against foreigners will be carried out by the foreign personnel of the Egyptian Police Department.

On No. 3 judgment to be reserved for discussion; the present time for this step is regarded as inopportune.

No. 4 will be accepted with the proviso that should the new Chamber be composed of five instead of three one of the judges shall be British.

No. 5 to be accepted in so far as to make it possible for an Egyptian to be named President or Vice-President of the Tribunal; the Court in all cases to select and elect the President or Vice President; the Government only nominating.

As regards No. 6, judgment to be reserved for future discussion.

On these terms England will stand firm, while France, Italy, and Greece will not even go so far. The latter Governments will not only claim that they cannot make a decision in the matter by January 31st, but will also object to a commission with an Egyptian as President. That they will procrastinate as long as possible there is no doubt, but in the end they will agree to attend an international congress limited to the discussion of the Six Points presented.

I at once sent copies of the Note and Annex A to Judge Brinton, with a request for his comment, and I enclose herewith a copy of his "General Observations" on the subject, forwarded by him direct to the Secretary of State on December 24, 1927, with another letter, dated December 29, 1927, accompanied by a supplementary Memorandum.⁷

Judge Crabites is now in the United States, and should a further discussion be desired, he may be reached through Kidder Peabody & Co., 17 Wall Street, New York.

Here it is thought that such a congress cannot be called by February, but when called England will probably name her Minister here; the Judicial Adviser to the Egyptian Government; and one or more of the senior Judges on the Court of Appeal. The other Powers contemplate naming their respective Diplomatic Representatives and each her senior Judge in the Mixed Courts.

I shall acknowledge the enclosed Circular Note, stating that it has been submitted to my Government but that it is doubtful if the reply can be received before January 31, 1928.

I have [etc.]

NORTH WINSHIP

⁷ None printed.

[Enclosure—Translation ^a]*Printed Circular Note of the Egyptian Minister of Foreign Affairs
(Hanna)*

CAIRO, December [25], 1927.

SIR: The Government of His Majesty the King, desirous of facilitating the settlement of foreigners in Egypt, is still endeavoring to insure the protection of their interests through its own institutions. But the effect of the capitulatory regime is to hamper seriously the activities of the State, not only with respect to foreigners who continue to enjoy privileges in matters of law, taxes and jurisdiction, which are very injurious to the sovereignty of the country, but also with regard to the Egyptians upon whom the Government cannot impose laws or taxes from which foreigners would be exempt. Consequently, His Majesty's Government is engaged in a forthcoming revision of the capitulatory regime for the purpose of substituting for it an organization, which, while adopting measures necessary for the protection of the interests of foreigners, may be in harmony with modern conceptions and more compatible with the sovereignty of the country, its interests, its evolution and its progress. To that end, it proposes to lay before you in the very near future, its proposals, with a view to reaching an agreement or agreements with the powers on this subject.

Pending this revision, the Egyptian Government, which, for some time past, has been struggling with difficulties of a practical nature flowing from the fact that certain provisions of the *Règlement d'Organisation Judiciaire*⁹ of the Mixed Courts and of article 12 of the Mixed Civil Code¹⁰ no longer harmonize with the constitutional regime of the country or its evolution or the requirements of a good and sound administration of justice, regards it as necessary to have an agreement or agreements between itself and the powers whereby some amendments would be made in those provisions relative to the promulgation of laws concerning capitulatory foreigners and the repression of certain classes of offenses committed by those foreigners.

The amendments would bear on the following points:

- (1) Revision of the provisions of article 12 of the Mixed Civil Code.
- (2) Extension of the criminal jurisdiction of the Mixed Courts in police cases to new categories of offenses.

^a File translation revised.

⁹ Regulations regarding the judicial organization of the Mixed Courts, constituting a charter or statute similar in essence to a treaty. See Brinton, *The Mixed Courts of Egypt* (New Haven, Yale University Press, 1930), p. 36, note 4. For English translation, see *ibid.*, pp. 370-382.

¹⁰ For English translation, see annex A, *infra*; for French texts, see Umberto Pace, *Les Codes Mixtes d'Egypte* (Alexandrie, 1932), pp. 22-23; and Brinton, *The Mixed Courts of Egypt*, pp. 384-385.

(3) Suppression of the assessors (associate lay judges) of the Misdemeanor Court (*Tribunal Correctionnel*).

(4) Creation in the Mixed Court of Appeals of a chamber consisting of three judges for the sole purpose of trying appeals in possessory cases and cases in chambers.

(5) Revision of the provisions relative to the appointment of magistrates who hold the office of Presidents in the Court of Appeals and in the District Courts.

(6) Suppression of the provision under which the magistrates of the Mixed Courts may not receive badges of honor from the Egyptian Government.

(1) *Modification of article 12 of the Mixed Civil Code*

Article 12 of the Mixed Civil Code permits Egypt to legislate, in matters which are under the jurisdiction of the Mixed Courts and with regard to foreigners who are under the jurisdiction of these Courts, with the collaboration of the general assembly of the Mixed Court of Appeals to which are added judges of powers not represented on the Court.

The present wording of article 12 was adopted in 1911 as the result of an international conference called by the Egyptian Government.

It provides that the laws approved by the general assembly of the Court can only be promulgated three months after the deliberation of the assembly, this being done in order to make it possible for the powers that should not concur in the deliberation of the assembly to request another deliberation before that time expires.

Now the observance of this three months' waiting period is inconsistent with the provision in the Egyptian Constitution (article 35), which requires that laws be promulgated within one month after they have been passed by the Parliament. It is easy to see, indeed, that if a law is passed by the Parliament before receiving the approval of the Mixed Court, the Government will be compelled to promulgate it without complying with the three-month limit provided by article 12. If, on the contrary, a bill is approved by the Mixed Court before being passed by the Parliament, the introduction of amendments in the bill by the Parliament will suffice to make it necessary for the Court again to deliberate, and the same situation will be created as if the Court had had the last say.

Under present conditions, it is therefore no longer possible in practice to maintain in the wording of article 12 the provision relative to the time limit for promulgation and the right given to the powers to ask for another deliberation.

It appears, anyway, that this right, which might be conceived as a useful precautionary measure as long as the organ created in 1911 by the new article 12 should not have been tried out, may now be dis-

pensed with without any trouble. For as a matter of fact, since 1911 more than thirty bills have been brought before the assembly of the Court without any of the powers ever availing itself of that right.

The present article 12 also provides that when the bill approved by the Court is not promulgated within three months from the day on which it could have been promulgated, that is to say, six months after the deliberation, it will be deemed to have been abandoned, and cannot be promulgated except upon another deliberation. This maximum time limit of six months was sufficient when it was in the discretion of the Government only to promulgate a draft law. But at this time the legislative power is wielded by the Parliament, and there will likely occur cases in which a bill first approved by the Mixed Court cannot be passed afterwards by the two chambers of Parliament in the six months' limit. The maximum time should be made one year.

The Government of His Majesty the King, therefore, proposes to have the text of article 12 of the Mixed Civil Code amended in accordance with the language given in annex A. The proposed amendments do not change in their essence the provisions in article 12. They affect neither the principle of cooperation in the legislative work of an assembly of magistrates, nor the composition of that assembly where all the powers that have adhered to the judiciary reform (among which those who, as a consequence of the 1914-1918 war, relinquished their capitulatory privileges are no longer to be included) are to be represented, nor the quorum of fifteen members and two-thirds vote required for the deliberations, nor, finally, the reservation that the *Règlement d'Organisation Judiciaire* remains outside of jurisdiction of the assembly. These amendments are only intended to bring the provisions of article 12 into harmony with the normal operation of the Egyptian constitutional regime.

(2) *Extension of the criminal jurisdiction of the Mixed Courts in misdemeanor cases to new categories of offenses*

On March 21, 1925, the Egyptian Government with the approval of the legislative assembly of the Mixed Court of Appeals passed a law to regulate the traffic in and repress the use of narcotics. This law provides penalties of the grade applying to misdemeanors (*peines correctionnelles*) for delinquents who come under the jurisdiction of the Native Courts, and penalties of the grade of simple police offenses for delinquents who are under the jurisdiction of the Mixed Courts. The reason for this difference is that at the present time the Mixed Courts are competent, so far as misdemeanors are concerned (*en matière correctionnelle*), only with regard to a few offenses enumerated in article 6, title II of the *Règlement d'Organisation Judiciaire*.

When called upon to take up the bill under consideration, the assembly of the Mixed Court of Appeals was in favor of an eventual extension of the criminal competence of the mixed jurisdiction in this regard. Since the law was put into operation, the captains of police of Cairo and Alexandria have repeatedly pointed out the necessity, in order to achieve repression of the traffic in narcotics, of providing that foreigners can be arraigned before the courts of the country and placed under the same penalties as Egyptians.

Finally, Mr. Van Den Bosch, Procureur General of the Mixed Court of Appeals, sent to the Minister of Justice a letter dated January 28, 1927, in which he declared that effective repression of the traffic in narcotics could only be secured when the police penalties provided by the law apply to all offenders regardless of their nationality.

The extension of the penal jurisdiction of the Mixed Courts to offenses coming under the law concerning the traffic in narcotics presents itself, therefore, as a measure which may safely be styled as one of public safety; but the Government of His Majesty the King considers that the jurisdiction of these courts over misdemeanors (*en matière correctionnelle*) should be extended also to several other offenses which are at present only liable to simple police penalties, as well as to certain breaches of public morals and certain commercial frauds which, are not yet punishable under our existing legislation.

These offenses are as follows:

- (1) Pandering and the traffic in women and children, obscene or indecent publications, songs, or shows.
- (2) Adulteration of foods, medicines, chemical or natural fertilizers, selling or offering for sale such products when they are known to be adulterated.
- (3) Deceiving the purchaser as to the quantity or quality of the merchandise by means of false weights, measures or commercial names, selling, offering for sale or bringing into the country merchandise given a false commercial name.
- (4) Having and managing establishments where the public are allowed to indulge in games of chance, and organizing public lotteries without a regular permit.

Some of these infractions have to do with the protection of public morals and good order in public establishments which it is the duty of the police to insure. The others which aim at commercial frauds practiced either on the purchaser or on other merchants, are closely connected with matters relative to commercial sales and unfair competition which come within the jurisdiction of the Mixed Courts. The Egyptian Government has often been asked by the Chambers of Commerce to issue repressive measures against commercial frauds. The fact that adequate penal sanctions could not be applied against for-

eigners has been one of the principal reasons why the Government has refrained thus far from enacting such legislation.

Quite a number of the offenses here considered have been made the subject of international concern or even conventions. Under these conditions the proposition to confer upon the Mixed Courts penal jurisdiction over these offenses by means of the penalties applicable to misdemeanors (*peines correctionnelles*) is fully justified. In order to extend the penal jurisdiction of the Mixed Courts in *correctionnelle* matters to the above-named offenses, it would be necessary to add a provision to article 6, title II of the Règlement d'Organisation Judiciaire which now determines the limits of that jurisdiction. The text of article 6 has consequently been changed, following the wording proposed in annex B.

Feeling sure that its proposition will be well received, the Egyptian Government has already worked out the bills which it expects later to lay before the Parliament and the Assembly of the Mixed Court of Appeals with a view to repressing the offenses which thereafter will be brought before them.

(3) *Discontinuance of judges assessors in the Misdemeanor Court*

This measure was requested by the Mixed Court of Appeals in a letter addressed to the Minister of Justice on December 15, 1926. The general assemblies of the three tribunals of the first instance had already declared themselves unanimously in favor thereof.

The court points out the fact that the obligation now required by the Règlement d'Organisation Judiciaire that the Police Court be made up with the assistance of assessors (associate lay judges), one-half of whom must belong to the nationality of the accused, gives rise to very serious difficulties. One of these difficulties to which attention has been called by the Court is that of language. The assessors very often are not sufficiently acquainted with the language in which the trial is conducted to be able to follow the case. When it comes to discussion, it becomes necessary to give them explanations so as to enable them to express an opinion. An opinion given under these conditions cannot be very valuable. On the other hand, the assessors, who are notables of the several colonies and most of them engaged in exacting occupations, find it difficult regularly to attend the hearings and wait for the case on which they must sit to take its turn. The consequence is that cases are continued again and again. Finally, the obligation to change the assessors according to the nationality of the accused is the cause of recesses continually being taken in the sitting, in order to change the composition of the court. All of which is very injurious to the

normal dispatch of legal business and the proper administration of justice.

Consequently, the Government of His Majesty the King proposes the amendment of article 3, title 2 of the *Règlement d'Organisation Judiciaire*, and the suppression of the word "assessors" in articles 4 and 5 of the same title, according to the provisions of annex C.

(4) Creation in the Court of a chamber consisting of three justices

Article 3 of the *Règlement d'Organisation Judiciaire* provides that the judgments of the Court of Appeals shall be handed down by five justices, of whom three are to be foreigners and two Egyptians.

The Mixed Court of Appeals recently wrote to the Minister of Justice to bring to his attention the clogging of the calendars and to ask him to call upon the Government of His Majesty the King for an increase in the number of justices.

The Government, after a thorough examination of the situation, reached the conclusion that the labors of the Court would be very perceptibly lightened and facilitated if it were possible to amend the aforementioned article 3 of the *Règlement d'Organisation Judiciaire* by providing that the judgments could be handed down by only three justices, two foreigners and one Egyptian, in cases on appeal which had been tried in the first instance by one magistrate only, that is to say, in cases in chambers and possessory cases.

This proposal is self-explanatory. Three magistrates seems to be sufficient since in the first instance the cases are considered by one judge only. Furthermore, in these two classes of cases, it is always a question of ordering provisional measures which leave the merits of the case intact.

The Court of Appeals upon being asked for its opinion gave it in favor of the proposition.

With a chamber thus composed, the present calendars of the three chambers of the Court would be relieved of about 7 percent of the cases, which, to a certain extent, would eliminate the clogging of which the Court is now complaining. On the other hand, the new justices who would sit in that new chamber, having little to do on account of the small number of cases that would be brought before them, would be available to act in the other chambers for justices who are sick or absent, and thus take an effective part in the work.

The Government of His Majesty the King, therefore, proposes to add to article 3 of the *Règlement d'Organisation Judiciaire* a provision directing that the judgments of the court shall be handed down

by three justices in the cases above referred to in accordance with the provisions of annex D.

(5) *Revision of the provisions relative to the designation of magistrates who discharge the duties of presidents in the Court of Appeals and in the tribunals*

Articles 2 and 3 of the *Règlement d'Organisation Judiciaire* provide that the tribunals and the Court of Appeals shall be presided over by foreign judges who will be styled vice presidents. These magistrates are elected for a 1-year term by the general assembly of the Court. The *Règlement Général Judiciaire*¹¹ which under article 37 of the *Règlement d'Organisation Judiciaire* are drawn up by the Court, makes it clear, on the other hand, that the magistrates bearing the title of presidents of the Court of Appeals and of the District Courts, and who are appointed by the Egyptian Government, are but honorary presidents without any jurisdiction or administrative powers. (See articles 7 and 20 of the *Règlement Général Judiciaire*.)

The *Règlement Général Judiciaire* further provides that the vice presidents of the Court of Appeals and of the District Courts, who are the effective presidents, have deputies who are also foreigners, who like themselves, are elected for only 1 year by the assembly of the Court. (Articles 8, 9, 10, and 21 of the *Règlement Général Judiciaire*.)

There could have been some ground for such provisions in the early years of the reform when there might have been some difficulty in finding Egyptian magistrates with sufficient experience in conducting a court to take up the role of presidents or vice presidents respecting foreign colleagues. But at this time, regular tribunals have been functioning in Egypt for fifty years and experienced magistrates have been trained in the country. One can see no reason why they should labor under a sort of legal incapacity which wounds their dignity, and for such there is no longer any justification.

On the other hand the obligation put upon the vice presidents and substitutes of vice presidents to present themselves every year for reelection by their colleagues impairs their freedom of action and forces upon them compromises that are often detrimental to the good of the service.

Therefore the Government proposes the following changes in the provisions under consideration:

(1) The office of honorary president which is reserved for Egyptian magistrates shall be discontinued.

(2) The actual presidents and also the vice presidents will continue to be named by the Court by election in the same manner as is now

¹¹ For the nature of this statute governing the internal organization and personnel of the Mixed Courts, see Brinton, *The Mixed Courts of Egypt*, 1930, p. 241.

practiced; but they shall be appointed to their offices by decree, and for a term of three years.

(3) One of these magistrates should be a foreigner and the other an Egyptian so that if the president is a foreigner, the vice president must be an Egyptian, and, vice versa, if the president is an Egyptian, the vice president must be a foreigner.

In order to make these changes in the *Règlement d'Organisation Judiciaire*, it would be advisable to amend articles 2 and 3 of title I and add an article 3bis, in accordance with the provisions of annex E.

When the *Règlement d'Organisation Judiciaire* has been so modified, the Egyptian Government will ask the Court to amend in the same sense the corresponding provisions in the *Règlement Général Judiciaire*.

The Government of His Majesty the King deems it proper to call attention to the fact that the amendments it has the honor now to propose, on the one hand, do not in any way infringe upon the independence of the magistrates who are called upon to preside over the Court of Appeals and the District Courts and who shall continue to be solely named by the vote of their colleagues, and, on the other hand, make no change in the character of the institution, which is that of a mixed jurisdiction, that is to say, one composed of foreign and Egyptian magistrates. Quite to the contrary, that mixed character will be better assured when the functions of president and vice president, instead of being—as they are today—held by foreign magistrates only, shall be divided among them and their Egyptian colleagues.

(6) *Striking out article 22 of the Règlement d'Organisation Judiciaire which provides that the magistrates of the Mixed Courts cannot be given any decorations or badges of honor by the Egyptian Government.*

This provision was intended to safeguard the independence of the judges on the Mixed Courts. But it cannot be admitted that the independence of the judges, at the present time, might be affected by badges of honor.

The conscience of the magistrates themselves, the manner in which these distinctions are conferred, and the attitude that the Egyptian Government has always maintained towards the magistrates remove any apprehension on that score.

It is therefore proposed to strike out the said article 22.

These are the propositions which the Government of His Majesty the King has the honor to submit to the governments that have adhered to the institution of mixed jurisdiction and to which it is still bound in that respect. It is satisfied that they are all in the interest

of a good administration of justice and to the advantage of the institution itself. The needs of the moment make some of these propositions particularly urgent.

I should therefore be thankful to you, Mr. if you would kindly lend your good offices with the Government of to secure its adhesion to the bills annexed to this note. Should your Government have any remarks to offer concerning any provisions in the bills, there would be occasion to have them examined by an international commission which would meet at Cairo with a member of the Government of His Majesty for its president and would consist of representatives of the states concerned.

As the adoption of the above-mentioned proposition might involve changes in the budget appropriations which are to be voted in April, it might be well to have the additions reach the Government of His Majesty before January 31, 1928, and, in case it would become necessary to call a meeting of the international commission, to have it meet in the first half of the month of February.

You will therefore, Mr. kindly let me have before January 31, 1928 the adhesion of your Government to the bills hereto annexed or the name of the representative, if any, who would be given the needful powers to discuss the said questions and adopt the said bills so as to make it possible to call the commission together in February and to have its labors completed in time to have the necessary appropriations voted.

Be pleased to accept, Mr. the assurances of my high consideration.

MARCOS HANNA

ANNEX A

Mixed Civil Code

ARTICLE 12

Text

The additions to and modifications of the mixed legislation shall be ordered on the initiative of the Ministry of Justice as a consequence of and in conformity with a resolution of the general assembly of the Mixed Court of Appeals to which the ranking judge of every nationality whose Government has adhered to the judiciary reform of 1875, and

Proposed Text

The additions to and modifications of the mixed legislation shall be ordered on the initiative of the Ministry of Justice as a consequence of and in conformity to a resolution of the general assembly of the Mixed Court of Appeals to which the ranking judge of every nationality which is not represented by an associate judge in the Court and the Government of

which is not represented by a justice in the Court, shall be invited.

The assembly will have a quorum only when not less than fifteen of the members are present.

Every justice on the assembly of the Court of Appeals who is found to be absent or incapacitated by virtue of an internal regulation to be framed by the general assembly of the Court at an ordinary session, shall be replaced by the ranking judge of the same nationality. The ranking judge absent or incapacitated under the same conditions will be replaced by the judge next in order of the same nationality.

The resolution must be arrived at by a two-thirds vote of the members present.

The draft laws thus approved can only be promulgated three months after their approval.

On the request of one or more powers formulated during that time limit, they shall, when the said time limit expires, be taken up for another deliberation. Following this second deliberation, the draft law which shall have received the required majority vote may be promulgated without further formality or delay.

The general assembly of the Court at an ordinary session may lay before the Ministry of Justice proposals for reform in matters of mixed legislation.

However, no modification or addition to the *Règlement d'Or-*

which has adhered to the judiciary reform of 1875 and has not foregone its rights in the matter, shall be invited.

The assembly will have a quorum only when not less than fifteen of the members are present.

Every justice of the Court of Appeals who is found to be absent or incapacitated by virtue of an internal regulation to be framed by the general assembly of the Court at an ordinary session, shall be replaced by the ranking judge of the District Court of the same nationality. The ranking judge absent or incapacitated under the same conditions will be replaced by the judge next in order of the same nationality.

Resolutions shall be adopted by a two-thirds vote of the members present.

Laws promulgated in accordance with resolutions arrived at as above stated, shall be operative without any other formality.

Failing promulgation within one year from the date of the approval of the assembly as provided in this article, the draft law shall be regarded as having been abandoned and cannot be again brought up except by conforming anew to the provisions of this article.

No modification of or addition to the *Règlement d'Organisation Judiciaire* may be made by virtue of this article.

The general assembly of the Court at an ordinary session may

ganisation Judiciaire may be made by virtue of this article.

lay before the Ministry of Justice proposals for reform in matters of mixed legislation.

Laws so prepared shall come into force simply through publication in the *Journal Officiel*.

Unless published within three months from the time when the publication might take place, the draft law shall be regarded as abandoned, and shall not be resumed except by again conforming to the provisions of this article.

ANNEX B

Règlement d'Organisation Judiciaire

TITLE II

ARTICLE 6

Present Text

The Mixed Tribunals shall have jurisdiction over:

(1) Prosecutions for police offenses committed by foreigners.

Proposed Text

The Mixed Tribunals shall have jurisdiction over:

(1) Prosecutions for police offenses committed by foreigners.

(2) Actions against foreigners, subject to the jurisdiction of the Mixed Courts in cases of police offenses at the date of promulgation of the present law, when they are charged as principals or accessories with a delict coming under the laws relative to the traffic in narcotics; procuring and traffick- ing in women and children; ob- scene or indecent publications, songs or public shows; the adul- teration of food stuffs, medicines, fertilizers (chemical and natu- ral); the sale and offering for sale of such adulterated products; commercial frauds or delicts com- ing under chapter XII, title III of the Penal Code relative to gam- bling and lotteries.

When the prosecutions here considered are taken at one and the same time against foreigners coming under the jurisdiction of the Mixed Courts, and against other foreigners or Egyptians, such actions shall be brought against all the accused principals or accessories before the mixed jurisdiction.

(2) Actions brought against the principals or accessories of delicts coming under chapter IX, title III of the Penal Code in cases of mixed bankruptcies.

(3) Actions brought against the principals and accessories of the following crimes and delicts:

(3) Actions brought against the principals or accessories of delicts coming under chapter IX, title III, of the Penal Code in cases of mixed bankruptcies.

(4) Actions brought against the principals and accessories of the following crimes and delicts:

ANNEX C

Règlement d'Organisation Judiciaire

TITLE II.—Chapter 1

ARTICLE 3

Present Text

The Misdemeanor Court (*Tribunal Correctionnel*) shall be composed of three judges of the District Court, including one native and two foreigners, and of four foreign assessors if the accused is a foreigner.

If the accused is a native, or if action is brought against foreigners and natives, one half of the assessors shall be natives.

Proposed Text

The Misdemeanor Court (*Tribunal Correctionnel*) shall consist of three judges of the District Court, including one Egyptian and two foreigners.

ARTICLE 4

The Court of Assizes shall be composed of three justices of the Court of Appeals—one native and two foreigners.

The twelve jurymen shall be foreigners, if the accused is a for-

The Court of Assizes shall consist of three justices of the Court of Appeals—one native and two foreigners.

The twelve jurymen shall be foreigners, if the accused is a for-

eigner. If the accused is a native, or if the action is taken against foreigners and natives, one half of the jurymen shall be natives.

One half of the assessors and jurymen shall belong to the nationality of the accused foreigner, if he so requests. In cases where the list of jurymen or assessors of the same nationality as the accused should be insufficient, he shall designate the nationality from which they should be chosen in order to make up the required number.

eigner. If the accused is a native, or if the action is taken against foreigners and natives, one half of the jurymen shall be natives.

One half of the jurymen shall belong to the nationality of the accused foreigner, if he so requests. In cases where the list of jurymen of the same nationality as the accused should be insufficient he shall designate the nationality from which they should be chosen in order to make up the required number.

ARTICLE 5

When there are several accused, each one of them shall have the right to ask for an equal number of assessors or jurymen of his nationality without, however, increasing the number of assessors or jurymen and subject to determining by lot which of the accused parties may not exercise that right by reason of the said number.

When there are several accused, each one of them shall have the right to ask for an equal number of jurymen and subject to determining by lot which of the accused parties may not exercise that right by reason of the said number.

ANNEX D

Règlement d'Organisation Judiciaire

TITLE I.—Chapter 1

ARTICLE 3

Present Text

There shall be at Alexandria a Court of Appeals composed of eleven magistrates—four natives and seven foreigners.

Proposed Text

There shall be a Court of Appeals that may have its seat either at Alexandria or Cairo and which shall consist of not less than eleven magistrates—four Egyptians and seven foreigners.

One of the foreign justices shall preside and have the title of vice president. He shall be elected by an absolute majority of the foreign and native members of the Court.

The judgments of the Court of Appeals shall be handed down by five justices, of whom three shall be foreigners and two natives.

The judgments of the Court of Appeals shall be handed down by five justices, of whom three shall be foreigners and two Egyptians, except in cases of appeals from judgments of the Tribunal of Summary Jurisdiction in possessory actions and replevin or of orders issued by the Tribunal of Reference.

In the above-mentioned cases the judgments shall be handed down by three justices—two foreigners and one Egyptian.

ANNEX E

Règlement d'Organisation Judiciaire

TITLE I.—Chapter 1

ARTICLE 2

Present Text

Each of these Courts¹² shall be composed of seven judges—four foreigners and three natives.

Judgments shall be given by three judges, of whom two shall be foreigners and one a native.

One of the foreign judges shall preside, with the title of vice president. He shall be selected by the majority of the foreign and native members of the Court of Appeals,

Proposed Text

Each of these Courts shall be composed of seven judges at least—four foreigners and three Egyptians.

Judgments shall be given by three judges of whom two shall be foreigners and one Egyptian.

¹² Article 1 provides for the establishment of three Courts of First Instance or District Courts, located respectively at Alexandria, Cairo, and Mansourah.

from an alphabetical list, made up by the general assembly of each District Court, and including five candidates at Alexandria and Cairo and three candidates at Mansourah.

In commercial cases, the District Court shall call on two merchants to assist them, one native and one foreigner, in an advisory capacity and chosen by election.

In commercial cases the District Courts shall call on two merchants to assist them, one Egyptian and one foreigner in an advisory capacity and chosen by election.

ARTICLE 3

There shall be at Alexandria a Court of Appeals composed of eleven justices—four natives and seven foreigners.

One of the foreign justices shall preside, with the title of vice president. He shall be designated by an absolute majority of both the foreign and native members of the Court.

The judgments of the Court of Appeals shall be rendered by five justices, of whom three shall be foreigners and two natives.

There shall be a Court of Appeals which may have its seat either at Alexandria or at Cairo, and which shall consist of not less than eleven magistrates—four Egyptians and seven foreigners.

The judgments of the Court of Appeals shall be rendered by five justices of whom three shall be foreigners and two Egyptians, except in cases of appeals from judgments of the Tribunal of Summary Jurisdiction in possessory actions and replevin and orders issued by the Tribunal of Reference.

In the cases above mentioned the judgments shall be handed down by three justices—two foreigners and one Egyptian.

ARTICLE 3 (BIS)

The president and vice president of the Court of Appeals and

of each one of the District Courts shall be appointed for a term of three years by royal decree on the motion of the Minister of Justice as a consequence of and in conformity with a nomination made by the general assembly of the Court of Appeals. The nomination will be made by an absolute majority vote of the foreign and Egyptian members of the Court. The *Règlement Général Judiciaire* shall determine in what manner the vote shall be taken.

In each one of the District Courts and in the Court of Appeals, one of the magistrates nominated for the office of president or vice president shall be an Egyptian and the other a foreigner so that if the magistrate nominated for president is an Egyptian the vice president must be a foreigner or vice versa, if the magistrate for president is a foreigner the vice president must be an Egyptian.

883.05/273

The Chargé in Egypt (Winship) to the Secretary of State

No. 155

CAIRO, January 6, 1928.

[Received February 3.]

SIR: Referring further to my despatch of December 30, 1927, No. 150, I have the honor to report that after the Egyptian Government had taken over one year to discuss and arrive at the final point of presenting the reforms to the Powers, the request that the reply be given by January 31st is not taken seriously by the Legations here. In each case the Circular Note has been acknowledged, followed by a statement to the effect that a reply should not be hoped for by the date given. France, Italy, and Greece, as stated, would prefer to handle the entire matter through diplomatic channels.

I am now informed by the Legations of these countries that their recommendations in submitting the Circular Note to their respective Governments will be as follows:

To accept point one. To accept point two in principle, but require the appointment of prosecuting attorneys from the Capitulatory Powers to handle all cases brought against foreigners, and also with the proviso that an international police be maintained in Egypt to carry out the orders of the prosecuting attorneys in cases against foreigners. If these two modifications are not accepted by the Egyptian Government it will be suggested that the present procedure in regard to foreigners be maintained, although the jurisdiction of the Mixed Courts will apply in the trial of cases. A clause providing for the appeal of criminal cases will also be annexed.

There will be no objection to point three or point four in principle, although the question of procedure and application will probably be discussed at length.

On point five the view taken is the same as that stated to be held by The Residency in my despatch No. 150, of December 30, 1927, that is, to make it possible for an Egyptian to be named president or vice-president of the Tribunal. It is believed, however, that this will only remove the objection to the wording of the present regulation that an Egyptian cannot hold these positions, and to which the Egyptian Government objects. The foreign powers here will, however, oppose a modification which will require the appointment of an Egyptian to either of these posts.

Point six will be bitterly opposed on the ground that the judges of the Mixed Courts should be denied any temptation to win political favor and that the giving of decorations might influence the Court in favor of the Government.

On page seven, of the proposed new text of Article Twelve of the Mixed Civil Code, it is suggested that the present text of Article Three be changed to read as follows: "There shall be a Court of Appeal which may be located either at Alexandria or Cairo . . .", instead of the actual text which reads: "There shall be at Alexandria a Court of Appeal . . .". This is regarded as an important modification by the foreign Legations and exception is taken to the fact that the Egyptian Government did not mention it in its Circular Note but gave it only in the proposed new text of the Code. The objection to the possibility of the Court of Appeals's being moved to Cairo is made on the same ground as point six, that is, fear of political influence.

During the week I have talked with several members of the Egyptian Government on the subject, and find that they cherish no hope for the acceptance of the six points by the Capitulatory Powers by January 31st, but they hope that each will reply to their Circular Note by agreeing to send representatives to an international congress to be held in Cairo to discuss the matter in general. As stated, it is

believed that the foreign powers represented in Cairo will ask that the Congress be not open to general discussion regarding the Capitulations but that it be limited to the discussion of the six points presented.

I am enclosing herewith an English translation of the official text of the Circular Note,¹⁴ already submitted in French, which is taken from the *Egyptian Gazette* of January 6, 1928.

I have [etc.]

NORTH WINSHIP

883.05/266 : Telegram

The Secretary of State to the Chargé in Egypt (Winship)

WASHINGTON, January 10, 1928—4 p. m.

3. Department cannot recommend to the President acceptance of proposals regarding reorganization and enlarged jurisdiction of Mixed Courts until it has received full text of circular note and has given matter appropriate consideration. In any such consideration it would wish to have before it the carefully considered views of the American judges on the courts. You should therefore request Judges Brinton and Henry to give you a written expression of their views for transmission to the Department which will address a similar request to Judge Crabites now in this country. You should also endeavor to obtain and submit any views which representative Americans residing in Egypt may care to express.

You should inform Egyptian Government that your Government will be pleased to consider proposals in a sympathetic and helpful manner and that should it later appear desirable to hold in Cairo an international conference to discuss the question your Government will be pleased to send delegates. The date suggested, i. e. February next, would, however, appear to be too early to permit this Government properly to study the question and to instruct its delegates.

KELLOGG

883.05/269

Memorandum by the Secretary of State

WASHINGTON, January 21, 1928.

The Egyptian Minister called yesterday to present me an invitation to attend a Conference called to consider questions pertaining to the Mixed Court in Egypt. I told him it would receive our sympathetic consideration; that we had to ask for an appropriation for the expenses of such a Conference and I could not, therefore, tell him off-hand

¹⁴ *Ante*, p. 747.

whether we could attend or not. After he had presented the invitation, he asked me if I had forgotten about the extraterritorial question. I told him that I had not forgotten about it but I had really not had time to go into the matter and give it careful consideration. I asked him whether the present conference had anything to do with it. He said the present conference had to do with changing the Mixed Court and his Government was in favor of that but that this was only a part of the matter. What Egypt wanted was to do away with the whole extraterritorial right. I had understood him previously to say that the particular complaint they had was the extraterritorial rights pertaining to the fiscal administration, that is the exemption of taxes by foreigners, etc. I asked him what the foreign countries were going to do. He said Egypt did not believe they could get all the fifteen nations to agree and, therefore, a conference ought to be called and he was in hopes the United States would take the lead. I said I could not give him any assurances at this time; that I was not familiar enough with the subject.

883.05 /274

The Chargé in Egypt (Winship) to the Secretary of State

No. 172

CAIRO, January 21, 1928.

[Received February 16.]

SIR: I have the honor to acknowledge cable instruction Number three, dated January tenth, 1928, four P. M., and to state that I sent a note to the Egyptian Ministry for Foreign Affairs containing the statements as expressed in the last paragraph of said cable.

Judge Brinton's expression of views on this subject, although not enclosed in his letter of December 24th, addressed to The Secretary of State direct,¹⁵ were forwarded in my despatch Number 150, dated December 30, 1927. He has promised to give me his views from time to time, as the questions now under consideration develop, and I shall not fail to forward them as received.

I am now in receipt of a letter from Judge R. L. Henry, containing a detailed statement of his views on the subject of the proposed modifications, and enclose herewith a copy of same.¹⁵

Up to the present time I have not been able to obtain an expression of opinion from representative Americans residing in Egypt, but as soon as Dr. Henry of the Vacuum Oil returns from his vacation in America I shall ask him to furnish me with a report on the subject.

¹⁵ Not printed.

The situation here is very little changed; the threatened Ministerial crisis and the long talked of Conversations in London still hold first place in political circles. The Minister for Foreign Affairs seems reconciled to the fact that the points will not be accepted by the Capitulatory Powers by January 31st, and that the International Commission hoped for in February will not take place, although he still hopes for an International Congress to discuss the matter in the late Spring.

In the meantime, France, Italy, and Greece are united in the hope that there will be a definite agreement among the Powers before the Congress convenes.

I have [etc.]

NORTH WINSHIP

883.05/281 : Telegram

The Minister in Egypt (Gunther) to the Secretary of State

CAIRO, November 3, 1928—5 p. m.

[Received November 3—5 p. m.]

44. I am forwarding to you by pouch leaving today a copy of an identic note addressed by the Minister for Foreign Affairs to the representative[s] of the capitulatory powers¹⁷ reopening the general subject of capitulations and having specific reference to the note of December 25, 1927, forwarded to you under cover of despatch number 150 of December 30th, 1927.

The note now received states that it is in the nature of a preliminary to the submission to the powers concerned of plans for the revision of the capitulatory regime as it affects legislation, taxation and jurisdiction; that meanwhile the Egyptian Government hopes that the powers will cooperate with it in securing the prompt realization of the several reforms outlined in the note of December 25th last comprising the modification of article 12 of the Mixed Civil Code as well as of certain features of the Règlement d'Organisation of the Mixed Courts.

In the belief that it would be of interest to the Department to know the attitude of other missions I have inquired among my colleagues and find that the dean of the diplomatic corps, following instructions given him by the French Government when the subject was last under consideration, has prepared a note in reply which he has asked by telegraph now to be authorized to present on behalf of his own Government only. His note states that in principle the French Government is disposed to give favorable consideration but invites the attention of the Egyptian Government to the necessity

¹⁷ Note dated Oct. 28, 1928, p. 767.

first of all of drawing up a code of criminal and civil procedure and of providing prison facilities suitable to foreigners. The note will also state that the French Government sees no necessity for an international commission to discuss this matter which can be arranged as well directly between governments and invites attention to the necessity of creating new judges in order to handle the additional work.

It is expected that Lord Lloyd, the British High Commissioner, who is due to return from leave before the end of next week will bring with him the views of the British Government. I shall take first opportunity of discussing matter with him.

GUNTHER

883.05/285

The Minister in Egypt (Gunther) to the Secretary of State

No. 69

CAIRO, November 3, 1928.

[Received November 22.]

SIR: I have the honor to refer to my telegram No. 44 of even date reporting the receipt of and commenting briefly on an identic Note addressed under date of October 28th, 1928, by the Minister for Foreign Affairs to the representatives in Egypt of the capitulatory powers reopening the general subject of the modification of the capitulatory regime as effective in this country and requesting, in particular, that the limited proposals in this sense made by the Egyptian Government in its Note of December 25th, 1927, be recalled to the attention of the Governments of the interested powers.

A copy of the identic Note as addressed to this Legation, together with a translation thereof, is submitted herewith.

The Legation will, of course, follow this matter closely and report fully to the Department.

I have [etc.]

FRANKLIN MOTT GUNTHER

[Enclosure—Translation ¹⁸]

The Egyptian Minister for Foreign Affairs (Afifi) to the American Minister (Gunther)

No. 32-10/6 23 R

BULKELEY, October 28, 1928.

MR. MINISTER: By letter of December 25th, 1927,¹⁹ my predecessor had the honor to draw the attention of the American Chargé d'Affaires to the hindrance which the capitulatory regime presents to the Egyptian State in matters of legislation, taxation, and jurisdiction, and to the desire of the Egyptian Government to see substituted for this regime an organization which, while adopting the measures

¹⁸ File translation revised.

¹⁹ *Ante*, p. 747.

necessary to the protection of foreign interests, should be in harmony with modern ideas and more compatible with the sovereignty of the country, its interests, its evolution and its progress.

Solicitous of the vital interests of the country, the Government of His Majesty is constantly preoccupied with this revision and hopes soon to be in a position to discuss its projects with you with a view to arriving at an agreement or agreements with the powers on this subject.

In the meantime, the Government of His Majesty desires to arrive at a prompt realization of those reforms set forth in the aforesaid letter of this Ministry and which deal with the modification of article 12 of the Mixed Civil Code as well as with certain dispositions of the organic statute (*Règlement d'Organisation Judiciaire*) of the Mixed Courts.

The proposed modification to article 12 of the Mixed Civil Code has as its object the harmonizing of this article with the provisions of article 35 of the Egyptian Constitution. It is true that in the present circumstances this reform no longer retains the same urgent character; but the Egyptian Government desires nevertheless to bring it to fulfillment, considering that the suspension of Parliament is provisional.

As to the other projects which have as their object the facilitating of the repression of crime (*infractions criminelles*) and the furtherance of justice, the Government of His Majesty is persuaded that they will be readily recognized as being in the general interest and that they cannot but be favorably received by the interested powers.

It is with this hope that I have the honor to resort to Your Excellency's good offices in begging Your Excellency to have the kindness to recall this question to the attention of the Government of the United States.

I take [etc.]

H. AFIFI

883.05/282 : Telegram

The Minister in Egypt (Gunther) to the Secretary of State

CAIRO, November 6, 1928—6 p. m.

[Received November 6—12:55 p. m.]

47. My No. 44, November 3, 5 p. m. and despatch No. 62 of October 22.²⁰

I find that Belgian and Greek Ministers have prepared notes practically identic with that of French Minister and are awaiting telegraphic authorization to deliver. Greek Minister states that later

²⁰ Despatch not printed.

on after Egyptian Government's reply he will probably bring up in addition desirability of reorganization of Parquet and of creation of judicial police.

None of the representatives expect to deliver their notes for at least another fortnight.

GUNTHER

883.05/287

The Minister in Egypt (Gunter) to the Secretary of State

No. 83

CAIRO, November 22, 1928.

[Received December 21.]

SIR: Adverting to my despatch No. 69 of November 3rd, 1928, enclosing a copy and translation of the Circular Note received from the Foreign Office of October 28th, 1928, reopening the question of capitulations, and to my telegram No. 44, November 3rd, 5:00 P. M., 1928, in which I reported that I would seize an early occasion upon Lord Lloyd's return to ask him to acquaint me with the views of the British Government in regard to this matter, I have the honor now to report that I have received a communication from The Residency, referring textually to the numbered proposals in the Egyptian Foreign Office Note, from which I have the honor to quote as follows:

"Taking these proposals in their order, His Majesty's Government are in agreement with 1 and 2. As regards the extension of criminal jurisdiction, Sarwat Pasha assured us last year that warrants issued by the Procureur-Général would be executed by foreign members of the Egyptian police force. His Majesty's Government reserve their attitude as regards proposals 3 and 6. They are prepared to support 4: but should the proposal be rejected in favour of the creation of a five-Judge Chamber, His Majesty's Government would claim one of the three resulting foreign judgeships. As regards 5, His Majesty's Government have no objection to the appointment by the Egyptian Government of the Presidents and Vice-Presidents of the Courts: but they dissent from the proposal that either the President or the Vice-President of a Court must be an Egyptian. Finally His Majesty's Government reserve their attitude towards the proposal providing that the Mixed Court of Appeal may be either in Alexandria or Cairo."

In my most recent conversation on this subject with the British High Commissioner he stated that insofar as the proposal to hold a conference was concerned his Government felt that though both this method of approach and that of direct negotiation between Governments had its drawbacks, the conference was perhaps the lesser of two evils. As far as the general question was concerned he observed that it would probably be better to attempt to cure the evils of the capitulatory system than to ignore them or to oppose the steps which the Egypt-

tian Government desire to take. It would seem, in his opinion, and I must say that in this I concur, that if the capitulatory system is still to have a long life it would be well to eradicate if possible some of the present causes for complaint.

It is obvious from the conversations which I have had with various of my Colleagues that a block has been formed by the Ministers of France, Italy, Greece and Roumania. No answer has yet been made by any of these Ministers to the Circular Note from the Egyptian Foreign Office of October 28th, 1928, as they are still in the process of conferring with one another and, above all, are awaiting the final decisions of the French Foreign Office. That their attitude and tactics will be obstructive is already clear. I shall, of course, continue to follow developments very closely and as soon as any definite communications have been made by any of the Missions shall endeavor to ascertain the purport thereof and report to you.

I have [etc.]

FRANKLIN MOTT GUNTHER

883.05/288

The Minister in Egypt (Gunther) to the Secretary of State

No. 89

CAIRO, December 1, 1928.

[Received December 29.]

SIR: I have the honor to refer to my despatches Nos. 69 of November 3rd, and 83 of November 22nd, 1928, on the subject of the Egyptian Government's proposals of December 25th, 1927, for the extension of the penal jurisdiction of the Mixed Tribunals and for certain modifications of the Organic Law (*Règlement d'Organisation Judiciaire*) of those courts. In these despatches I submitted the various views of such of my colleagues with respect to this important matter as I had been able to ascertain.

I now have the honor to submit the text, with translation of the reply made by my French Colleague under date of November 22nd, 1928,²¹ to the Egyptian Government's Notes of December 25th, 1927, and October 31st, 1928. This text, while couched in terms of sympathetic interest confines its examination to the question of the proposed extension of mixed criminal jurisdiction. The dominant idea underlying this reply is that certain postulates should be clearly defined before the powers can be expected to assent, other than in principle, to the Egyptian proposals. These postulates are "the creation or the extension of new organs (Parquet, Judicial Police and penitentiary system) and the putting into definite shape of codes of substantive and adjective criminal law."

²¹ Not printed.

It is clear that the French Government attaches particular importance to an increase in the personnel, both judicial and administrative, of the courts. Reading between the lines of its reply and in the light of my earlier comment, it is obvious that an increase in the number of French judges is a *sine qua non* to French acceptance. And it would seem that representation on the Parquet and in the contemplated mixed Judicial Police likewise enters into the general policy underlying the French reply. This desire of the French Government to be assured that France shall receive an adequate number of such new appointments, particularly judgeships, is readily understood. As the Department is already aware, France, crystallizing Latin thought, feels that the Mixed Court of Appeal has ceased to be truly "mixed" and has become in fact Anglo-Egyptian. For on each of the three benches of five judges which constitutes a chamber of that body Great Britain now has one representative and Egypt two. As this Anglo-Egyptian color was given to the Mixed Court of Appeals during the period of the British Protectorate, when Great Britain, through the Judicial Adviser, exercised a direct control over the judicial machinery of Egypt, France, I am led to believe from various sources, confined herself to a *pro forma* protest against this departure from the spirit underlying the creation of the Egyptian Mixed Courts. Now, on this first appropriate occasion since the abolition of the Protectorate, France voices her feeling. By its instructions No. 271 of June 8th, 1926, and No. 306 of January 22nd, 1927,²² the Department, when discussing the desirability of a return to the principle of equality of representation amongst the principal capitulatory powers on the mixed judiciary appears to a certain extent to have associated itself with this attitude.

I shall take occasion in an early despatch or telegram to submit a comparative analysis of the views of my various Colleagues, together with such recommendations as I may, in the light of the situation then existing, feel justified in proposing.

At the present writing, however, I am not as yet prepared to agree with the view expressed in the French Note that an international conference with respect to this question is impractical. On the contrary I concur in the position taken by Lord Lloyd (see my despatch No. 83 of November 22nd, 1928) that, providing the necessary preliminaries are disposed of by direct correspondence with the Egyptian Government, a conference has more chance of eventual success than the "direct conversations" advocated by the French Government. By this comment I do not mean to imply, as does the French Note, that at such a conference questions placed on its agenda should "be solved by majority vote." I do feel, however, that the proposed interna-

²² *Foreign Relations*, 1927, vol. II, pp. 558 and 560.

tional conference, attended as it would be by competent technical advisers and offering an opportunity for a free exchange of views, would afford the best means of reaching an eventual solution of this perplexing problem.

I have [etc.]

FRANKLIN MOTT GUNTHER

883.05/289

The Chargé in Egypt (Wadsworth) to the Secretary of State

No. 90

CAIRO, December 7, 1928.

[Received January 2, 1929.]

SIR: I have the honor to refer to my last despatch No. 89 of December 1st, 1928, on the subject of the Egyptian Government's proposals of December 25th, 1927, and October 28th, 1928, for the extension of the penal jurisdiction of the Mixed Tribunals and for certain modifications of the Organic Law (*Règlement d'Organisation Judiciaire*) of those courts. With that despatch I had the honor to submit a copy of the text, with translation, of the reply to the Egyptian proposals made under date of November 22nd, 1928, by my French Colleague.²⁴

I now have the honor to submit herewith a copy, with translation, of the text of the Italian reply to the Egyptian Government's proposals.²⁴ This reply was delivered, under date of December 4th, 1928, by my Italian Colleague, to the Egyptian Minister for Foreign Affairs.

It will be observed that, while the original text of the Italian Note is somewhat involved, its general sense is identical with that of the French reply. The only differences are that the Italian Note lays particular stress upon the desirability of informal conversations and refrains from pointing out specifically the measures which the Italian Government would wish to see taken by the Egyptian Government before the latter's proposals can receive final official consideration. Inasmuch as this Note is in substance identical with the French reply I feel that I may properly limit my comment to stating that such observations as I had the honor to submit with respect to the French position are, in my opinion, equally applicable to that taken by the Italian Government.

I may add that I have just learned from unofficial sources that the Egyptian Minister for Foreign Affairs is somewhat disturbed by the conflicting attitudes taken on the one hand by Lord Lloyd and on the other by the Franco-Italian group. I shall take early occasion to endeavor to verify this report, for I believe that, if true, it may lead

²⁴ Not printed.

to a situation embarrassing both to Lord Lloyd and to the Egyptian Government. Should this prove to be the case it may be that such reply as I may be directed to make to the Egyptian Notes of December 25th, 1927, and October 28th, 1928, will prove to be of more than passing importance in shaping the attitude of the Egyptian Government.

I have [etc.]

For the Minister :
 GEORGE WADSWORTH
First Secretary of Legation

APPOINTMENT OF AN AMERICAN REPRESENTATIVE ON THE INTERNATIONAL QUARANTINE BOARD AT ALEXANDRIA

883.12/32

The Secretary of State to the Minister in Egypt (Howell)

No. 307

WASHINGTON, *March 2, 1927.*

SIR: With reference to the Legation's despatch No. 588 of February 7, 1925,²⁵ and to other correspondence concerning the desire of the Government of the United States to be represented on the International Quarantine Board at Alexandria, Egypt, it may be stated for your information that on October 8, 1925, the Department indicated to the French Government²⁶ its desire that a place be given for this subject on the agenda of the International Conference held in Paris in May, 1926, for the purpose of revising the International Sanitary Convention of January 17, 1912.²⁷ The Department also instructed the delegates of the United States to the Conference²⁸ to make known in an appropriate manner the importance which this Government attached to such representation and to its recognition by the revised International Sanitary Convention. It was indicated that this Government desired such representation in order to be in a position to protect its growing shipping interests and the public health of the United States.

In accordance with the Department's instructions, the American representatives took up this matter at the Conference. It is understood that the Conference decided that this Government should take up this question directly with the Egyptian Government and that the Egyptian Delegation to the Conference expressed its interest in the matter of American representation on the Quarantine Board and requested that this Government approach the Egyptian Government directly on the subject.

²⁵ Not printed.

²⁶ *Foreign Relations*, 1926, vol. I, p. 175.

²⁷ Malloy, *Treaties*, 1910-1923, vol. III, p. 2972.

²⁸ Instructions not printed.

You are accordingly instructed to communicate with the American Consuls in Egypt with a view to obtaining from them information regarding the amount of shipping between the United States and Egypt and the amount of shipping which passes through the Suez Canal bound for the United States. You should also endeavor to obtain information regarding the number of American tourists who annually visit Egypt or countries beyond the Suez Canal or adjacent thereto. After obtaining the information indicated you should bring this matter to the attention of the appropriate Egyptian authorities indicating the vital interest of the United States in the administration of the maritime quarantine as a protection not only to its growing shipping interests but also to the public health in the United States against diseases which may be carried to its ports by vessels from the Near East. You should support your statement by figures obtained from the American consular officers in Egypt concerning the shipping and tourist traffic and you should express the hope that in view of the facts you have presented the Egyptian Government may find it convenient to grant to the Government of the United States the privilege of being represented on the International Quarantine Board at Alexandria.

You should take no steps to make any appointment nor should you suggest to the Egyptian Government any candidate for the position except under instructions from the Department.

I am [etc.]

For the Secretary of State:

LELAND HARRISON

883.12/32

The Secretary of State to the Chargé in Egypt (Winship)

No. 326

WASHINGTON, August 29, 1927.

SIR: The Department refers to its special written instruction No. 307 of March 2, 1927, with respect to the desire of this government to be represented on the International Quarantine Board at Alexandria, Egypt, and desires to draw your attention to the fact that its files contain no record of the receipt of a reply thereto.

It is desired consequently that you report by mail regarding the present status of the matter, informing the Department at the same time of the nature of such action as may have been taken by the Legation in compliance with the instruction mentioned above.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

883.12/36

The Chargé in Egypt (Winship) to the Secretary of State

No. 203

CAIRO, March 3, 1928.

[Received March 29.]

SIR: I have the honor to refer to Instruction number 326, dated August 29, 1927, file 883.12/32, with respect to the desire of the American Government to be represented on the International Quarantine Board at Alexandria, Egypt.

At the time it was found that nothing had been done in this connection by the Legation, and I began a detailed study of the matter in which I was assisted by Mr. Geist and Major Thomson, President of the Sanitary Council of Maritime Quarantine of Egypt. There was considerable delay, owing to Major Thomson's absence from the country, and it will also be remembered that the Prime Minister, who in the present Cabinet is also Minister of the Interior, was in Europe until the latter part of November.

On December 28th I saw the Prime Minister in this connection and left with him an *Aide Memoire* covering fully the American Government's request, supported by tables of statistics, which he promised to study.

On February 16th, having heard nothing further in this matter, I addressed another note to the Prime Minister, renewing the request mentioned above, and several days later I saw him and he assured me that the Egyptian Government had taken a definite decision in the matter and that America would be granted representation on the International Quarantine Board at Alexandria but that it might take some time for it to go through. I feel that this is encouraging and that the above request will be granted within a reasonable time.

I have [etc.]

NORTH WINSHIP

883.12/37

The Chargé in Egypt (Winship) to the Secretary of State

No. 261

CAIRO, May 18, 1928.

[Received June 7.]

SIR: I have the honor to report that a Sanitary Conference was held last month at Port Sudan looking to the extension of the organization of the Regional Bureau of Sanitary Information for the International Quarantine Board at Alexandria.

This Conference was attended by delegates from the Governments of French Somaliland, Italian Somaliland, the Sudan and Egypt.

Aside from the question of rapid transmission to the Bureau at Alexandria of all information concerning epidemics, the Conference

examined proposals for the organization of short voyages for the pilgrims in the Red Sea district, the Quarantine Council having been charged with the establishment of regulations governing these voyages. The definition given to "short voyages" was those of less than twenty-four hours, such as the voyage between Souakin and Djeddah, or between Yembo and Djeddah. It was decided to prohibit the use of sail boats for these voyages.

Pourparlers were entered into with the chief medical officer of the Government of the Hedjaz, and steps will be taken through the Egyptian Ministry for Foreign Affairs looking to the participation of the Hedjaz in the Regional Bureau at Alexandria in order that it may easily obtain information regarding epidemics in Arabia.

In the meantime it is understood that Major Thomson of the Alexandria Quarantine Board has made arrangements with the Egyptian, English, and Dutch Consuls at Djeddah, as well as with the doctors who accompany the pilgrims, to furnish the Bureau with telegraphic advice regarding the health condition of the pilgrims.

In this connection, the Legation is still pressing for the admission of an American representative on the International Quarantine Board at Alexandria, and delay is apparently due to the demoralization and confusion in the Ministry of the Interior since the return of Sarwat Pasha from Europe last Summer, as very little has been accomplished owing to the failure of the conversations in London, the Ministerial crisis, the change of Government, and the heated discussions over the Assemblies Law. It will be remembered that the Prime Minister of Egypt in the previous, as well as the present Cabinet, was also Minister of the Interior. As reported, I have the assurance of the present Prime Minister that the matter will receive sympathetic consideration and attention as soon as possible.

I have [etc.]

NORTH WINSHIP

883.12/38 : Telegram

The Chargé in Egypt (Winship) to the Secretary of State

ALEXANDRIA, June 22, 1928—1 p. m.

[Received June 22—10:20 a. m.]

24. American representation International Quarantine Board approved by this Government. Name and record of proposed delegate requested. See article 2 khedivial decree of June 19, 1893. Despatch follows.

WINSHIP

883.12/40

The Chargé in Egypt (Winship) to the Secretary of State

No. 283

BULKELEY, RAMLEH, June 22, 1928.

[Received July 19.]

SIR: I have the honor to refer to my cable of even date, No. 24, and to report that I have been informed officially by the Minister for Foreign Affairs that the Egyptian Government has taken a favorable decision to accord representation on the International Quarantine Board at Alexandria to the United States, and official notification is given in the enclosed Note, with translation, dated Cairo, June 21, 1928, No. 40-3/10 (46).

Article two of Khedivial Decree of June 17, 1893 requires that all delegates should be recognized doctors with regular diplomas from a European faculty of medicine, or from the State, or an official of career of the grade of at least Vice Consul or of an equivalent grade.

The Egyptian Government asks to be informed in due time the name of the delegate proposed by the American Government to sit on said Board, together with a report as to his position or medical record.

The Director of the Board expressed to me the hope that a physician would be designated, one with experience in quarantine matters. If this is not found practical, however, at the present time, the American Consul at Alexandria may be named.

Needless to say, I am very gratified at the Egyptian Government's favorable decision in this matter.

I have [etc.]

NORTH WINSHIP

[Enclosure—Translation]

The Egyptian Minister for Foreign Affairs (Ghali) to the American Chargé (Winship)

No. 40-3/10

CAIRO, June 21, 1928.

MONSIEUR LE CHARGÉ D'AFFAIRES: By letter of May 16, last, No. 540, you brought to my attention the desire expressed by the Government of the United States of America to be represented on the Maritime and Quarantine Sanitary Council of Egypt at Alexandria.

In this regard you referred to the great importance your Government attached to participate in the administration of quarantine service in order to assure, on the one hand, the protection of the increasing maritime commerce of the United States, and on the other hand, to inform the country against the danger of infection by the diseases that might be introduced in their ports by the numerous ships coming from the Near East.

To demonstrate the importance of the maritime interests of the United States, you cited the fact that twelve to fifteen thousand American tourists visit Egypt annually and that several thousand others annually pass through Suez en route to the Orient. Besides this, the great number of American ships that pass the Suez Canal destined for the United States was established by statistics.

I have the honor to inform you that, taking these facts into consideration, the Egyptian Government is happy to agree, in principle, to the representation of the United States on the Maritime and Quarantine Sanitary Council, (International Quarantine Board).

In view of this, I hope you will be so kind as to make known in due time the name of the delegate that will be designated in this connection by your Government and this, in view of the steps necessary to be taken for his recognition.

In this regard, I should draw your attention to the last paragraph of Article 2, of the Decree of June 19, 1893, which prescribes that:

"All delegates should be doctors with regular diplomas, from a European faculty of medicine, or from the State, or an official of career of the grade of at least Vice Consul, or of an equivalent grade."

I seize this occasion [etc.]

WACYF BOUTROS GHALI

883.12/39

The Secretary of the Treasury (Mellon) to the Secretary of State

WASHINGTON, July 3, 1928.

SIR: I have the honor to acknowledge the receipt of your letter dated June 27, 1928,²⁹ (File, NE 883.12/38), transmitting therewith a copy of a telegram from the American Legation in Egypt^{29a} informing me that the request of this Government to be represented on the International Quarantine Board at Alexandria, Egypt had been approved by the Egyptian Government, and requesting that you be advised of any suggestions which the Surgeon General of the Public Health Service may desire to make with reference to the appointment of a representative of the United States on that Board.

It is noted that under Article 2 of the Khedivial Decree dated June 19, 1893 the delegates on the International Quarantine Board must either hold regular diplomas as Doctors of Medicine granted by a European faculty of medicine or a faculty of medicine in the represented state, or must be consular officers of career of the represented state.

²⁹ Not printed.

^{29a} Telegram No. 24, June 22, 1928, p. 776.

The Surgeon General of the Public Health Service informs me that he has given this matter a great deal of thought and attention during the past four years, and suggests that, in view of the quarantine conditions at present existing in that area, the representative of the United States on the International Quarantine Board at Alexandria, Egypt, be, for the time being, the ranking consular officer of career on the Egyptian station, and should the quarantine conditions in that area undergo such a change in the future as to warrant it, that an officer of the Public Health Service experienced in quarantine matters be then detailed as the representative of the United States on the International Quarantine Board at Alexandria, Egypt.

Should a consular officer of career be appointed accordingly for the present as a representative of the United States on the International Quarantine Board at Alexandria, Egypt, the Surgeon General of the Public Health Service further suggests that the technical advice of an officer of the Public Health Service experienced in quarantine matters, and now stationed in Naples, Italy, could readily be made available upon your request to appropriately advise the representative of the United States on that Board.

Respectfully,

A. W. MELLON

883.12/39

The Secretary of State to the Secretary of the Treasury (Mellon)

WASHINGTON, July 31, 1928.

SIR: I have the honor to acknowledge the receipt of your letter of July 3, 1928, concerning the designation of a representative of the Government of the United States on the International Quarantine Board at Alexandria, Egypt. The suggestion of the Surgeon General has been noted that the United States be represented on the Board by the ranking consular officer at that post and the generous offer of the Surgeon General to send an officer of the United States Public Health Service experienced in quarantine matters to furnish the consul with technical advice is much appreciated.

With respect to the appointment of a representative of the United States on the International Quarantine Board at Alexandria, I wish to say that I have directed the American Minister at Cairo to nominate for such appointment the American Consul at Alexandria, Mr. Raymond H. Geist. Mr. Geist is now on leave but he will return to his post at Alexandria before September 15, 1928. Any time subsequent to that date Mr. Geist will be pleased to receive a visit from the United

States Public Health Service representative at Naples in accordance with the offer of the Surgeon General.

I have [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

Assistant Secretary

883.12/40

The Secretary of State to the Minister in Egypt (Gunther)

No. 381

WASHINGTON, July 31, 1928.

SIR: The Department has received the Legation's telegram No. 24 of June 22, 1928, and despatch No. 283 of the same date with further reference to the desire of this Government to be represented on the International Quarantine Board at Alexandria, Egypt.

Upon the receipt of the Legation's telegram under reference the Department forwarded a copy thereof to the Secretary of the Treasury and expressed a desire to obtain any suggestions which the Surgeon General of the Public Health Service might wish to make with respect to the appointment of a representative of the United States on the Board. On July 3, 1928, the Secretary of the Treasury sent to the Department a reply of which a copy is transmitted herewith for the information of the Legation.³⁰ A copy of the Department's reply is also enclosed.³¹

You will, of course, make appropriate acknowledgment of the Egyptian Foreign Office note of June 21, 1928, expressing your Government's appreciation of the action of the Egyptian Government in the matter and stating, in reply to the penultimate paragraph of the note, that you have been instructed to nominate as the representative of the United States on the Board the American Consul at Alexandria, Mr. Raymond H. Geist. You are requested to forward a copy of this instruction, with its enclosures, to the American Consulate at Alexandria for the information and guidance of that office.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

³⁰ *Ante*, p. 778.

³¹ *Supra*.

883.12/42

The Chargé in Egypt (Winship) to the Secretary of State

No. 20

BULKELEY, RAMLEH, August 24, 1928.

[Received September 11.]

SIR: I have the honor to acknowledge the receipt of instruction No. 381, dated July 31, 1928, regarding American representation on the International Quarantine Board at Alexandria, and to report that I have this day addressed a Note to the Minister for Foreign Affairs expressing my Government's appreciation of the act of the Egyptian Government in the matter, and stating that I have been instructed to nominate as the representative of the United States on said Board the American Consul at Alexandria, Mr. Raymond H. Geist. I have also written to Mr. Geist informing him in the matter and enclosing a copy of the instruction under acknowledgment as well as the copy of the letter dated July 3, 1928, from the Treasury Department and the Department of State's reply.

I have [etc.]

NORTH WINSHIP

883.12/45

The Secretary of State to the Consul at Alexandria (Geist)

WASHINGTON, November 3, 1928.

SIR: Under date of July 31, 1928, the Department instructed the American Legation at Cairo to nominate you as the representative of the Government of the United States on the International Quarantine Board at Alexandria. It is understood that a copy of the Department's instruction under reference, together with copies of its enclosures, has been forwarded to you by the Legation. In one of these enclosures the United States Public Health Service offered to send a Public Health surgeon experienced in quarantine matters to furnish you with technical advice. The Department has now received and encloses a copy of a letter dated October 17, 1928, from the Treasury Department³² stating that Doctor Taliaferro Clark, Senior Surgeon in the Public Health Service, stationed in Paris, will visit Egypt in the month of November and that he will be instructed to call on you at the time of his visit.

I am [etc.]

For the Secretary of State:

NELSON TRUSLER JOHNSON

³² Not printed.

CONSENT OF UNITED STATES TO EXTENSION OF PRIVILEGE OF
SEARCH OF DOMICILES OF ITS NATIONALS ON CONDITION OF
SIMILAR CONSENT BY OTHER POWERS

883.114 Liquors/11

The Secretary of State to the Chargé in Egypt (Winship)

No. 355

WASHINGTON, February 23, 1928.

SIR: The Department acknowledges the receipt of the Legation's despatch No. 154 of January 5, 1928, enclosing a note, with translation, received under date of December 28, 1927, from the Egyptian Foreign Office ³³ requesting that this Government consent to extending to the hours from sunset to sunrise the privileges of searching the domiciles of its nationals for the purpose of facilitating the task of the agents of the Department of Excises (a proper translation of the word "Accises" not "Assizes" as in the Legation's translation) of the Egyptian Ministry of Finance in the investigation of premises under suspicion of concealing illegal distilleries.

When the other Powers enjoying capitulatory privileges in Egypt shall have given their consent to such extension of the right of search you may convey this Government's consent to the Egyptian Government with the reservation that all searches shall be carried out under the restrictions created by the applicable treaties and the Protocol of 1874.³⁴

For your information: The privilege of search was accorded the Turkish Empire in the terms of the Protocol of 1874 under the provisions and restrictions of which all searches of American domiciles in Egypt should be, and it is understood that they are, carried out. It should be understood, of course, that, if the request of the Egyptian Government be assented to under the conditions outlined above and an American national whose domicile is searched is found to have transgressed the applicable provisions of law in such a way as would subject him to penalties greater than those of simple police, the case should be turned over to the appropriate American consular court for action.

In connection with this instruction your attention is invited to the Department's instruction No. 241 of December 10, 1925 ³⁵ with respect to a similar request of the Egyptian Foreign Office; a request regarding search between sunset and sunrise in the execution of the Narcotic Law of March 21, 1925.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, JR.

³³ Neither printed.

³⁴ Malloy, *Treaties*, 1776-1909, vol. II, p. 1344.

³⁵ Not printed.

883.114 Liquors/12

The Chargé in Egypt (Winship) to the Secretary of State

No. 259

CAIRO, May 16, 1928.

[Received June 7.]

SIR: I have the honor to acknowledge the receipt of instruction No. 355, dated February 23, 1928, file 883.114/29,³⁶ and to report that notwithstanding the fact that the Ministry for Foreign Affairs has renewed its appeal to this Legation for its consent to extending to the hours from sunset to sunrise the privilege of searching the domiciles of its nationals for the purpose of facilitating the task of the agents of the Department of Excises of the Egyptian Ministry of Finance in the investigation of premises under suspicion of concealing illegal distilleries, this Legation has not conveyed the American Government's consent, as France, Italy, and Greece have withheld their consent. The notes from the Foreign Office were acknowledged, stating that the matter had been referred to the Department of State for a decision.

I understand that Great Britain has accepted the above proposal with the reservation that the British Consular Officers should be informed in advance in each case and a representative of a British Consulate should be present.

The French Minister informs me that the French law forbids, even in France, except in the case of "flagrant délit" perquisitions under the circumstances mentioned, and that the French Legation has informed the Egyptian Government that it cannot give satisfaction on this point as it would be an infringement of a national law.

I am also informed by the Italian Minister, and the Greek Chargé d'Affaires that they have replied in a similar manner to the request from the Foreign Office.

I am submitting these decisions of the other Powers, and should appreciate a further instruction as to what the Legation should reply to the Foreign Office.

I have [etc.]

NORTH WINSHIP

883.114 Liquors/13

The Secretary of State to the Chargé in Egypt (Winship)

No. 377

WASHINGTON, June 25, 1928.

SIR: The Department has received your despatch No. 259 of May 16, 1928 with further reference to the request of the Egyptian Government that this Government consent to extending to the hours from sunset to sunrise the privilege of searching the domiciles of American

³⁶ Changed to "883.114 Liquors/11."

nationals for the purpose of facilitating the task of the agents of the Department of Excises of the Egyptian Ministry of Finance in the investigation of premises under suspicion of concealing illegal distilleries.

The statements made in your despatch under acknowledgment of the information you have received regarding the positions adopted in this matter by the British as well as by the French, Italian and Greek representatives in Egypt have been noted. The British position appears to the Department to be substantially that taken by the Department in the second paragraph of its instruction No. 355 of February 23, 1928, for the reported British reservation "that the British Consular Officers should be informed in advance in each case and a representative of a British Consulate be present" is adequately covered by the pertinent provisions of the Protocol of 1874. The position reported to have been taken by your French, Italian and Greek colleagues that acquiescence in the Egyptian request would constitute "an infringement of a national law" is not taken by this Government. However, this Government would not wish to see its nationals in Egypt treated in a less favorable manner than the nationals of these or other countries. Having in mind, therefore, that there may not be general acquiescence on the part of the capitulatory powers in the present request of the Egyptian Government, the Department, in reply to the request for further instructions set forth in your present despatch, desires that you limit your reply to the Foreign Office note to an acknowledgment and statement of this Government's position in the following sense:

"Excellency:

I have the honor to refer to Your Excellency's notes of and as well as to my replies of and with respect to the request of Your Excellency's Government that my Government consent to extending to the hours from sunset to sunrise the privilege of searching the domiciles of American nationals for the purpose of facilitating the task of the agents of the Department of Excises of the Egyptian Ministry of Finance in the investigation of premises under suspicion of concealing illegal distilleries.

I am now pleased to inform Your Excellency, under instructions from my Government, that, if and when the other powers enjoying capitulatory privileges in Egypt give their consent to such extension of the privilege of search and on the condition which it assumes the Egyptian Government has likewise in mind that all searches shall be carried out under the restrictions created by the applicable treaties and the Protocol of 1874, the consent of the Government of the United States will be given, such consent to be effective as of the date on which notification thereof shall be communicated to the Egyptian Government.

I am directed by my Government to add that it will of course be understood that, if, under the conditions outlined above, my Gov-

ernment's consent becomes effective and an American national whose domicile is searched is found to have transgressed the applicable provisions of law in such a way as would subject him to penalties greater than those of simple police, the case will be turned over to the appropriate American Consular Court for action."

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

ETHIOPIA

PROJECT FOR CONSTRUCTION OF A DAM AT LAKE TSANA¹

884.6461 Tsana Dam/43

The Minister in Ethiopia (Southard) to the Secretary of State

No. 18

ADDIS ABABA, April 26, 1928.

[Received May 28.]

SIR: I have the honor to transmit herewith a letter addressed to the J. G. White Engineering Corporation, which in response to an inquiry from the Corporation, explains briefly the present local status of the Lake Tsana dam matter.

There may be further and more extensive comment within a few days and if such develops I shall prepare a detailed despatch for the Department. . . .

I have [etc.]

ADDISON E. SOUTHARD

[Enclosure]

The Minister in Ethiopia (Southard) to the J. G. White Engineering Corporation²

ADDIS ABABA, April 26, 1928.

SIRS: This is to acknowledge the receipt this week of your letter of March 16th, 1928, inquiring whether I have received through the Department of State the literature on the Tsana dam matter which you prepared for my information.

I have received the literature and have studied it with much interest. I much appreciate your courtesy in sending the clippings as they have been very useful in refreshing my back-ground knowledge of the situation.

You inquire also as to the next move expected from you by the Ethiopian Government. I have discussed this at some length with His Imperial Highness, the Prince Regent. He expects within the near future to have something definite to communicate in this connection.

¹ Continued from *Foreign Relations*, 1927, vol. II, pp. 599-610.

² Original forwarded to the president of the J. G. White Engineering Co. by the Chief of the Division of Near Eastern Affairs under covering letter, June 2, 1928.

Within the past few days His Imperial Highness has received a note on the Tsana dam subject from the British Foreign Office. This note, which I have read, states in effect that the British Government is prepared to consent to the building of the dam as an Ethiopian enterprise provided the work is given into the hands of competent engineers and sufficient guarantees are given that the water will be made amply available on appropriate terms to the Sudan and Egypt.

This note also mentions British understanding that the Ethiopian Government proposes giving the concession to the J. G. White Engineering Corporation. To this no objection is intimated, but the note states that the British Government must know the terms of the concession before entering upon the negotiations incident to the formal and final agreement which it contemplates giving.

Although His Imperial Highness did not say so I am of the opinion, and suggested as much to him, that he will soon invite a representative of your company either to Ethiopia or to London to meet with Doctor Martin³ and a British representative for the purpose of speeding up the final negotiations.

The impression I have from reading this latest note from the British Foreign Office, and discussing it with His Imperial Highness, is that the way is rapidly clearing for the final steps leading up to actual construction work on the dam.

I am thoroughly at your service in this or any other matter in which you may be interested in Ethiopia, and hope you will keep me informed of any developments at your end. I would have cabled through the Department of State this latest development in the Tsana dam matter, but my code has not yet arrived.

Ras Tafari has authorized me to write you the information herein contained, but he asks that you hold it in strictest confidence pending its release from other sources.

I am [etc.]

ADDISON E. SOUTHARD

884.6461 Tsana Dam/48a : Telegram

The Secretary of State to the Minister in Ethiopia (Southard)

[Paraphrase]

WASHINGTON, October 1, 1928—6 p. m.

13. It is requested by the J. G. White Engineering Corporation that you be informed as follows:

Release of information given under authorization of Ras Tafari in your letter to them of 26th April has been awaited by the corpora-

³ Dr. Wargneh C. Martin, adviser to Ras Tafari, Prince Regent of Ethiopia.

tion with strictest confidence. They are also waiting for an invitation from Ras Tafari to send representative to London to cooperate in working out agreement with British and Sudan Governments in accordance with program discussed with Martin. They ask that you submit an inquiry to Ras Tafari in their behalf as to whether matters have progressed sufficiently to justify discussion in London by all interested parties. The present time is considered especially opportune by them for the initiation of such discussions in London.

It is understood by the White Corporation that Martin is now in England for his health. Regarding the purpose of his visit there, they would be glad to receive latest information.

Of course, you will telegraph through the Department your reply to the foregoing.

KELLOGG

883.6113/34

The Minister in Egypt (Gunther) to the Secretary of State

No. 51

BULKELEY, RAMLEH, *October 2, 1928.*

[Received October 23.]

SIR: I have the honor to report that I had an opportunity today of discussing at length with Ibrahim Fahmy Bey, the Minister of Public Works, the general problem of Nile control to an understanding of which I have been considerably assisted by Vice Consul Lawton's thorough report of May 15th, 1927.⁵

I was surprised to learn from the Minister that, in his opinion, the Lake Tsana project should take precedence over Gebel Aulia, Lake Albert, and the diversion of the Sudd channel. He seemed to think that the three above mentioned projects could wait even for twenty-five years. The only Nile engineering plan to which he gives precedence over Lake Tsana is that for the heightening of the Assuan dam and the subsequent development of hydro-electric power at that spot.

After the Commission meets in November and December, next, to study the problem of the heightening of this dam, the Minister said he thought that a commission should proceed with the study of the development of power through waterflow at the dam. This is in line with some remarks recently made to me by the King, already reported to you. I asked the Minister whether he would not have an American engineer on that commission also and he said that he would like very much to have Mr. Hugh Cooper, but that the latter had intimated that he would not sit on this commission as an Italian expert had been considered by the last Egyptian Government in place of him. I ob-

⁵ Not printed.

served that, in view of the confidence which he, the Minister, reposes in Mr. Cooper, I felt sure that the latter would be glad to reconsider his decision and added that in case he did not the Department would perhaps be disposed to consider submitting a list of American engineers—if asked to do so—especially qualified for this kind of work, from which the Egyptian Government could make its choice. This seemed to please him very much.

As telegraphed to you today in my No. 37, October 2nd, 3:00 P. M., 1928,⁶ the Minister of Public Works is most anxious to get in touch with Mr. Cooper.

In a personal letter to Mr. Southard of this date, I am informing him of the expressed views of the Minister in so far only as they have regard to the Lake Tsana project.

I have (etc.)

FRANKLIN MOTT GUNTHER

884.6461 Tsana Dam/54

The Minister in Ethiopia (Southard) to the Secretary of State

No. 74

ADDIS ABABA, October 3, 1928.

[Received November 14.]

SIR: I have the honor to confirm my telegram of this date ⁶ indicating that a proposal of the J. G. White Engineering Corporation for a conference in London on the Lake Tsana Dam matter could not conveniently and promptly at this time be placed before His Imperial Highness, Tafari Makonnen.

About every other time I have seen His Highness for conference, an average of two or three times a month, I have asked him about progress of the Lake Tsana proposition. He invariably replies that he is awaiting further word from the British Government as to a proposed conference. As suggested in various previous despatches on the subject I am strongly inclined to the opinion that he is in no hurry to push the matter.

There is much local rumor that the recent Italian accomplishment in the negotiation of a treaty of friendship ⁷ and of an economic convention,⁸ already reported upon at length from this office, has encouraged the British Government to expect a compensating concession of some sort in accord with the spirit of the Anglo-Italian Agreement of December, 1925.⁹ From such knowledge of the situation as may be gained locally it would seem reasonable to credit a renewal, on this basis, of

⁶ Not printed.

⁷ Treaty of amity, conciliation and arbitration, signed Aug. 2, 1928, League of Nations Treaty Series, vol. xciv, p. 413.

⁸ Road convention, signed Aug. 2, 1928, *ibid.*, p. 423.

⁹ Exchange of notes respecting certain British and Italian interests in Abyssinia, Dec. 14 and 20, 1925, League of Nations Treaty Series, vol. I, p. 281.

British hopes in connection with Lake Tsana. This doubtless affords an additional reason for the Prince Regent's evident desire to postpone action in the Tsana matter.

His attention for some weeks past has been concentrated on his approaching coronation as King. Presumably also for a little while after that event on October 7th, 1928, he will not wish to be pressed on a matter of such potential difficulty in his international relations as that concerning the dam. His Highness always grants me an interview on request and I could doubtless see him fairly promptly, even in the enchantment of coronation matters. But I do not believe it discreet to urge the dam matter until his mind is in a more receptive state for business affairs. I expect to find an opportunity to submit the J. G. White proposal to him sometime after October 15th.

I deduce from the Department's telegraphic instruction of October 1st, 1928, that the J. G. White Corporation has possibly heard directly from Doctor Martin. The Corporation suggests that Doctor Martin has gone to London for his health. That is probably true as he was not feeling well for some weeks before he left Addis Ababa. However, I opine that health matters do not necessarily provide the main or only reason for his journey. Other possible reasons have been suggested in previous despatches such, for instance, as my No. 51 of July 31st, 1928.¹⁰

I do believe that Doctor Martin is keen to see something definite done in the dam matter, whether American or British interests assume therein the principal role. He is sufficiently interested in the progress of Ethiopia to realize that the building of the dam will likely be an initial step in an economic development of considerable magnitude. But such knowledge of the situation as may be gleaned from local sources does not indicate that he is committed to American as opposed to British participation.

The coronation of Tafari as King may be taken as a possibly favorable influence towards decision in the Tsana Dam affair. Under his new title he will have more extensive power than heretofore. He will have authority to decide on his own initiative matters upon which he has previously had to consult the Empress with resulting considerable delay or vacillation in arriving at final results. I have no reason to suspect that the Empress has ever been opposed to American participation in the Tsana Dam construction, but I do believe that she would hesitate to place the final seal of her approval upon a project of such comparative consequence without thinking about it for a few years more. As one of the "old school" Ethiopians Her Majesty is inclined to distrust proposals for important changes in the country, and doesn't like to make decisions concerning such.

¹⁰ Not printed.

Should my opinion be correct that with his coronation as King the present Prince Regent will assume authority to decide entirely on his own initiative such matters as this Tsana one, we may expect earlier and more definite action than has heretofore been practicable or possible.

The Tsana Dam matter is always a live item in the business of this office. No opportunity is neglected to keep it before the Ethiopian Government. As previously reported, however, I am sometimes inclined to suspect the seriousness of Ethiopian intentions with regard actually to having this construction work undertaken. All is being done that is practicable to bring about an issue or a decision. Any developments of interest will be promptly reported to the Department, by mail or by telegraph according to circumstances.

I have [etc.]

ADDISON E. SOUTHARD

884.6461 Tsana Dam/51 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

[Paraphrase]

ADDIS ABABA, *October 17, 1928—11 a. m.*

[Received 2:55 p. m.]

Referring to the telegram from the Department of October 1, 6 p. m. I have discussed with Tafari the proposal of the White Corporation. Until British Government replies to his inquiry concerning terms under which they will use water, it is considered by him strategically inadvisable to call conference. Such reply is expected by him with arrival of new British Minister in December. Refer my despatch No. 67, September 20.¹¹

SOUTHARD

884.6461 Tsana Dam/55

The Minister in Ethiopia (Southard) to the Secretary of State

No. 81

ADDIS ABABA, *October 17, 1928.*

[Received November 16.]

SIR: I have the honor to confirm my telegram of this date reporting that I had discussed with His Majesty, King Tafari, the proposal of the White Engineering Corporation for a conference in London on the subject of the Lake Tsana Dam.

The King stated that he had many months ago requested the British Government to indicate its attitude as to what it would be

¹¹ Not printed.

willing to pay for water stored by the dam, and with what regularity and in what quantity it would be used. He feels that unless a definite agreement can be entered into for fixing more or less the financial return expected the construction would not economically be justified. Apparently he does not consider that Ethiopia and the Ethiopians themselves would have any particular need for a dam. He is believed to look upon the matter as a business venture whereby he will store up water and sell it profitably—to the British.

As no reply has yet been received from the British Government His Majesty thinks that it would be tactically unsound for him to propose a conference; that such act on his part would indicate undue anxiousness and give the British an advantage in the bargaining which he feels is certain to develop. His Majesty further informed me that he had reason to believe that the first business to be taken up on the arrival within a few weeks of the new British Minister, Mr. S. P. P. Waterlow, would be this dam matter.

Such is the viewpoint of King Tafari. From my own knowledge of the situation I can agree that it would not be good tactics for Ethiopia to propose a conference until the British Government indicates its attitude in the pending question as to the terms and conditions of use of the Tsana water. . . .

. . . There are reasons for believing that the construction may eventually be undertaken, and there are also circumstantial reasons of weight for feeling that it may not be undertaken within the next several years.

There is also, in my opinion, reason to suspect that the new British Minister when he arrives will make additional proposals for British construction of the dam. In such he will doubtless have Italian support on the basis of the agreement of December, 1925, between the two countries. Italian support may be reckoned on more definitely in view of the recent conclusion of the Italo-Ethiopian Treaty and Convention. This particular point of relationship between the two matters has been discussed in previous despatches.

Dr. W. C. Martin, in connection with whose recent presence in London the White Corporation presumably considered the proposal of a conference, is stated now to be en route to Ethiopia and due to arrive before the end of this month. I had heard that he would wait to travel out with the new British Minister. On second thought, however, I realized that such would be inadvisable from the viewpoint of a man of Doctor Martin's well known astuteness. I shall see him promptly upon his return and obtain all the information possible.

In summarizing, I may say that I have been consistently on the alert to bring about an issue in the Tsana Dam matter. Two important obstacles to obtaining action are (1) the possible lack of definite inten-

tion to build such a dam and (2) the very evident disinclination of His Majesty to displease the British. Further, the Government of the United States has no tangible concession to give in return whereas the British Government has various concessions to offer on a bargaining basis.

The Ethiopian Government has now procured the opening here of an American Legation. That ambition being satisfied, interest in things American tends to lag. . . . Our situation is peculiar here in that for economic favor we are in competition with certain European powers which can make concessions of a material or tangible nature more easily estimated and realized . . . than the more or less intangible good will and perhaps moral support which we can offer.

On the basis of a cordial friendship of eleven years with His Majesty, King Tafari, during which I have seen him grow from a youthful ruler of insecure position uncertain of himself to a matured and unusually able ruler with more or less secured position, I am not without personal influence of weight. But material considerations are likely to come first with His Majesty, as with the average Ethiopian, and there is little that we are able to offer in that category. It may, therefore, be seen that our possible accomplishments of economic value here are not to be arrived at without first overcoming certain handicaps or obstacles. While I continue optimistic I cannot conscientiously be enthusiastic.

I have [etc.]

ADDISON E. SOUTHARD

884.6461 Tsana Dam/51 : Telegram

The Secretary of State to the Minister in Ethiopia (Southard)

[Paraphrase]

WASHINGTON, *October 29, 1928—3 p. m.*

18. We communicated contents of your telegram of October 17th, 11 a. m., to J. G. White Engineering Corporation. They point out, by way of reply, that it would be difficult, if not altogether impossible, because of purely engineering reasons for the British Government to reply to King Tafari's inquiry concerning terms under which water will be used and paid for, unless engineering agreement is previously reached between the British authorities on the one hand and the White Corporation on the other—the latter representing His Majesty Ras Tafari's interests and the interests of American stockholders who would invest forty million Ethiopian dollars in Ethiopia under the direction of His Majesty. White Corporation believe that a conference as described in Department's 13, October 1, 6 p. m., would, if held before the departure of the new British Minister for Addis Ababa, conduce to the reaching of an agreement regarding the large sums which

the British would be required to pay for water, from which sums would come returns to American capital as well as the important revenues accruing to the Government of Ethiopia.

Your bringing the foregoing to the attention of King Tafari would be appreciated by the J. G. White Corporation.

KELLOGG

884.6461 Tsana Dam/58

The Minister in Ethiopia (Southard) to the Secretary of State

No. 92

ADDIS ABABA, November 5, 1928.

[Received December 7.]

SIR: I have the honor to confirm my telegram of this date¹² reporting that His Majesty, King Tafari Makonnen, was ill with influenza, and that I would as soon as possible convey to him, with appropriate persuasion, the message from the J. G. White Corporation given in the Department's telegraphic instruction of October 29th, 3:00 P. M., 1928.

His Majesty has been ill for several days and sees no one. A written communication to him on the subject would be ineffective. There is no one else here with power of action or decision in the Tsana Dam matter and I must, therefore, wait until the King is accessible in person.

The new British Minister, Mr. S. P. P. Waterlow, has evidently expedited his departure from London as I am informed by my colleague of the British Legation that he is already en route and is expected in Addis Ababa some time between November 21st and 25th.

I have [etc.]

ADDISON E. SOUTHARD

884.6461 Tsana Dam/56: Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

[Paraphrase]

ADDIS ABABA, November 28, 1928—4 p. m.

[Received November 29—3:16 p. m.]

With reference to the telegram from the Department of October 29, 3 p. m. Tsana matter exhaustively discussed with Tafari; after which he declined to call proposed conference or take any other action pending further communication from the Government of Great Britain which the King hopes to receive December 2 when the

¹² Not printed.

new Minister from Great Britain presents his letters of credence. In my opinion, Tafari has not definitely made up his mind to have the dam constructed.

SOUTHARD

884.6461 Tsana Dam/61

The Minister in Ethiopia (Southard) to the Secretary of State

No. 101

ADDIS ABABA, November 28, 1928.

[Received December 27.]

SIR: I have the honor to confirm my telegram of this date to the effect that His Majesty, King Tafari Makonnen, has declined to call the conference on the Tsana Dam matter proposed by the J. G. White Engineering Corporation, or to take any other action pending the receipt of further communication which he expects from the British Government.

In my despatch No. 98 of November 13th, 1928,¹³ and in other previous despatches, I have indicated the probable special interest with which the King has awaited the arrival of the new British Minister in connection with the Tsana Dam proposition. The new British Minister has now arrived and will present his letters of credence on December 2nd, 1928, after which he will presumably endeavor to press the Tsana Dam matter.

Since the receipt of the Department's telegraphic instruction of October 29th, 1928, 3:00 P. M., I have twice and at length discussed with His Majesty the J. G. White Corporation's proposals for a conference. I have used much persuasion, which I could pursue to fairly persistent length because of my long friendship with the King, but without definite result. I am convinced that he must first definitely make up his mind that he wants the dam constructed and that, second, he must overcome his apparent present reluctance to oppose British desires and decline the profitable concessions or payments which they are willing to make towards acquiring the Tsana Dam.

I have endeavored in my various despatches to place before the Department my opinion that the King originally had the White Corporation approached in the Tsana matter not because he had any clear or definite idea of building a dam but because he hoped by such action not only to uncover British attitude in certain matters of political interest to him but to provide further apparent reasons for the opening here of the American Legation which he has for many years sought. . . .

¹³ Not printed.

. . . Certainly the Ethiopian mind has never yet been definitely made up as to the construction of the dam. I also believe it possible that a definite decision will now not long be deferred. I further believe this Legation able to accomplish the greatest possible results in the face of competition with the more material inducements offered by British and perhaps other interests. No effort to that end has been, or will be, spared. But the Ethiopian will not be hustled. That has been amply and expensively demonstrated by the various Occidental interests which have had, and have, aims in this country.

I regard the Tsana Dam project as the major activity of this Legation and it receives constant attention. We are doing all that is practicable to push the project towards the tangible shape which the J. G. White Corporation probably thought had already been arrived at on the occasion of Dr. W. C. Martin's visit to the United States. At that time it was little more than an idea springing from various motives which have on previous occasions been discussed or intimated from this office. In illustration it might be remarked that the British have been working on the Tsana Dam project for many years during the last fifteen or twenty of which they have on various occasions been almost near enough to grasp it. The pendulum swung very far away from them, or so it seemed, when Doctor Martin was sent to the United States. Now it is swinging back. Whether British or American interests can catch it seems still more or less conjectural. Final decision may be had in the next week, the next month, the next year, or the next decade. In the meantime the Ethiopian is in no hurry and may even be getting some diversion out of the situation. . . .

I have [etc.]

ADDISON E. SOUTHARD

884.6461 Tsana Dam/56

The Chief of the Division of Near Eastern Affairs (Shaw) to the President of the J. G. White Engineering Corporation (Gano Dunn)

WASHINGTON, November 30, 1928.

DEAR MR. DUNN: A telegram from Mr. Southard, dated November 28, has just reached us. It is in answer to our telegram of October 29 and says that after a very full discussion on the Tsana matter with King Tafari the latter refuses to call a conference or to take any other step until a further communication has been received from the British Government. The King hopes that this communication will be received as soon as the new British Minister presents his letters of credence on the 2nd of December. Mr. Southard concludes the telegram by expressing his own personal opinion to the effect that the King has never yet definitely made up his mind to have the Dam actually constructed.

It looks to me as though the next move would have to be taken through British channels. I can't see that there is anything further that we can do here for the time being.

Very sincerely yours,

G. HOWLAND SHAW

884.6461 Tsana Dam/57 : Telegram

The Minister in Ethiopia (Southard) to the Secretary of State

[Paraphrase]

ADDIS ABABA, December 3, 1928—4 p. m.

[Received December 4—6:10 a. m.]

My cable of November 28, 4 p. m. Tafari has intimated to me that the British Government communication concerning Tsana Dam is delayed by the inability of the British to get consent or agreement from the Government of Egypt. Further details not available here.

SOUTHARD

884.6461 Tsana Dam/62

The Minister in Ethiopia (Southard) to the Secretary of State

No. 104

ADDIS ABABA, December 3, 1928.

[Received January 4, 1929.]

SIR: I have the honor to confirm my telegram of this date stating that His Majesty, King Tafari Makonnen, had intimated to me that British action in the Tsana Dam negotiation was delayed by difficulties with the Egyptian Government.

Neither the King nor any one else here appears to be well informed in the matter. However, the report current is that the British Government will delay making any further proposals to the Ethiopian Government concerning the Tsana Dam until it shall have obtained the consent of the Egyptian Government. The Egyptians appear to be holding out for guarantees from the British Government which the latter is reluctant to give. I regret that I can obtain no more detailed information here, but this intimation of a probable situation may enable the Department to elicit details from either Cairo or London.

In further connection with the Tsana Dam subject I wish to refer to my Diplomatic Despatch No. 99 of November 16th, 1928,¹⁴ concerning German interest in the project. I have been informed by my German colleague here, Dr. Curt Pruffer, that he is starting off about the middle of December for a trek from Addis Ababa to

¹⁴ Not printed.

Asmara in the Italian colony of Eritrea. Lake Tsana is on the route and I asked him if he would see it. He said that it would be one of the points of interest on his trip. Doctor W. C. Martin and others have told me, however, that the German Minister's trip has as its main objective the visit to Lake Tsana and that the stated objective of Asmara is merely incidental. It is not apparent that Dr. Pruffer can do anything important in the matter by merely going there but I report his proposed trip as of further significance in connection with the German interest reported in previous despatches.

Captain Harold White, mentioned in the Department's telegraphic instruction of October 29th, 1928,¹⁵ has arrived and was taken by me a few days ago for presentation to His Majesty, the King. He gave the King a fine tiger skin and 6,000 feet of cinematograph film. He said nothing about the Tsana Dam on this occasion but I have heard from other sources that he will seek an audience with the King for purpose of discussing it.

I suspect that matters will in no way be helped if he discusses the Tsana Dam with the King but I have not, of course, intimated anything of the sort to Captain White, whom I have found an agreeable and most creditable type of American. If and when he mentions to me his purpose in this connection I shall afford him all possible assistance. I do know, however, that the King prefers to keep the discussion in its present status between himself and the Legation, unless an actual and fully accredited officer of the White Corporation should come. I understand that Captain White does not so qualify.

I have [etc.]

ADDISON E. SOUTHARD

884.6461 Tsana Dam/63

The Chief of the Division of Near Eastern Affairs (Shaw) to the President of the J. G. White Engineering Corporation (Gano Dunn)

WASHINGTON, January 5, 1929.

DEAR MR. DUNN: Confirming the telephone conversation which I have just had with you, the following is a paraphrase of a confidential cable from our Legation at Addis Ababa, dated January 4:

A conference has been held on the Tsana Dam matter between King Tafari and the new British Minister. As a result of this conference I have been requested by His Majesty to communicate to the J. G. White Engineering Corporation his desire that the Corporation

¹⁵ Telegram No. 19, Oct. 29, 4 p. m., not printed.

immediately send a qualified representative to Addis Ababa to take up and discuss with the King the details preliminary to the conclusion of a possible contract. The idea of a conference in London was once more suggested by me to the King. His Majesty however declined.

Sincerely yours,

G. HOWLAND SHAW

PROPOSALS BY ETHIOPIA FOR OBTAINING MILITARY SUPPLIES AND INSTRUCTORS IN THE UNITED STATES

500A14/462½

The Ambassador in France (Herrick) to the Secretary of State

No. 7615

PARIS, June 21, 1927.

[Received July 5.]

SIR: With reference to the Department's instruction No. 2304 of May 23rd¹⁶ (File No. 884.24/6), regarding a "Convention between the French, British and Italian Governments dated 1925" concerning the sale of arms to Abyssinia, I have the honor to report that I have been informed at the Ministry for Foreign Affairs that no "Convention" exists, but that there has been a simple exchange of Notes amongst the Powers mentioned agreeing to apply in principle to Abyssinia the Geneva Convention signed June 17, 1925, regarding the Control of International Commerce of Arms and Munitions.¹⁷

It appears that a conference with Abyssinian authorities was planned for this spring but has been postponed to the autumn. No desire exists to prevent the purchase of arms in reasonable quantities, and it is intended that every country should be on an equality with reference to any such purchases. It is desired, however, in order to insure the tranquillity of the States bordering upon Abyssinia, that only a limited quantity of rifles, perhaps fifty thousand, be purchased by that country. According to my informant, arms purchased by the Abyssinian Government usually find their way into the hands of irresponsible individuals rather than remaining in the possession of the Government forces.

I have [etc.]

For the Ambassador:

SHELDON WHITEHOUSE

Counselor of Embassy

¹⁶ Not printed.

¹⁷ *Foreign Relations*, 1925, vol. I, p. 61.

884.24/10

The Minister in Ethiopia (Southard) to the Secretary of State

No. 4

ADDIS ABABA, May 4, 1928.

[Received June 1.]

SIR: I have the honor to state that His Imperial Highness, Ras Tafari, Prince Regent and Heir to the Throne of Ethiopia, has asked this Legation and Consulate General to procure promptly for him from the United States prices and offers on the following military supplies:

1. Army rifles, per thousand.
2. Machine rifles and machine guns, per one hundred.
3. Smaller caliber artillery pieces.
4. Ammunition for above.
5. Uniforms for both privates and officers, of both cotton khaki and woolen khaki made in the fasten at the neck style, with trousers either laced or close fitting below the knees. Per thousand suits.

If American laws and regulations permit the export of these war materials, and the prices are suitable, His Imperial Highness might make purchases approaching perhaps a million dollars in all. At any rate I respectfully suggest the advisability of having sent to this Legation and Consulate General, for delivery to His Imperial Highness, catalogs and other sales literature covering the above commodities.

Although I am not in possession of recent information on the subject I obtain the understanding here that there is no longer a general restriction sponsored by Britain, France and Italy to control the importation of war materials into Ethiopia since the admission of the latter to membership in the League of Nations.

I have [etc.]

ADDISON E. SOUTHARD

884.24/11

The Minister in Ethiopia (Southard) to the Secretary of State

No. 63

ADDIS ABABA, September 14, 1928.

[Received October 11.]

SIR: I have the honor hereby to transmit a request of the Ethiopian Government that the War Department of the United States purchase for it, as a special favor, one aeroplane and two tanks suitable for military purposes.

His Imperial Highness, the Prince Regent of Ethiopia, is taking steps to modernize his small army by instruction in the use of this sort of equipment.

There are no aeroplanes in the country as their importation has heretofore been prohibited. The proposed purchase would, therefore, bring in an American aeroplane as the first ever to be used in Ethiopia.

It is likely that other purchases through commercial channels would follow.

The Ethiopian army has one tank recently presented to it by the Italian Government and which, for purposes of local instruction, is operated by a non-commissioned officer of the Italian Army who is on duty at the local Italian Legation.

The Prince Regent has been persuaded from some source that American aeroplanes and tanks are superior to European ones. He wishes samples and informs me that for such reason he wishes to inquire whether our War Department could make the purchases above indicated.

His Imperial Highness is willing to remit cash in advance if informed that the purchase can be made. He has asked me to request a telegraphic reply.

Should the purchase be made it is desired by the Prince Regent that shipment be made direct from New York to Djibouti, French Somaliland, which is occasionally practicable by steamers of one or two of the lines running to India and the Far East via the Suez Canal.

Djibouti is a French port but His Imperial Highness says he will make arrangements for landing of the shipment there and for its clearance through to Ethiopia.

I am also asked by the Ethiopian Government to inquire whether it would be possible to procure two American army officers to serve as military instructors here. I have not encouraged any belief that such arrangement can be made but transmit the inquiry by special request.

I have [etc.]

ADDISON E. SOUTHARD.

500.A14/462½ : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, October 3, 1928—5 p. m.

341. Your despatch No. 7615 of June 21, 1927. Please ascertain discreetly and telegraph results of proposed conference of three Powers with Abyssinia and present status of arms traffic control.

KELLOGG

500.A14/492½ : Telegram

The Chargé in France (Armour) to the Secretary of State

PARIS, November 3, 1928—1 p. m.

[Received November 3—10:15 a. m.]

345. Department's telegraphic instructions 341, October 3, 5 p. m. and my despatch 9054, October 19, 1928.¹⁸ Foreign Office informs me

¹⁸ Latter not printed.

that conference mentioned in my despatch No. 7615, June 21, 1927, has not yet taken place but that in the near future the French, British and Italian representatives at Addis Ababa expect to renew their invitation to the Ras to attend conference and that it seems more likely than heretofore that he will do so.

ARMOUR

884.24/14

The Secretary of State to the Minister in Ethiopia (Southard)

No. 26

WASHINGTON, November 5, 1928.

SIR: The Department has received your despatch No. 63 of September 14, 1928, in which you state that the Ethiopian Government has inquired whether the United States War Department as a special favor would purchase for the Ethiopian Government one aeroplane and two tanks suitable for military purposes. It has been noted that the Ethiopian Government also inquired whether it would be possible to obtain the services of two army officers to serve as military instructors in the Ethiopian army.

A copy of your despatch under reference has been transmitted to the United States War Department for its consideration. A reply has now been received¹⁹ stating that the War Department is permitted by law to concern itself with the sale to foreign governments of military equipment only when such equipment is surplus material from its own stores. The War Department states that at the present time it has no surplus aeroplanes or tanks.

With respect to the desire of the Ethiopian Government to obtain the services of two army officers for instruction purposes, the United States War Department states that its officers may be detailed for such purposes only in pursuance of a special Act of Congress. A copy of the letter is transmitted herewith for your information.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, JR.

884.24/13

The Secretary of State to the Minister in Ethiopia (Southard)

No. 27

WASHINGTON, November 14, 1928.

SIR: The Department has received your despatch No. 4 of May 4, 1928, in which you say that Ras Tafari, the King of Ethiopia, has requested you to obtain promptly for him prices in the United States of certain military equipment. You also state that if the laws and regu-

¹⁹ Not printed.

lations of the United States permit the exportation of military equipment it is the intention of the Ethiopian Government to purchase a quantity of these commodities in the American market.

A copy of your despatch under reference was forwarded informally to the Department of Commerce for consideration. A reply has now been received, of which a copy is transmitted herewith, together with its enclosures.²⁰

It may be added for your information that while the Department does not encourage the exportation of arms and ammunition to any country, there are no legal restrictions on the exportation of those commodities to Ethiopia.

I am [etc.]

For the Secretary of State:
J. REUBEN CLARK, Jr.

884.20/3

The Secretary of State to the Minister in Ethiopia (Southard)

No. 10

WASHINGTON, December 6, 1928.

SIR: With reference to the Department's instruction No. 26 of November 5, 1928, concerning the desire of the Ethiopian Government to engage two army officers to serve as military instructors in the Ethiopian Army, there are enclosed for your information a copy of a letter which it is understood Mr. Sydney Forrester Mashbir has addressed to His Majesty King Tafari Makonnen,²¹ regarding this subject and a transcript of his record with the War Department. It is understood that Mr. Mashbir is now a Major in the Reserve of the United States Army and that since September 25, 1928, he has been eligible for promotion to Lieutenant Colonel in the Reserve. In case an arrangement is concluded between the Ethiopian Government and Mr. Mashbir, the Department understands that he proposes to resign his commission in the Reserve Corps of the Army.

Mr. Mashbir has been informed that if he concludes an arrangement with the Ethiopian Government for service in its Army, he does so as a private citizen and the Department, merely for its information, takes note of the fact that such an arrangement exists.

I am [etc.]

For the Secretary of State:
NELSON TRUSLER JOHNSON

²⁰ Not printed; the enclosures consisted of catalogs, price lists, etc., of interested companies.

²¹ Not printed.

FINLAND

TREATIES OF ARBITRATION AND CONCILIATION BETWEEN THE UNITED STATES AND FINLAND, SIGNED JUNE 7, 1928

711.60 d 12A/1

The Secretary of State to the Finnish Minister (Åström)

WASHINGTON, April 9, 1928.

SIR: I have the honor to transmit herewith for the consideration of your Government and as a basis for negotiation a proposed draft of a treaty of arbitration between Finland and the United States.¹

The provisions of this draft operate to extend the policy of arbitration enunciated in the arbitration conventions concluded in 1908 between the United States and several other countries,² and are identical in effect with the provisions of the arbitration treaty signed between the United States and France on February 6, 1928, a copy of which is also enclosed.³

You will observe that Article I of the treaty with France does not appear in the draft submitted herewith. Its language was borrowed from the language of the Treaty for the Advancement of Peace signed in 1914,⁴ and some question having arisen as to whether the new treaty affected the status of the Treaty of 1914, the matter has been resolved in the case of France by an exchange of notes⁵ recording the understanding of both Governments that the earlier conciliation treaty was in no way affected by the later arbitration treaty. In order to obviate further questions of this nature, however, it seemed desirable to avoid the incorporation in other arbitration treaties of any portion of the language of the earlier conciliation treaties, where such treaties exist, and in such cases I have therefore proposed the elimination of Article I of the French treaty and amended Article II (which is Article I of the draft transmitted herewith) by substituting for the words "the above-mentioned Permanent International Commission" the words "the Permanent International Commission constituted pursuant to" the applicable treaty

¹ Draft treaty not printed; it was the same as the signed treaty, p. 806.

² For index references to treaties of 1908, see *Foreign Relations*, 1908, p. 832; *ibid.*, 1909, p. 676.

³ *Post*, p. 810.

⁴ *Foreign Relations*, 1915, p. 380.

⁵ *Post*, p. 819.

of conciliation. As no such conciliation treaty is in force between Finland and the United States, this latter formula cannot of course be used. I have therefore made no mention in Article I of any Permanent International Commission referring instead to "an appropriate commission of conciliation". The negotiation and conclusion of an arbitration treaty can thus proceed independently of negotiations with respect to a conciliation treaty.

The Government of the United States would be pleased, however, to conclude with the Government of Finland not only the arbitration treaty referred to above, but also a conciliation treaty modeled after the so-called Bryan treaties which were signed by the United States with many other countries in 1913 and 1914,⁶ and I take this opportunity to transmit for the consideration of your Government and as a basis of negotiation a proposed draft of a treaty of conciliation identical in effect with other treaties to which the United States is a party.⁷

I feel that by adopting treaties such as those suggested therein we shall not only promote the friendly relations between the Peoples of our two countries, but also advance materially the cause of arbitration and the pacific settlement of international disputes. If your Government concurs in my views and is prepared to negotiate treaties along the lines of the two drafts transmitted herewith, I shall be glad to enter at once upon such discussions as may be necessary.

Accept [etc.]

FRANK B. KELLOGG

711.60 d 12A/6

The Finnish Minister (Åström) to the Secretary of State

WASHINGTON, June 2, 1928.

EXCELLENCY: I have the honor to refer to Your Excellency's note of April 9, 1928, concerning a proposal to conclude Treaties of Arbitration and Conciliation between Finland and the United States and the drafts indicating along what lines the Government of the United States is prepared to negotiate treaties of the above mentioned nature. I had the pleasure during our conversation on April twenty-fourth to bring to Your Excellency's knowledge with what great gratification the Government of Finland had received the said proposals. I am now in receipt of a cable advising me that my Government will be pleased to sign the Treaties in the form they were proposed, with only the suggestion that English alone be the original language of the documents.

⁶ For index references to the Bryan treaties, see *Foreign Relations*, 1914, p. 1130; *ibid.*, 1915, p. 1328; *ibid.*, 1916, p. 1007.

⁷ Draft treaty not printed; it was the same as the signed treaty, p. 808.

I also was advised that the President of Finland has authorized me to sign the Treaties on behalf of the Republic of Finland.

Accept [etc.]

L. ÅSTRÖM

Treaty Series No. 768

Arbitration Treaty Between the United States of America and Finland, Signed at Washington, June 7, 1928^a

The President of the United States of America and the President of the Republic of Finland

Determined to prevent so far as in their power lies any interruption in the peaceful relations that have always existed between the two nations;

Desirous of reaffirming their adherence to the policy of submitting to impartial decision all justiciable controversies that may arise between them; and

Eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the Powers of the world;

Have decided to conclude a treaty of arbitration and for that purpose they have appointed as their respective Plenipotentiaries,

The President of the United States of America, Mr. Frank B. Kellogg, Secretary of State of the United States;

The President of the Republic of Finland, Mr. L. Aström, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Finland to the United States of America;

Who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

ARTICLE I

All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to an appropriate commission of conciliation, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established

^a Ratification advised by the Senate, Dec. 18 (legislative day of Dec. 17), 1928; ratified by the President, Jan. 4, 1929; ratified by Finland, Nov. 9, 1928; ratifications exchanged at Washington, Jan. 14, 1929; proclaimed by the President, Jan. 14, 1929.

at The Hague by the Convention of October 18, 1907,⁹ or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

The special agreement in each case shall be made on the part of the United States of America by the President of the United States of America by and with the advice and consent of the Senate thereof, and on the part of Finland in accordance with its constitutional laws.

ARTICLE II

The provisions of this treaty shall not be invoked in respect of any dispute the subject matter of which

(a) is within the domestic jurisdiction of either of the High Contracting Parties,

(b) involves the interests of third Parties,

(c) depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine,

(d) depends upon or involves the observance of the obligations of Finland in accordance with the Covenant of the League of Nations.¹⁰

ARTICLE III

The present treaty 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 Finland in accordance with its constitutional laws.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate in the English language, and hereunto affix their seals.

Done at Washington the seventh day of June in the year of our Lord one thousand nine hundred and twenty-eight.

[SEAL]

FRANK B. KELLOGG

[SEAL]

L. ÅSTRÖM

⁹ *Foreign Relations*, 1907, pt. 2, p. 1181.

¹⁰ Malloy, *Treaties*, 1910-1923, vol. III, p. 3336.

Treaty Series No. 769

*Conciliation Treaty Between the United States of America and Finland, Signed at Washington, June 7, 1928*¹¹

The President of the United States of America and the President of the Republic of Finland, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their Plenipotentiaries:

The President of the United States of America,

Mr. Frank B. Kellogg, Secretary of State of the United States;

The President of the Republic of Finland,

Mr. L. Aström, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Finland to the United States of America;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

Any disputes arising between the Government of the United States of America and the Government of Finland, of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the High Contracting Parties do not have recourse to adjudication by a competent tribunal, be submitted for investigation and report to a permanent International Commission constituted in the manner prescribed in the next succeeding Article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

ARTICLE II

The International Commission shall be composed of five members, to be appointed as follows: One member shall be chosen from each country, by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments, it being understood that he shall not be a citizen of either country. The expenses of the Commission shall be paid by the two Governments in equal proportions.

The International Commission shall be appointed within six months after the exchange of ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

¹¹ Ratification advised by the Senate, Dec. 20, 1928; ratified by the President, Jan. 4, 1929; ratified by Finland, Nov. 9, 1928; ratifications exchanged at Washington, Jan. 14, 1929; proclaimed by the President, Jan. 14, 1929.

ARTICLE III

In case the High Contracting Parties shall have failed to adjust a dispute by diplomatic methods, and they do not have recourse to adjudication by a competent tribunal, they shall at once refer it to the International Commission for investigation and report. The International Commission may, however, spontaneously by unanimous agreement offer its services to that effect, and in such case it shall notify both Governments and request their cooperation in the investigation.

The High Contracting Parties agree to furnish the Permanent International Commission with all the means and facilities required for its investigation and report.

The report of the Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the High Contracting Parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each Government, and the third retained by the Commission for its files.

The High Contracting Parties reserve the right to act independently on the subject matter of the dispute after the report of the Commission shall have been submitted.

ARTICLE IV

The present treaty 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 Finland in accordance with its constitutional laws.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate in the English language, and hereunto affix their seals.

Done at Washington the seventh day of June in the year of our Lord one thousand nine hundred and twenty-eight.

[SEAL]	FRANK B. KELLOGG
[SEAL]	L. ÅSTRÖM

FRANCE

TREATY OF ARBITRATION BETWEEN THE UNITED STATES AND FRANCE, SIGNED FEBRUARY 6, 1928

711.5112 U.S./4

The Secretary of State to the French Ambassador (Claudel)

WASHINGTON, December 28, 1927.

EXCELLENCY: I have the honor to transmit herewith for the consideration of your Government and as a basis for negotiation, a draft of a proposed treaty of arbitration between the United States of America and the French Republic. The provisions of this draft operate to extend the policy of arbitration enunciated in the Convention signed at Washington February 10, 1908¹ (which expires by limitation on February 27, 1928), and explicitly record the desire of the two Governments to condemn war as an instrument of national policy in their mutual relations, thus formally recognizing, with the modifications which we have discussed orally, two of the fundamental principles underlying the proposal informally submitted to me last June by His Excellency the Minister of Foreign Affairs.²

I feel that by adopting a treaty such as that suggested herein we shall not only promote the friendly relations between the Peoples of our two countries, but also advance materially the cause of arbitration and the pacific settlement of international disputes. If your Government concurs in my views and is prepared to negotiate a treaty along the lines of that transmitted herewith, I shall be glad to enter at once upon such discussions as may be necessary.

Accept [etc.]

FRANK B. KELLOGG

[Enclosure]

Draft Treaty of Arbitration

The United States of America and the French Republic determined to prevent so far as in their power lies any interruption in the peaceful relations that have happily existed between the two nations for more than a century, desirous of re-affirming their adherence to the policy of submitting to impartial decision all justiciable controversies that

¹ *Foreign Relations*, 1908, p. 331.

² See *ibid.*, 1927, vol. II, pp. 611 ff.

may arise between them, and eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the Powers of the world, have decided to conclude a new treaty of arbitration enlarging the scope and obligations of the arbitration convention signed at Washington on February 10, 1908, which expires by limitation on February 27, 1928, and for that purpose they have appointed as their respective Plenipotentiaries

The President of the United States of America

The President of the French Republic

who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

ARTICLE I

Any disputes arising between the Government of the United States of America and the Government of the French Republic of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the High Contracting Parties do not have recourse to adjudication by a competent tribunal, be submitted for investigation and report, as prescribed in the treaty signed at Washington, September 15, 1914,³ to the Permanent International Commission constituted pursuant thereto.

ARTICLE II

All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to the above-mentioned Permanent International Commission, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907,⁴ or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the

³ *Ibid.*, 1915, p. 380.

⁴ *Ibid.*, 1907, pt. 2, p. 1181.

organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

The special agreement in each case shall be made on the part of the United States of America by the President of the United States of America by and with the advice and consent of the Senate thereof, and on the part of France in accordance with the constitutional laws of France.

ARTICLE III

The provisions of this treaty shall not be invoked in respect of any dispute the subject matter of which

(a) is within the domestic jurisdiction of either of the High Contracting Parties,

(b) involves the interests of third Parties,

(c) depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine.

ARTICLE IV

The present treaty 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 French Republic in accordance with its constitutional laws. The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith thereof the respective Plenipotentiaries have signed this treaty in duplicate and hereunto affix their seals.

Done at Washington the day of in the year of our Lord one thousand nine hundred and twenty

711.5112 U.S./7

The French Ambassador (Claudé) to the Secretary of State

[Translation]

WASHINGTON, January 7, 1928.

MR. SECRETARY OF STATE: By note of the 28th of December last your Excellency was good enough to transmit the text of a draft of a treaty of arbitration between France and the United States to replace the convention which expires at the end of next month.

M. Briand, to whom I have not failed to telegraph the text, has suggested certain modifications of which I told you verbally yesterday.

He sent me a draft containing these modifications. I have the honor to transmit these attached hereto to your Excellency.

Accept [etc.]

CLAUDEL

[Enclosure]

French Draft Treaty of Arbitration

The President of the French Republic and the President of the United States of America,

Determined to prevent, so far as in their power lies, any interruption in the peaceful relations that have happily existed between the two nations for more than a century,

Desirous of reaffirming their adherence to the policy of submitting to impartial decision all judiciable controversies that may arise between them;

Eager by their example, not only to demonstrate that in their reciprocal relations they condemn war, but also to hasten the time when the conclusion of international arrangements for the pacific settlement of disputes between states shall have eliminated forever the possibilities of war among the nations of the world;

Considering the treaty signed in Washington on September 15th 1914, to facilitate the settlement of disputes between France and the United States of America;

Considering that the arbitration convention signed at Washington on February 10th, 1908 expires on February 27th, 1928, and that it is necessary to replace it by provisions enlarging the scope of the said convention, which shall, according to international law of to-day, develop its obligatory principles,

Have decided to conclude a treaty to these ends and have appointed as their respective plenipotentiaries:

The President of the French Republic

The President of the United States of America

Who, having communicated to one another their full powers, found in due and proper form, have agreed upon the following articles:

ARTICLE 1. Any disputes which might arise between the Government of the French Republic and the Government of the United States of America, of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the High Contracting parties have not had recourse to adjudication by a competent tribunal, be submitted for investigation and report, as prescribed in the treaty signed at Washington September 15th, 1914, to the Permanent International Commission constituted pursuant thereto.

ARTICLE 2. All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other, under treaty or otherwise, which have not been adjusted as a result of reference to the Permanent

International Commission mentioned in Article 1st, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law and equity, shall be submitted to the Permanent Court of Arbitration established at the Hague by the Convention of October 18th, 1907, or to some other competent tribunal as shall be decided in each case by special agreement; such a special agreement shall provide for the organization of the said tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

The special agreement in each case shall be made on the part of the Government of the United States of America, by the President of the United States of America, by and with the advice and consent of the Senate thereof, and on the part of France, in accordance with the constitutional laws of France.

In case an understanding could not be reached on the special above mentioned agreement, the procedure to be applied will be that provided for in articles 53 and 54 of the Convention of the Hague of October 18th, 1907.

ARTICLE 3. The provisions of the present treaty shall not be invoked in respect of any dispute, the subject matter of which is:

a) within the domestic jurisdiction of either of the High Contracting Parties,

b) involves the interests of third parties,

c) depends upon or involves the maintenance of the traditional attitude of the United States of America concerning American conditions commonly described as the Monroe Doctrine,

d) depends upon or involves the observation of the obligations of France in accordance with the Covenant of the League of Nations.

ARTICLE 4. The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof and by the President of the French Republic in accordance with the constitutional law of the Republic.

The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange of ratifications. It shall thereafter remain in force continuously. However, it may be terminated by one or the other of the Contracting Parties and in this case its effects will cease at the expiration of a delay of one year beginning on the date of the denunciation.

In faith thereof the respective Plenipotentiaries have signed this treaty in duplicate, both in French and in English, both texts prevailing, and hereunto affixed their seals.

711.5112 U.S./16

The Secretary of State to the French Ambassador (Clandel)

WASHINGTON, February 1, 1928.

EXCELLENCY: I have the honor to refer to your note of January 7, 1928, transmitting an amended text of the proposed arbitration treaty between the Governments of France and the United States incorporating the changes which your Government desires to have made in the draft which I submitted with my note of December 28, 1927. I will discuss the proposed changes in the order in which they occur in the amended draft.

The Government of the United States is entirely willing to substitute in the first clause of the Preamble the phrases "President of the French Republic" and "President of the United States of America" for the phrases "French Republic" and "United States of America", respectively.

The Government of the United States has no objection to the insertion of a clause in the Preamble referring to the treaty of September 15, 1914, if the Government of France attaches real importance thereto. It suggests, however, that the specific reference to the treaty of September 15, 1914, which is found in Article I, sufficiently recognizes the existence and validity of that treaty.

The Government of the United States is not entirely clear as to the force and effect of the proposed change in that clause of the Preamble which refers to the arbitration treaty of February 10, 1908. Since in its opinion the draft treaty now under discussion definitely enlarges the scope and obligations of the treaty of 1908, it believes it would be desirable specifically to record that fact in the Preamble. In these circumstances it would prefer to retain that clause in the form in which it was submitted to your Government.

The amended text forwarded with your note of January 7, 1928, omits from Article II the phrase "which it has not been possible to adjust by diplomacy" which occurs immediately after the first comma in the draft submitted with my note of December 28, 1927. I have no doubt that this omission was unintentional, since the inclusion of such a clause appears necessary to complete the scope of the article.

The new paragraph which your Government proposed to add to Article II presents, as you have been orally informed, a much more serious question. In consenting to the ratification of The Hague convention of 1907 for the pacific settlement of international disputes, the Senate of the United States adopted the following resolution:⁵

⁵ The following omission indicated in the original despatch. For complete text of resolution, see Malloy, *Treaties*, 1776-1909, vol. II, p. 2247.

"Resolved further, as a part of this act of ratification, That the United States approves this convention with the understanding that recourse to the permanent court for the settlement of differences can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute; and the United States now exercises the option contained in article fifty-three of said convention, to exclude the formulation of the 'compromis' by the permanent court, and hereby excludes from the competence of the permanent court the power to frame the 'compromis' required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the 'compromis' required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise."

In these circumstances I am very glad to have received your oral assurances that your Government has agreed not to press this amendment.

In conclusion, it gives me pleasure to inform you that the Government of the United States is entirely willing that there be added to Article III the new paragraph (*d*) which your Government has suggested for the purpose of excluding from the scope of the treaty disputes the subject matter of which "depends upon or involves the observance of the obligations of France under the covenant of the League of Nations".

I transmit herewith for convenient reference a revised text of the draft treaty embodying the changes suggested by your Government and agreed to by the Government of the United States as set forth above.⁶

Accept [etc.]

FRANK B. KELLOGG

Treaty Series No. 785

Treaty Between the United States of America and France, Signed at Washington, February 6, 1928⁷

The President of the United States of America and the President of the French Republic

Determined to prevent so far as in their power lies any interruption in the peaceful relations that have happily existed between the two nations for more than a century;

Desirous of reaffirming their adherence to the policy of submitting to impartial decision all justiciable controversies that may arise between them;

⁶ Not printed; see text of signed treaty, *infra*.

⁷ In English and French; French text not printed. Ratification advised by the Senate, Mar. 6, 1928; ratified by the President, Mar. 15, 1928; ratified by France, Apr. 6, 1929; ratifications exchanged at Washington, Apr. 22, 1929; proclaimed by the President, Apr. 22, 1929.

Eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the Powers of the world;

Having in mind the treaty signed at Washington on September 15, 1914, to facilitate the settlement of disputes between the United States of America and France;

Have decided to conclude a new treaty of arbitration enlarging the scope of the arbitration convention signed at Washington on February 10, 1908, which expires by limitation on February 27, 1928, and promoting the cause of arbitration and for that purpose they have appointed as their respective Plenipotentiaries:

The President of the United States of America:

Mr. Robert E. Olds, Acting Secretary of State, and

The President of the French Republic:

His Excellency Mr. Paul Claudel, Ambassador Extraordinary and Plenipotentiary of the French Republic to the United States, who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

ARTICLE I

Any disputes arising between the Government of the United States of America and the Government of the French Republic of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the High Contracting Parties do not have recourse to adjudication by a competent tribunal, be submitted for investigation and report, as prescribed in the treaty signed at Washington, September 15, 1914, to the Permanent International Commission constituted pursuant thereto.

ARTICLE II

All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to the above-mentioned Permanent International Commission, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907, or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall pro-

vide for the organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

The special agreement in each case shall be made on the part of the United States of America by the President of the United States of America by and with the advice and consent of the Senate thereof, and on the part of France in accordance with the constitutional laws of France.

ARTICLE III

The provisions of this treaty shall not be invoked in respect of any dispute the subject matter of which

(a) is within the domestic jurisdiction of either of the High Contracting Parties,

(b) involves the interests of third Parties,

(c) depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine,

(d) depends upon or involves the observance of the obligations of France in accordance with the covenant of the League of Nations.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America by and with the advice and consent of the Senate thereof and by the President of the French Republic in accordance with the constitutional laws of the French Republic.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith thereof the respective Plenipotentiaries have signed this treaty in duplicate in the English and French languages, both texts having equal force, and hereunto affix their seals.

Done at Washington the sixth day of February in the year of our Lord one thousand nine hundred and twenty-eight.

ROBERT E. OLDS [SEAL]

CLAUDEL [SEAL]

711.5112 U.S./31

The Secretary of State to the French Ambassador (Claudel)

WASHINGTON, March 1, 1928.

EXCELLENCY: As you are aware it was not the intention or desire of the Government of the United States that the new Arbitration Treaty, which was proposed to your Government last December and signed on February 6, 1928, should be held to affect in any way the provisions of the Treaty for the Advancement of Peace signed by France and the United States on September 15, 1914, and I have understood that the Government of the French Republic was in accord with the Government of the United States on this point.

In order to prevent the possibility of any future misunderstanding, however, I desire formally to state that in the opinion of the Government of the United States the provisions of the Arbitration Treaty signed February 6, 1928, do not in the slightest degree affect or modify the provisions of the Treaty signed September 15, 1914. I should be glad to receive a note from you confirming my understanding that your Government's interpretation of the Treaty signed February 6, 1928, is identical with that of the Government of the United States as expressed above.

Accept [etc.]

FRANK B. KELLOGG

711.5112 U.S./33

The French Ambassador (Claudel) to the Secretary of State

[Translation]

WASHINGTON, March 5, 1928.

MR. SECRETARY OF STATE: By a note dated the first of this month Your Excellency has been good enough to inform me that in the opinion of the Federal Government "the provisions of the treaty of arbitration signed February 6, 1928, do not in the slightest degree affect or modify the provisions of the treaty signed September 15, 1914". You added that you would be glad to receive from me a note confirming that my Government shares this point of view.

My Government, to which I did not fail to transmit the text of Your Excellency's note, has requested me to assure you that its interpretation of the treaty signed February 6, 1928, is identical with that of the Government of the United States as expressed above.

My Government is of the opinion that our recent arbitration treaty not only leaves the 1914 treaty unchanged but even envisages its application.

Please accept [etc.]

CLAUDEL

PROBLEMS OF TARIFF ADMINISTRATION REGARDING FRENCH EXPORTS TO THE UNITED STATES AND AMERICAN EXPORTS TO FRANCE

102.1702 France/269

The Ambassador in France (Herrick) to the Secretary of State

No. 8272

PARIS, January 31, 1928.

[Received February 10.]

SIR: With reference to the recent commercial negotiations between France and the United States,⁸ and in particular to the objections raised by the French Government to the activities in France of certain agents of the Treasury Department, I have the honor to transmit herewith a copy and translation of a note dated January 27, 1928, from the Foreign Office. In this note, the French Government offers suggestions concerning a procedure, which, if adopted, the French Government thinks would enable our Government to exercise a proper control over the declarations of value made by French exporters, and yet not arouse the susceptibilities of French producers and merchants.

I have [etc.]

MYRON T. HERRICK

[Enclosure—Translation]

The French Ministry for Foreign Affairs to the American Embassy

PARIS, January 27, 1928.

The Ministry for Foreign Affairs has, at various times, had occasion to speak to the Embassy of the United States concerning the difficulties which have arisen in France on account of the activities of the agents of the Treasury Department, owing to their claiming the right to examine the books of French firms having business relations with the United States.

On March 6, 1926, in particular, the Ministry for Foreign Affairs handed unofficially to Mr. Johnson, at that time Counselor of the Embassy of the United States at Paris, an *aide-mémoire* giving the point of view of the French Government in this regard.⁹

The misunderstanding was happily straightened out by the agreement contained in the notes exchanged last autumn between the two Governments, concerning the customs régime applicable to American products upon their importation into France.¹⁰ In the *aide-mémoire* handed on October 24, 1927, to the Ministry for Foreign Affairs,¹¹ the Embassy of the United States was good enough, indeed, to state that

⁸ See *Foreign Relations*, 1927, vol. II, pp. 631 ff.

⁹ Not found in Department files.

¹⁰ See *Foreign Relations*, 1927, vol. II, pp. 696-703.

¹¹ See telegram No. 330, Oct. 22, 1927, 11 a. m., to the Chargé in France, *ibid.*, p. 696.

its Government "assures the French Government that if the French Government objects, no investigation of private books and records of French producers, manufacturers or merchants will be made by representatives of the American Government in French territory."

The French Government, which has already taken note of this undertaking, admits readily on its side that, on account of the collection of ad valorem customs duties in the United States, the American Government desires to exercise a proper control over the declarations of value made by French exporters.

Consequently, it seems desirable to the French Government to seek, in agreement with the Government of the United States, a procedure which would permit the delegates of the American Treasury Department to fulfill their mission in a manner compatible with their obligations, without exceeding the provisions of French law and without arousing the legitimate susceptibilities of French producers and merchants.

This procedure might, in its opinion, be established on the following bases:

1. The delegates of the American Treasury Department would be attached to the American consular authorities, to whom French exporters must apply for the visaing of their invoices, and would control, by making use of their knowledge of the market and their personal information, the sincerity and exactness of these invoices and the documents which usually accompany them.

2. When they are in doubt concerning the sincerity or the exactness of these documents, they would proceed to their verification.

3. In such a case, the exporter would have the choice between the two following methods:

- a). either he would produce the bills of sale, contracts and correspondence relating to the transactions in question. Only such documents as the French customs authorities are themselves entitled to demand for declaration of value could be produced;

- b). or the exporter's declarations would be submitted to an expert accountant or to a technical expert, or to two experts,—one accountant and the other a technical expert.

4. The expert or experts, who would be of French nationality, would be chosen by the American authorities from a list drawn up by the French Government. The list of expert accountants would be that at present prepared by the French Government, in execution of the decree of March 22, 1927, creating the diploma of expert accountant. The list of technical experts would be that of the customs experts, among whom the French Administration already chooses its own experts in cases of similar disputes.

5. It would be understood that verifications of the declarations made by French exporters would only be made in case the American authorities thought it necessary to question the sincerity of a declaration of value. There can be no question, indeed, of subjecting all French exporters doing business with the United States to a permanent control over the elements of their declarations.

6. The verification thus effected would guarantee French exporters against any new valuation by the American customs, except in case of a suspicion of fraud or substitution of merchandise.

The French Government would be happy to know the opinion of the Government of the United States concerning the foregoing suggestions. It also desires to obtain the assurance that, in a spirit of equitable reciprocity, the French agents who shall eventually be authorized to this effect by it, would be authorized to control the declarations of American exporters under the same conditions as those which it has the honor to propose to-day to the Government of the United States. It believes that, if its suggestions were accepted, they would be of a nature to settle definitely, to the common satisfaction of both countries, the very delicate question of the control of exporters' declarations of value.

611.5131/736

The French Ambassador (Claudel) to the Secretary of State

[Translation]

WASHINGTON, May 14, 1928.

MR. SECRETARY OF STATE: The notes, concerning tariff regimes, exchanged between the American Government and the French Government in September and October, 1927,¹² have shown that on the ground of principles and systems the difference of points of view was too great to permit of arriving at an agreement. By common accord, it was decided to put the question on the ground of practical concessions made possible by the laws of our respective countries and capable of giving concrete expression to the goodwill of our Governments.¹³

Accordingly, as a result of the Franco-German agreement,¹⁴ the treatment of American merchandise upon its entry into France, has, from the sixth of September,¹⁵ been changed in such a way as to give complete satisfaction to American commerce.

The several items of the French tariff which later gave rise to complaints on the part of your exporters were the object of corrective measures.

Finally, the agreements concluded with Switzerland and Belgium, in force since April 15,¹⁶ led to new concessions because the French Government attached importance to giving the United States the

¹² See *Foreign Relations*, 1927, vol. II, pp. 670-698.

¹³ See *ibid.*, pp. 698-703.

¹⁴ League of Nations Treaty Series No. 1761, vol. LXXVI, p. 5; for English translation, see p. 345.

¹⁵ For text of the French decree, dated Aug. 30, 1927, and effective Sept. 6, 1927, see *Journal Officiel: Lois et décrets*, Aug. 31, 1927, p. 9163.

¹⁶ League of Nations Treaty Series No. 1698, vol. LXXII, p. 275; and No. 1599, vol. LXIX, p. 49, respectively.

benefit of the new minimum tariff even when such tariff is lower than the duties borne by American merchandise before September 6.

The equivalent of these important advantages should be found, according to the spirit of our agreement of last October, in a friendly examination by the American Government and the Tariff Commission of requests for the lowering of duties affecting specifically French merchandise when differences in the cost of production in the two countries justify it, and in a modification of certain administrative measures which are considered especially prejudicial to the normal development of exchanges.

I have the honor to transmit to you the two attached lists of the claims of French commerce.¹⁷ The first indicates the articles of merchandise affected by duties which appear to our exporters to be excessive, for which articles the French Government is ready to furnish the Tariff Commission with estimates on the cost of production in France. In order to arrive at fair conclusions on this point, I believe that it will be necessary for the Tariff Commission to reach an agreement with this Embassy as to the methods to be employed in the two countries in making up these estimates. It seems to me, indeed, desirable that the special conditions of production in France, such as the output of labor, the non-amortized capital, the fiscal burdens, should be equitably taken into consideration.

The second list concerns the modifications that we should like to see made in the general provisions of the American tariff. We will furnish the American Government with all the details which may be desired on each of the questions raised in order to justify the reasonableness of the latter.

I have no doubt but that concessions which may result from our requests for the lowering of excessive duties and for the modification of administrative measures harmful to French commerce would greatly facilitate the later negotiation of a long term treaty of amity and commerce between the United States and France.

Please accept [etc.]

CLAUDEL

611.5131/740

The Secretary of State to the French Ambassador (Clausel)

WASHINGTON, July 20, 1928.

EXCELLENCY: Adverting to Your Excellency's notes of May 14 and June 16, 1928, transmitting lists of the complaints presented by the Government of France on behalf of French commerce,¹⁸ I have the honor to advise you that the above notes have been referred to the

¹⁷ Not printed.

¹⁸ Note of June 16, 1928, and lists of complaints not printed.

proper authorities of this Government for appropriate consideration in accordance with the agreement reached by the two Governments last fall. I am now advised by the Secretary of Agriculture that such of the complaints listed in the annexes thereto as come within the jurisdiction of his Department have received careful consideration and he has submitted the following observations thereon:

"The first protest contained in the accompanying communication of May 14, 1928, from the representative of the French Government, deals with pharmaceutical products. It is claimed that the different provisions of law relative to the composition of medicinal products, their labeling, packing and advertisement in the form of circulars, are applied in a way to create a real discrimination to the prejudice of foreign products. As to this, the Department would state that in so far as this Department is concerned the Food and Drugs Act, which applies to the importation of these products, has been administered impartially as regards foreign preparations and no discrimination has been made against French products. It is undoubtedly true that the relative percentage of preparations of French or foreign manufacture which have received attention is high; in fact it is much higher than the percentage of domestic preparations which have been the subject of action under the law; this is due, however, not to an application of different standards but because of the extremely large number of American preparations on the market and the fact that the conditions under which importations are made render the application of remedial measures under the law more readily available in respect to foreign products. Nearly all imported preparations come to the attention of the Department's inspection force at the port of entry, while in the larger field of domestic commerce it is quite possible that many misbranded preparations may escape detection and prosecution for a time. This is due to no intentional laxity on the part of the law-enforcing authorities but to the limitations incident to operating in so broad a field which render it impracticable to reach immediately each and every violation of the law. Conditions in this respect, however, are constantly improving. In criticizing these French preparations for the purpose of law enforcement, the Department has used essentially the same basis or standards as it uses in applying law to American preparations, either as a basis for legal action or as a basis for inducing voluntary change in the labeling.

"In mentioning circulars no doubt the French authorities had particularly in mind action which we have taken against circulars or other literature brought in under separate cover. In many instances these seem to represent but an attempt at continuing labels or literature previously objected to. No doubt they have in mind the injunction proceedings against the Collector of Customs and the Secretary of Agriculture instituted by E. Fougere and Company in the case of a product known as 'Dioseine Prunier', where very objectionable circulars were brought in under separate cover which perpetuated objectionable labeling which we had previously called to their attention and to the attention of the manufacturer. Action was taken against the literature and against the product itself, although brought

in separately. The literature, although supposedly addressed to physicians, was distinctly objectionable. This case has never been settled; in fact it is still pending, and it is understood that when the case is reached on the calendar another hearing will be afforded before a decision is reached. In the meantime the Department has not taken action against literature brought in under separate cover, except possibly in one or two extreme instances. It has, however, warned importers regarding the objectionable nature of this literature imported under separate invoice.

"Specific protest is made that certain hemopoietic horse serums have been prohibited although they are administered through the mouth and although they could be considered as defibrinated plasma and have been incorrectly classed with the antitoxic and anti-infectious serums which are the subject matter of the American law. As to this it may be stated that the preparations mentioned fall under the authority of the United States Health Service under the Act of July 1, 1902.¹⁹ No importer has made application to have such serums admitted for use in the treatment of domestic animals, and serum from horses has never been denied entry by this Department. However, a certain product known as 'Hemostyl Serum Hemopoietique' has in several instances been the subject of action by this Department because the labeling thereon was so broad and extreme in its therapeutic claims as to cover many serious diseases or conditions in which it would be ineffective and under these conditions the product was refused entry as grossly misbranded under the Sherley Amendment to the Food and Drugs Act.²⁰ The Department in one instance called the attention of the United States Public Health Service to an importation of this product and that Service refused entry to it under the above mentioned Act of July 1, 1902. The therapeutic efficacy of this product was informally discussed between the representatives of this Department and the French commercial attaché. The latter was then informed that the statements regarding the therapeutic efficacy of the product were far beyond what was justified in fact.

"The protest of the French Government also covers the regulations concerning the importation of vegetable products and in particular of flower bulbs under the Plant Quarantine Act²¹ administered by this Department. It is claimed that by virtue of the Quarantine Act and of the Regulations thereunder the importation of nursery products and other plants and seeds is subject to restrictions ranging all the way from the securing of preliminary permits and the allotment of the importation to the prohibition of direct sale to consumers (narcissus bulbs since the first of January, 1928). The French Government suggests its willingness to work for an agreement between the French and American phytopathological services with a view to establishing sanitary certificates permitting the suppression of all restrictions to the importation of these products into the United States.

"In reply to this suggestion the Department is constrained to withhold its approval from any commitment of this Government to the

¹⁹ 32 Stat. 712.

²⁰ Approved Aug. 23, 1919; 37 Stat. 416.

²¹ Approved Aug. 20, 1912; 37 Stat. 315.

modification of its present policy in the premises along the lines proposed. The inadequacy of the inspection and certification method of safeguarding the entry of foreign plants was plainly indicated in the seven-year trial subsequent to the passage of the Plant Quarantine Act. Not only was the foreign inspection of large, miscellaneous shipments totally inadequate, but it developed also that the reinspection at destination in this country could by no means be depended upon to complete the safeguards against entry of pests. It is to be regretted that inspection and certification of large shipments in foreign countries can not be effectively performed; and we are therefore forced to the conclusion that if the United States is to be protected from the stream of foreign pests which has hitherto been coming in, with resulting losses to our agriculture, running into hundreds of millions of dollars annually, the present policy must be continued—a policy which, in fact, originated in European countries and was based on pest conditions which undoubtedly fully justified it. This policy has been adopted by practically all nations having important commercial interests.

“Reference is also made in the above mentioned communication to the tariff duty on medicinal preparations containing even a slight proportion of coal tar. The analytical work under the Tariff Act ²² is not done by this Department but by the Customs Laboratory.

“The French Government also suggests an understanding on the subject of rules for the disinfection of hides. The Department believes that there can be no occasion for any misunderstanding or difficulty in this regard. There is no prohibition against the importation of French hides and skins. They may come forward from France as generally provided for all countries subject to disinfection after arrival in the United States. They may also be imported without restrictions if shown by the certificate of an American consular officer to have been taken from animals in a section of the French Republic in which to the best of his knowledge and belief anthrax is not prevalent and neither foot-and-mouth disease nor rinderpest exists, or if they consist of hard dried hides and skins the reference to foot-and-mouth disease and rinderpest may be eliminated from the certificates. Any hides and skins consigned from a point at which there is suitable equipment for their disinfection by immersion may be imported without other restriction if accompanied by the certificate of a United States consular officer showing that they were disinfected under the supervision of a member of the consular staff by any one of various methods approved by the Chief of the Bureau of Animal Industry of this Department.”

It is hoped that Your Excellency's Government will find in the foregoing statement a satisfactory explanation of the points discussed.

Accept [etc.]

FRANK B. KELLOGG

²² Approved Sept. 21, 1922; 42 Stat. 858.

611.5131/748a : Telegram

The Acting Secretary of State to the Chargé in France (Armour)

WASHINGTON, October 16, 1928—9 p. m.

361. Your despatch 8934, September 10.²³

(1) You may make the following reply to French proposal transmitted with despatch 8272, January 31:

"The Government of the United States has given most careful consideration to the suggestions made by the French Government in its memorandum of January 27, 1928, concerning verification of valuations for customs purposes of French exports to the United States.

The suggestion is noted that the agents of the United States Treasury Department might be attached to the American consular authorities in France with a view to verification of invoices and other documents pertaining to exportations. In this connection it should be pointed out that the activities of such agents relate almost entirely to specific investigations based upon inquiries from appraising officers in the United States as to market values, and that both the invoices and the reports of such agents, while carrying much weight, are in any case only advisory in the determination of dutiable value, which by law cannot be established until entry of the goods into the United States. Accordingly verification of documents submitted to consular authorities would not be sufficient.

The French Government further suggests (a) that exporters might have the opportunity of submitting to the American customs agents bills of sale, contracts and correspondence relating to the transactions in question, or (b) that any verification of declarations made by French exporters deemed necessary by the American authorities should be effected by experts of French nationality, whose verification would be final except in case of a suspicion of fraud or substitution of merchandise.

The Government of the United States, of course, has no objection to French exporters submitting to American Treasury agents bills of sale, contracts and correspondence relating to export shipments. It should be understood, however, that determination of the weight to be given to such documents is, under American law, a matter for the appraiser, who has the duty and sole responsibility of fixing finally the value of imported merchandise, subject only to appeal to re-appraisement, by the Government or the importer, before the United States Customs Court. Thus, Section 500 of the Tariff Act of 1922.²⁴ charges the appraiser with the following duties: (Here quote sub-paragraphs (1) and (3) of paragraph (a) and sub-paragraph (d) through the words "appraisement or report"). It will accordingly be appreciated that there is no authority warranting the transfer of the power of appraisement from the appraiser to other parties.

Moreover, the proposal regarding verification by experts of French nationality contemplates imposing fundamental responsibility on such

²³ Not printed.

²⁴ 42 Stat. 965.

experts. In this connection it may be pointed out that the law provides (Revised Statutes, Section 2616) that persons appointed in connection with administration of the customs laws of the United States must take an oath to prevent and detect frauds against these laws, embodying the following declaration: (Here quote oath set forth Section 1757 Revised Statutes). It is apparent that such an oath could not appropriately be taken by a national of a foreign country.

It is greatly regretted that for the aforementioned reasons the procedure suggested by the French Government cannot be adopted. The Government of the United States, however, would be disposed to give attentive consideration to any alternative procedure, meeting the requirements of existing American and French law, that the French Government may propose.

With reference to the inquiry of the French Government concerning the privileges that might be accorded in the United States, as a matter of reciprocity, to French agents that might be appointed with a view to verification of declarations of American exporters, the Government of the United States is happy to assure the French Government that it would interpose no objection to activities on the part of such agents on lines similar to those on which American Treasury agents may be authorized to operate in France. It should be noted in this connection that Canada, South Africa, and Australia at the present time maintain customs agents in the United States whose duties are substantially similar to those of American customs agents in foreign countries and that no objection to their activities in this country has been raised by this Government."

(2) Department notes suggestions in final paragraph memorandum of September 6²⁷ accompanying despatch 8934 that France might welcome compromise arrangement. Since the present arrangement was agreed to at the instance of the French Government, Department hesitates to make any formal proposal looking toward investigation of private French books and records by Treasury Agents. This Government, however, is anxious to avoid placing obstacles in the way of importations from France by reason of application of United States value which may occasionally be necessary under the law in cases where records of French business men may not be examined. If, as has been intimated, the French Government is prepared to state that American Treasury agents, without taking any initiative, might be authorized to examine such private French books and records as interested French business men may voluntarily submit to them, this Government would gladly agree. You will, however, carefully explain that appraisement on United States value will not be avoided entirely by the examination of books and records, the law providing substantially that appraisement shall be on United States value in cases where foreign or export value as defined in tariff law cannot be ascertained to satisfaction of appraising officer. Investigations are

²⁷ Not printed.

helpful in establishing foreign or export value and serve to reduce recourse to application of United States value.

If you make this suggestion to the French Government, you should do so orally, referring to the ante-penultimate sentence of above quoted communication. You should state, however, that in view of the correspondence of last fall, the Government of the United States would desire a written communication by the French Government in the sense indicated.

[Paraphrase.] (3) Tobacco interests, mentioned in enclosure of despatch 8934, are, according to Department information, in touch with French exporters who may be approaching the French Government now in the matter. If this is so, it would appear to be opportune moment for you to present the above communication in writing together with an oral statement along lines indicated. [End paraphrase.]

CLARK

611.5131/748d : Telegram

The Secretary of State to the Chargé in France (Armour)

WASHINGTON, October 30, 1928—7 p. m.

367. Department has today made public summary of communication set forth [in] Department's 361, October 16, 9 p. m. Please inform Foreign Office that it was deemed necessary to do so in view of garbled reports appearing in the press concerning this Government's communication.

Department's statement also contained the following comment:

"The Government of the United States made no request to the French Government that American customs agents be given the right to ask French business men to submit their private books and records.

"It has been stated in press reports from Paris that American customs authorities have been making it a practice to appraise goods on the basis of cost of production of similar goods in the United States. This is entirely incorrect. Apparently these reports have reference to determination of 'United States value' in cases where appraisers are unable to satisfy themselves as to value in the country from which the goods are exported to the United States. 'United States value' is a technical term which, as defined in Section 402 of the Tariff Act of 1922,²⁸ is an approximation of foreign value, since it is calculated by deducting from the wholesale price in the United States the amount of duty payable, cost of transportation, insurance and other necessary expenses from place of shipment to place of delivery, and an allowance for commissions, profits and general expenses. United States value, in view of these deductions, is obviously much lower than the selling price of imported goods in the United States.

²⁸ 42 Stat. 949.

"Since the French Government objected to investigations of private books and records in France by American Treasury agents, American appraisers occasionally are not able to obtain suitable data as to foreign or export value, and necessarily must place some further reliance on United States value. The Department of State is advised, however, that there is no reason to believe that any considerable amount of increased valuations has thereby resulted. Ordinarily foreign or export values can be ascertained to the satisfaction of appraising officers."

In connection with the foregoing Department points out for your information that cigarette paper case, which has attracted more attention than all others, originated prior to understanding limiting activities of Treasury agents in France.

Press reports that the United States has requested France to allow Treasury agents to operate on lines on which they operated prior to understanding reached last fall obviously are distortion of oral statement you were authorized to make pursuant to Department's 361. The latter instructions were sent you, not because this Government has any particular interest in such an arrangement, but rather in view of intimations by French officials that the French Government might welcome a procedure intermediate between that abandoned last fall and the present arrangements. The oral statement merely indicated that the United States would be favorably disposed toward such a proposal if France cared to make it. On these facts, it is the more regrettable that the French Government has permitted garbled reports of your oral conversations to become current to the effect that the United States wishes to reopen this question. Unless you see objection you should orally so inform the Foreign Office.

KELLOGG

611.5131/749 : Telegram

The Chargé in France (Armour) to the Secretary of State

PARIS, October 31, 1928—7 p. m.

[Received 8:40 p. m.]

336. Department's 367, October 30, 7 p. m. I have informed Foreign Office of Department's publication and made oral representations as outlined in last paragraph of instruction. Despatch follows.²⁹

ARMOUR

²⁹ Not printed.

611.5131/751a : Telegram

The Secretary of State to the Chargé in France (Armour)

WASHINGTON, November 8, 1928—3 p. m.

381. Department's 361, October 16, 9 p. m. I do not wish to initiate any controversy on these tariff questions but in as much as garbled reports of negotiations and statements of the French point of view have been appearing in the press, presumably based at least in part on information obtained from the French Government, it is deemed advisable to make the following statement for your information and guidance and for appropriate use in any conversations on the subject with French officials and, if the question is raised, for discreet use in conversations with reliable members of the press.

The view has been expressed that the United States is showing a lack of reciprocity pursuant to the understanding reached last fall, and that France has cause for grievance because in exchange for restoration of substantial *status quo* in tariff rates, the United States has not so far ameliorated administrative regulations such as quarantines affecting imports from France. This involves clear misconception of the understanding. The consideration for restoration of French tariff rates was abstinence for the time being from application of penalty duties under Section 317,³⁰ for the use of which the United States had ample justification. In the *aide mémoire* submitted pursuant to Department's 345 of November 7, 1927,³¹ this Government went so far as to state specifically that it "cannot agree that the removal of the remaining discriminations against American trade be indefinitely deferred, or made conditional upon the result of the investigations to be made by the Governments of the United States and France."

It was of course understood that each country would examine in a friendly spirit complaints submitted by the other with respect to treatment of its commerce. But it is incorrect to say that the examination of French complaints in a friendly spirit was to be the consideration for restoration of lower tariff rates. This is the more clear in view of the fact that, apart from the remaining discriminations, the American complaints with respect to French treatment of American commerce are fully as substantial as corresponding French complaints. The Department expects shortly to communicate to the French Government a statement of its complaints in this regard.

KELLOGG

³⁰ 42 Stat. 944.

³¹ *Foreign Relations*, 1927, vol. II, p. 701.

REPRESENTATIONS TO THE FRENCH GOVERNMENT REGARDING
APPARENT VIOLATIONS OF CONSULAR CONVENTION OF 1853 BY
FRENCH COURTS IN LANDLORD AND TENANT CASES

851.502/25

The Secretary of State to the Ambassador in France (Herrick)

No. 2742

WASHINGTON, April 21, 1928.

SIR: The Department refers to your despatch No. 8379 of February 28, 1928, and previous despatches³² concerning the apparent violations of Article 7 of the Consular Convention of 1853 between the United States and France³³ by the decisions of various French courts in landlord and tenant cases, and now desires you to bring this matter personally to the attention of the appropriate official of the Ministry of Foreign Affairs.

The statement in the last paragraph of Article 7 of the Convention, to the effect that "the Government of France accords the citizens of the United States the same rights within its territory in respect to real and personal property and to inheritance as are enjoyed there by its own citizens" would seem to admit of no exception except that of reciprocity provided for in the first part of the paragraph. The Court of Cassation, on January 26, 1928, in the case of *Conner versus Thouret* held as follows:

" . . . But whereas, on the one hand, this Convention, whose subject is to regulate in a general way the situation of French citizens in the United States and that of American citizens in France, does not apply to very special legislation such as the French legislation on leased property which, not being affected by international law, is made up of a number of derogations to the common law which are necessitated by the results of the war; . . .

"Whereas, on the other hand, there exists no treaty between France and the United States concerning special legislation on leased property; and whereas Article 1101 of the Civil Code of the State of New York, cited in the appeal, according to which in a city of one million inhabitants or over, or in a town situated in a country next to such a city, a delay is granted until June 1, 1927, to the registered owner of a building, who, as an individual, attempts as the result of a grave public event to recover possession of his property in whole or in part in order to live therein with his family, cannot take the place of diplomatic reciprocity: . . ."

This Government is not prepared to agree with the conclusions reached by the Court of Cassation in the above quoted decision. In this relation it should be observed that a State complaining of the

³² None printed.

³³ Malloy, *Treaties*, 1776-1909, vol. I, p. 531.

infraction of a treaty is believed to be justified in declining to admit that its rights under the agreement can be ultimately determined by a foreign local court without the consent of each party to the agreement. While it is doubtless true that French courts are bound to give effect to laws enacted by the French parliament regardless of whether such laws do in effect violate existing treaty engagements of France, it is, of course, open to this Government to hold that the legislation is in violation of existing treaty provisions and to demand that remedial action be taken to protect the violated rights of its nationals.

In this connection, attention is invited to an article entitled "La Législation des loyers d'habitation et les Étrangers" in which Professor J. Perroud, discussing the law of April 1, 1926,³⁴ makes the following interesting statements (*Journal du Droit International*, 1927, page 295) :

"Propriétaire étranger.—Au moment où s'est élaborée la loi du 1^{er} avril 1926, la jurisprudence reconnaissait au propriétaire étranger la faculté d'exercer le droit de reprise. Cette solution a été volontairement écartée par l'article 5 de la loi du 1^{er} avril 1926, qui vise à deux reprises différentes 'le propriétaire de nationalité française'.

"Il est à remarquer que ce texte ne contient aucune réserve relative aux traités diplomatiques, alors qu'une réserve expresse est formulée dans l'article immédiatement précédent à propos de la situation du locataire étranger. L'intention du législateur est donc très nette; aucun propriétaire étranger, quels que soient les termes des traités passés entre la France et le pays auquel il appartient, ne peut se soustraire à l'article 5.

"On serait peut-être tenté d'objecter que la loi de 1926, expression unilatérale de la volonté du seul législateur français, ne peut déroger à un traité, convention synallagmatique. Cette objection, dont la valeur est indiscutable, pourrait être présentée par voie de représentations diplomatiques adressées par les États étrangers au Gouvernement français. Mais les tribunaux n'ont pas à en tenir compte. La question de droit international public est distincte de la question de droit privé. De même que les tribunaux français ne peuvent écarter l'application d'une loi française sous prétexte qu'elle serait contraire à la constitution, de même ils ne pourraient se refuser à appliquer la loi du 1^{er} avril 1926 comme contraire au droit international public."

It will be observed that the author considers that the legislation in question may violate the treaty but that the courts are bound by the municipal law and that the only existing redress is through diplomatic channels.

The Department is unable to concur in the position that any reservation can be read in the last paragraph of Article 7 of the Treaty of 1853 and considers, therefore, that American nationals should be entitled to the benefits of Article 5 of the law of April 1, 1926. The fact

³⁴ For text of law, see *Journal Officiel: Lois et décrets*, Apr. 2, 1926, p. 4090.

that that law confined to French nationals the right to secure the possession of their property does not, in the estimation of the Department, necessarily preclude such a right being enjoyed equally by American nationals. While it would seem necessarily to exclude all aliens whose countries have not concluded treaty provisions of the nature of those contained in Article 7 of the Convention of 1853, it is not perceived why it should be considered as stopping the application of the treaty. Had such been the intention of the legislature, it would seem that it would have clearly specified that the right should be accorded to French nationals only, irrespective of treaty provisions in force between France and foreign Powers.

It is believed that the only reservation which can be read in the treaty provision in question is that of reciprocity and that if it can be established to the satisfaction of the appropriate judicial and administrative authorities that French nationals are not discriminated against in legislation of the same nature in this country, American nationals should be entitled to enjoy the benefits of the law of April 1, 1926. In view of the fact that in the United States rent legislation is one for the determination of the several States, reciprocity in this matter should be determined by reference to the laws of the State of which the American citizen desiring to enjoy the privileges of the French law of April 1, 1926, is a resident. The Department cannot agree with the contention of the Court of Cassation that reciprocity in this matter can only be accomplished by a treaty between the two countries concerning special legislation and that legal reciprocity as such does not *ipso facto* entitle American citizens in France to the benefits of Article 5 of the law. It is the contention of this Government that the meaning of Article 7 of the Convention is perfectly clear and that American citizens in France should be placed on the same footing as French citizens in matters relating to the ownership and possession of real estate whenever it can be shown that the State in this country of which such American nationals are residents does not discriminate against French citizens in matters pertaining to the ownership and possession of real property.

You may, in your discretion, advert to certain considerations recited by the lower court in the same case of *Conner* versus *Thouret*, and which, in the Department's estimation, must have strongly influenced the Tribunal de Paix of Agenteuil in its decision that Mrs. Conner was not entitled to obtain the repossession of her property :

“Considérant que, si ces motifs juridiques suffisent à justifier la décision que nous allons prendre, celle-ci ne s'en justifie pas moins par certaines considérations que commande la situation économique actuelle; qu'il est, en effet, de notoriété publique que, grâce à la prime que leur procure le change de leur monnaie nationale sur la nôtre, beaucoup de citoyens américains ont acquis en France, au cours de ces

dernières années, de nombreux et importants immeubles; que l'attention du Parlement français a déjà été appelée sur les dangers qu'une telle situation peut faire courir à l'État; mais qu'il est tout à fait invraisemblable que des Français puissent, avec leur monnaie dépréciée, aller réaliser aux États-Unis des acquisitions de ce genre et de cette importance; qu'à ce point de vue encore, la règle de la réciprocité se trouve ainsi rompue; et qu'il n'est nullement à redouter que des mesures de rétorsion puissent effectivement être exercées contre nos nationaux en Amérique, sous le prétexte que la France refuserait aux citoyens américains un bénéfice que la loi du 1^{er} avril 1926 a voulu réserver aux seuls propriétaires de nationalité française; . . . " (Quoted from *Journal du Droit International*, 1927, page 428.)

In conclusion you will state that the French authorities will doubtless agree that the presence in France of numerous American citizens residing therein cannot fail to constitute an important factor in the relations between the two countries and that any discrimination against them which in this Government's estimation constitutes a violation of treaty provisions between the United States and France cannot fail to cause irritation and bad feeling which this Department does not doubt the French authorities would be the first to deprecate.

You will express the earnest hope of this Department that the French Ministry of Foreign Affairs will consider sympathetically the considerations advanced above and find it possible to devise some means whereby American owners of real property in France may enjoy the benefits of Article 5 of the law of April 1, 1926.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

851.502/36

The Chargé in France (Armour) to the Secretary of State

No. 9211

PARIS, December 14, 1928.

[Received December 27.]

SIR: I have the honor to refer to the Department's instruction No. 2742 of April 21, 1928, and telegraphic instruction No. 204 of July 7, 2 p. m.,³⁵ with regard to the failure of the French authorities to accord American landlords and tenants the same treatment as is accorded French citizens under present rent laws. The Department consistently holds that, notwithstanding the provisions of the rent laws, which would distinguish between the rights of French and aliens, American citizens are entitled to non-discriminatory treatment under the terms of Article 7 of the Consular Convention of 1853.

³⁵ Latter not printed.

In view of its instructions in the matter, I believe that the Department will desire to be kept informed of developments. As the Department is aware, American citizens residing in France, particularly tenants, have from time to time been encountering serious difficulties in the manner in which the rent laws are made to apply to them. Latterly, encouraged by several decisions of the lower courts adverse to foreign tenants, French landlords are in more numerous instances denying to American citizens the benefits of Article 4 of the law of April 1, 1926. The situation with regard to action under Article 5 of said law, when the American citizen is in the position of landlord, is at present less acute.

In one or two instances the Ministry for Foreign Affairs has responded to the Embassy's representations in behalf of American tenants by according delays in eviction from the premises occupied by them, in order that the tenants might endeavor to reach satisfactory agreements with the landlords. The question of principle involved in the interpretation of Article 7 of the Convention of 1853 has, however, never been answered by the Foreign Office. I am therefore continuing to press for a decision on this point since failing such decision there is no recourse for the American tenants concerned than the rather hopeless one, in view of the generally adverse decisions handed down, of appealing to the courts. It should be noted that in some cases which have been brought to the attention of the Embassy the tenants have preferred, rather than to resort to litigation, to yield to the demands of the landlord for augmented rent (the amount of augmentation is strictly limited by law), but even this procedure is not available when the landlord insists upon the expulsion of the tenant in order that he may lease the premises to a new party upon the basis of the much higher rents now prevalent.

For the purpose of the Department's records it should be added that the Embassy, in continuing to urge upon the Minister for Foreign Affairs a favorable determination of the rights of American tenants and landlords under Articles 4 and 5 of the law of 1926 as governed by the Consular Convention of 1853, has presented the matter by note of May 11, 1928, personal conversation of July 2, note of July 9, and finally by a note of November 23 earnestly requesting an early decision in the matter.

I have [etc.]

NORMAN ARMOUR

851.592/25

The Secretary of State to the Ambassador in France (Herrick)

No. 3043

WASHINGTON, January 28, 1929.

SIR: The Department refers to its instruction No. 2742 of April 21, 1928, and to the Embassy's despatches No. 9024 of October 9, 1928,³¹

³¹ Despatch No. 9024 not printed.

and No. 9211 of December 14, 1928, in further relation to the apparent violations of Article 7 of the Consular Convention of 1853 by the decisions of various French courts in landlord and tenant cases, and encloses for your information a copy of a press statement appearing in the *New York Times* of January 16, 1929.³³

The Department notes from the Embassy's despatch of December 14, 1928, that so far the question of principle involved in the interpretation of Article 7 of the Convention of 1853 has never been answered by the Foreign Office. The Department leaves to your discretion the advisability of bringing greater pressure to bear upon the Foreign Office to answer the representations contained in the Department's instruction of April 21, 1928. Unless there are cases at the present time in which American citizens are suffering undue hardships as a result of the French authorities actions in enforcing the French law of April 1, 1926, it would seem unnecessary to take special means to obtain an early answer from the Foreign Office. If, however, you feel that important American interests are being prejudiced by the failure of the French Foreign Office to reach a decision in this matter you may take this case up personally with the appropriate authorities and state that you are doing so under new instructions from your Government. In any event you are requested to keep the Department closely advised of developments in this matter.

I am [etc.]

For the Secretary of State:
J. REUBEN CLARK, Jr.

INFORMAL REPRESENTATIONS REGARDING POSSIBLE DISCRIMINATION AGAINST AMERICAN OIL IMPORTS INTO FRANCE

851.6363 Import Law/7

The Ambassador in France (Herrick) to the Secretary of State

No. 8328

PARIS, *February 14, 1928.*

[Received February 24.]

SIR: I have the honor to refer to my telegram No. 41, February 14, 11 A.M.,³⁹ concerning conversations with our Chargé d'Affaires at Madrid and action taken by this Embassy with reference to the Spanish oil monopoly. As indicated in this telegram, Mr. Blair reported encouraging developments in London in the sense that, while it seemed that the British Foreign Office had theretofore not been fully informed as to the situation in Spain, it now, as a result of fuller information, appeared inclined to take a more active interest in the situation and to stiffen its attitude. In view of the Department's telegraphic instruc-

³³ Enclosure not printed.

³⁹ Vol. III, p. 850.

tion to Madrid No. 14, of February 1,⁴⁰ (now made part of this Embassy's archives by authority of the Department's telegraphic instruction to Madrid No. 15, February 2⁴¹), empowering this Embassy in its discretion to discuss this question informally with the Foreign Office, it seemed advisable to do so. Accordingly, a member of my staff had a conference with M. Corbin, the new director of Political and Commercial Affairs, in which he informed him of the latest developments in London, and having in mind the Department's instruction No. 2607 of February 2, 1928,⁴¹ emphasized our desire to act in close accord not only with the French but also with the British, if they should come around to taking the view of the situation already held by us and the French, and the desirability of the French Embassy in London doing what it could to bring the British into line with a view to strong and concerted action. M. Corbin expressed himself as glad to receive this information and as in agreement with the views expressed.

The moment seemed particularly opportune to discuss this matter with the Foreign Office inasmuch as there is reason to fear that the French Parliament is about to take under consideration legislation governing the importation of petroleum into France of a most harmful character to American interests, and the more the Foreign Office could be gotten on record as condemning all phases of the iniquitous action of the Spanish Government concerning oil, the more the Embassy's task might be facilitated if and when it should become necessary to protest informally on behalf of American oil interests against proposed French legislation.

The latest adverse development is the following: Reference to the Embassy's despatches Nos. 8045 of November 18, 8052 of November 21, 8077 of December 1, 1927,⁴² show the situation down to the end of the year, the last mentioned despatch giving the text of the Bill introduced by the Government. The Embassy's despatch No. 8269 of January 20, 1928,⁴¹ then showed that, when the Petroleum Committee of the Chamber was to consider this Bill, the Government's candidate, M. Charlot, was elected reporter against the opposition radical candidate. There was reason to hope and believe that the Government reporter would report favorably upon the Bill introduced by the Government. Unfortunately, however, such has not proven to be the case. The Embassy is informed that M. Charlot has now prepared a Bill, which he is about to submit to the Petroleum Committee, with the following two chief vicious amendments to the earlier Government Bill.

⁴⁰ Vol. III, p. 843.

⁴¹ Not printed.

⁴² None printed.

First: Instead of allowing companies already in business here to obtain a license for future importation equal at least to the maximum figure of their annual imports during the last five years, (Article 5 of the old Bill), the license figures now are to be based on their average annual imports during the last five years. The inequity of this resides in the fact that as the American and English companies, openly aimed at by this amended Bill, only began their operations after the war, an average of the last five years necessarily includes some of their leanest years and in no way corresponds to the present volume of business, let alone the reasonable expectation of normal increase.

Second: After the basic licenses, preference in surplus allotments to meet increased consumption is to be given first to French refineries and next to French importing companies. "French" as used in the Bill means corporations at least 51% of whose stock is owned by, and the majority of whose Board of Directors is composed of, French citizens.

It seems unnecessary to comment on the frankly discriminatory nature of such proposed legislation and on the danger of such theories, should they meet with any measure of success in the present case, being extended in unlimited fashion to other fields of industry and finance.

The Embassy is further informed that the consideration of this amended Bill by the Chamber Petroleum Committee is very imminent; in fact it had been expected that the Committee would take it up on each of the last few days. I shall of course report further to the Department, by telegraph if necessary.

I have [etc.]

MYRON T. HERRICK

851.6363 Import Law/9

The Ambassador in France (Herrick) to the Secretary of State

No. 8343

PARIS, February 18, 1928.

[Received February 28.]

SIR: With reference to my telegram No. 48 of February 17,⁴³ concerning proposed French legislation regulating petroleum importation into France, I have the honor to report further as follows.

My despatch No. 8328 of February 14 showed the obnoxious amendments to the Government's Bill proposed by the Reporter of the Chamber Petroleum Committee. Late in the afternoon of the day on which that despatch was written, this amended Bill came before this Committee, which, in the following two respects, attenuated the said amendments.

* Not printed.

First: The figure for the basic importation licenses was changed from the average annual imports during the last five years to the average during the last three years, (i. e. 1925, 1926, 1927).

Second: With regard to priority in surplus importation allotments, where the amendment had proposed the first preference to "refineries belonging to corporations controlled by French capital", it was changed to read "refineries in existence or to be created on French territory".

The amended Bill as thus presented to the Committee, after undergoing the above and other minor changes, was favorably passed upon by unanimous vote, and at the same time was scheduled to appear upon the agenda of the Chamber on Thursday, February 23.

The Standard Oil Company of New Jersey representatives here were naturally very much perturbed over these developments and exceedingly anxious that I do anything possible to help the situation. Their anxiety was all the greater on account of the previous reassuring statements made by M. Briand and M. Bokanowski to Mr. Whitehouse, (reported in the Embassy's despatches No. 8045 of November 18, and No. 8052 of November 21, 1927, respectively,⁴⁵) as well as the facts that it was the Government's own choice for a Reporter to the Chamber Petroleum Committee who had proposed the amendments in question, and that this Committee had emitted an unanimous vote.

In view of the speed with which matters had developed in the last few days and the shortness of time remaining before the Bill was to come before the Chamber, I felt that the most helpful step under the circumstances would be for me to take the matter up unofficially and personally with M. Briand. I was the more led to this as, upon inquiry as to the cause of the attenuation of the amendments hereinabove referred to, the Embassy was informed that this was the result of intervention by the Foreign Office which had pointed out to the Petroleum Committee the trouble which was likely to be caused by the amendments as they originally stood.

Accordingly, accompanied by a member of my staff, I had an interview with M. Briand, the substance of which was reported in my telegram of last night, but the following amplification may be of interest to the Department. According to all appearances, M. Briand was most receptive to all I had to say to him. Referring to his conversation with Mr. Whitehouse last November, I pointed out that the situation had in the last few days apparently become completely altered, and said that I should like briefly to present the point of view of the American interests involved which inevitably were seriously disturbed at the present turn of affairs. M. Briand replied that he was not surprised at my concern. He confirmed the fact that the

⁴⁵ Neither printed.

Foreign Office had indicated to the Chamber Petroleum Committee that the proposed amendments were bound to cause trouble; the result had been that certain of the proposed amendments had been eliminated, but both he and the French Government remained unsatisfied with the Bill as it still stood at the present time. He said that undoubtedly the provisions of the Bill with which he was displeased were the same as those which were causing us uneasiness, and added that he would be delighted to have me state the American point of view. I accordingly did so under the four following heads: (1) The discrimination with respect to surplus allotments against companies the majority of whose capital and directors are not French; (2) The restriction on basic license figures resulting from only taking an average of the past 3 years; (3) The fact that the Standard Oil Company has not had its day in court to reply to the charges levelled against it; (4) That as it stands the Bill appears incompatible with the Geneva Convention and Protocol on the abolition of import and export prohibitions and restrictions.⁴⁶ I also adverted to the facts that it was the Government's own choice of a Reporter who had proposed these amendments and that the Petroleum Committee had voted unanimously.

M. Briand replied that he welcomed this exposition of our attitude which would strengthen his hands in future discussions with proponents of the present Bill. He made light of the fact that the Committee had voted unanimously and said that the Reporter had merely had his hand forced by certain zealous members of the Committee, including its Socialist chairman, M. Baron. He then said specifically that I might rest assured that the Government would oppose the Bill in its present shape when it came before the Chamber. The clear implication was—although not equally specifically stated—that the clauses we object to will undergo modification.

The concluding remarks then uttered by M. Briand constituted perhaps the most interesting part of the conversation. He said that after all our respective general policies concerning oil were not likely to conflict; he observed that we see entirely eye to eye with regard to the situation in Spain, and that we would soon be acting together in Syria where he hoped our interests would coincide on the many important matters that would come up there, such, for instance, as the construction of a pipe line by the most direct route. To this I naturally made no reply.

The Department's telegraphic instruction No. 50, February 17, 7 P. M.,⁴⁷ on the above subject, has just been received. My telegram

⁴⁶ Vol. I, p. 336.

⁴⁷ Not printed.

under reference, which crossed it, furnishes, I believe, a complete reply. For my information, I should appreciate it if the Department would clip and send to me the press despatches from Paris referred to in its instruction.

I have [etc.]

MYRON T. HERRICK

851.6363 Import Law/12 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, March 3, 1928—11 a. m.

[Received March 3—9:17 a. m.]

57. Embassy's telegram No. 48, February 17, 8 p. m.,⁴⁸ and despatch 8343 of February 18. The following favorable change has taken place since then:

Prime Minister Poincaré and Foreign Minister Briand, appearing yesterday before the petroleum committee of the French Chamber of Deputies, opposed the objectionable amendments to the petroleum importation bill which had been adopted by the said committee.

M. Briand, especially, took a very strong position which was fully in accord with his previous assurances to me.

American and British oil companies may, as a result, now be heard on Monday by the committee. The amendments having been withdrawn by their committee authors, the bill in its original form will come before the Chamber of Deputies on Tuesday.

HERRICK

851.6363 Import Law/13 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, March 9, 1928—1 p. m.

[Received 3:20 p. m.]

60. My telegram No. 57, March 3, 11 a.m. Petroleum importation bill was passed by the Chamber on the night of March 7. Bill now provides that import licenses are to be based on maximum figures of annual imports during last five years and proposed amendment discriminating in favor of French companies with respect to surplus license allotments is eliminated (see my despatch 8343 of February 18th, 1928). On the other hand, an amendment providing for government participation in the profits was adopted by a majority of one. This amendment does not involve discrimination. Moreover it seems

⁴⁸ Not printed.

likely to encounter opposition in the Senate and was probably proposed for this very reason by the Socialists who would like to see bill in its present form fail so as to give them a chance of passing a more monopolistic measure eventually. [Paraphrase.] During discussion, as reported in the official journal of March 8, M. Bokanowski, Minister of Commerce and Industry, made statements which have, however, caused a further unexpected and more alarming development. He declared, with regard to increased consumption, that the French Government had reserved the right to deliver licenses for surplus importation to whatever parties it might wish and to favor French refineries. Stating the position of the Government thus would have the effect of permitting, whenever the governmental licensing committee created by the bill might see fit, the sort of discrimination against non-French oil interests that had already been expressly cut out of the bill. See my despatch No. 8343 of February 18 for the viewpoint of M. Briand, with which these statements now are entirely at variance. Because of this fact and because of the urgency of the matter, since the bill may go at any moment to the Senate, I conferred with a representative of American oil interests and yesterday made it clear in a communication to Prime Minister Poincaré (Minister Briand being away at Geneva) that I was acting without instructions, unofficially, and entirely on my own initiative by pointing out the above-stated fact and by expressing my personal hope that any discrimination against American interests might be avoided by the taking of due steps. [End paraphrase.]

HERRICK

851.6363 Import Law/14 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, March 12, 1928—6 p. m.

70. Your 60, March 9, 1 p. m. The Department approves your informal representations and desires that you continue to follow developments closely.

KELLOGG

851.6363 Import Law/17 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, March 16, 1928—noon.

[Received March 16—11:25 a.m.]

70. My 60, March 9, 1 p. m. Senate on March 14 passed oil importer bill eliminating Chamber amendment of government participation in profits and also amending article two by an additional clause

providing that the Council of State must likewise be consulted with respect to the special authorization for licenses. [Paraphrase.] As constituting presumably an effective check upon any arbitrary action by the commission created by the bill, this clause is most welcome. [End paraphrase.]

Chamber yesterday finally passed bill accepting Senate reservations.⁴⁹

HERRICK

**EFFORTS BY THE DEPARTMENT OF STATE TO PROTECT AMERICAN
MOTION PICTURE INTERESTS FROM RESTRICTIONS IMPOSED BY
FRENCH FILM REGULATIONS⁵⁰**

851.4061/76a : Telegram

The Acting Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, March 15, 1928—noon.

74. Department understands that Senate⁵¹ will today pass new film law. Article 7 of this law is said to read as follows:

"Producers who can prove the sale of one French film of the first category to a foreign country well-known as a producer of films and where imports from France are at present made difficult, will receive from the Commission authorization to exploit in France, colonies and protectorates, seven foreign films for each French film sold among these various countries. French films of the second category will be entitled to fifty per cent of the advantages accorded to French films of the first category."

The Department further understands, however, that American companies will be permitted to distribute in France only four American films for one French film sold in the United States and that to secure distribution of seven American films this French film must be shown also in Germany and in England. Hays⁵² informs Department that this will compel some of the largest American companies to withdraw altogether from France with consequent loss of heavy investments.

The proposed measure also is understood to limit to 500 the number of foreign films that may be brought into France from March 1, 1928 to September 30, 1929. The fixation of such a quota is inconsistent with the spirit at least of the agreement for the abolition of import and export prohibitions and restrictions signed recently at Geneva. While

⁴⁹ For text of law as promulgated Mar. 30, see *Journal Officiel: Lois et décrets*, Mar. 31, 1928, p. 3675.

⁵⁰ See also documents regarding question of French film restrictions raised in connection with Second International Conference for the Abolition of Import and Export Prohibitions and Restrictions, Geneva, July 3-19, 1928, vol. I, pp. 366-398, *passim*.

⁵¹ French Senate.

⁵² Will H. Hays, president of the Motion Picture Producers and Distributors of America, Inc.

the French Government, in a letter addressed to the Secretary-General of the League of Nations on January 27th last, stated that France reserved the right to adopt certain restrictive measures, that letter stated that such measures "will apply equally to French and foreign films."⁵³ It is entirely obvious that the measure understood to be contemplated does not so apply.

Please discuss this matter fully with Lowry, who is understood to be in Paris.⁵⁴ If you consider it advisable you may talk over the situation informally with the Foreign Office, pointing out the serious injury to American motion picture companies who have invested in France on the understanding that they will be able to carry on their business. Also please telegraph Department whether you perceive ground for formal protest.

OLDS

851.4061/77 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, March 16, 1928—6 p. m.

[Received March 16—3:57 p. m.]

72. Your 74, March 15, noon. There is no film legislation of the kind referred to before either the Chamber or the Senate. Any film regulations of this nature would as [*at*] most only require a decree. As Department will recall, the Administrative Régime of Film Exploitation and Control was only instituted by decree, see despatch No. 8356, February 20.⁵⁵

The article quoted in Department's instruction is article 7 of what purports to be "Regulations Established by the Film Control Commissioner." It is still possible that they represent the wishes of the French film interests rather than regulations whose promulgation has been definitely decided upon by the government.

On March 10th the commercial attaché took Lowry to see Herriot⁵⁶ and the latter stated specifically that although strong pressure had been brought to bear upon him he had opposed the adoption of regulations providing for a film quota.

Under these circumstances I feel clear that no formal protest is justifiable. It would not seem advisable to assume that Herriot is going to take action completely inconsistent with his said statement and I consequently believe that informal action is likewise inopportune at this juncture.

HERRICK

⁵³ Vol. I, p. 368.

⁵⁴ Representative of the Motion Picture Producers and Distributors of America, Inc.

⁵⁵ Not printed.

⁵⁶ Edouard Herriot, French Minister of Public Instruction and the Fine Arts.

851.4061/81 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, *March 23, 1928—4 p. m.*

[Received March 23—3:55 p. m.]

80. Reference my No. 77, March 20.⁵⁷ As to any action taken by the Film Commission at its meeting to put regulations into effect, no definite information is forthcoming.

Since the text of these regulations, in incomplete form as mentioned in my telegram 72 of March 16 (namely, without indication of approval by Herriot nor otherwise given binding effect), has appeared in *Matin* and in trade papers, however, our commercial attaché has seen the Director-General of the Fine Arts, who is ex officio chairman of the Film Commission, about the matter.

In a despatch leaving today,⁵⁸ additional details are given in order to facilitate the Department in instructing me further. If any other developments take place before the receipt of this information, and if informal action seems advisable, I shall proceed according to authority granted in Department's telegram 74, of March 15, noon, and shall cable my report.

HERRICK

851.4061/81 : Telegram

*The Acting Secretary of State to the Ambassador in France (Herrick)*WASHINGTON, *March 24, 1928—5 p. m.*

89. Your 80, March 23, 4 p. m. Will H. Hays is sailing [on] *Leviathan* today in order to take up directly questions raised by film regulations now under consideration. On his arrival you will, of course, render all appropriate assistance. Meanwhile, it is suggested that, if you see no objection, you inform Herriot that he is coming and ask that he be heard before the adoption of any regulations that may affect American film interests.

OLDS

⁵⁷ Not printed.

⁵⁸ Despatch No. 8460, Mar. 22, 1928; not printed.

851.4061/88

The Ambassador in France (Herrick) to the Secretary of State

No. 8491

PARIS, April 3, 1928.

[Received April 13.]

SIR: With reference to my despatch No. 8460 of March 22,⁵⁹ the Department's telegraphic instruction No. 89 of March 24, 1928, and previous correspondence concerning the difficulties encountered by American film interests, I have the honor to report that in compliance with the said instruction the Commercial Attaché informed M. Herriot of Mr. Hays' impending arrival. Mr. MacLean referred to the publication in the *Matin* and in trade papers of what purported to be the Film Commission's regulations, and asked M. Herriot specifically whether or not these regulations were approved by him and whether they would be promulgated by decree or validated in some other manner. Although M. Herriot did not return a direct answer, he implied that the decree creating this Film Commission (see despatch No. 8356 of February 20, 1928⁵⁹) gave the Commission full power to make regulations for its own governance with respect to the issuing of film visas; consequently, these regulations did not require his approbation to be effective, and much less a governmental decree. Whether because of his realization of the unsatisfactory nature of this reply or not, M. Herriot then sought to emphasize the point that if the Film Commission could adopt regulations in this manner without further formality, it could equally readily and simply modify the same.

Incidentally, M. Herriot took occasion to ask Mr. MacLean if a seven to one quota would really bear too hardly on American film interests (see Department's telegraphic instruction No. 74 of March 15). In this connection, it may be stated that, although the general expectation is that if the present regulations should stand, the quota would be four to one rather than seven to one, no action of the Film Commission with respect to visas has yet substantiated this belief.

In other words, the situation still remains vague and confused, and I am confirmed in my impression that this is deliberately done with a view to seeing just how much the American film interests will put up with.

Mr. Hays called at the Embassy on Saturday morning accompanied by Colonel Lowry. We had a long conference at that time and another one yesterday. They both are in accord with the view that the matter has not yet reached the point where protest to the Foreign Office, of even an informal nature, would be warranted or opportune. Moreover, they agree that before reaching the stage where informal con-

⁵⁹ Not printed.

versations at the Foreign Office—devoid of protest but pointing out the difficulties which will ensue if the present situation is not corrected—may be advisable, the best course will be for Mr. Hays to see M. Herriot, and in a very frank and open talk point out to him, more clearly than he has probably yet realized, just what the result will be to French as well as to American film interests if the present course is persisted in. As M. Herriot is away over the Easter holidays, this cannot take place until next week, when I will report further.

In the meantime, Mr. Hays has been active in seeing the necessary people in the cinematographic world, and it may be hoped that when the Film Commission holds its next meeting tomorrow afternoon it will take no action which will render it more difficult to recede from the tentative position it has so far adopted.

I have [etc.]

For the Ambassador:

GEORGE A. GORDON

First Secretary of Embassy

851.4061/89 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, May 2, 1928—3 p. m.

[Received 5:03 p. m.]

111. Now I am informed that during the last few days the negotiations between Hays and Herriot and representatives of French film industry have taken a bad turn. The French electoral period and the determination of Hays to sail on May 2 were contributing factors. A second meeting between Hays and Herriot could not be arranged until 5 o'clock yesterday afternoon, and an outcome preventing complete withdrawal of American films from France, followed by inevitable unfortunate consequences of such a development, seemed, under the circumstances, problematical. Prior to this meeting, however, I took occasion to write a short, informal, unofficial letter, which I addressed jointly to Hays and Herriot and in which I stated in substance that I ventured earnestly to request, as the question of good relations between France and the United States is so much more important than material interests concerned here, that neither party should take any decisions which would cause a complete cessation of business relations and also that enough time be allowed for further and complete discussions, aiming at a solution mutually satisfactory, by holding in abeyance the present regulations of the Film Commission.

Such a measure, it seemed to me, would offer the best chance to both Hays and Herriot to enable them to assume an attitude less rigid. As a matter of fact, as a result of their meeting which lasted 2½ hours, Hays did put off his sailing until Saturday at the earliest, while Herriot will convoke a meeting tomorrow of the Film Commission to appoint a subcommittee which will be charged with holding immediate discussions with Hays.

My despatch dated April 27 (No. 8561)⁶⁰ reports developments during the interval since my previous despatch.

HERRICK

851.4061/89 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, May 4, 1928—6 p. m.

124. Your 111, May 2, 3 p. m. Department cordially approves such informal conciliatory efforts by Embassy.

KELLOGG

851.4061/90 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

[Paraphrase]

PARIS, May 4, 1928—5 p. m.

[Received May 4—3:25 p.m.]

114. Referring to the penultimate paragraph of my telegram 111 of May 2, I report that the Film Commission at its meeting yesterday morning appointed a subcommittee and the latter conferred throughout the afternoon with Hays and again during the evening, holding a meeting of ratification this morning.

After the principle of enforced export of French films had been abandoned, an agreement was reached which will enable continuation of business in France by the American film industry under conditions of harmonious and cordial cooperation. Hays has reported fully the details of agreement to his home office which will in turn communicate them to the Department.

Hays is sailing tomorrow for home.

I am greatly gratified at this result, and Herriot has acted certainly in a most conciliatory and broad-minded manner. At the conclusion of the meeting he expressed to me in a cordial message his appreciation of my cooperation and his feeling that I would share his satisfaction equally because the arrangement had been effected in such a way as to promote greater friendliness hereafter.

HERRICK

⁶⁰ Not printed.

SUIT OF PRINCESS ZIZIANOFF AGAINST CONSUL DONALD F. BIGELOW,
INVOLVING QUESTION OF CONSULAR IMMUNITY

811.111 Zizianoff, Nina Princess

The Consul General at Paris (Gaulin) to the Secretary of State

[Extract]

No. 21

PARIS, March 26, 1927.

[Received April 9.]

SIR: I have the honor to transmit herewith for the Department's information a draft of conclusions submitted to the President of the 12th Chambre Correctionnelle de la Seine⁶² at the close of the hearing of Mr. Bigelow's plea for immunity under the Convention of February 23, 1853,⁶³ which took place on March 22, 1927. This draft indicates the grounds on which Mr. Bigelow's claim to immunity from jurisdiction is based. I am also transmitting a copy of a statement, signed by Mr. Bigelow,⁶² and submitted to the Tribunal on the day following the hearing, protesting against the failure of the Substitut du Procureur (or Public Prosecutor) to take into consideration the Embassy's notes of March 5, 1927 and March 14, 1927, copies of which are enclosed, or to consider the most-favored-nation clause in the treaty.

I have [etc.]

A. GAULIN

[Enclosure 1]

*The American Ambassador (Herrick) to the French Minister for
Foreign Affairs (Briand)*

PARIS, March 5, 1927.

EXCELLENCY: I have the honor to call Your Excellency's attention to an instruction which I have just received from the Department of State⁶⁴ regarding the decision of the Cour de Cassation, referred to in the notes of M. de Navailles to Mr. Hallett Johnson of November 12th and 14th last, and reading in part as follows:

"It is important to observe, with reference to the statement in the decision of the Cour de Cassation, mentioned above, that this Government did not agree to the contention in the note of June 19, 1909, from the Foreign Office to Ambassador White,⁶² that the 'personal immunity' provided for in Article II of the Treaty, relates only to

⁶² Not printed.

⁶³ Malloy, *Treaties*. 1776-1909, vol. I, p. 528.

⁶⁴ Instruction No. 2144, Jan. 5, 1927, as amended by telegram No. 65, Mar. 4, 1927, 8 p. m.; neither printed.

'exemption from arrest and preliminary detention'. The Department considers that the phrase in question was intended to insure to American Consuls in France and French Consuls in the United States immunity from arrest or imprisonment in all cases, except cases in which Consuls are accused of crimes proper. In other words, the Department considers that this provision was intended to insure immunity from arrest or imprisonment under the judgment of a court as well as preventive arrest or imprisonment."

It is pertinent to add that the note of June 19, 1909, has not received from the Government of the United States an adhesion without reserves and that it was, moreover, limited to cases such as that of Mr. King, the circumstances of which are not comparable to that of Mr. Bigelow. Furthermore, the exchange of views in 1909 cannot be considered as a positive interpretation of the Convention of February 23, 1853, given in the form of an additional protocol or as a declaration duly signed and dated and constituting an instrument thereafter inseparable from the Convention of 1853.

The Government of the United States cannot, therefore, consider as conforming to its views the affirmation by the Cour de Cassation that the Convention of 1853 has been the object of a bilateral interpretation by the interested Governments. No modifications having been made in the text of the Convention of 1853, the Government of the United States feels that it can reasonably contend that a Consul of American nationality cannot in any case be arrested or imprisoned except for crime.

With reference to this case, I am authorized by my Government to call Your Excellency's special attention to the provision of Article XII of the Treaty of 1853, that Consular officers "shall enjoy in the two countries all the other privileges, exemptions and immunities which may at any future time be granted to the agents of the same rank of the most favored nation," and to inquire whether, in accordance with this provision, the French Government may not see fit to have the suits against Mr. Bigelow withdrawn, especially in view of the decision of the Court at Dieppe on January 22, 1900, in the suit against Lee Jortin, British Vice-Consul at Dieppe, in which the Court held that it had no jurisdiction, and the decision of the Court of Appeals at Rouen of May 11, 1900, confirming the decision of the lower Court (Clunet 1900, 130, 858); also the decision of the Police Court of the Seine of July 8, 1890, holding that it had no jurisdiction of the suit against Manolopoulo, Chancellor of the Greek Consulate General at Paris (Clunet 1890, 667).

I have [etc.]

MYRON T. HERRICK

[Enclosure 2]

The American Embassy to the French Ministry for Foreign Affairs

The American Embassy presents its compliments to the Ministry of Foreign Affairs and has the honor to refer to the citation, dated October 19, 1926, regarding the suit of Princess Zizianoff (née Johanna Kriebel) against Mr. Donald F. Bigelow, Consul in charge of the Passport Department of the American Consulate General at Paris, and to inform the Ministry that the Department of State in cables to the Embassy stated that it considers any effort to hold Mr. Bigelow responsible for his action in refusing the visa to the plaintiff or to have such act reviewed by a French court to be improper.

The notice of the decision to refuse the visa applied for was, by direction, communicated to Princess Zizianoff on December 16, 1925, in a letter worded as follows:

“Madam:

I am directed to inform you that the Consulate General is unable to give favorable consideration to the application which you executed at the Passport Department of the Consulate General on December 12, 1925, for a visa charging you to the immigration quota for France. The Consulate General has completed its investigation of your case and has reason to believe that you are not admissible to the United States under the laws relating to the entry of aliens.

Very respectfully yours,

Donald F. Bigelow
American Consul”

The decision to refuse the visa was approved by Mr. Skinner, then Consul General at Paris and at present American Minister to Greece, by a written instruction to Mr. Bigelow, dated as early as August 27, 1925. The refusal has since been maintained by Mr. Orr, Mr. Skinner's successor in charge of the Consulate General and by the Department of State which is fully informed of the reasons for the denial of the visa applied for by Princess Zizianoff.

This communication is being addressed to the Ministry of Foreign Affairs with the request that its contents be transmitted to the President of the 12th Chambre Correctionnelle du Parquet de la Seine, the tribunal before which the suit of Princess Zizianoff has been referred for a hearing on March 22, 1927.

Assuming that the Ministry for Foreign Affairs agrees with the Department of State in its statement referred to in the first paragraph of this note, the Embassy also has the honor to request that the Ministry will be so good as to inform the President of the 12th Chambre Correctionnelle that any effort to hold Mr. Bigelow responsible for his action in refusing a visa to the plaintiff or have such act reviewed by a French Court is improper.

PARIS, *March 14, 1927.*

811.111 Zizianoff, Nina Princess : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, June 30, 1927—3 p. m.

198. Department understands hearing in Bigelow case set for July 12. Decision of Civil Court of the Seine of April 5 concerning jurisdiction seems to involve a confusion of Articles II and XII of the Treaty of 1853. Department holds that Article II, which guarantees immunity of Consuls from arrest and imprisonment except in cases of crime, in no way limits the scope of the most-favored-nation provision of Article XII, which guarantees to American Consuls in France "all the other privileges, exemptions and immunities which may at any future time be granted to the agents of the same rank of the most-favored-nation." Regardless of Article II, Article XII guarantees to American Consuls in France the same immunities which are granted in France to Consuls of Great Britain, Greece and other foreign countries. In your discretion, after consulting Consul Bigelow, address a note to the Foreign Office to the above effect, at the same time calling attention again to decisions of French courts mentioned in Department's telegram No. 65 of March 4,⁶⁶ and ask Foreign Office to inform court. You may also call attention to statements made in your previous note concerning the note of June 19, 1909, from the French Foreign Office.

KELLOGG

811.111 Zizianoff, Nina Princess

The Chargé in France (Whitehouse) to the Secretary of State

No. 7686

PARIS, July 22, 1927.

[Received August 1.]

SIR: With reference to the Department's cabled Instruction No. 198, June 30, 3 P.M., I have the honor to report that, after consultation with Mr. Bigelow's lawyer, the Embassy addressed a note to the Foreign Office on July 5th, in the sense outlined by the Department, regarding the suit brought by Princess Zizianoff against Mr. Donald F. Bigelow.

I am now in receipt of a reply, dated July 20th, in which the Foreign Office states that, while divergencies of views have appeared in the notes exchanged between this Embassy and the Ministry for Foreign Affairs concerning the scope of the expression "personal immunity", it has been recognized on both sides that the meaning of "immunity

⁶⁶ Not printed; but see note, Mar. 5, 1927, to the French Minister for Foreign Affairs, p. 850.

from the jurisdiction of the courts" had never been given to this formula. The Foreign Office adds that the statements made to the press by Mr. Bigelow are personal acts and cannot under any heading be considered as official acts.

A copy and translation of the aforementioned note are to-day being transmitted to Mr. Bigelow's lawyer for his information.

I have [etc.]

SHELDON WHITEHOUSE

[Enclosure—Translation]

The French Ministry for Foreign Affairs to the American Embassy

I. D. 26

In reply to a note of the 5th instant of this month, relative to the suit of Princess Zizianoff against Mr. Bigelow, the Ministry for Foreign Affairs has the honor to inform the Embassy of the United States that it did not fail to call the attention of the Attorney General near the Paris Court of Appeals to Article 12 of the Franco-American Consular Convention of February 23, 1853, which permits consuls of the United States of America to invoke the benefit of the privileges, exemptions and immunities granted to consuls of the most-favored nation. The provisions of the Franco-Hellenic Consular Convention of January 7, 1876⁶⁷ were also pointed out to this high official.

As regards sentences and decisions of the Courts of Appeal and tribunals, it is for the conflicting parties to invoke them before the court charged with the case and to draw therefrom such conclusions as they deem advisable.

The Embassy mentioned the decision of the Correctional Court of Dieppe of March 19, 1900 and the sentence of the Court of Rouen of May 11th of the same year in the case of *Murphy* versus *Lee Jortin*. The Ministry begs the Embassy to note that there exists no consular convention between France and Great Britain and that the courts in question consequently based their decisions on the general principles of international law. It should be pointed out, furthermore, that, contrary to what the Embassy thinks, the aforementioned sentence and decision explicitly affirmed the competency of the French courts.

As to the suit of *Snacos* versus *Manolopoulos*, the Ministry for Foreign Affairs believes that the decision of July 8, 1890 of the Correctional Court of the Seine wrongly interpreted Article 8 of the Franco-Hellenic Consular Convention of January 7, 1876.

This article reads as follows:

"Consuls General, Consuls, Student Consuls, Chancellors and Vice Consuls or Consular Agents, citizens of the State which nominates

⁶⁷ French text in *British and Foreign State Papers*, vol. LXVII, p. 716.

them, shall enjoy personal immunity: They cannot be arrested or imprisoned, except for deeds and acts which the penal code of the country of their residence qualifies as crimes and punishes as such. If they are merchants, imprisonment for debt can only apply in their case on account of business dealings."

In the opinion of the French Government, the words "shall enjoy personal immunity; they cannot be either arrested or imprisoned" can only apply to preventive arrest and imprisonment. Admitting that this interpretation may be contested, it none the less remains true that the said Article 8, if it exempts consuls from arrest and imprisonment, in no case exempts them from local jurisdiction.

In the notes exchanged between the United States Embassy and the Ministry for Foreign Affairs concerning the King and Bigelow cases, divergencies of views have appeared as regards the scope of the expression "personal immunity", but it has been recognized on both sides, in the clearest manner, that, neither in America nor in France, the meaning of immunity from the jurisdiction of the courts had never been and is not given to this formula. It is stated, in the note which the Embassy addressed to the Ministry on June 12, 1909:

"It is settled law of the United States that Consular Officers are not entitled under international law to exemption from the jurisdiction of local courts. This rule is obviously necessary where consuls engage in private business. The Department of State interprets the Consular Treaty with France as not derogating from this doctrine; and holds that the Treaty gives a consular immunity from suit only as to his official acts and capacity, but not as to transactions connected with his private business undertakings."

Now, the declarations made to the press by Mr. Bigelow, declarations which motivated Princess Zizianoff's suit, are personal acts and cannot, under any heading, be considered as official acts.

PARIS, *July 20, 1927.*

811.111 Zizianoff, Nina Princess

The Secretary of State to the Chargé in France (Whitehouse)

No. 2526

WASHINGTON, *December 1, 1927.*

SIR: The Department is informed that the appeal of Consul Donald F. Bigelow from the decision of the 12th Chamber of the Tribunal Correctionnel de la Seine in the suit brought against him by Princess Zizianoff will be heard on December 22 by the Cour d'Appel of Paris. The Department desires that you send to the French Foreign Minister a note containing the following statement:

"I am instructed by my Government to say that it has learned with much concern of the decision rendered by the Tribunal Correctionnel de la Seine on April 5, 1927, declaring itself competent to hear the

suit brought against Consul Donald F. Bigelow by Princess Zizianoff because of statements made by Mr. Bigelow to a newspaper writer, in which the Consul gave reasons why he had refused to visa the passport of the plaintiff. It is hoped that the Court of Appeals, to which Consul Bigelow has taken an appeal from the decision mentioned, will see fit to take into consideration the following points:

"The action of Consul Bigelow in refusing to grant a visa to Princess Zizianoff was approved by the Department of State. While the Department regrets that Mr. Bigelow felt called upon to state to a newspaper reporter who had made inquiry regarding the matter reasons which had actuated him in refusing the visa, it feels that his action is not one for which he should be prosecuted in the French courts, particularly in view of the fact that he acted in his consular capacity, on the consular premises, and was not actuated by any personal malice toward Princess Zizianoff.

"In addition to the foregoing facts which would seem to furnish sufficient ground for holding that the French courts should not take jurisdiction in the suit against Consul Bigelow, my Government again calls attention to the provisions of Article XII of the Consular Convention of 1853, between the United States and France, that 'the respective Consuls General, Consuls, Vice Consuls or Consular Agents . . . shall enjoy in the two countries all the other privileges, exemptions and immunities which may at any future time be granted to the Agents of the same rank of the most-favored-nation'. My Government desires that attention be again directed to the Embassy's note of March 5, 1927, in which mention was made of the decision of the Tribunal Correctionnel de la Seine of July 8, 1890, dismissing the suit brought against Mr. Manolopoulo, Chancellor of the Greek Consulate General in Paris, who was charged not only with having defamed but also with having struck the plaintiff, and the decision of the Cour d'Appel at Rouen of May 11, 1900, dismissing a suit brought against Mr. Lee Jortin, British Vice Consul at Dieppe for lack of jurisdiction.

"My Government would be pleased if the French Government could see its way clear to bring the above to the attention of the Cour d'Appel of Paris."

I am [etc.]

For the Secretary of State:

WILBUR J. CARR

811.111 Zizianoff, Nina Princess

The Chargé in France (Whitehouse) to the Secretary of State

[Extract]

No. 8215

PARIS, *January 13, 1928.*

[Received January 27.]

SIR: With reference to the Department's Instruction No. 2526 of December 1, 1927 . . . I have the honor to transmit herewith a copy and translation of the reply of the French Ministry for Foreign Affairs to the note which I sent on December 15, 1927, in compliance

with the Department's aforementioned Instruction, regarding the suit brought by Princess Zizianoff against Mr. Donald F. Bigelow.

I have [etc.]

SHELDON WHITEHOUSE

[Enclosure—Translation]

The French Minister for Foreign Affairs (Briand) to the American Chargé (Whitehouse)

PARIS, January 11, 1928.

MR. CHARGÉ D'AFFAIRES: My Department has given the greatest attention to the information and arguments contained in your letter of the 15th of last month relative to the case of Princess Zizianoff against Mr. Bigelow. It has not failed up to the present time to acquaint the Attorney General near the Seine Correctional Court and the Attorney General near the Paris Court of Appeals with the texts and reasons invoked by your Embassy to contest the competence of French jurisdiction in the case in question, but it also, as was its duty, had to notify these High Magistrates of the interpretation which the French Government gives to Articles 2 and 12 of the Franco-American Consular Convention of February 23, 1853, an interpretation which is binding upon the French courts in matters of public international law.

Respectful of the principle of the separation of powers, the Ministry for Foreign Affairs refrains from any observation whatsoever regarding the grounds of the case. As to competence, it can only intervene in order to fix the interpretation of certain provisions of the Consular Convention of 1853; in this regard, please allow me to point out that the opinion of the French Government agrees with that of the American Government concerning consuls being amenable to the local jurisdiction, except as regards official acts. Now, Princess Zizianoff is suing Mr. Bigelow for defamation through the press; as defamation cannot be considered as an official act, there is no doubt but that the case is within the competency of the French courts.

In those circumstances, my Department does not believe that it is possible for it to modify the position which it has taken in this matter.

Accept [etc.]

For the Minister for Foreign Affairs
and by delegation
The French Ambassador, Secretary General:
BERTHELOT

811.111 Zizianoff, Nina Princess

The Consul General at Paris (Gaulin) to the Secretary of State

No. 727

PARIS, March 5, 1928.

[Received March 15.]

SIR: I have the honor to enclose copies and translations of the judgment rendered by the Court of Appeals, on January 28, 1928, in the suit of Princess Zizianoff against Consul Donald F. Bigelow.

The matter is now pending in the Court of Cassation, but the date of hearing has not yet been set.

I have [etc.]

A. GAULIN

[Enclosure—Translation]

Judgment Rendered by the Court of Appeals of Paris (First Chamber), January 28, 1928

PRESIDENCY OF MR. FORTIN

THE COURT:

Heard, The Associate Chapsal in his report,

The Attorney General Reynaud in his argument,

Maitre Rosenmark for Bigelow,

Maitre de Moro-Giafferi for the civil party, in their conclusions and pleadings.

Seen, The appeal perfected by Bigelow, which is regularly presented at the audience by the conclusions of the solicitor;

Considering that the accused contends that the judges of first instance erroneously declared themselves competent for the reason on the one hand that they incorrectly interpreted the convention of February 23, 1853, article 2 #1 of which, conferring personal immunity upon the American consular officers, did not permit the legal citation of Bigelow before a French Tribunal, and that, on the other hand, secondarily, even though there was ground to interpret the convention of 1853 in the sense adopted in the judgment delivered, the said Bigelow having acted in his capacity as consul in the exercise of his functions, he could in no case, upon the subject of the act imputed to him, be responsible to the French tribunals and that, to decide to the contrary would be to injure the sovereignty of a foreign government;

But considering that there is no need to stop at the principal conclusions of Bigelow, the Government, which has the sole capacity to interpret diplomatic conventions, having theretofore made known its interpretation regarding the sense to be given the provisions of the Convention of February 23, 1853, and notably as to the terms "personal immunity";

That it results from a decision of the Court of *Cassation* of February 23, 1912, reported in the Criminal Bulletin under the number of III, page 189, and authority for the judgment delivered, that this clause, which concerns consular officers, must be understood, not as an immunity from territorial jurisdiction in repressive matters, but solely as an exemption from arrest and preventive detention;

That since then, the convention of 1853 having been neither modified or denounced, this interpretation, which is imposed on the tribunal by virtue of the principle of the separation of powers, has even been renewed and confirmed, as appears from a letter from the Ministry of Foreign Affairs dated October 26, 1926, addressed to the bailiff Olivera and produced at the arguments;

That in consequence, without deeming it necessary to determine the other issues raised and notably that relative to pretended secret documents, the present decision being based only upon the judgment of *Cassation* of 1912 and the letter aforesaid, all the contentions being inapplicable in these circumstances, it suffices to declare that the judges of first instance rightly rejected the principal conclusions of Bigelow.

Considering, as regards the secondary conclusions, that with equal reason the trial judges did not entertain them;

That by referring to the incriminating expressions, as they appear from the original citation, which tend to impute to the Princess Zizianoff that she was a spy in Russia for the Germans, that she had even been deported on this account, and that since, under an anti-bolshevist mask she spied upon the American patriotic societies for the account of the Soviet Government, at whose Paris Embassy she made a visit, one could not see in the tenor of such expressions the accomplishment, on the part of Bigelow, of an act of government;

Considering besides, as declared by the judgment below, that the accused under prosecution, not upon the subject of a refusal of passport, which would be an act within his consular capacity and would escape by consequence any review by the judicial authority, but solely for having, in communicating that decision to representatives of the press, delivered himself in connection with that refusal to the above noted commentaries, which were not the necessary and indispensable corollary;

That there is in these commentaries considered externally or included in the functional act itself, a weighty fault having a personal character and susceptible of doing harm to private interests; that this fault, which detaches itself clearly from the function fulfilled by Bigelow and demands no examination at all of the functional act, would draw upon him, if it were established, penal sanctions by reason of the criminal (*délictueux*) elements that it appears to contain;

By these motives and those not to the contrary of the trial judges,

While declaring that there is no need to give satisfaction to the demand for notice to Bigelow, the present decision involving only the documents of which he has knowledge;

Confirms the judgment in question in so far as it declares the court competent upon the prosecution instituted at the request of the civil party;

Declares in consequence that the contentions upon appeal by Bigelow are badly founded;

Condemns Bigelow to the costs of the proceeding.

811.111 Zizianoff, Nina Princess

The Secretary of State to the Ambassador in France (Herrick)

No. 2723

WASHINGTON, April 10, 1928.

SIR: With reference to your despatch No. 8215 of January 13, 1928, and previous correspondence concerning the suit of Nina Zizianoff against Consul Donald F. Bigelow, and the note of January 11, from the French Foreign Office, a copy and translation of which accompany the same, the Department desires that you send to the Foreign Minister a note containing the following expression of its views:

"The Department of State has read with great interest the text of the decision of the Cour d'Appel de Paris on January 28, 1928 in the case involving Consul Bigelow.

"Having observed that the decision rejecting Mr. Bigelow's claim to immunity is based on the decision of the Cour de Cassation of February 23, 1912 in the case of King, one-time consular agent of the United States at Lille, and on a letter, referring to the King case, addressed by the Ministry of Foreign Affairs to Mr. Thomas Olivera, the Department of State desires to point out that the case of King, who was engaged in business in Lille and charged with the commission of fraud in the course of such business, can in nowise be held comparable with that of Bigelow, a consul of career who in the course of his official employment gave a newspaper reporter reasons which had actuated him in refusing a visa to the plaintiff in this case.

"It is clear that Mr. Bigelow was not actuated by any personal malice towards Princess Zizianoff. The interview in question was given on the consular premises, and, according to his conception of his consular duties at that time, was not improper. He may be reproached for having committed an error in the performance of his official duties, but the Department of State maintains that an error of this nature, being directly connected with the performance of an official act, should not subject the consul to prosecution.

"Further reference is made to the Embassy's note of March 5, 1927, and in this connection the Ministry is informed that the absence of any reference to most-favored-nation treatment in Ambassador

White's memorandum of June 19, 1909 upon which the decision of the Cour de Cassation of February 23, 1912, in the King case, seems to have been based, cannot be interpreted as limiting this Government's right to claim the full effect for its consuls of the most-favored-nation clause in the Convention of 1853.

"The Department desires also to remark that it has never accepted the view of the Ministry that the term 'personal immunity' as used in Article II of the Convention is understood only as insuring exemption from preventive arrest and imprisonment. That there may be no misunderstanding in the future, it seems desirable to record this expression of views at what appears to be an opportune occasion."

I am [etc.]

For the Secretary of State:

WILBUR J. CARR

811.111 Zizianoff, Nina Princess

The Consul General at Paris (Gaulin) to the Secretary of State

No. 1431

PARIS, *March 30, 1929.*

[Received April 13.]

SIR: I have the honor to refer to my telegram of March 27, 1929,⁶⁸ and to enclose, in triplicate, a copy with translation of the judgment rendered on March 26, 1929, by the Twelfth Chamber of the Civil Tribunal of Paris⁶⁸ in the suit of Princess Zizianoff versus Consul Donald F. Bigelow. It will be noted that the suit has been dismissed and the plaintiff ordered to pay the costs.

It is not known whether Princess Zizianoff will file an appeal.

I have [etc.]

A. GAULIN

⁶⁸ Not printed.

GERMANY

TREATIES OF ARBITRATION AND CONCILIATION BETWEEN THE UNITED STATES AND GERMANY, SIGNED MAY 5, 1928

711.5112 France/128

The Chargé in Germany (Poole) to the Secretary of State

No. 3076

BERLIN, *January 10, 1928.*

[Received January 28.]

SIR: I have the honor to acknowledge the receipt of the Department's circular telegram of 6 p. m., January 6, 1928,¹ and to report that I duly delivered to the Foreign Office for the consideration of the German Government the texts of the draft pact of perpetual friendship between France and the United States and the American reply of December 28, 1927.²

The Foreign Office officials expressed a lively interest and much appreciation of the action of the American Government in making this communication. The Secretary of State, Herr von Schubert, told me that he was studying the texts very carefully himself and had submitted them also to the legal expert of the Foreign Office, Herr Gauss. He suggested that it was possible that in due course he would have some observations to make of either a formal or an informal nature.

I hear privately that the Foreign Office has already concluded that the American proposal for a general treaty does not conflict with the obligations of a member of the League of Nations.

During an informal conversation today Mr. de Haas, who is in charge of American affairs at the Foreign Office, made a point of referring to the Root treaty aspect of the negotiations with France and remarked upon the fact that there was no arbitration treaty between the United States and Germany. He said that this void had been a subject of discussion in the Foreign Office as much as a year ago and was one of the matters which had been particularly discussed with the new German Ambassador to the United States, Herr von Prittwitz. The latter had been instructed to sound out the State Department at the first good opportunity regarding the readiness of the American Government to enter into negotiations

¹ See vol. I, p. 3.

² *Foreign Relations*, 1927, vol. II, pp. 616, 626.

with Germany for the conclusion of an arbitration treaty. Mr. de Haas said that it was the intention of the Foreign Office to proceed very cautiously, as the German Government had learned since the war not to broach such matters with foreign Governments until there was an intimation that an approach would be well received.

I have [etc.]

D. C. POOLE

711.6212 A/5 : Telegram

The Secretary of State to the Ambassador in Germany (Schurman)

WASHINGTON, March 12, 1928—7 p. m.

23. Department handed German Ambassador March 12 a draft of a proposed treaty of arbitration between the United States and Germany. The provisions of the draft are identical in effect with those of the arbitration treaty recently signed with France³ and with draft arbitration treaties already submitted to the Spanish, British, Japanese, Italian and Norwegian Governments.⁴

Department also handed to the Ambassador draft of treaty of similar purport to the so-called Bryan Treaties.⁵

The text of these proposed treaties will be forwarded in next pouch.⁶

KELLOGG

711.6212 A/7

Memorandum by the Under Secretary of State of a Conversation With the German Ambassador (Von Prittwitz)

[WASHINGTON,] April 11, 1928.

The Ambassador came in at his own suggestion and said that his Government had been considering the draft treaties of arbitration and conciliation recently submitted. It was anxious to negotiate and sign these treaties as soon as possible. There were, however, one or two questions of interpretation and procedure under the two treaties which it would seem desirable to discuss quite informally in order to make certain that there is an entire agreement on all points. The Ambassador thought that these questions were easily determinable. He did not wish to deal with them at all formally and, therefore, merely prepared a very brief memorandum which he would

³ *Ante*, p. 816.

⁴ For negotiations with Great Britain, see *post*, pp. 945 ff.; with Italy, Japan, and Spain, see vol. III, pp. 102 ff., pp. 135 ff., and pp. 879 ff. Although negotiations with Norway were instituted in 1923, the treaty was not signed until 1929 (Department of State Treaty Series No. 788).

⁵ For index references to the Bryan treaties, see *Foreign Relations*, 1914, p. 1130; 1915, p. 1328; 1916, p. 1007.

⁶ Draft treaties not printed.

like to leave for our consideration. He suggested that at our convenience we take the subject up again orally. Attached is his memorandum.

The Ambassador also inquired whether the correspondence on the subject of the treaty to outlaw war had been yet sent to Ambassador Schurman for delivery to the German Government. I told him that all papers were now in the hands of our Ambassador in Berlin, and that we hoped to give him final instructions to deliver them to the German Government some time within the next day or two.

R[OBERT] E. O[LDS]

[Annex]

*Informal Memorandum by the German Ambassador
(Von Prittwitz)*

I. In the matter of the relation between the two Treaties the following questions might arise:

1) After entering into a "special agreement" under Article I of the Arbitration Treaty to submit a controversy to arbitration, may a party, parallel to or subsequent to such arbitration, invoke conciliation proceedings?

Following the draft, this would appear not to be the case.

2) If, on the other hand, a party considers a case for arbitration to have arisen, but cannot agree with the other party on the terms of such arbitration so that a "special agreement" is not concluded, it is to be assumed that each party is entitled to call for conciliation.

3) If, notwithstanding that a case for arbitration has arisen, one party immediately enters into conciliation proceedings, the question arises whether the other party may insist upon arbitration before the conciliation proceedings have been carried through. In such case the first party which has referred the matter for conciliation can in effect always obstruct the arbitration proceedings by refusing to enter into a "special agreement". It seems, nevertheless, of importance to determine in principle whether such action would be permissible under the treaties. The only logical reply would appear to be that no party may obstruct or delay arbitration by onesided invocation of conciliation.

II. The phrase "and which are justiciable in their nature etc." in Article I is understood to be an interpretation and not a modification of the term "claim of right" in the same article. If this were not the case, such modification, it is to be feared, might lead to the creation of a reservation of similar scope as the former reservations on grounds of national honor and interest in that any party might declare that it did not consider the case susceptible of decision by the application of the principles of Law or Equity.

III. The first reservation of Article II can be interpreted to apply in every case in which a national law creates the jurisdiction of a

national Court. There are, however, many cases conceivable where a national law provides for national jurisdiction, but where simultaneously accepted rules of International Law are applicable. Supposing in such case, that the decision of the national Court were not in accordance with the accepted rules of International Law, such decision might nevertheless be held to prevail. The customary practice in such cases is first to resort to the final decision of national jurisdiction and then to allow arbitration if such final national decision proves to be contrary to International Law. If the first reservation of the present draft is not to be understood in this sense, the result would be that domestic jurisdiction could in every case exclude arbitration. It therefore appears desirable to interpret clause (a) of Article II to mean that this reservation is only applicable in cases where domestic jurisdiction is provided by International Law, i. e. where the Law of Nations unrestrictedly leaves the matter to national jurisdiction.

711.6212 A/8

*Memorandum by the Under Secretary of State of a Conversation
With the German Ambassador (Von Prittwitz)*

[WASHINGTON,] April 14, 1928.

The Ambassador came down and talked with the Secretary and the Under Secretary regarding the questions informally submitted by him on April 11. These questions were taken up seriatim and discussed at length along the lines laid down in the attached memorandum which was at the conclusion of the conversation given to the Ambassador for his own personal use, and not in any sense to be regarded as a communication from the Department to him or to his Government. The Ambassador expressed entire satisfaction with the explanations, and said that he saw no reason why after receiving his report the German Government would not agree to the prompt execution of the treaties.

R[OBERT] E. O[LDS]

[Annex]

*Comment on the Informal Memorandum Left by the German
Ambassador (Von Prittwitz) at the Department of State April
11, 1928*

[WASHINGTON,] April 12, 1928.

It must be assumed that the parties to the treaties sincerely desire to carry out the spirit of the agreement. Given such disposition on both sides, it does not seem likely that any misunderstanding-

ing would arise. The following may be said as to the specific points suggested:

I. (1) After entering into a "special agreement" under Article I of the Arbitration Treaty a party may not invoke conciliation proceedings parallel to or subsequent to the arbitration. This situation follows from the language of the original Bryan Treaties, which in the interest of uniformity the Department has felt it unwise to modify. It does not seem that this situation presents any material difficulties since either party in the first instance can choose between arbitration or conciliation, and arbitration having been chosen there would seem to be little advantage in shifting to the conciliation procedure, except in respect of the mutual undertaking not to resort to war pending the report of the conciliation commission. As a practical matter, were a question to arise even remotely threatening hostilities, the parties would be ill advised not to adopt the conciliation procedure in the first instance. Furthermore, in the event that a multilateral treaty for the renunciation of war along the lines now under discussion comes into force, the matter would be cared for even more satisfactorily than under the conciliation treaty.

I. (2) If a party considers a case for arbitration to have arisen but cannot agree with the other party on the terms of the arbitration, either party is entitled to call for conciliation since "recourse to adjudication by a competent tribunal" cannot be said to have been had where no agreement has been reached on a compromise.

I. (3) Arbitration can be invoked in respect of questions "which have not been adjusted as a result of reference to an appropriate commission of conciliation". Either party may, therefore, request arbitration so long as the controversy has not been "adjusted" by conciliation, and it would seem to follow that mere reference to a conciliation commission could not be held to bar recourse to arbitration.

II. The definition of a justiciable question in Article I must be taken as a whole, that is to say to come within the scope of the arbitration treaty a difference must at one and the same time relate to an international matter, be based upon a claim of right and be justiciable in its nature by reason of being susceptible of decision by the application of the principles of law or equity. To illustrate: a question arising under a treaty or under well settled principles of international law. If the question comes within this definition, it could not be excluded from arbitration because one of the parties might claim that it involves national honor or vital interests. In this connection refer to the Secretary's speech in New York, a copy of which is attached.⁷

III. Clause (a) of Article II of the arbitration treaty is intended to exclude from the scope of the treaty such questions as the incidence of domestic taxation, tariff, immigration of aliens and all matters of internal policy unless such matters contravene a treaty right between two countries. All such political questions are clearly within the purely domestic jurisdiction of the parties. This does not mean, of

⁷ *The War Prevention Policy of the United States*, an address by Honorable Frank B. Kellogg, Secretary of State of the United States, delivered before the Council on Foreign Relations at New York City, Mar. 15, 1928 (Washington, Government Printing Office, 1928).

course, matters within the jurisdiction of domestic courts or tribunals but matters of purely national concern because wholly within the governmental control or competency of the two nations. If a question, however, is of international character and is a claim of right susceptible of decision by the application of the principles of law, of course the right of arbitration cannot be taken away by either country through self-serving legislation.

Treaty Series No. 774

Arbitration Treaty Between the United States of America and Germany, Signed at Washington, May 5, 1928^a

The President of the United States of America and the President of the German Reich

Determined to prevent so far as in their power lies any interruption in the peaceful relations now happily existing between the two nations;

Desirous of reaffirming their adherence to the policy of submitting to impartial decision all justiciable controversies that may arise between them; and

Eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the Powers of the world;

Have decided to conclude a treaty of arbitration and for that purpose they have appointed as their respective Plenipotentiaries

The President of the United States of America, Frank B. Kellogg, Secretary of State of the United States, and

The President of the German Reich, Herr Friedrich von Prittwitz und Gaffron, German Ambassador to the United States of America:

Who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

ARTICLE I

All differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to an appropriate commission of conciliation,

^a In English and German; German text not printed. Ratification advised by the Senate, May 10, 1928; ratified by the President, May 15, 1928; ratified by Germany, Jan. 28, 1929; ratifications exchanged at Washington, Feb. 25, 1929; proclaimed by the President, Feb. 25, 1929.

and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907, or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

The special agreement in each case shall be made on the part of the United States of America by the President of the United States of America by and with the advice and consent of the Senate thereof, and on the part of Germany in accordance with its constitutional laws.

ARTICLE II

The provisions of this treaty shall not be invoked in respect of any dispute the subject matter of which

(a) is within the domestic jurisdiction of either of the High Contracting Parties,

(b) involves the interests of third Parties,

(c) depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine,

(d) depends upon or involves the observance of the obligations of Germany in accordance with the Covenant of the League of Nations.

ARTICLE III

The present treaty shall be ratified by the President of the United States of America by and with the advice and consent of the Senate thereof and by the President of the German Reich in accordance with German constitutional laws.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate in the English and German languages, both texts having equal force, and hereunto affix their seals.

Done at Washington the fifth day of May in the year of our Lord one thousand nine hundred and twenty-eight.

FRANK B. KELLOGG [SEAL]

F. VON PRITTWITZ [SEAL]

Treaty Series No. 775

*Conciliation Treaty Between the United States of America and
Germany, Signed at Washington, May 5, 1928*^{*}

The President of the United States of America and the President of the German Reich, being desirous to strengthen the bonds of amity that bind them together and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States of America, Frank B. Kellogg, Secretary of State of the United States of America; and

The President of the German Reich, Herr Friedrich von Prittwitz und Gaffron, German Ambassador to the United States of America:

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE I

Any disputes arising between the Government of the United States of America and the Government of Germany, of whatever nature they may be, shall, when ordinary diplomatic proceedings have failed and the High Contracting Parties do not have recourse to adjudication by a competent tribunal, be submitted for investigation and report to a permanent International Commission constituted in the manner prescribed in the next succeeding Article; the High Contracting Parties agree not to declare war or begin hostilities during such investigation and before the report is submitted.

ARTICLE II

The International Commission shall be composed of five members, to be appointed as follows: One member shall be chosen from each country, by the Government thereof; one member shall be chosen by each Government from some third country; the fifth member shall be chosen by common agreement between the two Governments, it being understood that he shall not be a citizen of either country. The expenses of the Commission shall be paid by the two Governments in equal proportions.

The International Commission shall be appointed within six months after the exchange of ratifications of this treaty; and vacancies shall be filled according to the manner of the original appointment.

^{*} In English and German; German text not printed. Ratification advised by the Senate, May 10, 1928; ratified by the President, May 15, 1928; ratified by Germany, Jan. 28, 1929; ratifications exchanged at Washington, Feb. 25, 1929; proclaimed by the President, Feb. 25, 1929.

ARTICLE III

In case the High Contracting Parties shall have failed to adjust a dispute by diplomatic methods, and they do not have recourse to adjudication by a competent tribunal, they shall at once refer it to the International Commission for investigation and report. The International Commission may, however, spontaneously by unanimous agreement offer its services to that effect, and in such case it shall notify both Governments and request their cooperation in the investigation.

The High Contracting Parties agree to furnish the Permanent International Commission with all the means and facilities required for its investigation and report.

The report of the Commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the High Contracting Parties shall shorten or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each Government, and the third retained by the Commission for its files.

The High Contracting Parties reserve the right to act independently on the subject matter of the dispute after the report of the Commission shall have been submitted.

ARTICLE IV

The present treaty shall be ratified by the President of the United States of America by and with the advice and consent of the Senate thereof, and by the President of the German Reich in accordance with German constitutional laws.

The ratifications shall be exchanged at Washington as soon as possible, and the treaty shall take effect on the date of the exchange of the ratifications. It shall thereafter remain in force continuously unless and until terminated by one year's written notice given by either High Contracting Party to the other.

In faith whereof the respective Plenipotentiaries have signed this treaty in duplicate in the English and German languages, both texts having equal force, and hereunto affix their seals.

Done at Washington the fifth day of May in the year of our Lord one thousand nine hundred and twenty-eight.

FRANK B. KELLOGG [SEAL]

F. VON PRITTWITZ [SEAL]

PLANS FOR A COMMITTEE OF EXPERTS TO SEEK A FINAL
SETTLEMENT OF THE REPARATION PROBLEM¹¹

462.00 R 296/2383 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

[Paraphrase]

BERLIN, September 28, 1928—7 p. m.

[Received 8:15 p. m.]

198 . . . S. Parker Gilbert, Agent General of Reparations, is actively studying the situation since the conversations recently at Geneva and today very confidentially told me that there is a definite possibility, he thinks, of an expert commission similar to that of 1924 being summoned next month. He . . . believes that at Paris there is a thorough disposition to effect at this time a final settlement of reparations, and he thinks from previous talks that Poincaré¹² may direct the movement and give force to it. Gilbert hopes that, while opposition may be expected from London, better counsel will prevail there with Baldwin¹³ in charge if both France and Germany proceed in the right way. A conclusive, concrete development now is not likely, but it may follow in a fortnight, according to Gilbert. He emphasized his desire to inform the Department through this Embassy of the situation. Action not unacceptable to the United States nor disturbing American domestic politics is possible, he feels.

A summary of the German Government's present attitude has been given me as follows:

(1) To sit tight while Gilbert and Paris take the lead. Maturing French war stocks debt to the United States, the Germans feel, offers a splendid opportunity for a settlement, but, relying greatly on Gilbert, they are prepared now to follow his leadership.

(2) The French suggestion of bilateral negotiations has been resisted, and the Germans prefer a meeting of experts as in 1924 rather than a diplomatic conference and have the impression that invitations to private American citizens will not be objectionable to the United States Government.

(3) As a means of repressing German industrial rivalry, they believe the British prefer continuing the present regime but will hesitate to obstruct a general movement in the direction of settlement.

(4) Reparations and interallied debts, the Germans are convinced, must be kept apart.

The above I have not repeated to Paris or London.

POOLE

¹¹ For previous correspondence concerning German reparations, see *Foreign Relations*, 1925, vol. II, pp. 133 ff.; also *ibid.*, 1927, vol. II, pp. 722 ff.

¹² Raymond Poincaré, President of the French Council of Ministers.

¹³ Stanley Baldwin, Prime Minister of Great Britain.

462.00 R 296/2404 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

[Paraphrase]

BERLIN, October 11, 1928—noon.

[Received 1:15 p. m.]

207. The situation regarding reparations remains essentially unchanged since my 198 of September 28.

At the German Foreign Office yesterday, in speaking to me, Schubert¹⁴ stressed the need of cautious preparation, but he intimated that in a fortnight a definite step was possible and emphasized the German Government's great desire for American cooperation and the avoidance of any action disturbing or unacceptable to the United States Government. Schubert wishes me to let him know of anything in which due regard does not appear to be given to the American requirements.

As to American citizens taking part, he explained that his Government entertains the hope that the composition of the commission may resemble that of 1924 very closely.

POOLE

462.00 R 296/2452

*Memorandum Handed by the German Ambassador (Von Prittwitz)
to the Secretary of State on October 30, 1928*

(Content of Intimation by German to French, Belgian, British, Italian and Japanese Governments).

The representatives of France, Belgium, Great Britain, Italy, Japan and Germany having at their meeting in Geneva on September 16 unanimously ascertained the necessity of a comprehensive and definite settlement of the reparation problem and agreed to call a committee of financial experts of the six governments for this purpose, it appears desirable that these governments should take the necessary steps for the execution of the plan decided upon, so that the committee may begin its work. In the opinion of the German Government this would entail the following:

The Geneva agreement of September 16¹⁵ provides only for the calling of experts from the six countries there represented. It would, however, be welcomed by all concerned, if besides those experts, citizens of the United States could participate in the work of the com-

¹⁴ Dr. C. T. C. von Schubert, Secretary of State of the German Foreign Office.

¹⁵ See London *Times*, Sept. 17, 1928, p. 12.

mittee. In such case it would be for the six governments to issue invitations to such American citizens as they may agree upon to join in the deliberations of the committee.

It appears desirable that the committee should be composed in the same manner as the first committee of experts instituted in 1923, of independent persons of financial competence who enjoy international reputation and authority in their own country and who are not bound by any governmental instructions. The number of members should not exceed three from each country.

The committee should meet as soon as possible at a place to be selected from considerations of practical expediency, as which the German Government would welcome the city of Berlin to be chosen.

The mandate of the committee having been defined in the Geneva agreement as a "complete and definite settlement of the reparation problem", it should be asked to make suggestions for such definite and complete settlement of the problem.

When the six governments have come to an understanding on the above procedure, they would inform the Reparations Commission thereof and invite its future cooperation to the end that the proposals which the committee may make, are, after their acceptance by the governments concerned, put into effect.

462.00 R 296/2425 : Telegram

The Secretary of State to the Chargé in France (Armour)

[Paraphrase]

WASHINGTON, October 31, 1928—noon.

368. Please communicate the following to Gilbert for his confidential information:

Your telegram of October 23 to me ¹⁶ has been taken into consideration by President Coolidge, Secretary Mellon, and me.

You desire, as I understand it, information regarding the United States attitude on the following:

(1) Whether this Government is in principle willing for American citizens to serve as independent experts on a committee similar to the Dawes Committee. This Government will give the most sympathetic consideration to such a request if the Allied European Governments officially make it and if they submit names of American citizens as their appointees to serve on the committee.

(2) Whether this Government is ready to cooperate with other Governments concerned so far as designating two citizens to serve on the committee. The answer to this question should be, "no." The mere fact of the Government's assumption of responsibility for their selec-

¹⁶ Not printed.

tion carries with it so much official responsibility for their recommendation that I do not believe this Government will or should care to assume it. The American interest in reparations is entirely too small to justify this Government's assumption, either directly or indirectly, of any responsibility respecting settlement of the whole problem of reparations.

(3) Whether this Government is willing for an individual in an official position of the Government to serve in private capacity on the committee. "No" should be the answer to this. This Government does not think it appropriate for one of its officials to sit on such a committee. Such action would carry with it more or less official responsibility.

The foregoing confidential information is stated on the understanding that this experts committee will not examine into nor make any recommendations concerning the Allied Governments' or any other European debts to the United States.

KELLOGG

462.00 R 296/2487

Memorandum by the Secretary of State

[WASHINGTON,] November 22, 1928.

The French Ambassador asked me on his own responsibility and not for his government as to whether the United States had any objection to Americans being appointed by the foreign governments on the expert committee on reparations. I told him that no government had made any inquiry nor had any citizens of the United States made any inquiry as to whether there was any objection; that all I knew about it was what I had seen in the press; that it was the intention of the Allied Powers and Germany to form an organization of experts to re-examine the subject of German reparations; that it was probable that two American experts would be chosen by them if the United States had no objection. I also said that I had received the same information from our embassies but not by reason of any inquiry made by foreign governments. I told him if any such request was made it would receive sympathetic consideration but that I would have to take the matter up with the President.

F[RANK] B. K[ELLOGG]

462.00 R 296/2494

Memorandum by the Secretary of State

[WASHINGTON,] November 27, 1928.

The German Ambassador called to see me this morning and left with me a memorandum delivered by the German Government to the French, Belgian, British, Japanese and Italian Governments. The memorandum is as follows:

[Here follows text of memorandum printed on page 872.]

After the delivery of this document, the French Government and the British Government made representations to the German Government along the following lines—the French Government stated that it would have to receive sufficient reparations to pay its obligations to Great Britain and the United States[,] and Great Britain stated that it must insist on the principles of the Balfour note¹⁷ which was that Great Britain was to receive enough money from reparations and foreign obligations to it to pay the United States. The German Government got no statement from Belgium or Italy or any of the other countries.

After the delivery of these statements to the German Government, the German Government delivered to Great Britain and France a memorandum as follows:

“The German Government has taken cognizance of the *Aide Memoire* wherein the French Government has notified the governments in London, Rome and Brussels of its views concerning the settlement of the Reparation question.

It has furthermore taken cognizance of the declaration made verbally to the German Ambassador in Paris stating that the questions raised in its *Aide Memoire* will in no way be regarded by the French Government as an instruction to the Experts Commission.

The German Government is of the opinion that, whereas the appointment of an experts' commission was agreed upon in Geneva, the moment for discussing the material settlement of the reparations question will not have arrived until the conclusions of the Experts Commission have been presented to the governments concerned. In the face of the point of view taken by the French Government the German Government must, therefore, reserve to itself freedom of action in every respect and confines itself at present to emphasizing the general principle that a definite settlement of the Reparations question will only be possible if such solution will allow Germany to fulfil its obligations permanently out of its own economic resources and without thereby endangering the standard of living of the German people”.

The German Ambassador said that so far as these memoranda were concerned, Germany seemed satisfied because several Allied countries did not insist that their statements to Germany as to the amount of reparations they must receive would be made an instruction to the experts on the Commission. He said that another question had now arisen—whether the experts were to be named by the Reparations Commission or by the several governments. Germany insisted the appointment should be made by the governments and Great Britain agreed with her. One of the reasons why Germany insists on this is

¹⁷ *Foreign Relations*, 1922, vol. I, p. 406.

that she has no representative in the German Reparations Commission. This matter has not yet been settled. . . . He believed, however, that when the reparations experts were appointed, they would ask the United States to have two appointed from this country.

462.00 R 296/2521 : Telegram

The Secretary of State to the Chargé in France (Armour)

[Paraphrase]

WASHINGTON, December 7, 1928—5 p. m.

416. Reparation 65. With reference to your telegram No. 395, of December 6, 4 p. m.¹⁸ In reply to Gilbert's very confidential inquiry, I answered through you in my telegram 368, of October 31, noon, which please consult. In it you will note I said under section (1) in response to his question as to whether this Government is in principle willing for American citizens to serve as independent experts on a committee similar to the Dawes Committee: "This Government will give the most sympathetic consideration to such a request if the Allied European Governments officially make it and if they submit names of American citizens as their appointees to serve on the committee." Of course, this was not intended as any suggestion as to whether the Reparation Commission or the interested Governments should name American experts, if appointed. No suggestion has been or will be made by the United States as to the role to be played by the Reparation Commission or the Governments in constituting the committee. This matter in no way concerns us.

Please inform Gilbert if you believe he does not fully understand this, and repeat the above as Department's No. 123 to the Embassy in Germany.

KELLOGG

462.00 R 296/2524 : Telegram

The Secretary of State to the Chargé in France (Armour)

[Paraphrase]

WASHINGTON, December 8, 1928—7 p. m.

420. Reparation 66. Reference to your 398, December 8, 11 a. m.¹⁸ I stated in my telegram 416, of December 7, 5 p. m., that no suggestion has been or will be made by the United States as to the role to be played by the Reparation Commission or the Governments in constituting the committee. Furthermore, I had no intention of indicating

¹⁸ Not printed.

that the Allied European Governments alone, excluding Germany, should make this request. Neither side nor any individual Government, of course, should use the question of participation of American experts as a weapon.

Please inform Gilbert, and repeat the above as Department's No. 124 to Berlin.

KELLOGG

462.00 R 296/2549 : Telegram

The Chargé in France (Armour) to the Secretary of State

PARIS, December 20, 1923—9 a. m.

[Received 9:25 a. m.]

423. Reparation No. 146.

1. Following is rough translation from French text of terms of reference appended to agreement between Poincaré and Von Hoesch :

"The German, Belgian, French, British, Italian and Japanese Governments, in carrying out the Geneva decision of September 16, 1928, in which the establishment of a committee of independent financial experts had been agreed, have decided to intrust this committee with the elaboration of proposals for a complete and definitive settlement of the reparation problem. These proposals should include (*devront comporter*) a settlement of the obligations arising from the treaties and agreements existing between Germany and the crediting [*creditor*] powers. The committee should communicate its reply to the governments having participated in the Geneva decision as well as to the Reparation Commission."

2. Following is section referring to procedure for obtaining American participation :

"The participation of American experts will be arranged as follows: Sir Esme Howard, British Ambassador at Washington, dean of the Ambassadors accredited there from the six interested powers, will address himself in the name of his colleagues to the Government of the United States in order to ask if it is prepared to consent that American experts take part in the work of the committee envisaged and he will inform himself at the same time whether in that case the Washington government is disposed to propose American personages. If the Government of the United States consents to this, the persons proposed will be appointed jointly by the Reparation Commission and the German Government. In case the Government of the United States should prefer to leave the choice to the governments of the six powers, these will reach agreement upon the choice of the American personages to be invited. The latter will be appointed jointly by Reparation Commission and the German Government."

3. Remainder of agreement will be transmitted in subsequent telegram.

ARMOUR

462.90 R 296/2550 : Telegram

The Chargé in France (Armour) to the Secretary of State

PARIS, December 20, 1928—noon.

[Received December 20—9:55 a. m.²⁰]

424. Reparation No. 147. Reference my Reparation 146. Following is rough translation from French text of agreement, dated December 17, 1928, between Poincaré and Von Hoesch:

"After having received the adhesion of all the interested Governments, M. Raymond Poincaré, President of the Council of Ministers and M. Von Hoesch, German Ambassador at Paris, in examining the question of setting up the Committee of Experts provided for by the Geneva agreement of September 16, 1928, relative to the settlement of the reparation problem, have reached agreement as follows:

"1. It is highly desirable in the general interest that, besides the experts to be designated by each of the six Governments having participated in the above-mentioned Geneva decision, citizens of the United States should also take part in the work of the Committee of Experts.

"2. The committee should, following the example of the first Committee of Experts which was established in November 1923, be composed of independent experts enjoying international esteem and authority in their own countries and not being bound by instructions from their governments. The number of members will be two for each country. It is nevertheless understood that alternates (*suppléants*) can be associated with them.

"3. The committee will meet provisionally at Paris as soon as possible. The final decision concerning the place at which it will be thought advisable to meet will be reserved to the committee.

"4. The committee will receive on the part of the six Governments in accordance with the said Geneva agreement of September 16th the mandate 'to elaborate proposals for a complete and definitive settlement of the reparation problem'. These proposals should include a settlement of the obligations arising from the treaties and agreements existing between Germany and the creditor powers. The committee will communicate its reply to the governments having participated in the Geneva decision as well as the Reparation Commission.

"5. As concerns the appointment of the experts the procedure will be as follows:

"The experts of the creditor powers having participated in the Geneva decision will be designated by the governments of these powers and appointed according to the convenience of these governments either by them or by the Reparation Commission.

"The German experts will be appointed by the German Government."

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ARMOUR

²⁰ Telegram in two sections.

462.00 R 296/2560 : Telegram

The Chargé in France (Armour) to the Secretary of State

PARIS, December 23, 1928—1 p. m.

[Received December 23—11:50 a. m.²¹]

431. Reparation No. 152. The communiqué published last night regarding the Committee of Experts was a textual reproduction of the Poincaré-Von Hoesch agreement, telegraphed in my reparation No. 147, with an additional sentence at the end reading:

“Arrangements have been made by the six interested Governments with a view to determining the most appropriate method for obtaining the participation of American experts”.

This sentence was put in the communiqué in place of the detailed section concerning American participation, telegraphed in paragraph 2 of my reparation No. 145.²² (For explanation of this, see paragraph 2 [of] my reparation 150.²²)

The terms of reference as appended to the agreement and telegraphed in paragraph 1 of my reparation 146 were not published but they are of course covered in paragraph 4 of the communiqué.

2. At the time of issuing this communiqué, Poincaré also issued an official statement reading as follows:

“The Government of the Republic, in an *aide-mémoire* of October 30th which will be published later, informed the other creditor powers and Germany of the conditions to which it will subordinate its adherence to any plan of settlement. These conditions are those which the Minister for Foreign Affairs set forth at the Geneva Conference and which the President of the Council of the Empire [*Republic*] stated in his address at Chambéry and Caen.”

The statement recalled the essential of the Caen speech as follows:

“In any negotiation concerning our claim on Germany we have not the right either to abandon blindly our guarantees or accept an arrangement which would not have the effect of assuring us, together with the means, for providing for integrally our own debts a just indemnity for our reparations.”

[Paraphrase]

3. From the foregoing paragraph 2, you will note that Poincaré in making public the agreement of the setting up of the committee seems to have felt that he should restate publicly the attitude of the French Government relative to the reparation settlement. The other Governments will presumably now do the same thing. In connection with the 3d paragraph of Gilbert's message sent to you this morning in my reparation 151,²² it occurs to me that, should you decide against making

²¹ Telegram in two sections.

²² Not printed.

a formal reservation, you might consider some such procedure as has been followed in the present case by Poincaré. In other words, when you agree to our participation, you might release a press announcement to the effect that the American Government had the understanding that this was to be a settlement of the reparations question on its merits and that the debts owed the United States Government by European countries would, of course, not in any way enter into the discussion.

ARMOUR

462.00 R 296/2560 : Telegram

The Secretary of State to the Chargé in France (Armour)

[Paraphrase]

WASHINGTON, December 26, 1928—5 p. m.

435. Referring to your telegram No. 431, December 23, 1 p. m. I made it clear to the press that, while the American Government had no objection to American citizens serving on the committee, debts were to be entirely excluded and not to be brought up as a subject for discussion. This statement was not given out as a personal interview but was thoroughly understood by the press and was published in general.

KELLOGG

462.00 R 296/2600 : Telegram

The Chargé in France (Armour) to the Secretary of State

[Paraphrase—Extract]

PARIS, January 8, 1929—4 p. m.

[Received January 8—1:25 p. m.]

10. Reparation 164.

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Is the understanding correct that the six Governments, before proceeding to appoint Americans whom they select, will submit their names to the Department?

ARMOUR

462.00 R 296/2599 : Telegram

The Secretary of State to the Chargé in France (Armour)

WASHINGTON, January 8, 1929—6 p. m.

7. Your 9, January 8, Noon ²⁴ and 10, January 8, 4 p. m. The following communiqué was given to the press on December 24:

"Sir Esme Howard, the British Ambassador, called upon the Secretary of State this morning and informed him in the name of the six governments interested in the reparations problem that they wished to inquire whether the United States Government will agree to American experts taking part in the work of the proposed committee which is to deal with the final settlement of the problem, and whether, if so, the United States Government would be ready to propose the names of such American experts. The British Ambassador explained to the Secretary of State that if the United States Government agrees to this the experts proposed will be appointed jointly by the Reparations Commission and the German Government, but if the United States Government should prefer to leave the choice of American experts to the six powers the latter will then agree on the names of the experts to be invited. In that case the experts will also be appointed jointly by the Reparations Commission and the German Government.

"The Secretary of State this afternoon informed Sir Esme Howard, the British Ambassador, that if the six governments desire American experts to serve upon the Expert Committee the United States will have no objection."

The British Ambassador was informed yesterday that this Government would not care to advise in any way as to the method of appointment of American members of the Experts Committee but that it would be perfectly satisfactory if the American members were appointed by the six Governments and equally satisfactory if they were appointed by the Reparation Commission and the German Government, these being the methods which the Ambassador had suggested. The Ambassador was likewise informed that the only thing the American Government desired was to have the Governments agree as to the method of appointment as we did not wish to be the cause of any misunderstanding.

Last paragraph your 10. Understanding correct.

KELLOGG

²⁴ Not printed.

**DISPOSAL OF UNUSED BALANCES OF SUMS ALLOCATED TO THE
INTERALLIED RHINELAND HIGH COMMISSION FOR ITS ADMINIS-
TRATIVE EXPENSES**

462.00 R 296/2149 : Telegram

The Ambassador in France (Herrick) to the Secretary of State

PARIS, February 18, 1928—noon.

[Received 2 p. m.]

50. Reparation 79.

1. Reference my letter December 12, 1927,²⁵ enclosing annexes 3314 A–C regarding disposal of unused balances of Rhineland High Commission. This question has not yet been acted upon formally by Reparation Commission but has been discussed at various meetings of managing committee. As a result of discussions, Secretary General has addressed letter to interested representatives, including myself, inquiring whether the governments would be prepared to substitute for the assurance already given in reply to Reparation Commission decision number 3539 of July 27, 1927,²⁵ as to covering claims under article 6 of the Rhineland agreement²⁶ an assurance along the lines set forth in the conclusions of annex 3314 A²⁷ which would extend the assurance to cover claims under articles 8–12 as well.

2. For reasons set forth in my letter under reference I see no objection to advising the Reparation Commission that the United States Government is prepared to substitute the suggested assurance for that already given.

3. In this connection, a question of interpretation has arisen as to the meaning of paragraph 5 of article 2 of the Paris agreement of January 13, 1927,²⁸ of which we were a signatory, annex 3091 A. The Agent General has blocked from the funds of the third annuity a sum of 550,000 gold marks under the provisions of the article cited. Various representatives on the Commission feel that the guarantee given by the powers under this article meant only that if at any given date claims should become payable, the powers concerned would be prepared for sums up to the amount of the savings of the Rhineland Commission to be taken out of their shares of the annuity then current.

²⁵ Not printed.

²⁶ Great Britain, Cmd. 222, Treaty Series No. 7 (1919).

²⁷ "... that a sum not exceeding the unused balances of the allocation for the administrative expenses of the Interallied Rhineland High Commission for the first and subsequent years of the Experts' Plan distributed as reparation will be made available in the annuity then current to meet such of the German Government's claims under Article 6 of the Rhineland Agreement in respect of the period after 1st September 1924 as may be proved to be justified, and any difference in favour of Germany between the provisional lump sums paid in respect of deliveries and supplies under Articles 8–12 of that Agreement for the period after 1st September 1925 and the definite value of these deliveries and supplies as fixed by the competent Assessment Commissions." (462.00 R 296/2087.)

²⁸ *Foreign Relations*, 1927, vol. II, p. 726.

It is felt that the powers had not contemplated that the guarantees would entail blocking the amounts in question in each annuity and that in fact the guarantee constituted an arrangement between the powers to deal with a contingency in respect of which neither the Reparation Commission nor the Agent General would be called upon to intervene until the claims became payable.

4. It seems clear to me that the interpretation outlined above is correct. It is further the only reasonable interpretation of the assurance which the Department has recently given as regards article 6 of the Rhineland agreement and of the extended assurance which it is now requested to give covering articles 8–12 as well. It is obvious that the advantages to be gained from the distribution of the 1,450,000 gold marks of savings now available would be offset if a corresponding amount were immediately blocked in the fourth annuity.

5. I understand that the Agent General has been informally sounded out and that if the powers are prepared to give the extended assurance along with their interpretation of article 2 of the January 13, 1927, agreement on the general lines set forth above, he will doubtless be willing to disperse the accumulated savings of the Rhineland Commission without blocking a corresponding amount in the current or subsequent annuities.

[Paraphrase]

6. Representatives of the powers interested will shortly meet to consider these questions. I respectfully suggest, therefore, that you authorize me to define the United States Government's position substantially thus:

(a) That the United States Government is prepared to substitute the assurance recommended for that already given subject to all other interested governments' giving similar assurance; and

(b) That said Government interprets this assurance and article 2 of the agreement of January 13, 1927, in accordance with lines set forth above in paragraph 3.

HERRICK

462.09 R 296/2149 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, February 23, 1928—6 p. m.

53. Reparation 45. Your Reparation 79. You are authorized to state: (1) That the United States Government is prepared to substitute the assurance recommended in the conclusions of Annex 3314—A for that already given subject to all other interested governments giving similar assurance; and (2) That it interprets this assurance and Article 2 of the agreement of January 13, 1927, to mean that if at any given date claims should become payable, the Powers concerned would be willing that sums up to the amount of the savings

of the Rhineland Commission should be taken out of the part of the annuity then current which would otherwise be available for distribution among them.

KELLOGG

462.00 R 296/2214

The Ambassador in France (Herrick) to the Secretary of State

Reparation

PARIS, April 5, 1928.

[Received April 18.]

SIR: I have the honor to refer to my Reparation telegram No. 85 of March 28, 1928,²⁹ and to the Department's reply, Reparation No. 48 of March 29, 1928,²⁹ authorising me, in effect, to inform the Secretary General of the Reparation Commission that the Government of the United States was disposed to continue in effect the present arrangement for the distribution of cash transfers up to the limit of a third sum of 100 million gold marks during the 4th Annuity Year, provided the other interested Powers should take similar action, and without prejudice to any question of principle.

The representatives of the other Powers were all in agreement as to continuing the present arrangement, and accordingly a letter in this sense was addressed to the Chairman of the Transfer Committee under date of March 30, 1928, by the Secretary General of the Reparation Commission, together with a schedule indicating the basis for distribution of this third sum of 100 million gold marks. Copies of this communication are transmitted herewith as Annexes 3419 d ¹⁻².²⁹ I also transmit copies of Annex 3419 c, being a note from the Secretary General to the Commission submitting his letter of March 30th for the formal approval of the Commission.²⁹

I should like to express my appreciation of the Department's thoughtfulness in instructing me so promptly in the matter. This made it possible for an agreement to be immediately reached and notified to the Transfer Committee prior to its meeting on March 31st.

I have [etc.]

For the Ambassador,
EDWIN C. WILSON

²⁹ Not printed.

462.00 R 296/2249

The Ambassador in France (Herrick) to the Secretary of State

Reparation

PARIS, May 9, 1928.

[Received May 19.]

SIR: I have the honor to refer to my telegram Reparation No. 79 of February 18, 1928, and to the Department's Reparation No. 45 of February 23, 1928, regarding 1) the disposal of the unused balances of the Rhineland High Commission, and 2) the question of interpretation of paragraph 5 of Article 2 of the Paris Agreement of January 13, 1927, as well as of the extended assurance covering the Rhineland Commission for claims payable under Articles 6 and 8-12 of the Rhineland Agreement.

With regard to the first point mentioned, all the Powers concerned have now stated that they are prepared to give the extended assurance desired by the Rhineland Commission before it makes its savings available for distribution as Reparation.

As regards the second point, the question of interpretation, the Managing Committee at a meeting on May 2nd, acting in this instance as an informal drafting committee on behalf of certain of the interested Powers, considered a Draft Protocol prepared by the Finance Section of the Commission. Following subsequent discussions between representatives of the principal Powers, agreement has now been reached on a text, copies of which I transmit herewith.³⁰ This text of the Draft Protocol is satisfactory to the British, French, Italian and Belgian representatives and I regard it as satisfactory from our point of view. It is now proposed to submit the Draft Protocol to the representatives of all the Powers signatory to the Agreement of January 13, 1927, and then to convoke an early meeting of such representatives for the purpose of signing the Protocol.

The Department will note that according to Article 1 of the Draft Protocol, the additional amount that may be placed at the disposal of the Rhineland Commission, within the limits of its savings, in order to meet claims that may become payable, will rank with the annual charge fixed in Article 2 of the Agreement of 13th January, 1927, for the administrative expenses of the Rhineland Commission. In view of the wording of the Department's instruction contained in its telegram Reparation No. 45 of February 23rd, I had suggested to the other representatives that the paragraph should be so drafted as to read specifically that the sums which may be placed at the disposal of the Rhineland Commission to meet claims payable should be taken out of the part of the Annuity then current which would otherwise

³⁰ Not printed.

be available for distribution among the Powers. There was objection to this, however, on the part of the other representatives, as they feared that this wording would have the effect of setting up a further distinct category of priority in addition to the prior charges created in the January 14, 1925, Agreement. They preferred not to establish this additional priority, but merely to provide that, in the contingency contemplated, a certain amount would be added to the maximum amount heretofore fixed for the existent priority in favor of the Rhineland Commission.

So far as we are concerned, it appeared to me that our main interest was to see that any additional amount, within the limits of the savings effected, which might be allocated to the Rhineland Commission to meet claims payable, should not be charged against the Annuity as a whole in such a manner as to reduce the amounts already allocated for existing priorities, and in particular for our Army Cost priority. I explained this view to the other representatives who expressed their entire agreement with me, and in order specifically to guard against any such occurrence, it was agreed that a phrase at the end of paragraph 1 of the Draft Protocol should be inserted, reading as follows: "The provisions of this paragraph do not modify any of the stipulations of the Agreement of 14th January, 1925."

It seems to me that the Department's interpretation of Article 2 of the January 13, 1927, Agreement, as set forth in the Department's Reparation No. 45 of February 23rd, is now given practical effect by the wording of the Draft Protocol: if at any date claims become payable, sums up to the amount of the savings of the Rhineland Commission will in fact be taken, not from existent priorities, but from that part of the Annuity then current, i. e., the Reparation pool, which would otherwise be available for distribution among the Powers.

Further comment in explanation of the Draft Protocol may be submitted as follows:

It has been drafted to cover claims under Article 6 and Articles 8-12 for the second, third, fourth and fifth years of the Plan only. At one time it was suggested that the new assurances should cover the outstanding claims from the beginning of the Experts' Plan.⁵¹ As claims under Article 6 for the first year of the Plan are covered by the provisions of paragraph 5 of Article 2 of the Agreement of 13th January 1927, and as there are no outstanding claims under Articles 8-12 in respect of that year, it was thought preferable for the new assurances to cover claims only from the beginning of the second year of the Plan.

⁵¹ For the negotiations, see *Foreign Relations*, 1924, vol. II, pp. 1 ff.

Further, as the unused balances of the Rhineland Commission are established only for each annuity year it was thought advisable for the new assurances to cover only the period up to the end of the fifth year (31st August 1929) leaving any outstanding balances and any claims in respect of the period 1st September 1929–10th January 1930 to be dealt with at the same time as any general provisions are made for the whole of the sixth annuity year.

It will further be seen that paragraph 2 provides that, in the event of an agreement being reached regarding the amounts payable for the claims for one or several of the years only, the amount which the Allied and Associated Powers will make available will not exceed the unused balances for the year or years in question. Strictly speaking, in order that the total expenses of the Rhineland Commission for any given annuity should not exceed the maximum annual charge fixed in Article 2 of the Agreement of 13th January 1927, it would have been necessary to limit the amounts which could be made available to meet outstanding claims in respect of each year to the unused balances of the same year. As, however, as a result of the provisions of the Riders to the Financial Regulations of 5th May 1925,³² the claims under Articles 8–12 of the Rhineland Agreement for the second and third years will have to be dealt with together, it was thought useless to include such a restriction in the present Protocol (see Article III of Rider No. II, Annex 3089 B, page 21).³²

According to a revised statement from the Chief Accountant of the Reparation Commission, dated March 15, 1928, the amount of the savings of the Rhineland Commission which would now become available for distribution to the Powers is as follows:

	G. M.
Savings for the 2nd Annuity Year	300, 447. 10
“ “ “ 3rd “ “	612, 600. 92
Amount blocked in 3rd Annuity Year under Article 2 of the Agreement of 13th January 1927	550, 000. 00
	<hr/>
	1, 463, 048. 02

The savings for the first Annuity Year—548,581.58 gold marks—have already been distributed to the Powers.

The relative unimportance of the matter to the United States will be realized when it is seen that the total amount of savings which will thus fall to be distributed is only, in round figures, about two million gold marks, of which our share would be but some 45,000 gold marks. Conversely, the limit of our liability to recoup the Rhineland Commission on account of claims payable can never exceed the small amount thus received out of its savings.

³² Not printed.

As mentioned in the foregoing, the Draft Protocol in its present form is satisfactory to the British, French, Italian and Belgian representatives. As a result of the meeting to be called of the representatives of all the Powers signatory to the January 13, 1927, Agreement, it may be found necessary to amend the Draft Protocol in some minor particular in order for it to meet with general approval. But I feel that, in substantially its present form, it will be found satisfactory to all the representatives in question.

I therefore respectfully suggest that the Department, if it perceives no objection, authorise me by cable as soon as possible after the receipt of this letter, to sign, on behalf of the Government of the United States, the Protocol in substantially the form in which it is at present drafted.

I have [etc.]

For the Ambassador,
EDWIN C. WILSON

462.00 R 296/2262 : Telegram

The Secretary of State to the Ambassador in France (Herrick)

WASHINGTON, June 7, 1928—10 a. m.

160. Reparation 53. Your Reparation 97, June 4, 4 p. m.³⁴ Wilson is authorized to sign protocol substantially conforming to draft transmitted with letter of May 9.

KELLOGG

462.00 R 296/2323

The Ambassador in France (Herrick) to the Secretary of State

Reparation

PARIS, July 19, 1928.

[Received July 30.]

SIR: I have the honor to refer to my letter of May 9, 1928, the Department's Reparation telegram No. 53 of June 7, 1928, and other correspondence in regard to the draft protocol concerning the disposal of the unused balances of the Rhineland High Commission.

As a result of various meetings of the representatives of the interested Powers, the last of which was held on June 14th, agreement was reached on a final text, which conforms, with minor alterations, to that transmitted with my letter of May 9th. Certain representatives not being at that time in possession of authorization to sign, the Protocol, which bears the date of June 14, 1928, was not in fact signed by all concerned until within the last few days.

In this connection I am transmitting herewith copies of Annexes 3524 a-d¹⁻³,³⁵ as follows:

³⁴ Not printed.

³⁵ Of the six annexes, only annex 3524 B is printed.

Annex 3524 a is a copy of a Note from the French Delegation to the Secretary General of the Reparation Commission, dated July 17, 1928, communicating, on behalf of the French Government, a certified copy of the Protocol of June 14, 1928;

Annex 3524 b is a copy of the Protocol;

Annex 3524 c is a report by the Finance Section resuming the steps leading up to the signature of the Protocol, and attaching a statement (Annex 3524 d¹) giving expenditures and savings of the Rhineland Commission to the close of the Third Annuity Year. As will be noted, the amount now available for distribution as Reparations as a result of the Protocol of June 14th is 1,463,048.02 gold marks (the amount given in my letter of May 9th last);

Annexes 3524 d²⁻³ are draft letters to be sent to the Agent General for Reparation Payments and to the Rhineland Commission advising them of the signature of the Protocol in order that the necessary arrangements may be made for the unused balances to be distributed.

The Reparation Commission, at its meeting on July 18th, approved the conclusions of the Finance Section in Annex 3524 c, i. e., took note of the Protocol of June 14th, 1928, and decided to forward the letters above mentioned (Annexes 3524 d²⁻³).

The changes which have been made in the Protocol as signed, as compared with the draft³⁶ transmitted with my May 9th letter, may be resumed as follows:

1. The final sentence in sub-paragraph (b) of paragraph 1 of the old draft, reading "The provisions of this paragraph do not modify any of the stipulations of the Agreement of 14th January, 1925", (which was added at my request, see top page 3, my letter May 9th), has been changed to read "The provisions of the present Protocol do not modify any of the stipulations of the Agreement of 14th January, 1925", and placed as a sub-paragraph under paragraph 5 of the Protocol.

2. Paragraph 3 of the former text reads the same up to the words "may be proved to be justified". The new text following these words now reads as follows: "These amounts will be made available out of the Annuity current when the Interallied Rhineland High Commission requests payment of the claims and will rank with the annual charge fixed in Article 2 of the Agreement of 13th January, 1927. Moreover the sums which can be required for the payment of the claims of any given year or years shall not exceed the amounts still available in respect of that year or years." This change reproduces the pertinent wording in the first paragraph of the Protocol.

3. A new paragraph 4 has been added which reads: "The provisions of this Protocol shall in no event have the effect of increasing the annual allocation of any of the High Commissariats beyond the limits thereto assigned by the 1st paragraph of Article 2 of the Agreement of the 13th January 1927." This is an additional safeguard suggested by the Belgian Delegation.

4. Paragraph 4 of the old text is now paragraph 5.

³⁶ Not printed.

I will forward the certified copy of the Protocol as soon as I receive it from the French Government.³⁷

I have [etc.]

For the Ambassador,
EDWIN C. WILSON

[Enclosure—Annex 3524 B]

Protocol of June 14, 1928, Regarding the Disposal of the Unused Balances of the Sums Allocated to the Interallied Rhineland High Commission for Its Administrative Expenses Under Article 2 of the Agreement of the 13th January 1927

In order to complete the provisions of the Agreement of 13th January 1927 regarding the disposal of the unused balances of the sums allocated to the Interallied Rhineland High Commission for its administrative expenses, the signatories to that Agreement have agreed as follows:—

1. In addition to the annual charge fixed in Article 2 of the Agreement of 13th January 1927 for the period up to 10th January 1930, the Allied and Associated Governments will, at the request of the Interallied Rhineland High Commission, place at its disposal in the annuity current when the request is made, an amount which will rank with the annual charge referred to above and will not exceed the unused balances of the administrative funds of the High Commission for the second, third, fourth and fifth years of the Experts' Plan distributed as reparation, to meet:—

(A) such of the outstanding claims of the German Government against the Interallied Rhineland High Commission under Article 6 of the Rhineland Agreement for those years as may be proved to be justified, and—

(B) any difference in favour of Germany between the provisional lump sums paid in respect of deliveries and supplies made to the Interallied Rhineland High Commission under Articles 8-12 of the Rhineland Agreement for those years and the definite value of those deliveries and supplies as fixed by the competent Assessment Commissions.

2. In the event of an agreement being reached regarding the amounts payable for the claims under 1 (A) and (B) above for one or several of those years only, the amount which the Allied and Associated Powers will make available for the payment of these claims will not exceed the unused balances of the Interallied Rhineland High Commission for the year or years in question.

3. Should any of the claims in respect of the second, third, fourth and fifth years be outstanding as at 10th January 1930, amounts not exceeding the difference between the unused balances of the Interallied Rhineland High Commission for those years and the sums already used

³⁷ On Aug. 17, 1928, the Secretary of State acknowledged receipt of a note dated August 10 from the French Chargé enclosing a certified copy of the protocol of June 14 (462.00 R 296/2337).

for the settlement of claims in respect of those years will be made available by the Allied and Associated Powers after 10th January 1930 for the payment of such of those outstanding claims as may be proved to be justified. These amounts will be made available out of the Annuity current when the Interallied Rhineland High Commission requests payment of the claims and will rank with the annual charge fixed in Article 2 of the Agreement of 13th January 1927. Moreover the sums which can be required for the payment of the claims of any given year or years shall not exceed the amounts still available in respect of that year or years.

4. The provisions of this Protocol shall in no event have the effect of increasing the annual allocation of any of the High Commissariats beyond the limits thereto assigned by the 1st paragraph of Article 2 of the Agreement of the 13th January 1927.

5. The provisions of paragraph 5 of Article 2 of the Agreement of 13th January 1927 and the above provisions are an undertaking between the Allied and Associated Governments concerned and the Interallied Rhineland High Commission which only becomes effective if and when the latter informs those Governments that certain claims under Article 6 or Articles 8-12 of the Rhineland Agreement have become payable. It is the intention of the Powers signatory to the present Protocol that these provisions shall not result in the blocking of the funds in question pending the receipt of the information referred to above.

The provisions of the present Protocol do not modify any of the stipulations of the Agreement of 14th January 1925.

The present Protocol done in English and French (the English and French texts both being authentic) in a single copy will be deposited in the archives of the Government of the French Republic which will supply certified copies thereof to each of the signatory Powers.

PARIS, 14 June, 1928.

MAUCLERE

GUTT

EDWIN C. WILSON

W. A. C. GOODCHILD

CORSI

SHIZUO YAMAJI

M. DE PIMENTEL-BRANDAO

D. CAVADIAS

D. PLOJ

TOMAS FERNANDES

J. D. CONDURAKI

J. MROZOSWKI

STEFAN OSUSKY

462.00 R 296/2420 : Telegram

The Chargé in France (Armour) to the Secretary of State

[Paraphrase]

PARIS, October 16, 1928—1 p. m.

[Received 4:50 p. m.]

323. Reparation 117. 1. With reference to Department's telegram Reparation 63.³⁸ On October 5 in my letter enclosing the Reparation

³⁸ Not printed.

Commission's communication dated October 3³⁹ which formally advised regarding said Commission's decision on the request from Greece, I expressed the opinion that the United States Government was not interested in this question unless an arrangement should be reached operating to reduce the American share in the reparation annuities.

2. My reasons for this view are in brief as follows:

(a) The United States has waived various categories of claims and accepted a reduced participation in reparations;

(b) Said reduced participation has been further limited in the sum which the United States can annually receive; that is, the United States receives only 45,000,000 marks per annum, even though the American 2¼% share should bring a higher amount, as is this year's case;

(c) While the United States is returning German property and being satisfied with its small share of 2¼% both for its reparation claims and also for others coming under part 10 of the Treaty of Versailles, the other powers, on the contrary, either have liquidated German property and used such proceeds to cover their claims under the treaty's economic clauses or else have been substantially paid by Germany in respect of these claims;

(d) The question as to precedent in this case may be compared to those involving still unsettled cases of social insurance and pensions, civil and military, in Alsace-Lorraine;

(e) Generally speaking, my feeling is that the United States is not concerned with the execution of any provisions in the agreement of January 14, 1925, which have no specific reference to us and that the United States Government in this regard should assume no commitments. This would apply, among others, to provisions in that agreement such as articles 8, 10, and 23.

ARMOUR

462.00 R 296/2406

The Secretary of State to the Greek Minister (Simopoulos)

The Secretary of State presents his compliments to the Minister of Greece, and has the honor to acknowledge the receipt of his note of October 10, 1928,⁴⁰ regarding the desire of the Greek Government that a special charge in its favor be admitted against the fifth Dawes Plan annuity pursuant to Article 10 of the Agreement of January 14, 1925, regarding the distribution of the Dawes annuities. At the request of the Reparation Commission, the American Embassy at Paris has also transmitted for the information of the Department a copy of the letter of the Greek Delegation to the Reparation Commission dated August 8, 1928,⁴⁰ submitting a similar request to the Reparation Commission. From this letter it appears that the Greek

³⁹ Neither printed.

⁴⁰ Not printed.

Government requests that the provisions of Article 10 of the Agreement of January 14, 1925, be applied not only with regard to the sum of 116,655,373 drachmas mentioned in your note of October 10, but also for the satisfaction of the claims in respect of the disputes still pending before the Greek-German Mixed Arbitral Tribunal as and when these disputes are settled.

The Greek Government requests that the Government of the United States designate one of its experts in Paris as its representative in a conference of the Governments signatory to the Agreement of January 14, 1925, with the instructions necessary in order that a decision be taken with regard to the payment of the sum of 116,655,373 drachmas to Greece. In this connection the Greek Government refers to the meeting held at Paris on July 13, 1928, in connection with the advance to Greece of its share of the undistributed Bulgarian reparations. In fact, however, the Government of the United States was not represented at that meeting and did not sign the protocol drafted therein.

Similarly this Government sees no occasion for designating an American representative to participate in consideration of the matter presented by the Greek Government in its letter to the Reparation Commission of August 8, 1928. Only in case the Government of Greece and the Allied Governments concerned agree upon some arrangement that would involve some question affecting the rights accorded to the Government of the United States under the terms of the Agreement of January 14, 1925, would it be necessary for the Government of the United States to interest itself in the matter.

The Acting American Observer with the Reparation Commission is being instructed in this sense.

WASHINGTON, *October 31, 1928.*

462.90 R 296/2420 : Telegram

The Secretary of State to the Chargé in France (Armour)

WASHINGTON, *October 31, 1928—6 p. m.*

369. Reparation 64. Your Reparation 117, October 16, 1 p. m. You may appropriately inform the Greek Delegation and the General Secretary that this Government sees no occasion for designating an American representative to participate in consideration of the matter presented by the Greek Delegation in its letter to the Reparation Commission of August 8, 1928;⁴¹ only in case the Government of Greece and the Allied Governments concerned agree upon some arrangement that would involve some question affecting the rights

⁴¹ On Nov. 6, 1928, the Embassy in France reported that the Reparation Commission and the Greek Delegation had been informed of the position of the Government of the United States. (462.00 R 296/2468)

accorded to the Government of the United States under the terms of the Agreement of January 14, 1925, would it be necessary for the Government of the United States to interest itself in the matter.

KELLOGG

**AGREEMENT BETWEEN THE UNITED STATES AND GERMANY FOR
EXTENSION OF THE JURISDICTION OF THE MIXED CLAIMS COM-
MISSION, UNITED STATES AND GERMANY**

462.11 W 892/1128

The German Ambassador (Von Prittwitz) to the Secretary of State

[Translation ⁴²]

WASHINGTON, November 26, 1928.

MR. SECRETARY OF STATE: I have the honor to inform Your Excellency that inasmuch as a checking by the German agent of the list of such claims of American nationals against Germany as were presented at too late a date has made it possible to ascertain their approximate number, character and amounts, my Government is determined to do its share to bring about a settlement of these claims which are more precisely enumerated in section (2) paragraph (j) of the Settlement of War Claims Act of 1928.⁴³ In doing so it adopts the point of view also shared by the Government of the United States that the essential competence of the Mixed Claims Commission shall remain the same as fixed in the agreement of August 20 [10], 1922,⁴⁴ e. g., that it should not be extended to include claims which have arisen since the end of the war and which are included in the list of late claims in considerable number. Furthermore, the German Government considers it as a prerequisite that the preparation and adjudication of the late claims should be governed by the same legal principles as have so far been applied in the proceedings of the Mixed Claims Commission.

On the other hand, my Government is of the opinion that the purpose of the above-mentioned statutory provision can only be accomplished to the best interests of all concerned if means and ways are found by which a prompt and speedy preparation and adjudication of the claims involved may be fully guaranteed. Among other means my Government would consider it an appropriate means to this end if definite and final terms were fixed by agreement for the filing of claim and defense material, including the necessary evidence, and if the two Governments were to agree that the cases to be adjudicated by the Commission would have to be presented for judgment within fixed

⁴² File translation revised.

⁴³ Approved Mar. 10, 1928; 45 Stat. 256.

⁴⁴ *Foreign Relations*, 1922, vol. II, p. 262.

and final terms. Due to the fact that the adjudication of the late claims will necessitate the continuance of the expensive machinery of the German-American Mixed Claims Commission for months to come, which would not have been necessary or which would not have been necessary to the same extent if the claims in question had been presented within the statute of limitation, expiring April 9, 1923, and could have been dealt with together with the properly filed claims, my Government would consider it furthermore justified to have the new claimants, to whom a remedy is thus extended, participate to an appropriate extent in the expenses caused by a prolonged procedure of the Commission. This could be accomplished by the collection of fees, and indeed a fee for the final filing of the claim, in order to eliminate to the greatest possible extent claims which are unfounded or which are presented in unjustified amounts, and an additional fee for preparing and adjudicating each individual case. The payment of these fees should, in the interest of a speedy procedure, also be required to be made by definite and final date.

I may add that I have been invested with plenary power to enter into a binding exchange of views with Your Excellency at any time, with a view to the conclusion of an agreement based upon the points of view above stated.

Accept [etc.]

PRITTWITZ

462.11 W 892/1139

The Secretary of State to the German Ambassador (Von Prittwitz)

WASHINGTON, December 31, 1928.

EXCELLENCY: I have the honor to refer to your note of November 26, 1928, regarding the concluding of an agreement between the United States and Germany for the extension of the jurisdiction of the Mixed Claims Commission, United States and Germany, to include claims of the same character as those of which the Commission now has jurisdiction under the agreement between the two Governments signed August 10, 1922, which were not filed in time to be submitted to the Commission under the terms of the notes exchanged at the time of signing that agreement but which were filed with the Department of State prior to July 1, 1928.

You state that your Government is prepared to do its share to bring about a settlement of these so-called late claims, but that it considers that the preparation and adjudication of the claims should be governed by the same legal principles as have so far been applied in the proceedings of the Mixed Claims Commission, and that means should be found by which a prompt and speedy preparation and adjudication of the claims involved may be fully guaranteed. Your

Government suggests that as an appropriate means to this end, fixed and final terms should be agreed upon for the filing of claims and defense material, including the necessary evidence, and that a requirement should be made that all claims to be adjudicated by the Commission should be presented for judgment within a fixed period of time. You add that, owing to the fact that the adjudication of the late claims will necessitate the continuance of the expensive machinery of the Mixed Claims Commission for some months, which would not otherwise be necessary or which would not have been necessary to the same extent if the claims had been presented within the time prescribed by the agreement of August 10, 1922, your Government considers that the claimants for whom a remedy will thus be afforded should participate to an appropriate extent in the expenses which will result from the prolongation of the life of the Commission. This, you suggest, might be accomplished by the collection of a fee for the final filing of each claim, thus eliminating to the greatest possible extent claims which are unfounded or which are presented in unjustified amounts, and an additional fee for preparing and adjudicating the claim.

I desire to express my appreciation of the willingness of your Government to cooperate with my Government in an effort to complete the adjudication of the claims defined above. My Government, equally with your Government, is anxious that the work of the Mixed Claims Commission should be completed at the earliest date practicable and will use its best endeavors to that end. With respect to your suggestion that the claimants who will be benefited by an extension of time for the presentation of so-called late claims should share to an appropriate extent the additional expense incident to the prolongation of the labors of the Mixed Claims Commission, my Government considers that it would not be feasible to require the deposit of a fee as a condition precedent to the adjudication of the claims. In an effort, however, to meet the views of your Government that it should be relieved of this additional expense, the President would be willing to recommend to the Congress that the one-half of one per cent. which the Secretary of the Treasury is authorized by the "Settlement of War Claims Act of 1928" to deduct from awards made by the Mixed Claims Commission before payment thereof to the claimants as reimbursement for the expenses of the United States incident to the adjudication of the claims, shall, in so far as regards the late claims, be made available to your Government for defraying such expenses as may be incurred by your Government in connection with the adjudication of such late claims. I, therefore, suggest the following as the terms of the agreement between the two Governments:

(1) That all the late claims of American nationals against Germany, notice of which was filed with the Department of State prior to July 1, 1928, of the character of which the Mixed Claims Commission, United States and Germany, now has jurisdiction under the claims agreement concluded between the United States and Germany on August 10, 1922, shall be presented to the Commission with the supporting evidence within six calendar months from the first day of February, 1929;

(2) That the answer of the German Government to each claim presented shall, together with supporting evidence, be filed with the Commission within six calendar months from the date on which the claim is presented to the Commission, as provided for in paragraph 1;

(3) That the subsequent progress of the claims before the Commission, including the submission of additional evidence and the filing of briefs, shall be governed by rules prescribed by the Commission, it being understood that both Governments are equally desirous of expediting the completion of the work of the Commission;

(4) That the preparation and adjudication of the claims shall be governed by the same legal principles as have so far been applied in the proceedings before the Mixed Claims Commission;

(5) That the President will recommend to the Congress that the one-half of one per cent. which the Secretary of the Treasury is authorized by the "Settlement of War Claims Act of 1928" to deduct from awards made by the Mixed Claims Commission before payment thereof to the claimants for application to the expenses of the United States incident to the adjudication of the claims, shall, in so far as regards the late claims, be made available to the German Government for defraying such expenses as may be incurred by that Government in connection with the adjudication of such late claims.

Upon the receipt from you of a note expressing the concurrence of your Government in the conditions outlined in paragraphs 1 to 5 inclusive, the agreement contemplated by paragraph (j) of Section 2 of the "Settlement of War Claims Act of 1928" will be regarded as consummated.

Accept [etc.]

FRANK B. KELLOGG

462.11 W 892/1140

The German Ambassador (Von Prittwitz) to the Secretary of State

[Translation]

WASHINGTON, December 31, 1928.

EXCELLENCY: I have the honor to acknowledge receipt of your Excellency's note of December 31, 1928, with reference to the adjudication of the late claims before the Mixed Claims Commission, United States and Germany.

In reply thereto I beg to express to your excellency the concurrence of my Government in the proposals for adjusting this matter, as outlined in paragraphs 1 to 5 inclusive of your Excellency's note, and to inform you that my Government considers the agreement contemplated by subsection (j) of Section 2 of the "Settlement of War Claims Act of 1928" as thus consummated.

Accept [etc.]

F. W. v. PRITTWITZ

POLICY OF THE DEPARTMENT OF STATE REGARDING AMERICAN BANKERS' LOANS TO GERMAN STATES AND MUNICIPALITIES ⁴⁶

862.51 R 24/4: Telegram

The Secretary of State to the Ambassador in Germany (Schurman)

[Paraphrase]

WASHINGTON, *January 9, 1928—6 p. m.*

5. Inquiries have been made of the Department regarding its views as to flotation of loans of \$1,750,000 for the Vestischen Kleinbahn, Limited, Zuherten, Westphalia, Germany, and of \$1,500,000 for the Municipal Gas & Electric Corporation, Recklinghausen, Germany. This consultation of the Department is the first concerning German financing since the memorandum by S. Parker Gilbert which touched on German borrowing ⁴⁶ and since the movement to reorganize the Beratungsstelle. Although the latter, under its regulations, probably will not assume jurisdiction over these loans, the Department would not wish to confront that body, before it passes upon particular loans, with a statement thereon of the Department's views. Should you see no objection, you may consult the appropriate authorities informally and discreetly and cable their comment, particularly indicating whether jurisdiction will be taken by the Beratungsstelle. You should briefly report any indication of the status of the survey being made concerning the need for German borrowings abroad.

You will please reply as soon as you can.

KELLOGG

862.51 R 24/5: Telegram

The Chargé in Germany (Poole) to the Secretary of State

[Paraphrase]

BERLIN, *January 11, 1928—2 p. m.*

[Received January 11—10:45 a. m.]

6. Reference the Department's 5, January 9, 6 p. m.

(1) The Beratungsstelle has not received applications relating to the loans mentioned and now is investigating with a view to ascer-

⁴⁶ Continued from *Foreign Relations*, 1927, vol. II, pp. 727-730.

⁴⁶ See *Report of the Agent General for Reparation Payments*, Dec. 10, 1927 (Berlin, In. d. I.), pp. 194, 200.

taining whether these loans are essentially municipal or private industrial ones. The result will be reported as soon as possible.

(2) The Beratungsstelle's survey of requirements for municipal loans is still progressing and will soon be completed. Future policy will then be determined.

POOLE

862.51 R 24/8

Messrs. Hornblower, Miller & Garrison to the Secretary of State

NEW YORK, *January 17, 1928.*

[Received January 18.]

DEAR SIR: I refer to our letter of January 4th,⁴⁷ requesting your usual action respecting the proposed loan to the Municipal Gas and Electric Corporation of Recklinghausen, Germany, by the issue of said Corporation's \$1,500,000.—First Mortgage 20-Year Sinking Fund 7% Gold Bonds.

My clients, The Foreign Trade Securities Company, Limited, 43 Exchange Place, New York, advised me today that sometime in October 1927 they had presented this matter to you and have today called my attention to your reply thereto, dated October 14, 1927.⁴⁷

In your letter of October 14, 1927, you state that the information before the Department indicates that under German regulations in force, this issue is subject to the approval of the Advisory Office for Foreign Loans, the Beratungsstelle, and that you should prefer that the Department's views be not requested until the Department can be informed that the approval of the Beratungsstelle had already been obtained. We have investigated this situation and are advised by our Berlin office, as well as by our Berlin counsel, Dr. Wilhelm Beutner, that this loan is not included in the German regulations to which you refer, and that the approval of the Beratungsstelle is not required for the reason that this is not a Municipal loan but a loan to a public utility or corporation for which the City of Recklinghausen has not given any guaranty and, therefore, does not come within the regulations of the Beratungsstelle. We are advised that loans of this character are treated as ordinary corporation loans.

Very truly yours,

R. E. DESVERNINE

⁴⁷ Not printed.

862.51 R 24/9 : Telegram

The Ambassador in Germany (Schurman) to the Secretary of State

[Paraphrase]

BERLIN, *January 19, 1928—3 p. m.*

[Received January 19—2:30 p. m.]

12. Reference the Embassy's 6, January 11, 2 p. m. The loans therein mentioned are not within the jurisdiction of the Beratungsstelle.

The German Foreign Office adds privately that time was needed to reach this decision because, while the corporations are private, the stock of the prospective borrowers is partly owned by the Recklinghausen municipality. The Beratungsstelle's authority may be extended later to such cases, but now it is limited to loans which are taken up directly or guaranteed by municipalities.

The Ministry of Finance, moreover, has endeavored to discourage the loans in question, giving the reason that the use of foreign markets for such small amounts is not good policy. However, the Ministry is not able to enforce its view.

SCHURMAN

862.51 R 24/10

*The Secretary of State to Messrs. Hornblower, Miller & Garrison*WASHINGTON, *January 23, 1928.*

SIRS: I beg to acknowledge the receipt of your letter of January 17, 1928, in further reference to the interest of your clients, The Foreign Trade Securities Company, in a loan of \$1,500,000 to the Municipal Gas and Electric Corporation of Recklinghausen, Germany. It is noted that in the opinion of your Berlin office and in that of your Berlin counsel the approval of the Beratungsstelle is not required for this loan under the German regulations.

In view of the large number and amount of offerings of German loans in the American market, the Department believes that American bankers should examine with particular care all German financing that is brought to their attention, with a view to ascertaining whether the loan proceeds are to be used for productive and self-supporting objects that will improve, directly or indirectly, the economic condition of Germany and tend to aid that country in meeting its financial obligations at home and abroad. It is a matter of public knowledge that the German Federal authorities themselves are not disposed to view with favor the indiscriminate placing of German loans in the American market, particularly when the borrowers are German municipalities and the purposes are not productive.

Moreover, it can not be said at this time that serious complications in connection with interest and amortization payments by German borrowers may not arise from possible future action by the Agent General and the Transfer Committee. In this connection your attention is called to the statement in the report of the Agent General for Reparation Payments of December 10, 1927, that with the one exception of the German external loan, 1924, the Transfer Committee and the Agent General for Reparation Payments have always stated in answer to inquiries that they were not in a position to give any assurance whatever as to the service of loans of the German Reich, the States or the communes, or of German companies or other undertakings that might be floated abroad. While the Department of State does not wish to be understood as passing upon the interpretation or application of the provisions of the Dawes Plan or upon their effect, if any, upon loans such as the one now under consideration by you, it believes that in your interest and that of prospective purchasers, careful consideration should be given to this question.

While the foregoing considerations involve questions of business risk, and while the Department does not in any case pass upon the merits of foreign loans as business propositions, it is unwilling, in view of the uncertainties of the situation, to allow the matter to pass without calling the foregoing considerations to your attention. In reply to your inquiry, however, I beg to state that there appear to be no questions of Government policy involved which would justify the Department in offering objection to the loan in question.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

Assistant Secretary

862.51 W 28/4 : Telegram

The Secretary of State to the Ambassador in Germany (Schurman)

[Paraphrase]

WASHINGTON, February 14, 1928—7 p. m.

14. The Department has received an inquiry regarding its views concerning the flotation of a loan of \$10,000,000 for the Rhine-Ruhr Water Service Union, Essen, Germany. This concern comprises five "corporate bodies of public character."

You will please take similar action to that indicated in the Department's 5, January 9, 6 p. m., for the reason stated therein in the third sentence. Cable as soon as possible a reply.

KELLOGG

862.51 W 28/5 : Telegram

The Ambassador in Germany (Schurman) to the Secretary of State

[Paraphrase]

BERLIN, *February 16, 1928—7 p. m.*

[Received February 16—3:35 p. m.]

31. Reference the Department's 14, February 14, 7 p. m. The Beratungsstelle does not have jurisdiction over the loan in question.⁴⁸

SCHURMAN

862.51 East Prussia/4 : Telegram

The Secretary of State to the Ambassador in Germany (Schurman)

[Paraphrase]

WASHINGTON, *May 11, 1928—6 p. m.*

56. (1) On May 3 the Department replied to an inquiry by Blair and Company as to a proposed offering of \$20,000,000 bonds of the Province of East Prussia, Germany, that an expression of its attitude would be withheld pending receipt of definite information of action taken by the Beratungsstelle. It is now stated by Blair and Company that, in order to obtain that Committee's consideration, a German borrower must present a firm offer, which is subject only to the Committee's approval, so that, in case of such approval being given, the offer becomes a contract whereby the loan is purchased by bankers. The Company asks if they may accompany their bids by a statement of their being conditional upon the Department of State's raising no objection to the bonds being publicly offered.

(2) You may consult the appropriate authorities informally and discreetly regarding the foregoing and explain the Department's policy which was stated in its 5, January 9, 6 p. m. If you find the regulations are as indicated above, you may ask whether modification is possible and, if not, whether they would preclude consideration of contracts which are conditioned upon action by all the governmental authorities whose consent is necessary or customary for the issuance and sale of bonds.

(3) The Department has just been informed, in this connection, of the approval by the Beratungsstelle of a Speyer and Company loan for the city of Berlin "in principle." What is the meaning of this?

KELLOGG

⁴⁸ On Feb. 17, 1928, the Secretary of State addressed a letter to Messrs. Hornblower, Miller & Garrison (862.51 W 28/6), which, except for the opening paragraph, was identical with the letter of Jan. 23, 1928, to the same firm, printed p. 900.

862.51 East Prussia/5 : Telegram

The Ambassador in Germany (Schurman) to the Secretary of State

[Paraphrase]

BERLIN, May 18, 1928—noon.

[Received May 18—10:10 a. m.]

104. Reference the Department's 56, May 11, 6 p. m.

(1) Approval of the city of Berlin loan "in principle" means permission is given for the city to contract a loan whose exact amount has not yet been approved. The city of Frankfort is also in this situation.

(2) I hope tomorrow to be able to cable concerning the loan for East Prussia; this, I hear confidentially, is not regarded by the Ministry of Finance with entire favor.

SCHURMAN

862.51 East Prussia/6 : Telegram

The Ambassador in Germany (Schurman) to the Secretary of State

[Paraphrase]

BERLIN, May 21, 1928—noon.

[Received May 21—9:10 a. m.]

108. Reference your 56, May 11, 6 p. m., and my 104, May 18, noon.

(1) The Embassy is informed that the approval by the foreign authorities concerned of a foreign loan project here is not a precedent condition for consideration of the same by the Beratungsstelle. Action by the German authorities is not affected by a reservation in the loan contract with respect to the eventual approval by foreign authorities.

(2) The loan for East Prussia has not been presented to the Beratungsstelle, since it has not yet been given preliminary approval by the state government of Prussia.

SCHURMAN

**RESTRICTIVE MEASURES AGAINST AMERICAN BARLEY IMPORTED
INTO GERMANY, BECAUSE OF ALLEGED INJURIOUS EFFECT ON
ANIMAL HEALTH**

662.11173 Barley/1 : Telegram

The Consul at Bremen (Reed) to the Secretary of State

BREMEN, September 17, 1928—7 p. m.

[Received September 17—2:20 p. m.]

Am requested by Bremen Senate, Chamber of Commerce and Association Grain Importers to report that animals have been poisoned after feeding with American barley, grade 2, arrived this month and to request immediate investigation and stoppage further shipments

of chemically regenerated barley. Position serious, refusal of all grain arrivals threatened. Official analysis of samples being arranged.

REED

662.11173 Barley/4 : Telegram

The Secretary of State to the Consul at Bremen (Reed)

WASHINGTON, September 24, 1928—6 p. m.

Your September 17, 7 p. m. Department of Agriculture sent following cable to Bremen Association Grain Importers:

"Your communication 15th. Review official samples representing shipments number 2 barley to Germany from United States ports past 60 days shows shipments probably [*sic*] inspected and correctly graded. Chemical examination samples representing shipments steamers mentioned shows this grain wholesome feed and reveals nothing to cause sickness to animals. No complaints from other countries to which similar barley has moved. Future shipments will also be carefully inspected."

KELLOGG

662.11173 Barley/6 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

BERLIN, September 26, 1928—6 p. m.

[Received September 26—3:08 p. m.]

194. Am informed by Foreign Office that, as a result of sickness among hogs fed of American barley arriving by various ships from various ports, a decree will be submitted Reichsrat tomorrow, and probably passed, by which American barley will for the present be admitted only after actual feeding tests. I understand Department of Agriculture is already in general apprised of situation.

German authorities take serious view saying shipments totaling 500,000 tons may be involved before the end of year. They intend carrying out scientific tests here extending over a fortnight and urge that American authorities make similarly thorough investigation including feeding tests.

They also urge that as litigation is likely to ensue on a large scale between American exporters and German importers both Governments should use influence toward a direct meeting of exporters and importers with a view to a general adjustment.

North American Export Grain Association has telegraphed Embassy asking intervention with German authorities. Please make suitable acknowledgment.

POOLE

662.11173 Barley/7

The German Embassy to the Department of State

The German Embassy, under instructions by the German Government, has the honor to bring the following to the attention of the Department of State:

Barley of American origin, of which approximately twenty thousand tons have been imported into Germany since September 7, 1928 on seven steamers from the ports of Baltimore, Maryland, Norfolk, Virginia, New York, New York, Boston, Massachusetts and Montreal, Canada, principally via Bremen and also via Hamburg, has in hundreds of cases, when fed to hogs, caused diseases among those animals. Official feeding tests have shown that the barley in question endangers animal health. Although the chemical, botanical, bacteriological and feeding tests which have been started on a scientific basis, have not yet resulted in determining the definite cause of disease, it has already been established that large parts of the above mentioned shipments have been infected with mildew germs and that therefore the barley seriously menaces German agriculture. Since additional shipments of about sixty thousand tons of barley are expected to arrive in Germany during the next few weeks, the German Government may be compelled, for the protection of animals, to take measures which may result in the restriction of importation or the issue of a temporary embargo against barley suspected of being infected.

The American Consul in Bremen was duly informed of the matter by the Government of the City of Bremen, immediately after the discovery of the existing danger. It is also understood that the Bremen Association of Grain Importers informed the United States Department of Agriculture and the American shippers accordingly.

The foregoing is brought to the attention of the Government of the United States in view of the fact that it might also be in the interest of the United States to test barley, regarding the possibility of its endangering animal health before shipments for export are made, and possibly to prevent infected barley from being shipped abroad.

WASHINGTON, September 27, 1928.

662.11173 Barley/9 : Telegram

The Secretary of State to the Chargé in Germany (Poole)

WASHINGTON, September 28, 1928—1 p. m.

94. Your 194, September 26, 6 p. m. Following from Secretary of Agriculture:

"Complaints being received German purchasers American barley particularly at Bremen that hogs refuse to eat or are made sick thereby.

We are making careful scientific study similar barley here including bacteriological and feeding tests to determine if possible cause of difficulty. Our records show shipments about which complaints made were properly graded. Our inspectors instructed to use special care in examination further shipments European points. No justification for possible embargo on American barley which we understand has been suggested by some German importers."

KELLOGG

662.11173 Barley/8 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

BERLIN, September 28, 1928—1 p. m.

[Received September 28—10:50 a. m.]

197. My 194, September 26, 6 p. m. On the ground that American shippers have not yet agreed to make coming shipments contingent on examination of suspected barley, the Reichsrat last evening enacted decree providing that barley of American origin (excepting Texas, Kansas, Oklahoma, and Colorado) may be admitted to commerce in Germany only after an examination establishing its innocuous character. The importer bears expense of examination. Decree will be effective October 1st to November 15th but the Reich Government is authorized to cancel it before or extend it and may admit exceptions in its application.

Text by mail.⁴⁹

POOLE

662.11173 Barley/17 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

BERLIN, October 5, 1928—noon.

[Received October 5—10 a. m.]

202. My 197, September 28, 1 p. m. Foreign Office states barley situation growing worse and absolute embargo may be laid down. German importers have decided not to take up documents on arriving shipments which seems a clear breach of contract. American exporters should at once consider feasibility of sending a competent representative here, possibly from London, with whom Embassy can co-operate in looking after their legal and other interests. If this is communicated to the Department of Agriculture please say Steere⁵⁰ joins in recommendation.

POOLE

⁴⁹ Not printed.

⁵⁰ Representative in Germany of the Department of Agriculture.

662.11173 Barley/18 : Telegram

The Secretary of State to the Chargé in Germany (Poole)

WASHINGTON, October 5, 1928—6 p. m.

98. Your telegram September 28, 1 p. m. At the instance of the Department of Agriculture please ascertain of German authorities (1) precise nature of the examination contemplated to establish "innocuous character" of barley; (2) whether conducted by Governmental or private agencies; (3) whether restrictions apply only to shipments from United States ports; (4) precise nature of the exceptions in their application indicated in the decree.

You should further point out that (1) United States number 2 barley must be sound wholesome product to meet specifications of that grade under United States Government licensed inspection; (2) there is abundance barley United States to meet Grade number 2 grown in sections outside Texas, Oklahoma, Kansas and Colorado; (3) United States Department of Agriculture exercises every care to see that all export barley shipments properly inspected and graded. Further telegram follows.

KELLOGG

662.11173 Barley/21 : Telegram

The Secretary of State to the Chargé in Germany (Poole)

WASHINGTON, October 6, 1928—6 p. m.

99. Department's Number 98, October 5, 6 P. M. In discussing with German Foreign Office the question of temporary shipping restrictions on American barley, or of absolute embargo as foreshadowed in Embassy's Number 202, October 5th, Noon, you should make it clear that this Government views as a grave matter the imposition of any such restrictive measures without being fully apprised of sound scientific and technical grounds for the taking of such action on the part of the German Government. It is evident that under certain conditions the imposition of sanitary embargoes is justified as an emergency measure, particularly when serious losses are being occasioned or serious dangers threatened by the admission or use of the product in question and that a determination of the precise nature of the deleterious factor must await later thorough scientific investigation. In such cases, however, the losses of livestock or the threatened danger should be shown to be serious and the cause should be clearly traceable to the particular product in question.

The statements submitted by the German Government respecting American Grade "2" barley have thus far been only very general in

character. While it has been stated that hogs have been made ill by the consumption of this barley, no proofs have been submitted (1) that hogs have become sick or died as a direct result of its consumption, (2) that it was necessarily American Grade "2" barley which was the cause of the alleged difficulty, or (3) that there may not have been other factors contributing to such trouble as may have been occasioned.

In connection with this it appears that barley of other origin may sometimes be confused by the consumer with American barley. It is furthermore of importance to note that no complaints have been received from other countries to which Grade "2" American barley has recently been shipped.

[Paraphrase.] For the present the Department desires this question to be kept on a purely scientific basis and not to be involved with general economic considerations or immediate financial questions lying between importers and exporters. This barley appears at the same time to be bought by the importer under contract by which certificate of American embarkation-port inspection authorities is accepted unequivocally by importer as final and binding. There is no contractual guarantee that the grain is wholesome for animal consumption, nor is the exporter in any way responsible for any deterioration or change of the grain in transit. While grain so graded may, from previous experience and tests, be assumed to be wholesome, yet the purchaser unconditionally accepts it when specifications for "grade 2 barley" have been certified to as having been met. Furthermore, over a number of years this arrangement has proved satisfactory. Therefore, any action, such as joint inspection by German and American scientific authorities, tending to question officially the validity of the above described certification, might be invoked as affecting a compensation claim by American exporters for the grain involved in this controversy. Careful consideration must be given to this point.

It is pointed out by the Department of Agriculture that an advantage which would accrue to importers through evasion of their present contractual obligations is suggested by the fall in price since the barley upon which restrictions now are placed in the ports of Bremen and Hamburg was purchased at a high market. Moreover, a legal means of complete escape from their obligations by the importers concerned might conceivably be afforded by the imposition of an absolute embargo. It is felt, while not imputing bad faith to the German Government, that pressure on the latter by consumers may have been inspired by the importers; also that the deleterious effect on the hogs from consumption of this barley has been exaggerated greatly. Your comment is desired particularly on this point. [End of paraphrase.]

Inasmuch as the German Government has taken official action in this matter, it is felt that all action or representation on our part should

be centered in the Embassy. While cooperating fully with the Consulates at Bremen and Hamburg, you will instruct them accordingly and will warn them against making pronouncements or commitments which might be construed as official.

KELLOGG

662.11173 Barley/44 : Telegram

The Secretary of State to the Chargé in Germany (Poole)

[Paraphrase]

WASHINGTON, *October 7, 1928—11 a. m.*

100. Reference Department's No. 99 dated October 6, 6 p. m. Joint examination of the barley by official technical experts, with tests either in Germany or in this country or in both, is being pressed here by the German Embassy. But the Department of Agriculture is opposing strongly on the grounds explained in No. 99.

In general the Department desires to keep the issue on a purely scientific basis, without involving it with any financial questions between sellers and buyers of barley now under controversy.

Serious consequences in the American grain market would follow an absolute embargo which your 202, October 5, noon, intimated. Your opinion on the exact situation in Germany, and particularly as to whether an embargo is imminent, is desired by the Department, which wishes you to furnish such statistical material and facts that are immediately available as will suggest how seriously the situation may be regarded and if an absolute embargo or the present restrictions on shipping are justified.

KELLOGG

662.11173 Barley/24 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

BERLIN, *October 8, 1928—3 p. m.*

[Received 9 p. m.]

205. Department's numbers 98, 99, and 100. Representative of the Department of Agriculture joins me in the following:

Actual observation by Dr. Mahoney of Public Health Service at Bremen indicates that official hog-feeding tests are being carried out carefully and honestly. American barley induces vomiting while other barley does not. It is true that no hogs have yet died and it has not been possible so far to fix conclusively on a specific defect in the barley, though possible factors have been discovered, the most likely

being mould or fungus. Conclusion seems inescapable that at least some of the American barley contains obstructing element which either by itself or in conjunction with local conditions makes the barley nocuous.

While the fall of the price of barley has naturally aggravated the situation and caused a suspicion of bad faith which is expressed even by German newspapers and trade journals, it is not reasonable to believe that this whole difficulty, harmful as it is to German as well as American interests, has been created artificially. It is necessary for the present at least to proceed on the assumption that there is something wrong with the barley.

[Paraphrase.] The Department's desire that the question be kept on a purely scientific basis for the present and that tests to be made here be left to the Germans entirely, is noted. A policy of observation only will, therefore, be continued by newspapers; and in a few days the result of official laboratory tests may be known and a decision as to an absolute embargo may be made with reference to the tests. [End paraphrase.]

Ministry of Agriculture is being pressed by agrarian interests toward complete embargo, while Foreign Office seems desirous of avoiding such drastic action until the necessity therefor is publicly and officially confirmed. Foreign Office bases hopes on effective cooperation of the American Government to the end that further exports of barley unsuitable for feeding in Germany will be precluded by rigorous microscopic, bacteriological and feeding tests on the part of the Department of Agriculture.

In the meantime a great quantity of barley is accumulating at Bremen and less at Hamburg. Bremen storage facilities are exhausted. As more grain moves from America the situation becomes worse and worse. It seems very desirable, therefore, that, if in any way possible, an immediate effort be made toward some direct compromise between the American exporters and German importers which would permit diversion of cargoes and possibly other measures of alleviation.

Hamburg importers are still taking up documents, and Foreign Office deplores the contrary decision of the Bremen importers. Foreign Office concedes that London contract 30 is ironclad. However, if the situation continues to develop without alleviation, the German authorities may be expected to support their importers in an effort to escape consequences and a fight may be made on the ground that "reasonable examination" as stipulated in contract did not take place, especially after Department of Agriculture was warned of the difficulty here. Please reply by telegraph results of tests mentioned in Department's 93 [94], September 28, 1 p. m.

POOLE

662.11173 Barley/26 : Telegram

The Secretary of State to the Chargé in Germany (Poole)

WASHINGTON, October 9, 1928—7 p. m.

101. German Embassy reports that Consul Hamburg has declined to certify under seal as to identity of particular shipments of American barley. Such action presumably is pursuant to final sentence Department's 99, October 6, 6 p. m.

Unless you and Consuls perceive objection, in which event you should report to the Department for instructions, you may authorize Consuls to perform such acts when the samples submitted are accompanied by an affidavit indicating in full detail the manner in which the samples were drawn, by whom they were drawn, together with any other pertinent facts. You should warn the Consuls to avoid the assumption of any responsibility in connection with the certification of such samples other than that involved in the normal performance of notarial functions, and to avoid making any statement or performing any action which might be construed as assuming responsibility for the representative character of the samples in question.

KELLOGG

662.11173 Barley/30 : Telegram

The Secretary of State to the Chargé in Germany (Poole)

WASHINGTON, October 12, 1928—1 p. m.

105. Your 205, October 8, 3 p. m. The following is the text of a memorandum and its enclosure which was given today to the German Embassy by the Department and which you may, upon request, communicate to the German Government:

"The Government of the United States has been deeply concerned by the situation created by the restrictive measures which the German Government has applied to American barley, and has given its utmost attention and consideration to the various suggestions made in the German *aide memoires* of September 27 and 29 and October 8,⁵¹ looking toward an amelioration of the present state of affairs. It has noted with gratification that the German Government has instituted a prompt and thorough official investigation, the results of which it understands will be available within a few days, with respect to the alleged unfitness for consumption by hogs of American barley as received in Germany. The Government of the United States wishes to express its high appreciation of the friendly spirit in which the German Government has invited the cooperation of this Government in dealing with a state of affairs that is a source of concern to both countries.

⁵¹ *Aide-mémoire* of September 29 and October 8 not printed.

"The Government of the United States fully reciprocates the desire of the German Government for cooperation, and the fact that it has refrained from taking part in a joint investigation as suggested by the German Government in no way evidences a lack of good will on its part. However, in view of the statement that scientific examination is already in progress under the direction of German experts and is nearing completion, it is not perceived in what manner the assistance of American experts could be of advantage to the German experts in their task. It may furthermore be observed that inasmuch as this Government has no experts at present in Europe qualified to take part in such an investigation, the designation of American experts would presumably delay the completion of the German investigations and findings and create an atmosphere of uncertainty in the public mind, thus tending to aggravate the present state of affairs.

"However, this Government will hasten to give its immediate and attentive consideration to the reports of the German investigations and findings as soon as they are made available, and will study them in the light of the experiments made in this country, the nature of which is indicated in the attached statement by the Department of Agriculture.

"Regarding the suggestion that the Government of the United States exercise its influence to facilitate direct negotiations between the American shippers and the German importers with a view to the reaching of an amicable settlement of the difficulties which have arisen, it may be pointed out that it is the practice of this Government to leave the question of such negotiations to the direct initiative of the interested private parties. Moreover, the German Government will doubtless be interested to learn that this Government has been informed that daily communication is being carried on between the American shippers and the German importers through the usual business channels. In this connection, it may be observed that Governmental intervention in the situation might conceivably tend to affect the contractual relations of the American shippers and the German importers, and constitute an act of interference which might be unwarranted in the circumstances.

"With regard to the question of suspending the issuance of export certificates for shipments of barley to Germany, this Government submits that the evidence now available does not appear sufficiently specific or complete to justify such a measure. In this connection, it may be said that the competent American authorities are thoroughly satisfied that the certifications of barley in this country have been and are being properly and carefully made in accordance with the established and recognized official standards of grain classification, and have indicated the impracticability of making the issuance of these certificates contingent upon the application of bacteriological and feeding tests to barley shipments to Germany.

"The attached memorandum of the Department of Agriculture, to which reference has been made, deals more particularly with the technical and scientific phases of this question."

Enclosure, Department of Agriculture memorandum,

"The Department of Agriculture views the barley complaint as a purely scientific problem and therefore is deeply interested in the

feeding difficulties reported in Germany and in the scientific tests now being made by the German Government. Under date of September 15 the Department of Agriculture received a radiogram from the Bremen Association of Grain Importers complaining against shipments via certain vessels carrying barley certificated as No. 2. The Department has reexamined official samples of the cargoes mentioned in said radiogram and is convinced that the inspection and certification thereof was correct and conducted in accordance with long established and universally recognized commercial procedure as contemplated by the United States grain standards Act,⁵² and that the shipments mentioned were properly certificated as No. 2. However, the Department was much impressed with the seriousness of the complaint and immediately instituted thorough-going scientific research for the purpose of determining the possible cause of the reported feeding difficulties. A progress report of our scientific studies is as follows:

"Barley typical of exports to Germany from United States ports this season has been fed as exclusive diet, except for a small quantity of tankage, for a period of eight consecutive days to hogs at the Department of Agriculture Experimental Farm here with no symptoms of illness or refusal to eat. Furthermore, microscopic, bacteriological and pathological investigations have revealed nothing as a cause for sickness in this character of barley.

"A complete and exhaustive scientific research will be continued by the Department of Agriculture. The Department of Agriculture desires to assure the Department of State that No. 2 Barley in accordance with the official grain standards of the United States must be wholesome feed. This is fundamental from the standpoint of our domestic producers, dealers and consumers as well as our export trade. In the event that something new to science is discovered which shows in fact that the present standards are inadequate for this purpose, there would be left to the Department no other proper course than so to adjust its inspection and grading procedure as to care for the situation."

[Paraphrase]

This matter has been exhaustively considered by the Department in conjunction with the Department of Agriculture and with American shippers, so that the foregoing statement of this Government's position is felt to be self-explanatory. Due to excessive rains in regions where barley was grown, early shipments may have been inferior in quality to later ones, it is admitted by shippers, but both Department of Agriculture and shippers emphatically state that standards for export barley have been conformed to strictly in all shipments. Improvement in barley market, and a possibly superior quality in later shipments, according to shippers, will tend to put an end to present situation. They greatly doubt actual establishment of threatened embargo by German Government.

No more publicity than necessary is desired by the Department in this matter. Should German press, however, publish hostile state-

⁵² Approved Aug. 11, 1916; 39 Stat. 482 ff.

ments or articles criticizing this Government by alleging its refusal to cooperate in friendly way, you are authorized to make public the texts of the above memoranda. You should, in such event, of course, telegraphically inform the Department.

The reaction of the German Government to this note and any later developments should be closely reported by you to the Department.

KELLOGG

662.11173 Barley/35 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

[Paraphrase]

BERLIN, October 23, 1928—10 a. m.

[Received October 23—9:15 a. m.]

215. Reference my 212 of October 18, 1 p. m.⁵³ Complete embargo on American barley, according to very confidential information given me, is probable. Agrarian interests, making the question a domestic political issue, are bringing such pressure to bear on Foreign Office that it is now apparently helpless; but it has tried, on grounds of foreign political expediency, to stave off embargo. Agrarians not only allege that grade 2 barley is noxious but also claim that German soil and grain are threatened with contamination.

It is stated by the Foreign Office that scientific investigation will not be completed for several days, but barley's noxious character is apparently already irrefutably proved.

A detailed report concerning difficulties with American barley in England is given in the *Getreide Zeitung* of October 20. The Embassy at London is being advised of this.

POOLE

662.11173 Barley/38 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

[Paraphrase—Extract]

BERLIN, October 24, 1928—1 p. m.

[Received October 24—10:05 a. m.]

217.

Reference my 215, October 23, 10 a. m. According to very confidential information, yesterday at stormy meeting private interests

⁵³ Not printed.

and competent ministries decided for present to defer embargo. Its proponents were embarrassed because of failure of scientific investigation so far to produce definite explanation regarding barley's alleged nocuous character.

POOLE

662.11173 Barley/42 : Telegram

The Secretary of State to the Chargé in Germany (Poole)

[Paraphrase]

WASHINGTON, October 26, 1928—4 p. m.

111. Reference your 215 of October 23, 10 a. m., and your 217 of October 24, 1 p. m. You will remember that the Department's 99, October 6, 6 p. m., instructed you in discussions with German Foreign Office to make it clear that this Government, without being apprised fully of sound scientific and technical grounds for German Government's taking action, would view either an absolute embargo or temporary restrictions as a serious matter.

Although deferred for the present, the threatened embargo is understood still to remain as a definite possibility. The German Government's adoption of such a drastic measure before the investigation under way in Germany has been completed and its results communicated to this Government would appear, in view of the Department's information as below outlined, to be arbitrary and unjustified.

The German Government so far has submitted no evidence to this Government to establish that American grade 2 barley has been the cause of hog sickness in Germany, though such sickness after the feeding of barley can scarcely be doubted. It is important, on the other hand, to note that the Department of Agriculture here, wishing to determine scientific causes of this reported sickness of hogs in Germany and following imposition of the present German restrictions, promptly instituted a series of rigorous tests, feeding, chemical, and bacteriological, of American barley for export. Samples of barley of the grade 2 variety, destined for shipment to Germany and other countries from United States Atlantic seaboard ports, has been used for the purpose of these tests. Results have thus far been purely negative in these tests. Particularly the feeding tests show no ill effects whatsoever to hogs after feeding on grade 2 barley.

Imposition of an absolute embargo might, without well-established scientific findings of recognized authority, lend color to belief held in various quarters that German Government's action is more influenced by financial and economic factors which developed in connection with barley imported into Germany than by scientific considerations. However, the German Government's natural desire to pro-

tect German agriculture by taking all appropriate measures is appreciated. Available information here as to financial and economic phases of situation tends to support the view mentioned above and is as follows:

(1) Many German importers, especially at Bremen, apparently made heavy contracts for barley shipments when prices earlier this year were high. These contracts became onerous to them, it seems, following the subsequent drop in barley market. German importers have endeavored in various ways, according to indications here, to escape contractual obligations. They have hoped, it has been suggested furthermore, that a means might be found through imposition of either an embargo or restrictions to allow them to escape from contracts. It has also been suggested in this connection that the taking up unconditionally of shipping documents by Hamburg importers, unlike the attitude of Bremen importers, perhaps is due to their obligations being less onerous than those of Bremen importers.

(2) Department is informed that, despite American grade 2 barley being allegedly noxious in character, importers in Germany, Holland, and elsewhere in Europe are continuing to offer to purchase American grade 2 barley for shipment from North Atlantic ports at current lower market prices.

(3) According to further information received, rejected American barley is being purchased at prices only slightly under the current market in Bremen and elsewhere, nor has any ill effect from use and consumption of such barley been reported in Germany.

(4) Moreover, Department learns that dealers in West Germany have even protested to the German Government against imposition of any restrictions as unbearable to the West German trade. As reported, these dealers are not encumbered by contracts assumed by many other importers, especially in Bremen it seems, at earlier high prices, and consequently they are able to buy at favorable prices now. Thus protest was made about October 1 by the Dortmund Corn Exchange, on behalf of Dortmund, Duisburg, Essen, and Paderborn exchanges, and by the Society of Corn Traders in the Rhineland and in Westphalia and by the Society of Wholesale Corndealers in Muenster.

The above statements in numbered paragraphs are based on what are thought to be reliable data furnished by responsible American exporters to Department of Agriculture and to this Department. However, you should carefully verify them and cable a report as to whether these statements are confirmed by your own information.

Representations in the sense of this telegram are not now desired, but you may wish in informal conversations with German Foreign Office to keep the above considerations in mind. Should an emergency arise, however, in which in your judgment immediate action is required, such representations as you deem appropriate, based on this telegram, are authorized, unless the information herein contained is, you have reason to believe, incorrect.

KELLOGG

662.11173 Barley/48 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

[Paraphrase]

BERLIN, November 3, 1928—noon.

[Received November 3—9:25 a. m.]

229. Reference my 215 dated October 23, 10 a. m. Have been confidentially informed by a competent officer of the German Foreign Office that the danger of an embargo seems past.

Have repeated foregoing to London.

POOLE

662.11173 Barley/55 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

BERLIN, November 7, 1928—4 p. m.

[Received November 7—2:35 p. m.]

235. My 229, November 3, noon. A rather exact idea of the situation is provided by following statistics just received from consul at Bremen respecting imports and rejections of grade 2 barley: During September a total of 94,657 metric tons arrived at Bremen [and] Weser ports of which 11,986 rejected; and during October a total of 106,565 of which 32,247 rejected. Of foregoing, Gulf barley exempt from import restrictions was September 20,606, October 37,844. Sixteen thousand tons rejected barley are still at Weser ports.

Exact figures for Hamburg are not available but situation there is the same as at Bremen but on a good deal smaller scale.

POOLE

662.11173 Barley/60 : Telegram

The Chargé in Germany (Poole) to the Secretary of State

BERLIN, November 13, 1928—2 p. m.

[Received November 13—1:23 p. m.]

238. My 197, September 28, 1 p. m. *Reichsanzeiger* November 12 published decree of November 8 extending operation barley import restrictions until December 31, 1928, establishing new testing stations at Kiel, Wesermuende, and Munster, and closing station at Bremerhaven. Please inform Department of Agriculture [paraphrase] that this morning the German Foreign Office's assurances (on which I based my 215, October 23, 10 a. m.) were reiterated [end paraphrase].

POOLE

662.11173 Barley/76

The Ambassador in Germany (Schurman) to the Secretary of State

No. 4205

BERLIN, December 29, 1928.

[Received January 28, 1929.]

SIR: With reference to the Embassy's despatch No. 4102 of November 13, 1928,⁵⁴ I have the honor to inform the Department that according to the *Reichsanzeiger* of December 28, 1928, the ordinance of September 27, 1928, governing the importation of barley from the United States into Germany, has been extended to February 28, 1929.

A further report is being prepared on the future prospects of American barley in the German market which will be forwarded to the Department shortly.

I have [etc.]

JACOB GOULD SCHURMAN

NEW GERMAN REGULATIONS RESTRICTING IMPORTATION OF FOREIGN MOTION-PICTURE FILMS

862.4061 Motion Pictures/6 : Telegram

The Secretary of State to the Ambassador in Germany (Schurman)

WASHINGTON, December 17, 1928—6 p. m.

130. A protest has been received from the Motion Picture Producers and Distributors Association against the new German regulations governing the importation of foreign films which it is stated have just been promulgated. The Department has received no report upon this matter from the Embassy but has been furnished by the Department of Commerce with a cabled report from the Commercial Attaché. The regulations appear to run counter to both spirit and letter of the Geneva Export and Import Restrictions Convention⁵⁵ in general, and in particular would, if adopted, cause serious injury to the American interests involved.

The Association requests the interposition of the Embassy but in the light of the incomplete knowledge in its possession, the Department is not in a position to determine in what manner representations, if any, may most effectively be made. You should therefore investigate and report briefly by telegraph and fully by mail with your recommendations.

KELLOGG

⁵⁴ Not printed.⁵⁵ Vol. I, p. 336.

862.4061 Motion Pictures/8 : Telegram

The Ambassador in Germany (Schurman) to the Secretary of State

[Paraphrase]

BERLIN, December 21, 1928—1 p. m.

[Received December 21—12:45 p. m.]

260. Reference your No. 130, December 17, 6 p. m. The commercial attaché on December 17 cabled the facts in full. After reflecting upon the matter and after conferring with the Embassy staff, including the commercial attaché, I now submit the following observations:

(1) The only ground for formal protest apparently would be the Geneva resolution, but there is doubt that a strong case can be made.

(2) It might be pointed out informally to the German Government that such uncertainty had been created by investing arbitrary authority in the film commissioner that American business would find it difficult to continue and capital already invested would be threatened with destruction. This, I assume, has been foreseen by the German Government, but, despite their general wish for American good feeling, they have had their hands forced by the film industry at home.

(3) The most effective, and perhaps the only effective measure would, undoubtedly, be to face the united German film business with an agreement among the chief American film companies as to what they want in Germany, giving reasonable attention to conditions here. The Americans could agree then upon a common attitude should the Germans remain uncompromising. American companies at present have various spheres of conflicting business policy in the market here, and the Germans use this to their own advantage and to the detriment of American interests.

(4) My intervention has been requested by Mr. Will H. Hays⁵⁶ in his two telegrams December 14 and 20. Please inform him that the Embassy is giving its closest attention to the matter. However, it is important for the general situation not to be compromised by interceding on behalf of individual companies (United Artists) at present.

SCHURMAN

862.4061 Motion Pictures/15

The Ambassador in Germany (Schurman) to the Secretary of State

[Extract]

No. 4198

BERLIN, December 22, 1928.

[Received January 10, 1929.]

SIR: In confirmation of my telegram No. 260 of December 21, 1928, relative to the new German regulations governing the importation

⁵⁶ President of the Motion Picture Producers and Distributors of America, Inc., of New York.

of foreign films, I have the honor to transmit herewith a copy of the aforesaid regulations and a translation prepared by the Commercial Attaché.

I have [etc.]

JACOB GOULD SCHURMAN

[Enclosure—Translation ⁵⁷]

*Decree by the German Commission for Import and Export Permits
Concerning the Importation of Exposed Motion Picture Films*

II A/9 No. 17624/28

BERLIN, December 11, 1928.

Until further notice, the following regulations govern the import of exposed motion picture films:

I

In each contingent year, that is, the period from July 1 to June 30 of the following year, only a certain number of permits for censorship of foreign feature films will be issued. The allocation of these permits, the number of which is to be set each year, takes place as follows: a certain portion of them, to be determined from year to year, will be allotted to German renters who have actually maintained an independent rental organization during the contingent year in question; the rest remain at the disposal of the Federal Commissioner.

The allocation of permits among renters entitled thereto will be made in proportion to the number of German feature films, censored during the two preceding calendar years and entitled to compensation, of which they were the original distributors. By German films are meant films for which at least the studio photography was done in Germany. By films entitled to compensation are meant films whose length is not less than 1,500 meters and in the production of which at least 14 studio days were required. Furthermore, these films must have been publicly exhibited in the usual manner by the applying firm. The decision in doubtful cases will be made by the Federal Commissioner. Firms which were not original renters of any films entitled to compensation, or of only one such film, in the preceding year will not be taken into account.

The actual issuance of the permits will take place only after the allocation of the permits has been completed on the basis of the data presented by German renters, but in no case before August 1, 1929 [of each year]. No advance issue will be made.

The rights to permits and the permits themselves are non-transferable. The films censored on the basis of these permits may be re-

⁵⁷ As prepared by the Commercial Attaché. Bracketed corrections inserted after comparison with the German text.

leased only by the applying firm. In the case of district renters, the allocation of district permits will be made in accordance with the same principle as for renters covering all of Germany. District permits may be used by the holder only [in respect of foreign films]. District permits can be consolidated.⁵⁸ For every five district permits, a release permit may be claimed for all of Germany. Foreign feature films censored on the basis thereof must be released through district renters. District renters who were not the original distributor of any German film entitled to compensation in the previous year, or of only one such film, will not be taken into account.

II

For foreign comedies and cartoons not exceeding 500 meters in length and for newsreels and industrial films, permits may be granted without compensation.

III

Permits for the censorship of foreign educational and cultural films will be issued only when the renters applying therefor show by contracts or otherwise that for every foreign educational and cultural film for which a permit is requested they themselves have distributed two new and unreleased German educational and cultural films of about the same length, censored within the contingent year.

IV

Regulations governing the number of permits to be issued and details incidental thereto will be drawn up from year to year in consultation with the film industry.

V

On the basis of the foregoing, the Federal Commissioner fixes the number of permits to be issued during the contingent year 1929/30 i. e., the period from July 1, 1929 to June 30, 1930, at 210.

Of this number, 160 permits will be issued to qualified renters.

The remaining 50 permits are placed at the disposal of the Federal Commissioner and will be issued to German firms giving evidence that they have sold German films abroad and that these films have received adequate public exhibition there.

The basis upon which these permits are to be distributed will be determined later in consultation with the film industry.

Federal Commissioner for Import and Export Permits

Liquidation office

by DR. LANDWEHR

⁵⁸ In the German text this sentence appears as a footnote to the preceding sentence.

In accordance with the foregoing regulations, the Federal Commissioner calls upon all renters who lay claim to permits for the contingent year 1929/30 to submit applications not later than January 31, 1929, to the Aussenhandelsausschuss Filme, Dr. Kuhnert, Berlin, SW 48, Friedrichstrasse 250, listing the films entitled to compensation that they have distributed.

DR. LANDWEHR

862.4061 Motion Pictures/12 : Telegram

The Secretary of State to the Ambassador in Germany (Schurman)

WASHINGTON, December 26, 1928—3 p. m.

134. Department's No. 130, December 17, 6 p. m. Department's understanding is that new film regulations contain the provision that allocation of a certain proportion of permits will be to German renters who have actually maintained independent rental organization during past two years the remainder being at the disposal of Federal Commissioner. The Department is likewise informed that the total number of permits has been set at 210, of which 150 will be allocated to German renters, the remaining 60 held by the Commissioner for companies who have distributed German films in foreign countries. This regulation would effectively prevent the United Artists from any distribution in Germany in the coming year except through German renters. Since this company could not base its policy upon a requirement which was nonexistent and unforeseeable during the last two years, you should protest through appropriate authorities against the retroactive nature of the decree in its effect on companies such as the United Artists.

[Paraphrase.] The German Government would naturally desire to avoid any unfavorable publicity which might arise as a result of films of many of the principal stars of American motion pictures being forced to withdraw from the German field. [End of paraphrase.]

KELLOGG

862.4061 Motion Pictures/10 : Telegram

The Ambassador in Germany (Schurman) to the Secretary of State

[Paraphrase]

BERLIN, December 28, 1928—3 p. m.

[Received December 28—2:35 p. m.]

263. Reference your No. 130 [134], December 26, 3 p. m.

(1) The European manager of United Artists, Smith, conferred fully with me on their situation and then had a long conference with the German Federal Commissioner for Import and Export Permits, Dr. Landwehr, and the chairman of the advisory German Film

Foreign Trade Committee, Dr. Kuhnert, to whom the American company's case was presented. Smith was asked to offer proposals to bring United Artists into the framework of the new German film regulations. Having reserved the right to discuss the matter with his principals, he is now returning for that purpose to the United States.

(2) In order for United Artists to arrive at a working basis here, through compromising with German film authorities, a considerable investment would be involved and there would be no tangible hope that the immediate and limited benefit thereby obtained would endure more than 2 or 3 film years at the most. Consequently, United Artists faces the necessity of deciding to what extent, if any, adjustment to the new regulations is warranted.

(3) Owing to the foregoing, in my opinion a protest on behalf of United Artists would not be opportune until

(a) Smith has had a chance to report to his principals;

(b) United Artists has replied either negatively or positively to the above-mentioned German invitation for proposals; and

(c) The question as to representations in regard to the situation in its effect on American companies in general has been decided. Should not such representations, if they are to be made, take precedence?

(4) In ruling a retroactive effect for the new regulations, the German authorities claim that United Artists had adequate notice to allow them to adapt their business to the new film requirements. The German authorities nevertheless assert they will remain open-minded to any reasonable arrangement suggested by United Artists with a view to acquiring the same status "enjoyed" in Germany by other American film rental organizations. Matters could only be prejudiced by premature publicity on the part of United Artists.

(5) May I refer to my despatch No. 4198, December 22.

SCHURMAN

**APPLICATION OF ARTICLE XIV OF THE TREATY OF DECEMBER 8, 1923,
WITH RESPECT TO LICENSES FOR COMMERCIAL TRAVELERS**

711.622/104

The German Chargé (Kiep) to the Acting Secretary of State

[Translation]

III A 3479

The German Chargé d'Affaires ad interim has, by direction of his Government, the honor to bring the following to the knowledge of the Acting Secretary of State of the United States:

Under Article XIV^a of the Commercial Treaty between the German

Reich and the United States of December 8, 1923,⁵⁹ commercial travelers require a license in order to exercise their business in the country of the other party to the Treaty. In order to obtain such license, the applicant must, under Article XIV^b of the Treaty, obtain from the competent home authorities a certificate as commercial traveler.

In order to be in position to supply the merchants who travel to the United States on business with information on the point as to which American offices can issue the license provided for in the Commercial Treaty for their activities as commercial travelers in the United States, the Chamber of Industry and Commerce of Frankfort on the Main, Hanau, sent to the American Consul General in Frankfort an inquiry on the subject. The decision of the State Department of the United States thereon is said to be:

"The Department has been informed by the Department of Commerce that no provision has been made for the issuance of licenses to foreign commercial travellers; or certificates to American commercial travellers; that foreign salesmen coming to the United States are not now required to take out any license, either federal or local, and they are not subject to any tax for the right of carrying on their business in this country. It has therefore been felt that the present situation is as simple and liberal as could be desired and no provision has been made in respect of licenses and certificates.

"With regard to your inquiry as to whether any procedure has yet been specified concerning the form of consular visas provided for in paragraph (b) Article XIV of the Treaty, you are advised that since certificates are not now required of foreign commercial travellers, it has not been deemed necessary for this Government to establish a procedure for the issuance of visas to commercial travellers."

In order to make it possible to give an official notice of the liberal course which, according to this, is being taken by the United States to the German parties in interest through the German Government, the German Chargé d'Affaires would be thankful to the Acting Secretary of State of the United States for a statement of the course taken by the American officials in allowing German commercial travelers to do business in the United States.

The German Government for its part is ready to see to it that American commercial travelers in Germany hereafter will get a card of occupational identity if they should come without the certificate provided for in the German-American Commercial Treaty so long as the Government of the United States will not in that respect require any more from the German commercial travelers in the United States. Should the office of the United States concerned make that assent officially known, the German Chargé d'Affaires would be very thankful to be given the wording of the published notice on the subject.

MANCHESTER, MASS., *August 31, 1928.*

⁵⁹*Foreign Relations*, 1923, vol. II, pp. 29, 36.

711.622/104

The Secretary of State to the German Chargé (Kiep)

The Secretary of State refers to the communication of August 31, 1928, from the Chargé d'Affaires ad interim of Germany, requesting to be informed as to the conditions under which German commercial travelers will be permitted to carry on their business in the United States, and informs the Chargé d'Affaires that the Department of this Government which has had the matter under consideration states that foreign salesmen coming to the United States are not now required to take out any license, either Federal or local, and are not subject to any tax for the right of carrying on their business in this country. There is no objection to having the German Government make public an announcement to this effect.

The Department which has been considering the question assumes that the Chargé d'Affaires is familiar with the provisions of the American Tariff Law relating to the treatment of samples of foreign commercial travelers, and with the provisions of the American Income Tax Law regarding the taxation of income earned in this country, whether by citizens of the country or aliens.

As of possible interest to the Chargé d'Affaires, attention is invited to Section 308 of Title III of the Tariff Act of 1922, which Section provides for the admission of samples, for use in taking orders for merchandise, free of duty under bond for a six months' period. Section 308 is in part as follows:

"Sec. 308. That the following articles, when not imported for sale or for sale on approval, may be admitted into the United States under such rules and regulations as the Secretary of the Treasury may prescribe, without the payment of duty under bond for their exportation within six months from the date of importation:

"
 "(4) Samples solely for use in taking orders for merchandise;
 "
 (42 Stat. 858, 938)

Articles 406 to 413, inclusive, of the Customs Regulations of 1923, issued by the Treasury Department, relate to the importation of articles free under six months' bond.

A copy of the Revenue Act of 1928 (Public No. 562, 70th Congress), containing income tax provisions, is herewith enclosed.⁶⁰

The Department to which this matter was referred requests that the Chargé d'Affaires furnish a statement showing the procedure that will be followed in Germany in issuing the cards of occupational identity referred to in the note of the Chargé d'Affaires of August 31, last,

⁶⁰ 45 Stat. 791; not printed.

to American commercial travelers who arrive in Germany without the certificate provided for in Paragraph (b) of Article XIV of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany. The Secretary of State will therefore appreciate it if the Chargé d'Affaires will furnish such a statement in order that the information may be available to American business men who plan to visit Germany.⁶¹

WASHINGTON, October 26, 1928.

**TAKING BY CONSULAR OFFICERS OF TESTIMONY ON OATH OF
NATIONALS OF COUNTRY WHERE CONSULAR OFFICERS RESIDE**

711.622/103

*The German Embassy to the Department of State*⁶²

MEMORANDUM

Article XXII of the Treaty between the United States and Germany signed at Washington December 8, 1923, reads as follows:⁶³

"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."

In connection with this provision there has been set down a memorandum regarding a conference held in the Department of State between Messrs. Castle, Hyde, McClure, Metzger and Barnes, on behalf of the United States, and Messrs. Wiedfeldt and von Lewinski, on behalf of Germany, on December 1, 1923, which reads as follows:⁶⁴

"Article XXII [XVII]

"(15[14]) It was the consensus of opinion that under the provisions of this Article consular officers of the other High Contracting Party might take the testimony on oath of the nationals of the country where such consular officers reside, provided that such nationals are willing to give their testimony before such consular officers."

⁶¹ In a note of July 29, 1929 (711.622/115), the German Embassy informed the Department as follows (file translation revised): "Those American commercial travelers who come to Germany without the evidence provided for in article 14 of the treaty of commerce, friendship and consular rights between the German Reich and the United States of America, must apply orally to the proper police authorities of the place for a license to do business, presenting a valid passport accompanied by a photograph. In addition, information is required as to which American firm (nature and place of business) the applicant represents. The presentation of such information cannot, therefore, be waived, because, under the applicable law, a corresponding entry must be made in the license to do business. Delivery of the license to do business follows promptly through the local police authorities upon payment of the administrative fee which ranges from 3 to 10 Reichsmarks."

⁶² Left at the Department Aug. 29, 1928, by the Second Secretary of the German Embassy.

⁶³ *Foreign Relations*, 1923, vol. II, pp. 29, 41.

⁶⁴ *Ibid.*, pp. 24, 26.

The question has now been raised by a German lawyer, who wishes to be informed as to the applicability of a testimony taken from an American citizen before a German consular officer, whether or not an American citizen who has declared his willingness to give testimony before a German consular officer in the United States, could be prosecuted for perjury if in such testimony he made a false statement under oath.

As the Treaty is part of the Federal Law, an expression of opinion on the question by the Federal Authorities would be appreciated.

711.622/101

The Department of State to the German Embassy

MEMORANDUM

The Department of State refers to a memorandum of the German Embassy requesting to be informed on behalf of a German lawyer "whether or not an American citizen who has declared his willingness to give testimony before a German consular officer in the United States, could be prosecuted for perjury if in such testimony he made a false statement under oath."

In reply the Department desires to bring the following considerations to the German Embassy's attention.

Article XXII of the Treaty between the United States and Germany provides in part as follows:

"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."

It would seem that the Treaty does not grant the right to take the depositions of nationals of the United States, except possibly in the instances where such nationals are "occupants" of German vessels or have "permanent residence" in Germany. American nationals in the United States may presumably, however, voluntarily give their depositions under oath to German consular officers. However, to constitute perjury or false swearing under the laws of the United States, it must be shown that the oath was taken "before a competent tribunal, officer, or person, in any case in which a law of the United States authorized an oath to be administered." (United States Code, Title 18, Section 231).

From the foregoing it would seem that in so far as Federal laws are concerned a person can only be convicted of perjury where the oath is administered by one authorized to do so. Hence, if American nation-

als give false testimony under depositions under oath voluntarily given to German consular officers in this country they presumably would not be liable to prosecution for perjury under the laws of the United States, since there is no law of the United States authorizing German consular officers to administer oaths to them.

The Department notes that the German Embassy adverts to the memorandum regarding a conference held at the Department on December 1, 1923, which reads as follows:

“Article XXII [XVII]

“(15[14]) It was the consensus of opinion that under the provisions of this Article consular officers of the other High Contracting Party might take the testimony on oath of the nationals of the country where such consular officers reside, provided that such nationals are willing to give their testimony before such consular officers.”

The Department deems it pertinent to observe that in the last paragraph of the memorandum which was transmitted to Mr. Hyde by Mr. von Lewinski, the following statement was made “This memorandum is prepared as a minute of conversations, and is in no sense an agreement supplemental to the treaty or binding on the parties to the treaty as interpretative of its provisions.” It has been the Department’s understanding which it will be pleased to have confirmed, that the German Government objects to the taking of depositions of German nationals, by American consular officers in Germany. This understanding is based on a note of July 24, 1874, addressed by Mr. von Bülow to Mr. Bancroft. (*Foreign Relations of the United States*, 1874, 446; *Moore’s International Law Digest*, vol. II, 125).

WASHINGTON, *December 26, 1928.*

711.622/111

The German Embassy to the Department of State

[Translation]

V Z 327

With reference to the memorandum—711.622/101—of December 26, 1928, the German Embassy has the honor respectfully to advise the Department of State, pursuant to instructions received, that the German Government still adheres to the opinion expressed in the note of July 24, 1874, from Herr von Buelow to Mr. Bancroft, which has been cited, as no authority can be inferred, even from the Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, for consular officers of the United States to take testimony under oath from German nationals in Germany.

The German Embassy has the honor to express its most sincere thanks to the Department for its kindness in furnishing information in this matter.

WASHINGTON, *March 22, 1929.*

ARRANGEMENT BETWEEN THE UNITED STATES AND GERMANY FOR
RECIPROCAL FREE-ENTRY PRIVILEGES FOR NONCOMMISSIONED
PERSONNEL OF EMBASSIES AND CONSULATES

662.11241/22

The Ambassador in Germany (Schurman) to the Secretary of State

No. 1895

BERLIN, *January 25, 1927.*

[Received February 11, 1927.]

SIR: I have the honor to inform the Department that according to the German customs regulations now in effect the non-commissioned American personnel of this Embassy is not exempted from the payment of duty on articles received from abroad for their personal use and to request that, if the Department has no objections, an arrangement be proposed whereby the Embassy personnel may enjoy the privilege of free entry.

As the German regulations are based on reciprocity it would appear that if the free entry privilege were granted to the German personnel at the German Embassy in Washington the same privilege would be automatically extended by the German Government to the American personnel of this mission. In fact, an official of the Foreign Office recently told one of my staff that they were willing and even desired to make this reciprocal arrangement.

The Department's attention is also invited to the fact that the American personnel of the United States Consulates in Germany is being granted free entry privileges by the German Government which, I am informed, gives a liberal interpretation to Article XXVII of the Consular Treaty, recently concluded,⁶⁵ and includes the American non-commissioned personnel as members of the consular officer's suite.

I have the honor to enclose a copy of the German customs regulations, *Reichszollblatt* dated February 11, 1926,⁶⁶ which sets forth in detail the procedure followed by the German customs in regard to the foreign missions in Germany and shows that the privilege of free entry is enjoyed by the non-commissioned personnel of a large number of the foreign missions in Berlin, e. g., China, Japan, Ecuador, Hungary, Persia, Norway, Greece, Czechoslovakia, and others.

I should appreciate appropriate instructions from the Department in the matter.

I have [etc.]

JACOB GOULD SCHURMAN

⁶⁵ Treaty of Friendship, Commerce and Consular Rights Between the United States and Germany, signed Dec. 8, 1923; *Foreign Relations*, 1923, vol. I, pp. 29, 43.

⁶⁶ Not printed.

662.11241/22

The Secretary of State to the German Ambassador (Maltzan)

The Secretary of State presents his compliments to His Excellency, the German Ambassador, and has the honor to refer to Article XXVII of the Treaty of December 8, 1923, between the United States and Germany of Friendship, Commerce and Consular Rights, and to inform the Ambassador that according to a despatch dated January 25, 1927, from the American Ambassador at Berlin, the German Government interprets this Article liberally and accords the free entry privilege to the American non-commissioned personnel of American consulates in Germany.

The Secretary of State has the honor to advise the Ambassador, therefore, that upon the request of the German Embassy in each instance, the Department of State will arrange for the extension of similar free entry privileges to the German non-commissioned personnel of German consulates in the United States.

WASHINGTON, *March 3, 1927.*

662.11241/30

The Secretary of State to the Ambassador in Germany (Schurman)

No. 1482

WASHINGTON, *May 17, 1927.*

SIR: The Department refers further to your despatch No. 1895 of January 25, 1927, and acknowledges the receipt of your despatch No. 2075 of March 21, 1927,⁶⁷ concerning the extension of the free entry privilege on a reciprocal basis to the non-commissioned personnel of your Embassy and of the German Embassy at Washington.

The Department is now in receipt of a letter from the Treasury Department in reply to its inquiry in this matter, in which it is stated that the Treasury Department will, on a basis of reciprocity, accord the free entry privilege to the German non-commissioned personnel of the German Embassy at Washington upon the request of this Department in each instance with the understanding that no article the importation of which is prohibited by the laws of the United States shall be imported by such personnel.

You are requested to advise the Foreign Office, therefore, that this Government is willing to enter into a reciprocal arrangement whereby the free entry privilege may be extended to the American non-commissioned personnel including domestic servants of the American Embassy at Berlin and the German non-commissioned personnel including domestic servants of the German Embassy at Washington with the understanding that no article the importation of which is prohibited by the law of either country shall be imported by such

⁶⁷ Latter not printed.

personnel. The Department will make the arrangement effective immediately upon receipt of advice from you that the German Government agrees.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

662.11241/24

The German Chargé (Kiep) to the Secretary of State

[Translation]

The German Chargé d'Affaires ad interim presents his compliments to his Excellency, the Secretary of State, and has the honor to refer to the latter's esteemed note of March 3, 1927,—662 11241/22—relating to the interpretation of Article XXVII of the Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, between Germany and the United States in which it is stated that the Department of State will arrange for the extension of free entry privilege to the German "non-commissioned personnel" of German Consulates in the United States, and in order to more definitely interpret the classes of individuals to which by this understanding free entry privilege is to be accorded, and the extent of such privilege, has the honor to state his Government's position in this respect as follows:

1) The term "consular officers" ("Konsularbeamte") in the meaning of Article XXVII of the Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, between Germany and the United States, shall include consuls general, consuls, vice-consuls, interpreters, student interpreters and consular agents and none others.

2) the term "and suites" ("und ihre Begleitung") as used in Article XXVII of the Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, between Germany and the United States, shall include consular chancellors, consular secretaries, consular disbursing officers, other consular office personnel, and official personnel regularly attached to consulates, such as commercial attachés, when attached to a consular office, trade commissioners, physicians, etc., and messengers, as well as domestic employees who are permanently in the private service of "consular officers" ("Konsularbeamten"), provided that all the foregoing persons are of the nationality of the appointing government;

3) any and all baggage and other personal property of consular officers, (their families and suites), which is imported free of duty under the provisions of Article XXVII of the Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, between Germany and the United States, shall enjoy exemption from production, manufacturing, consumption and sales taxes which may otherwise be levied in addition to the duty, provided that such exemption shall not extend to articles of domestic production or manufacture when reimported into the country of origin or withdrawn from warehouses, which were

exempt from payment of such taxes for the purpose of exportation or warehousing, and provided that the privilege of entry free of duty shall only apply to such shipments as are addressed to the person enjoying entry free of duty privileges.

The German Chargé d'Affaires ad interim would be grateful to the Secretary of State for an expression of opinion by His Excellency as to whether the above stated position of the German Government for more definitely interpreting Article XXVII of the Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, between Germany and the United States is shared by the Government of the United States.

WASHINGTON, *January 6, 1928.*

662.11241/25

The Ambassador in Germany (Schurman) to the Secretary of State

No. 3516

BERLIN, *May 11, 1928.*

[Received May 28.]

SIR: With reference to the Department's instruction No. 1812 of November 21, 1927,⁶⁸ I have the honor to enclose herewith, in copy and translation, a self-explanatory note from the Foreign Office on the subject of the extension of the free-entry privilege on a reciprocal basis to the non-commissioned personnel of this Embassy and to the German Embassy at Washington.

As will be seen, the Foreign Office states that exemption from duty to the office and chancery personnel of this Embassy has already been granted by the German Government; and a copy of the *Reichszollblatt* as transmitted with the aforementioned note is likewise enclosed.⁶⁸ It will, however, be seen that the note states that the extension of free entry cannot be granted to domestic servants.

I have [etc.]

JACOB GOULD SCHURMAN

[Enclosure—Translation]

The German Ministry for Foreign Affairs to the American Embassy

No. I D 1173 Ang. I.

NOTE VERBALE

The Foreign Office has the honor to advise the Embassy of the United States of America as follows in reply to its Note Verbale No. 1789 of December 14, 1927:

The question of extending exemption from duty to the personnel of the Embassy has been discussed with the Finance Ministry of the Reich. In consideration of the offer of reciprocity made by the Gov-

⁶⁸ Not printed.

ernment of the United States, the German Government is prepared, as already indicated in its Note Verbale of August 31, 1927—I D 4385⁶⁹—to extend exemption from duty to the office and chancery personnel of the Embassy, to take effect at once. The provisions of execution of the ordinance of February 6, 1926, governing exemption from duty and taxes of Embassy goods have therefore been altered accordingly and the customs offices provided with instructions by means of publication of the provisions in the *Reichszollblatt*. Three copies of *Reichszollblatt* No. 15, page 95 of 1928 are herewith enclosed.⁶⁹

With regard to exemption from duty for domestic servants (servants and governesses), it is respectfully remarked that the extension of free entry to such persons is unfortunately not possible in accordance with the above-mentioned ordinance of February 6, 1926.

BERLIN, *April 16, 1928.*

662.11241/34

The Secretary of State to the German Ambassador (Von Prittwitz)

The Secretary of State presents his compliments to His Excellency the German Ambassador and with reference to the Embassy's note of January 6, 1928, relative to the interpretation of Article XXVII of the Treaty of Friendship, Commerce and Consular Rights, of December 8, 1923, between the United States and Germany, has the honor to advise the Ambassador as follows concerning this matter.

The Treasury Department to whom this matter was presented for consideration and comment states that it perceives no objection to the proposed agreement in so far as it relates to the terms "consular officers" and "suites" as used in Article XXVII of the Treaty. It points out, however, that there is nothing in this Article which confers any exemption of such persons from the excise taxes enumerated in paragraph (3) of the Embassy's note under acknowledgment, and it adds that it is not believed that the Article affords any basis for such proposed exemption. Article XXVII merely grants the privilege of free entry of articles of personal property of consular officers, their families and suites.

In this relation the Treasury Department points out that Article XIX of the Treaty only contemplates the exemption from taxation of consular officers and employees in consulates *levied upon their persons or upon their property* and that in the circumstances it can not be considered as entitling such persons to exemption from excise taxes. However, your attention is invited to the fact that German consular officers in the United States, but not German employees of consulates, may be entitled to exemption from excise taxes on account of the provi-

⁶⁹ Not printed.

sions of the most-favored-nation clause of Article XVII of the Treaty between the United States and Germany and Article XV of the Treaty of Friendship and General Relations between the United States and Spain of July 3, 1902,⁷⁰ which provides in part as follows:

"All consular officers, citizens or subjects of the country which has appointed them, shall be exempted . . . from all National, State, Provincial and Municipal taxes except on real estate situated in, or capital invested in the country to which they are commissioned."

It is further stipulated in the Article quoted that the exemption from taxation provided for therein shall apply only to consular officers not engaged in professional business, trade, manufacture or commerce and that consular officers so engaged shall be subject to the same taxes as are paid under similar circumstances by foreigners of the most favored nation. German consular officers in the United States could claim, under the provisions of this Article and the Most Favored Nation clause of Article XVII of the Treaty of December 8, 1923, between the United States and Germany, exemption from the payment of excise taxes if American consular officers in Germany are accorded a like exemption. The Department would be glad to consider any observations which the German Government may be disposed to submit on this point.

If the German Government accepts the interpretation that Article XXVII does not exempt consular officers from the payment of excise taxes, it is requested that His Excellency, the German Ambassador, confirm the Secretary of State's understanding that the agreement between the American and German Governments in regard to the interpretation to be placed on Article XXVII of the Treaty of December 8, 1923, shall be as follows:

"1) The term 'consular officers' ('Konsular-beamte') in the meaning of Article XXVII of the Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, between Germany and the United States, shall include consuls general, consuls, vice consuls, interpreters, student interpreters and consular agents and none others.

"2) The term 'and suites' ('und ihre Begleitung') as used in Article XXVII of the Treaty of Friendship, Commerce and Consular Rights of December 8, 1923, between Germany and the United States, shall include consular chancellors, consular secretaries, consular disbursing officers, other consular office personnel, and official personnel regularly attached to consulates, such as commercial attachés, when attached to a consular office, trade commissioners, physicians, etc., and messengers, as well as domestic employees who are permanently in the private service of 'consular officers' ('Konsular-beamten'), provided that all the foregoing persons are of the nationality of the appointing government; . . ."

WASHINGTON, *November 17, 1928.*

⁷⁰ *Foreign Relations*, 1903, pp. 721, 725.

662.11241/37

The German Ambassador (Von Prittwitz) to the Secretary of State

[Translation]

The German Ambassador has the honor to acknowledge with pleasure the esteemed note of the 17th instant—622.11241/25[34]—of His Excellency the Secretary of State of the United States with respect to the interpretation of Article 27 of the Treaty of Friendship, Commerce and Consular Rights concluded between the German Reich and the United States, December 8, 1923, and wishes to reserve the right of making a further communication on the subject.⁷¹

PRITTWITZ

WASHINGTON, November 24, 1928.

662.11241/38

The Secretary of State to the German Ambassador (Von Prittwitz)

The Secretary of State presents his compliments to His Excellency the German Ambassador and has the honor to inform him that a special reciprocal agreement has been entered into between the German Government and the United States Government, whereby the American non-commissioned personnel of the American Embassy in Berlin and the German non-commissioned personnel of the German Embassy at Washington are to be accorded the free entry privilege.

The Secretary of State has the honor to advise the Ambassador, therefore, that upon the request of the Germany Embassy in each instance the Department of State will arrange for the extension of similar free entry privileges to the German non-commissioned personnel of the German Embassy at Washington as are enjoyed by German consular officers assigned to the United States.

The Secretary of State has the honor to add that the German Government did not find it practicable to include domestic servants in this arrangement and that, therefore, the domestic servants employed at the German Embassy in Washington will not be accorded the privilege of free importation of articles for their personal use.

WASHINGTON, December 20, 1928.

⁷¹ A further note on this subject was received from the German Ambassador, Jan. 8, 1930 (662.11241/49).

REPRESENTATIONS BY THE GERMAN GOVERNMENT REGARDING
SPECIAL TAX ON THE USE OF CERTAIN FOREIGN-BUILT BOATS
IN THE UNITED STATES

711.622/89

The Secretary of the Treasury (Mellon) to the Secretary of State

WASHINGTON, January 8, 1927.

SIR: I have the honor to make reference to your letter of November 11, 1926,⁷² with which you enclosed for an indication of my views in regard to a reply to be made thereto, a copy of a communication of October 25, 1926, from Messrs. Hunt, Hill & Betts,⁷³ relative to an apparent conflict between the provisions of Section 702 of the Revenue Act of 1926⁷⁴ and Article VIII of the Treaty between the United States and Germany of Friendship, Commerce and Consular Rights.⁷⁵

The question presented by you is as to whether there is a conflict between the provisions of the Revenue Act of 1926 and the Treaty referred to above; and in the event that I consider that there is a conflict, you also indicate a request for an expression of an opinion as to what measures it might be possible to take with a view to giving due regard to the provisions of Article VIII of the Treaty between the United States and Germany.

Section 702 of the Revenue Act of 1926 provides as follows:

"On and after July 1, 1926, and thereafter on July 1 in each year, and also at the time of the original purchase of a new yacht or other boat by a user, if on any other date than July 1, there shall be levied, assessed, collected and paid in lieu of the tax imposed by Section 703 of the Revenue Act of 1924,⁷⁶ upon the use of yachts, pleasure boats, power boats, sailing boats, and motor boats with fixed engines, if foreign built and if of over five net tons and over thirty-two feet in length, not used exclusively for trade, fishing, or national defense, a special excise tax to be based on each such yacht or other boat at rates as follows: Yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats of over five net tons, length over thirty-two feet and not over fifty feet, \$2 for each foot; length over fifty feet, and not over one hundred feet, \$4 for each foot; length over one hundred feet, \$8 for each foot.

"In determining the length of such yachts, pleasure boats, power boats, motor boats with fixed engines, and sailing boats, the measurement of over-all length shall govern.

"In the case of a tax imposed at the time of the original purchase of a new yacht or boat on any other date than July 1, the amount to be paid shall be the same number of twelfths of the amount of the tax as the number of calendar months (including the month of sale) remaining prior to the following July 1.

⁷² Not printed.

⁷³ 44 Stat. 9, 95.

⁷⁴ Signed Dec. 8, 1923; *Foreign Relations*, 1923, vol. II, pp. 29, 33.

⁷⁵ 43 Stat. 253, 328.

"This section shall not apply to any yacht or other boat (1) which is used without profit by any benevolent, charitable, or religious organization, exclusively for furnishing aid, comfort, or relief to seamen, or (2) which was owned on January 1, 1926, by a citizen of the United States or by a domestic partnership or corporation."

Article VIII of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany provides as follows:

"The nationals and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment as nationals and merchandise of the country with regard to internal taxes, transit duties, charges in respect to warehousing and other facilities and the amount of drawbacks and bounties."

Article VIII of the Treaty, while in a measure ambiguous, appears to provide with respect to internal taxes, that the nationals and merchandise of each country shall receive the same treatment within the territory of the other as is afforded by the country asserting the tax to its own nationals and merchandise. Your inquirer has stated that an apparent conflict between Section 702 of the Revenue Act and Article VIII of the Treaty has been pointed out by a German manufacturer of pleasure boats. In this connection it should be noted that the tax involved is one imposed upon the use in this country of foreign built boats.

Consideration has been afforded the question whether under the provisions of Section 702 of the Revenue Act a treatment is afforded the merchandise of Germany different from that which is afforded the merchandise of the United States. Assuming that a tax on the use of merchandise would come within the provisions of the treaty, a study of the apparent meaning of the term "merchandise" as used in the treaty seems to indicate that yachts or pleasure boats are not included within that term. In the case of the *Marine City*, (6 Fed. 413) it was held that the term "merchandise" conveys the idea of property used by merchants in the course of trade and is usually, if not universally, applied to property which has not yet reached the hands of the consumer. See also *Passaic Mfg. Co. v. Hoffman* (N. Y.) 3 Daly 495, 512; *Blackwood v. Cutting Packing Co.*, 18 Pac. 248; *Van Patten v. Leonard* 8 NW 334; *Hein v. O'Connor* (Tex.) 15 SW 414 and *In re San Gabriel Sanatorium Co.* 95 Fed. 271 (citing Bouv. Law Dict.) In the case of *Connolly v. The International*, (83 Fed. 840) the Court said:

"We cannot limit the scope by speculating about the intent of Congress for the purpose of subjecting such water craft to taxation under the provision of tariff laws, which impose a tax on foreign 'goods, wares and merchandise'. The ordinary sense of the latter terms (and they are used in this sense) does not embrace water craft of any description whatever. The language of the Supreme Court in the recent case of *The Conqueror*, 166 U. S. 110 (17 Sup. Ct. 510), on this subject is as applicable here as it was there."

The sense in which this Department construes the term "merchandise" as used in the Treaty is that it was designed to include only such things as merchants ordinarily sell in the course of trade and does not include vessels which are in use. In reaching this conclusion consideration has been given the well known rule of statutory construction that where statutes and treaties are involved, effect will, if possible, be given to both, without violating the provisions of either.

I am, therefore, of the opinion that the effect of Section 702 of the Revenue Act of 1926 is not to impose a different tax in this country on the merchandise of Germany than is imposed on the merchandise of the United States, and that the Act of Congress does not violate the provisions of the treaty.

Respectfully,

A. W. MELLON

811.512 Boats/—

The German Embassy to the Department of State

MEMORANDUM

WASHINGTON, November 29, 1927.

Section 702 of the "Revenue Act of 1926" enacted by the United States Government provides for the levying of a special tax upon the use of certain foreign built boats. For the purpose of administering the tax provisions referred to, the Commissioner of Internal Revenue in Washington, D. C., with the approval of the Secretary of the Treasury of the United States has, on August 28, 1926, promulgated "Regulations 72 relating to the Special Tax upon the Use of Foreign Built Boats under Section 702 of the Revenue Act of 1926."

According to the definitions contained in these regulations the liability for the tax in question is not based on the ownership but rather exclusively on the use of certain boats and this liability begins on the first day of the month in which the taxable boat is placed in use. According to Art. 6 of these regulations every owner, lessee or charterer of a foreign built boat of a certain tonnage and length in use is liable for the tax. The following article states that liability for taxes is imposed on the use of all foreign built yachts, pleasure boats, power boats, motor boats and sailing boats of over 5 net tons and of over 32 feet length. According to these same regulations, liability to tax is also based on the use of similar foreign built boats which are foreign registered and used in the United States, and furthermore, on the use of similar boats owned by nonresident aliens navigating in United States waters.

Art. 8 of these regulations enumerates certain classes of boats, the use of which will not create any liability for the tax provided for in

Section 702 of the Revenue Act of 1926. Among the exceptions cited in Art. 8 there is, however, no mention that the use of boats which are built in Germany, is exempt from this special tax in question, as the provisions of Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, demand. There is no other section of the law, nor article of the regulations promulgated in pursuance thereof which exempts the use of German built boats from this special tax.

German builders interested in the construction and exportation of yachts, pleasure boats, power boats, motor boats or sailing boats to the United States have drawn the attention of the German Government to the fact, that their products, when exported to the United States, are subjected to the special tax provided in Section 702 of the Revenue Act of 1926 mentioned above, and that as a consequence thereof their boats are practically excluded from the American market. They have further informed the German Government that their protests against the levying of this special tax on boats built in Germany, which were based on Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, have been rejected by the competent American authorities, who, on the one hand, argue that the special tax provided by Section 702 of the Revenue Act of 1926 does not represent a tax on the ownership of boats built in Germany but rather on the use of such boats and does not, therefore, violate the provisions of Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights of December 8, 1923; while these same authorities on the other hand, are said to have contended that a boat is no longer to be considered as "merchandise" within the meaning of Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, when it is sold by the builder or dealer and is being used.

The German Government, after a careful study of the practical and legal questions involved, cannot agree with the opinion of these American authorities, as set forth. It believes, on the contrary, that the special tax imposed on boats built in Germany is incompatible with the provisions of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, since these provisions, in respect to internal taxation, guarantee the same treatment to German merchandise, as is accorded to goods produced in the United States.

The fact, that the liability to the special tax is not based on the ownership but on the use of the boats cannot, in the opinion of the German Government, exclude the application of Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and

Consular Rights of December 8, 1923, because any discrimination against a German product will have the same effect, whether it is directed against such product in the hands of the consumer or while it is still the property of the producer or dealer. Any interpretation of these treaty provisions which would in effect allow any discrimination against products which have been transferred to the consumer, or whose utilization has begun, would, in the opinion of the German Government, render entirely negative any application of Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923.

The German Government, furthermore, cannot agree with the opinion that a boat should not longer be regarded as "merchandise" within the meaning of Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, when it has been sold by the builder or dealer, and has passed to the purchaser, or is otherwise in use. The German Government, on the contrary, is rather of the opinion that any product, which has already left the trade and is subjected to special taxation solely because of its origin, by that very fact necessarily must be held to be "merchandise" within the meaning of Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923. In other words, under the above mentioned provisions of the Treaty boats built in Germany can only be regarded as "merchandise" because the liability to tax their use is based on their foreign origin solely, as provided under Section 702 of the Revenue Act of 1926.

Thus, for the reasons set forth above, the German Government would appreciate if the Government of the United States, in order to preserve the legal status provided by Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, would take the necessary action to secure the abrogation of Section 702 of the Revenue Act of 1926, in so far as it affects German built boats.

In this connection the German Government desires to bring the following to the attention of the Government of the United States:

In a police ordinance relating to the traffic of taxicabs issued in Hamburg on February 17, 1927,—*"Hamburgisches Gesetz—und Verordnungsblatt Nr. 18 of February 18, 1927, Page 99"*—the following provision was inserted: "Only German motor taxicabs can be licensed." Upon instruction by the Commercial Attaché of the American Embassy in Berlin, the American Trade Commissioner in Hamburg, Mr. James T. Scott, on April 21, 1927, orally protested against this provision to the police authorities of Hamburg, contending it was contrary to the provisions of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights,

of December 8, 1923. The German Government stands ready and is prepared to bring about the abolition of this ordinance issued in Hamburg, but it cannot effectively exercise its influence in that direction as long as the United States maintains its present position regarding Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, and has not taken action to restore the legal status provided by this Article by way of abolishing the special tax now imposed on boats built in Germany.

It would also be impossible for the German Government to prevent other German states from issuing similar ordinances, prior to the abolishment of the special tax on German built boats, since the licensing of a taxicab takes place only after its sale by the builder or dealer to the operator, when under the opinion of the American authorities with respect to boats built in Germany, the taxicab would no longer be considered as "merchandise" within the meaning of Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923.

In this connection it may also be pointed out that under the interpretation which the American authorities have placed upon Art. VIII of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, with regard to the taxation of merchandise, the German Government would be at liberty to enact a law amending the present German law relative to the German tax on automobiles—which law taxes solely the use of all automobiles, similar to the American special tax on foreign built boats—, providing higher rates on the use of foreign built automobiles than those imposed on vehicles of domestic manufacture. The effect of such a law is apparent, i. e., it would reduce the German market for foreign built automobiles which would principally affect the sales possibilities of the American automobile industry.

The German Government desires to observe the provisions of the Treaty between Germany and the United States, of Friendship, Commerce and Consular Rights, of December 8, 1923, not only in a literal sense but also according to its liberal interpretation and it does not intend, in individual cases, to restrict its terms to a narrow and strict meaning. However, it must always be mindful of the fact that it has a responsibility towards its own industries which makes it imperative to see that no interpretation of the treaty is made which is more favorable to American merchandise in Germany than German merchandise is enjoying in the United States.

The German Government, therefore, is hopeful that the Government of the United States will consider favorably the request contained herein that the special tax on German built boats be abolished.

811.512 Boats/2

*The Secretary of the Treasury (Mellon) to the Secretary of State*WASHINGTON, December 30, 1927.⁷⁶

SIR: I have the honor to reply to your letter of December 16, 1927,⁷⁶ with which you enclosed a copy of a memorandum transmitted to you from the German Embassy⁷⁷ objecting to the tax imposed by Section 702 of the Revenue Act of 1926, in so far as it affects the taxation of German built yachts. You have raised the inquiry whether there is some force in the argument that Section 702 does, in fact, violate Article VIII of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, and you ask my advice as to whether or not it might be advisable to bring this matter to the attention of the Chairman of the appropriate committee of Congress.

Article VIII of that treaty provides that "The nationals and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment as nationals and merchandise of the country with regard to internal taxes, . . .". In my letter of January 8, 1927, you will recall that this Department expressed its opinion that foreign built yachts and boats in use in the United States are not within the ambit of the term "merchandise" as used in the Treaty. Examination of additional court decisions, beyond those cited in that letter, strengthens the view that "merchandise" includes only property which merchants ordinarily sell in the course of trade and, consequently, does not include vessels. In this regard your attention is invited to the fact that Section 702 of the 1926 Revenue Act does not impose the tax upon the builder nor upon the yacht, but upon the use. In view of all the circumstances and of the possible effect upon other provisions of the law, I regret that I must adhere to my former conclusion conveyed to you on January 8th last.

I am informed that the Ways and Means Committee of the House of Representatives, during its consideration of the pending revenue bill, considered the issues raised in the memorandum from the German Embassy. As you are aware, the bill as reported by the Committee and as passed by the House of Representatives on December 15, 1927, continues the tax, at materially increased rates, on foreign built yachts.

In view of the position of the German Government, however, and of the possible effect upon our commerce with Germany, as outlined in your letter, I see no reason why the matter should not be brought to the attention of the Chairman of the Senate Committee on Finance.

Respectfully,

A. W. MELLON

⁷⁶ Not printed.

⁷⁷ *Supra*.

811.512 Boats/8

*The Secretary of State to the Chairman of the Committee on Finance
of the United States Senate (Smoot)*

WASHINGTON, March 20, 1928.

SIR: I have the honor to enclose for your consideration a copy of a memorandum of November 29, 1927, received from the German Embassy at this capital relative to an alleged conflict between Section 702 of the Revenue Act of 1926, in so far as it affects the taxation of yachts built in Germany, and Article VIII of the Treaty between the United States and Germany of Friendship, Commerce and Consular Rights. I understand that a bill (H. R. 1) proposing an increase in the rates of the taxes under Section 702 is before the Committee on Finance.

A copy of the memorandum from the German Embassy was transmitted to the Secretary of the Treasury in a letter of December 16, 1927, copy of which is enclosed herewith,⁷⁸ from whom a reply of December 30, 1927, has now been received, a copy of which is also enclosed. From the latter letter you will observe that the Secretary of the Treasury states that he must adhere to the conclusion already reached by him, as set forth in his letter of January 8, 1927, to the Department, a copy of which is enclosed, the last paragraph of which reads as follows:

"I am, therefore, of the opinion that the effect of Section 702 of the Revenue Act of 1926 is not to impose a different tax in this country on the merchandise of Germany than is imposed on the merchandise of the United States, and that the Act of Congress does not violate the provisions of the treaty."

Without entering into a discussion with regard to the question whether the tax on foreign built yachts imposed by Section 702 of the Revenue Act of 1926 is, technically a tax on merchandise in the sense in which that term is used in Article VIII of the Treaty between the United States and Germany, I believe you will concur with me in the opinion that there is some force in the argument of the German Government that the tax does, in fact, constitute a violation of the spirit of the Treaty. In view of this fact and of the possibility of reprisals in Germany against American made goods, I have deemed it advisable to bring this matter to your attention for consideration in relation to the bill H. R. 1.

While I appreciate, of course, the desire of American yacht builders to protect their industry against the competition of lower priced foreign built yachts, I am hopeful that your committee may find it possible to consider whether such protection could not be accorded through appropriate amendments to the Tariff Act, so drawn as to give due

⁷⁸ Not printed.

consideration to the decision of the Supreme Court of the United States in the case of *The Conqueror* (166 U. S. 110).

In this connection there are also enclosed copies of a letter of March 6, 1928, received from the National Automobile Chamber of Commerce and of a further communication of February 29, 1928, from the Treasury Department ⁷⁹ concerning the application of customs duties to the importation of foreign built yachts.

I have [etc.]

FRANK B. KELLOGG

⁷⁹ Neither printed.

GREAT BRITAIN

PROPOSED ARBITRATION TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN

711.4112A/3

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, December 29, 1927.

EXCELLENCY: I have the honor to refer to our conversation of this morning and to transmit herewith for the consideration of your Government, and as a basis for negotiation, a draft of a proposed treaty of arbitration.¹ The provisions of this draft operate to extend the policy of arbitration enunciated in the convention signed at Washington, April 4, 1908² (which expires by limitation on June 4, 1928), and explicitly record the desire of the two Governments to condemn war as an instrument of national policy in their mutual relations. The language of the draft is *mutatis mutandis* identical with that of the draft treaty which I yesterday transmitted to the French Ambassador for the consideration of his Government,³ except for the reservation at the end of Article II covering questions involving the interests of a self-governing Dominion of the British Empire. This clause was taken from Article I of the Knox Treaty concluded in 1911⁴ but never coming into force.

I feel that by adopting a treaty such as that suggested herein, we shall not only promote the friendly relations between the Peoples of our two countries, but also advance materially the cause of arbitration and the pacific settlement of international disputes. If your Government concurs in my views and is prepared to negotiate a treaty along the lines of that transmitted herewith, I shall be glad to enter at once upon such discussions as may be necessary.

Accept [etc.]

FRANK B. KELLOGG

¹ Not printed.

² *Foreign Relations*, 1908, p. 382.

³ *Ante*, p. 810.

⁴ *Congressional Record*, 62d Cong., 2d sess., vol. 48, p. 963.

711.4112A/18

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, March 20, 1928.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of March 16, 1928,⁵ informing me that your Government is considering the draft arbitration treaty which I transmitted with my note of December 29, 1927, and that you will be instructed as soon as possible as to the reply to be made to the proposal which I submitted.

As you were informed in my note of December 29, 1927, except for the reservation at the end of Article II, the language of the draft treaty which I submitted for the consideration of your Government was *mutatis mutandis* identical with that of the draft treaty which I communicated on December 28, 1927, to the French Ambassador for the consideration of his Government.

In connection with the consideration of the Arbitration Treaty with France a question arose as to whether that treaty (which as you are aware was signed February 6, 1928) ⁶ affected the status of the Treaty for the Advancement of Peace signed in 1914,⁷ a portion of the language of which was incorporated in Article I of the Arbitration Treaty. It was not the intention of either France or the United States that the Treaty of 1914 should be in any way modified by the new Arbitration Treaty, and notes have been exchanged ⁸ recording the understanding of both Governments that the Treaty of 1914 was in no way affected by the later Arbitration Treaty. In order to obviate further questions of this nature, however, I have deemed it desirable not to include in other arbitration treaties any portion of the language of the earlier conciliation treaties, and in the draft treaties recently submitted to other Governments I have, therefore, omitted the language of Article I of the treaty with France and amended Article II accordingly.

In these circumstances I have the honor to suggest that Article I of the draft arbitration treaty enclosed with my note of December 29, 1927, be suppressed, that in Article II (which thereupon becomes Article I) there be substituted for the words "the above-mentioned Permanent International Commission", the words "the Permanent International Commission constituted pursuant to the treaty signed at Washington, September 15, 1914",⁹ and that Articles III and IV be renumbered II and III respectively. In the interest of uniformity I also suggest the addition to Article II of a paragraph (similar to paragraph (d) of Article III of the French treaty) excluding from

⁵ Not printed.

⁶ *Ante*, p. 816.

⁷ *Foreign Relations*, 1915, p. 380.

⁸ *Ante*, pp. 812 and 815.

⁹ *Foreign Relations*, 1914, p. 304.

the scope of the treaty questions the subject matter of which depends upon or involves the observance of the obligations of the British Empire in accordance with the Covenant of the League of Nations. The effect of these changes will be not only to place the negotiations with your Government upon the same basis as the negotiations which are being conducted with other Governments, but also to make it absolutely clear that the new Arbitration Treaty does not in any way modify or affect the Treaty signed September 15, 1914.

Accept [etc.]

FRANK B. KELLOGG

711.4112A/24

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

No. 1437

WASHINGTON, May 22, 1928.

SIR: The British Ambassador called at the Department on May 5, 1928 and informed me that his Government was consulting the British Dominions about the arbitration and conciliation treaties. He asked whether the United States would be willing to extend the Root Treaty,¹⁰ by an exchange of notes, for six or eight months, while the new treaties were being negotiated. I told him that I doubted whether the Root Treaty could be extended merely by an exchange of notes without submitting the matter to the Senate but that I would look into the question and inform him later.

He was subsequently informed that it would not be legally possible to effect an extension by means of an exchange of notes and that if the Root Treaty were to be extended, it would be necessary to conclude an agreement to that effect and submit it to the Senate in the usual way.

I told him that, in any event, I did not think it would make much difference whether the Root Treaty was extended or not. Sir Esme said that he thought he would have some suggestions to make to me within a few days in connection with the subject, but nothing further has yet been received from him.

I am [etc.]

FRANK B. KELLOGG

711.4112A/29 : Telegram

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

WASHINGTON, October 17, 1928—4 p. m.

231. Instruction No. 1437 of May 22, 1928. Embassy's No. 88, April 27, 1928, 2 p. m.¹¹ Arbitration Treaty.

The suggestion of the British Ambassador that the Arbitration Treaty of 1908, which expired June 4, should be prolonged proved

¹⁰ Arbitration convention, April 4, 1908; *Foreign Relations*, 1908, p. 382.

¹¹ Vol. I, p. 39.

impracticable and nothing has since been received from the British Government in regard to negotiation of new treaty.

Please inquire at the Foreign Office whether it will shortly furnish the British Embassy in Washington with instructions. An early reply is desired.

CLARK

711.4112A/39 : Telegram

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

LONDON, October 18, 1928—6 p. m.

[Received October 18—2:30 p. m.]

223. Department's 231, October 17, 4 p. m. Foreign Office states that from the Dominions as yet only South African reply has been received. However, now that many problems under discussion and consideration these last months between London and the Dominions have been cleared away Foreign Office will again urge early action in the hope that the replies from the Dominions may be received before the end of the current year.

ATHERTON

711.4112A/32

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

No. 711

OTTAWA, October 30, 1928.

[Received November 2.]

SIR: I have the honor to report that on October twenty-sixth, the morning press, in commenting upon the reported delay in connection with the proposed arbitration treaty between the United States and Great Britain, quoted a statement of Dr. O. D. Skelton, Under-Secretary of State for External Affairs, to the effect that "there has been no special delay upon the part of either the British or the Canadian Government in connection with the proposed arbitration treaty between the United States and Great Britain". "It has been found necessary to consider the treaty in connection with others, such as the League of Nations treaties. The matter is under consideration, but so far no conclusion has been reached by either the British or Canadian Government."

I asked Dr. Skelton whether the British Government had made any communication to the Canadian Government on the subject, to which he replied in the negative. . . . As a matter of fact, he said London had made no communication to Ottawa on the subject as yet, but would probably do so before very long. He admitted that

Canada would find it necessary to study the arbitration treaties proposed by the League of Nations, all of which Canada would probably not be in a position to sign.

I have [etc.]

WILLIAM PHILLIPS

711.4112A/34

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

No. 756

OTTAWA, November 28, 1928.

[Received December 4.]

SIR: With reference to my despatch No. 711, of October thirtieth in connection with the proposed arbitration treaty between the United States and Great Britain, I have the honor to report that I had occasion to discuss the matter again with Dr. Skelton with the idea of ascertaining whether there had been any further action by the British or Canadian Governments in that regard. The Under-Secretary of State for External Affairs told me that both the Prime Minister and he himself had considered that it would be very advantageous if questions of a purely Canadian-American character should be dealt with by the International Joint Commission, rather than under the general Arbitration Treaty. They both were of the opinion that the Boundary Waters Treaty¹² clearly permitted, if not indeed encouraged, the handing over to the International Joint Commission of a wide range of subjects. Articles 9 and 10 of the Treaty provided both for conciliation and arbitration inasmuch as action by only one of the high contracting parties could elicit the examination and a report on "any other questions or matters of difference arising between them (the high contracting parties) involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other along the common boundary", while Canada and the United States jointly could refer the same subjects to the Commission for a decision.

According to Dr. Skelton, Sir Wilfred Laurier¹³ had always described the Commission as a miniature Hague Tribunal for the United States and Canada, and Mr. King¹⁴ believed in the desirability of making the most of this idea to the mutual advantage of both Canada and the United States. It appears that when Sir Austen Chamberlain¹⁵ was recently in Ottawa the Prime Minister talked the matter over with him.

Dr. Skelton gave me the impression that his Government strongly favored dealing with the matter in the manner described above as

¹² *Foreign Relations*, 1910, p. 532.

¹³ Leader of the Liberal party in Canada and former Prime Minister.

¹⁴ Mackenzie King, Canadian Prime Minister.

¹⁵ British Secretary of State for Foreign Affairs.

that calculated best to provide for American-Canadian relations, and expressed the hope that the Legation would give it consideration, and even approval.

If the Department views the Canadian thesis favorably I venture to suggest that I might be instructed to convey this fact informally to the Dominion authorities. It would appear that the proposed arrangement might be desirable because in employing the machinery already provided by the Boundary Waters Treaty further emphasis is given to the unique cooperation which has existed between Canada and the United States in the settlement of their respective difficulties. The Department may also find a further argument in favor of the matter under discussion in the fact that to do otherwise might appear to run counter to the Canadian policy of independence in foreign affairs when embracing questions that are of immediate concern to the Dominion.

I have [etc.]

WILLIAM PHILLIPS

711.4112A/35 : Telegram

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

WASHINGTON, January 21, 1929—4 p. m.

11. Your 756, November 28, 1928.

1. This Government understands the provisions of the Boundary Waters Treaty of 1909 in the same broad sense as the Prime Minister and the Under Secretary of State for External Affairs.

2. It is the view of this Government (*a*) that the new arbitration convention with Great Britain and the provisions relating to arbitration in the Boundary Waters Treaty (Article 10) would be operative concurrently and that both would be available in connection with Canadian-American questions; (*b*) that inasmuch as the provisions of Article 10 of the Boundary Waters Treaty constitute a special agreement relating to Canadian-American questions and the new arbitration treaty would be general, the convenience of the Governments usually would be best met by making use of the provisions in the Boundary Waters Treaty in connection with such matters.

3. This Government considers, however, that it would be unnecessary to make reference in the arbitration treaty to the special provisions in the Boundary Waters Treaty for settling Canadian-American differences.

4. This Government will, however, be glad to give consideration to such definite proposals in regard to the matter as may be made to it in the course of the negotiations.

5. You are authorized to convey the statements in the above four paragraphs informally to the Canadian authorities.

6. [Paraphrase.] It is Department's view that if definite proposals are made, they should come from British Government. [End paraphrase.]

KELLOGG

711.4112A/36

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

No. 822

OTTAWA, January 30, 1929.

[Received February 4.]

SIR: Referring to the Department's telegram No. 11 of January 21, 4 p. m., on the subject of the proposed arbitration treaty between the United States and Great Britain, I have the honor to report that I called upon Dr. Skelton, Under-Secretary of State for External Affairs, on January 25th, and conveyed to him informally the statements in the first four paragraphs of the telegram under reference.

Dr. Skelton seemed glad to hear that we understood the provisions of the Boundary Waters Treaty of 1909 in the same sense as the Prime Minister and himself. He said that the Cabinet was united in feeling that the Boundary Waters Treaty, rather than any arbitration treaty with Great Britain, should cover all purely Canadian-American questions.

Dr. Skelton further stated that it was the general feeling of the Cabinet that the International Joint Commission should be mentioned in the proposed arbitration treaty between the United States and Great Britain because its importance would thus be magnified in the eyes of the world.

I have [etc.]

WILLIAM PHILLIPS

711.4112A/37

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

No. 3335

LONDON, January 31, 1929.

[Received February 13.]

SIR: I have the honor to state that in reply to a question asked in the House of Commons on January 30th, relating to the conclusion of a new Arbitration Treaty between Great Britain and the United States, the Secretary of State for Foreign Affairs stated that during the last few weeks further replies had been received from the Dominion Governments, so that now all of the Government's inquiries had been answered except by one Dominion. Sir Austen Chamberlain continued by stating that His Majesty's Government was engaged in careful examination of the observations of the Dominions and the offices of His Majesty's Government in the United Kingdom, as

the highest importance was attached to obtaining complete agreement, and that further exchanges of opinion would be necessary before a definite reply could be reached. Sir Austen Chamberlain concluded that he regarded this Arbitration Treaty as of particular importance since it would presumably form a model for many others.¹⁶

I have [etc.]

For the Ambassador:

RAY ATHERTON

Counselor of Embassy

NEGOTIATIONS FOR CONVENTION BETWEEN THE UNITED STATES,
GREAT BRITAIN, AND IRAQ REGARDING RIGHTS OF THE UNITED
STATES AND OF ITS NATIONALS IN IRAQ¹⁷

890g.5123/2

*The Secretary of State to Messrs. Breed, Abbott & Morgan, of
New York*

WASHINGTON, August 16, 1928.

SIRS: Receipt is acknowledged of your letter of August 3, 1928¹⁸ in which you request the advice of the Department in the matter of the payment of income tax in Iraq by your clients, a New York corporation having a representative in Basrah.

In reply I desire to inform you that negotiations are now in process between the Governments of the United States, Great Britain and Iraq for the conclusion of a treaty by which it is expected that the treatment to be accorded American nationals in Iraq under British mandate will be determined.¹⁹ Meanwhile, however, the Department considers that the collection of taxes from American nationals in Iraq without the consent of this Government is in contravention of American treaty rights.

I may add, however, that should your clients, in view of the imminent conclusion of the treaty referred to above, consider that for reasons of business policy the payment of the taxes in question is desirable, this Government would raise no objection.

¹⁶ In a memorandum of Oct. 8, 1929, the Chief of the Western European Division (Marriner) recorded a conversation in which Mr. R. L. Craigie, head of the American Division of the British Foreign Office, said that the long delay in replying to the American position was due to a reexamination in the Foreign Office of the whole arbitration policy. No further communication on the subject appears to have been made by the British Government.

¹⁷ Continued from *Foreign Relations*, 1927, vol. II, pp. 781-807. These negotiations led to the signing of a convention Jan. 9, 1930 (Department of State Treaty Series No. 835; 47 Stat. 1817).

¹⁸ Not printed.

¹⁹ For previous correspondence on this subject, see *Foreign Relations*, 1927, vol. II, pp. 808 ff.

A copy of your letter and of this reply have been sent to the American Consul at Baghdad for his information and your clients' representative may consult with that officer, should he desire, in regard to the matter of payment of the tax if it is demanded.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

Assistant Secretary

890g.01/202

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

No. 3020

LONDON, September 6, 1928.

[Received September 17.]

SIR: Adverting to this Embassy's despatch No. 2382, January 9, 1928,²⁰ I have the honor to transmit herewith a copy, in triplicate, of an informal note received today from the Foreign Office in reply to Mr. Atherton's²¹ informal note to Mr. Oliphant²² of January 4, 1928.²³

It will be observed that the British Government and the Government of Iraq agree to all of the amendments which the Department wished to make in the proposed Convention between the United Kingdom, the United States and Iraq, with one exception; namely, the proposed alteration in the wording of Article 4, dealing with the position of educational, philanthropic and religious institutions.

I have the honor to request the Department's instructions in regard to this matter.

I have [etc.]

For the Ambassador:

F. L. BELIN

First Secretary of Embassy

[Enclosure]

Mr. H. J. Seymour of the British Foreign Office to the American Chargé (Atherton)

No. E 4301/84/65

[LONDON,] 5 September, 1928.

MY DEAR ATHERTON: In your letter of January 4th last to Oliphant regarding the proposed Convention between the United Kingdom, the United States and Iraq you set forth certain amendments which your

²⁰ Not printed.

²¹ Ray Atherton, Chargé and Counselor of the Embassy in Great Britain.

²² Lancelot Oliphant, Head of the Eastern Department, British Foreign Office.

²³ This note was based on the Department's instruction No. 1208, Dec. 17, 1927; *Foreign Relations*, 1927, vol. II, p. 806.

Government wished to make in the so-called "revise of November 1st," and which they hoped would prove acceptable to His Majesty's Government and the Government of Iraq. These amendments have in the interval been fully discussed both here and in Baghdad, and I am now in a position to let you know that they are all acceptable with one exception, namely the proposed alteration in the wording of Article 4, dealing with the position of educational, philanthropic and religious institutions.

The suggestion of your Government in this regard was that the words "and to any general educational requirements prescribed by law in Iraq" should be omitted, and that the Iraqi Government should accept in lieu thereof the statement of your Government's willingness to raise no objection to any reasonable curricular requirements which may be made by law generally applicable to all educational institutions in Iraq. The Government of Iraq point out, however, that Article 16 of the Iraq Constitution provides that the various communities in Iraq shall have the right to establish and maintain schools for the instruction of their own members in their own languages, provided that such instruction is carried out in conformity with such general programmes as may be prescribed by Law. It was in order that the proposed Convention might conform to the provisions of the Iraq Constitution (which cannot be amended before 1930) that the words "and to any general educational requirements prescribed by law in Iraq" were embodied in Article 4. The Iraq Government are advised that, in the circumstances, they could not, without infringing their own Constitution, accord to the United States Government the right to establish and maintain schools in Iraq without conditioning that right by some such proviso as that included in Article 16 of the Constitution.

Apart from this, however, the Iraq Government feel that if they agreed to the proposal made by the United States Government, they would, by implication, be bound to permit that Government to decide whether the educational law in Iraq is reasonable or not, and, in the event of their considering any Article unreasonable, to declare that they held American institutions in Iraq exempt from its application. The terms of Article 16 of the Constitution would, however, preclude the Iraq Government from recognising any such declaration, and a state of affairs would thus arise which they feel would be likely to cause friction and difficulty. They have, therefore, carefully considered the matter with the object of finding some alternative solution which would not be open to the same constitutional objection, but which would, nevertheless, provide a satisfactory safeguard for the American establishments in question.

For this purpose the Iraqi Government, who are anxious to do their utmost to meet American wishes, are prepared to give the United States Government assurances to the following effect :—

(1) The Iraqi Government will not interfere with the liberty of missionary schools to teach religion to Christian children, or to any other student whose guardian agrees to his attending religious ceremonies;

(2) The Iraqi Government will not interfere in matters concerning the curriculum, such as the time-table, discipline and purely internal administration in missionary schools.

They trust that these assurances will suffice to meet the considerations advanced in your letter of the 4th January and that, in view of the safeguards thus provided, the United States Government will be prepared to withdraw their objections to the retention in Article 4 of the words "and to any general educational requirements prescribed by law in Iraq".

I hope that the United States Government will regard this solution as satisfactory and that it will now be possible to sign the Convention as proposed in the revise, subject to the other alterations suggested by you in your letter of January 4th.

Believe me [etc.]

H. J. SEYMOUR

890g.01/202

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

No. 1616

WASHINGTON, November 30, 1928.

SIR: The Department has received the Embassy's despatch No. 3020 of September 6, 1928 transmitting a copy of a Foreign Office communication dated September 5, 1928 setting forth the views of the Iraq Government in regard to the proposed Convention between the United States and Great Britain and Iraq.

It is noted that all of the amendments to the draft Convention (described as the "revise of November 1st"), proposed by this Government and embodied in your communication of January 4, 1928 to the Foreign Office, are acceptable to both the British and Iraq Governments with the exception of the suggested omission in Article 4 of the words "and to any general educational requirements prescribed by law in Iraq." The Iraq Government takes the position that, inasmuch as Article 16 of the Iraq Constitution provides that the various communities in Iraq shall have the right to establish and maintain schools for the instruction of their own members in their own languages, provided that such instruction is carried out in conformity with such general programs as may be prescribed by law, it cannot, without infringing the Constitution, accord to nationals of the United States the right to establish and maintain schools in Iraq without conditioning that right by some such proviso as that suggested in Article 4.

The Iraq Government, however, is willing to give assurances to the following effect:

1. The Iraqi Government will not interfere with the liberty of missionary schools to teach religion to Christian children, or to any other student whose guardian agrees to his attending religious ceremonies;
2. The Iraqi Government will not interfere in matters concerning the curriculum, such as the time-table, discipline and purely internal administration in missionary schools.

You should reply to the Foreign Office substantially as follows:

The good will displayed by the Iraq Government in seeking to meet the American Government's objections to the proposed addition to Article 4 is sincerely appreciated. Careful consideration has been given to the point of view of the Iraq Government as explained in the communication of the Foreign Office of September 5 as well as to the two assurances which the Iraq Government is prepared to give with respect to schools established and maintained in Iraq by Americans.

The American Government has no doubt either of the friendly sentiments entertained by the Iraq authorities towards American institutions in Iraq or of the value of such sentiments as an effective basis for the continuance and development of the activities of these institutions in the future. The observations contained in the Embassy's letter of January 4, 1928 to Mr. Oliphant were prompted by a desire to avoid the possibility of future misunderstandings in connection with a form of words susceptible of several interpretations. The clarification of the Iraq Government's position contained in the Foreign Office's above-mentioned communication has appreciably lessened the possibility of such misunderstanding, and this Government is therefore prepared to agree to the inclusion in Article 4 of the clause "and to any general educational requirements prescribed by law in Iraq," to accept the assurances of the Iraq Government when given, and to proceed to the signature of the Convention, subject, however, to the following comment and understanding:

1. The first of the proposed assurances is somewhat detailed in character and would not appear to be so directly pertinent to the issues which the Department has had in mind as to require special mention in any clarification of the Iraq Government's position.

2. The phrasing of the second assurance would at first sight seem to leave something to be desired at least from the point of view of clarity and succinctness. After careful analysis, however, it is believed that the intention of the Iraq Government is to refrain from interfering in a discriminatory or restrictive manner with the curriculum and internal administration of the schools established and maintained in Iraq by Americans.

For convenient reference, there is transmitted herewith a revised draft of the Convention in the form in which this Government is prepared to sign, together with a memorandum of the several matters upon which the understanding of the Parties has been defined in the course of the negotiations and which are to receive appropriate

mention in the instrument, or instruments, to be signed simultaneously with the Convention.²⁴

You will, of course, furnish the Department with a copy of any communication which you may address to the Foreign Office in accordance with the foregoing instructions and inform it fully regarding such further discussion of the matter as you may have with the appropriate authorities of the British Government.

I am [etc.]

FRANK B. KELLOGG

**CLAIM OF THE STANDARD OIL COMPANY OF NEW JERSEY AGAINST
THE BRITISH GOVERNMENT FOR THE DESTRUCTION OF PROPERTY
IN RUMANIA IN 1916²⁵**

441.11 St 23/75

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

No. 2888

LONDON, July 10, 1928.

[Received July 19.]

SIR: I have the honor to refer to the Embassy's despatch No. 1836, May 4, 1927,²⁶ stating that a note had been transmitted to the Foreign Office on May 2, 1927,²⁷ upon the subject of the claim of the Romano-Americana arising from the destruction of its property in Roumania in 1916, and in this connection to enclose a copy, in quintuplicate, of a Foreign Office note in reply, stating *inter alia* that the version of the facts transmitted with Mr. Houghton's note to the Foreign Office cannot be regarded as complete or accurate, and, in view of the full and exact facts forwarded, expressing the hope that the Government of the United States will agree that the circumstances are not such as to establish any claim against His Majesty's Government.

I have [etc.]

RAY ATHERTON

[Enclosure]

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

No. C 4918/40/37

[LONDON,] 5 July, 1928.

SIR: His Majesty's Government have given their most careful attention to the note which the United States Ambassador addressed to me on May 2nd, 1927, regarding the claim of the Standard Oil Company of New Jersey arising from the destruction in 1916 of the properties of the Romano-Americana Company in Roumania.

²⁴ Enclosures not printed.

²⁵ Continued from *Foreign Relations*, 1926, vol. II, pp. 308-335.

²⁶ Not printed.

²⁷ For text, see instruction No. 766, Dec. 6, 1926, to the Ambassador in Great Britain, *Foreign Relations*, 1926, vol. II, p. 326.

2. In that note it is affirmed that the Government of the United States are unable to accept either the statements of fact or the conclusions of law set out in my note of April 15th, 1926;²⁸ and expression is given to the view of the Government of the United States that the facts of the present case are so clear and the principles of law so elementary that there is occasion only for discussion of the amount of indemnity to be paid. Mr. Houghton adds that, should His Majesty's Government be unwilling to appoint a representative to discuss that question with a representative of the Government of the United States, the latter would feel themselves under the necessity of insisting that the question of the liability of His Majesty's Government and, if that liability be established, the amount of the indemnity to be paid, should be submitted to arbitration in accordance with the arbitration treaty concluded in 1908 between the United States and Great Britain.²⁹

3. In previous correspondence on this claim His Majesty's Government have contented themselves with stating the conclusions of fact to be drawn from the evidence in their possession relating to the circumstances in which the property in question was destroyed; but in view of the version of those facts contained in Mr. Houghton's note, His Majesty's Government entirely agree that an accurate exposition of such facts is an essential preliminary to the discussion of the legal principles involved.

4. They, therefore, deem it desirable to set out briefly the actual facts as they know them, and to indicate, where it seems necessary to do so, the sources from which the information was obtained—sources which, I need hardly observe, cover a much wider field than the testimony given in the Consolidated Oilfields case. In the interests of clearness the texts of the more important documents to which reference is made are set out in an Appendix³⁰ to this note, in the hope that they, of themselves, will afford sufficient proof that the conclusions reached by His Majesty's Government regarding the facts of the destruction of the Romano-Americana properties, with which the Government of the United States are already acquainted, are neither illogical nor unjustified.

5. Mr. Houghton states that the version of the facts put forward by the Government of the United States is based chiefly on the evidence given in the course of the suit brought in His Majesty's courts by the Roumanian Consolidated Oilfields Company. It is therefore right that I should point out that the question in dispute in that case was whether or not a contract had been made with that Company which entitled them to claim compensation, and that the manner in which

²⁸ *Foreign Relations*, 1926, vol. II, p. 322.

²⁹ *Ibid.*, 1908, p. 382.

³⁰ Subenclosures 1-8, *infra*.

the property was destroyed was not of paramount importance to the issues thus raised. In any case, a description of events relating to the destruction of the property of the Roumanian Consolidated Oilfields Company at Targoviste (the point nearest the enemy on the west), which began on November 26th, 1916, cannot be regarded as an accurate statement of the facts in regard to the destruction of the property of the Romano-Americana Company at Moreni (a point farther east), which was not undertaken until November 30th and was not completed until much later. Nevertheless, insofar as the Government of the United States rely on the testimony given in the Roumanian Consolidated Oilfields case, I would invite your attention to the evidence of Colonel Norton Griffiths, and of Messrs. Masterson, Hayward and Sullivan in that case, which indicates plainly the vital distinction between the circumstances of destruction in the two areas.

6. Mr. Houghton's note begins with a statement of instructions alleged to have been given to Colonel Norton Griffiths in November 1916, the implication being that the history of the matter starts from that point. In the opinion of His Majesty's Government, however, it is necessary, if an accurate appreciation of the case is to be obtained, to refer to the steps taken by the Roumanian Government themselves and by the other Allied Governments before that date, in consequence of which Colonel Norton Griffiths was sent to Roumania.

7. Shortly after their entry into the war, the Roumanian Government issued a decree dated September 10th, 1916 (document No. 1) declaring the Roumanian petroleum industry to be in the service of the State, and appointing a special commission to supervise the industry under the general control of the Minister of War. At the beginning of October 1916, this commission, impressed by the capture of all the oil reserves at Constanza following the enemy operations in the Dobrudja, began to take precautionary measures, and to give instructions for preventing the large stocks of oil products on the fields from falling into the hands of the central powers in the event of an invasion from the west. By October 28th, 1916, as is clear from document No. 2, the Roumanian Government shared the apprehension of the commission and assured His Majesty's Minister in Bucharest that all possible preparations were being made to prevent the enemy from profiting by an occupation of the Roumanian oilfields by the destruction of the richest wells and by the dislocation of machinery. These assurances were repeated to His Majesty's Minister on November 3rd (document No. 3) during an interview with the Roumanian Minister of Commerce, who stressed the point that the oil companies had been placed under the control of the commission, and outlined in detail the proposed methods of destroying the stocks and paralysing the industry. At about this time (i. e. before Colonel Norton Griffiths

reached Bucharest which he did on November 17th, 1916) definite orders were in fact issued to the commission (largely at the instance of a French military officer who had been sent to Roumania by the French Government) to render useless the means of oil production. Independent testimony showing that the commission were duly carrying out the tasks thus imposed upon them will be found in document No. 4 in the form of a telegram sent through His Majesty's Legation at Bucharest from the Manager of the Astra Romana Company to his principals in London. From this document it will be seen that the commission was taking action, under instructions from the Roumanian Government, some three weeks before Colonel Norton Griffiths arrived at the first oilfield where destruction took place in his presence.

8. Towards the end of October, however, it seemed to the Allied Governments that the Roumanian Government for various reasons might not take effective steps to secure that object which they, nevertheless, recognised as vital to the successful prosecution of the war, and accordingly on November 2nd, 1916, it was proposed to the Roumanian Government that the Allied Governments (i. e. His Majesty's Government and the Governments of France and Russia) should undertake to share the expenses incurred by the Roumanian Government in destroying the stocks of corn and oil, provided that the local French, Russian and British military authorities were satisfied that the necessity for this destruction had, in fact, arisen.

9. It was in pursuance of this proposal, which was accepted by the French and Russian Governments on November 4th and December 24th, 1916 respectively, that Colonel Norton Griffiths was sent out by His Majesty's Government to Roumania, with instructions to cooperate with the Roumanian General Staff and with the local French and Russian military authorities, acting under similar instructions.

10. By the time Colonel Norton Griffiths arrived in Bucharest on November 17th the strategical position in that country had changed seriously for the worse, and it had become obvious both to the Roumanian Government and to the Allies that the mere destruction of the stocks of oil would not be sufficient to prevent the Germans obtaining from Roumanian sources those supplies of oil which they urgently required.

11. Colonel Norton Griffiths realised that there were only two ways in which he could secure that complete destruction of the industry which in the opinion of the Allied Governments had become necessary, in view of the critical nature of the strategical position, viz. either by the action of the Roumanian Government, who alone possessed both the legal right and the physical power to accomplish that destruction or by the consent and active assistance of the persons whose property was to be destroyed.

12. On his arrival at Bucharest Colonel Norton Griffiths found indeed that the Roumanian Government had themselves realized the necessity for more drastic measures, and on November 23rd they set up for that purpose a special military commission, consisting of Roumanian military officers and engineers, to supervise and expedite the work of destruction and demolition of the oil wells and plant under the orders of the Roumanian General Staff. On this commission Colonel Norton Griffiths and a French military officer were co-opted as members.

13. Notwithstanding the appointment of this special commission, the general attitude of the Roumanian Government at that time was such as to lead Colonel Norton Griffiths to believe that the best hope of accomplishing the desired end lay in purchasing outright the properties the destruction of which was desired. With this object in view he initiated negotiations with the main oil companies for the purpose of buying outright the whole of their interests and thus obtaining a free hand to do what might be necessary. Negotiations were begun with representatives of the Romano-Americana Company amongst others; but they proved abortive. Similar negotiations were on foot with representatives of the Roumanian Consolidated Oilfields Company, but before they reached a concluded stage the Roumanian authorities had themselves begun to take action, and Colonel Norton Griffiths, realising that action on their part would be the more effective, thereafter addressed his efforts to ensure that the destruction, to which the Roumanian authorities had already set their hand, should be adequate to secure the purpose in view, and he accordingly decided to join his colleagues on the special commission who were then in the oil-producing districts.

14. The first date on which Colonel Norton Griffiths came into direct contact with the oil-producing areas was on his arrival at Targoviste (where the Roumanian Consolidated Oilfields properties were situated) on November 26th, 1916, when he found his colleagues on the commission undecided as to the measures to be taken in consequence of two sets of orders which they had received. The first of these was an order issued by the Ministry of Industry on November 24th authorising the destruction of the oil stocks. The second was an order from the General Staff authorising the destruction of the industry (see evidence by Mr. Masterson in the Roumanian Consolidated Oilfields case). In view, however, of the fact that executive authority was vested in the General Staff, Colonel Norton Griffiths considered that the commission, if they merely proceeded to the destruction of the stocks of oil, would not be complying with the instructions received from that authority, and in this opinion he was supported by his French colleague. He accordingly urged, as he has stated in evidence,

that a telegram should be sent to the Roumanian General Headquarters for definite orders and this was done on the evening of November 26th with the concurrence of his colleagues who took similar action. That Colonel Norton Griffiths' anxiety to ascertain the wishes of the Roumanian military authorities was reasonable is shown by the fact that a week earlier (November 19th) an order had been issued by the Roumanian general commanding the lines of communication, which ran through the oil-producing areas, to the Headquarters Staffs of the First, Second, Northern Armies and Danube Defence Groups, contemplating *inter alia* the destruction of the oil wells and working machinery by dynamite (document 5)—a method which, so far as the wells were concerned, would have been attended by far more drastic consequences than the method of plugging which the commission eventually used.

15. It was not until he reached Moreni on November 27th, that Colonel Norton Griffiths first came into touch with any property belonging to the Romano-Americana Company. As no reply had been received from the Roumanian authorities to the telegram referred to in the preceding paragraph no action regarding the destruction of the property could be or was in fact taken by the Commission, beyond making certain preparations which could be put into effect if and when instructions were received. In consequence of the delay in obtaining a reply, which was due to the great confusion following the withdrawal of the Roumanian Government from Bucharest to Jassy on November 25th, Monsieur Chrissoveloni, a member of the Commission, was sent to endeavour to obtain direct from the Roumanian General Headquarters definite instructions, and it was only on his return on November 29th, with instructions which satisfied all the members of the commission that it was the desire of the Roumanian General Headquarters that the wells and machinery should be destroyed, that the work of destruction was proceeded with. The instructions conveyed by Monsieur Chrissoveloni were confirmed in an urgent order issued on November 29th by the Roumanian General Headquarters (document No. 6) authorising the immediate destruction of the wells and on the following day (November 30th) the Roumanian engineers on the special commission were instructed by the Roumanian military authorities (document No. 7) to act according to the military requirements of the situation and to inform their foreign colleagues of their instructions.

16. It was not until late in the afternoon of November 30th, i. e. after the above orders had been issued and received, that the derricks and machine shops at Moreni, including those which belonged to the Romano-Americana Company, were destroyed by fire and the wells adequately plugged. The destruction of the oil reservoirs, stores, power houses and other plant was completed by the night of Decem-

ber 1st. This completes the review of the main incidents in the destruction of the properties of the Romano-Americana Company on the west side of the river Prahova.

17. As regards the remainder of that Company's properties which were situated east of the river Prahova, I would refer you to a self-explanatory order of December 4th (new style) signed by General Iliescu, Chief of the General Staff, which was issued to the Second Army, and repeated to the subordinate commands (document No. 8). This document makes it clear that the Roumanian Government, having embarked on a policy of thorough destruction insofar as the oil properties on the west of the river were concerned, were prepared to carry that policy into effect in the districts of which Ploesti was the centre, as the circumstances of the enemy's advance warranted. While the General Staff required that the destruction should be completed at the earliest possible moment they were anxious to do nothing to impede the lines of communication during the period when the Roumanian armies were passing through the oilfields. They intended, however, that the work of destruction should be completed after the Roumanian armies had left the oilfields behind them, and the commission were duly authorised on December 4th by General Anastasiade commanding the Third Division at Ploesti, to fire all the oil plant east of the Prahova, after he had received the orders to that effect from General Avarescu set out in Document 8 part 2.

18. In the opinion of His Majesty's Government the foregoing account represents the true history of the destruction of the oil wells in Roumania so far as is relevant to the present claim. There are, however, two points in the account contained in Mr. Houghton's note on which I desire especially to comment.

19. Mr. Houghton states that the Roumanian authorities opposed with force the prosecution of the work of destruction by Colonel Norton Griffiths and his colleagues. So far from that being the case, the destruction of the property of the Romano-Americana Company was actually carried out by a number of Roumanian troops under the command of a Roumanian officer. I may add that there were no British troops present in the oilfields at that time, nor at any other time; and Colonel Norton Griffiths only engaged two or three employees of the Roumanian Consolidated Oilfields Company as members of his staff. In these circumstances His Majesty's Government are at a loss to understand on what information the statement to which I have referred is based, since it was physically impossible for Colonel Norton Griffiths to have withstood any forcible measures adopted by the Roumanian authorities.

20. Also, to suggest, as Mr. Houghton does, that His Majesty's Government despatched Colonel Norton Griffiths to Roumania for the

purpose of exercising in Roumanian territory and against Roumanian subjects those sovereign rights and duties inherent only in the Roumanian Government, for the defence of its territory, is to suggest that His Majesty's Government were guilty of a deliberate and serious affront to the sovereignty of His Majesty the King of Roumania which, had it indeed taken place, must have led to immediate remonstrance and repudiation by the Roumanian Government. So far from this being the case, that Government has on more than one occasion, as pointed out in my note of April 15th, 1926, asserted that they and they alone are responsible for the measures taken.

21. In the opinion of His Majesty's Government the facts of the case establish beyond any question that the destruction of the property of the Romano-Americana Company was carried out under the direct orders of the Roumanian Government, and was therefore in law and in fact the act of that Government; and that any action taken by Colonel Norton Griffiths was taken by him in his capacity as a member of a Roumanian commission appointed by the Roumanian Government.

22. His Majesty's Government do not deny that, in company with the French and Russian Governments, they urged the Roumanian Government, through their accredited representative in Bucharest, to make the fullest use of the powers assumed by them early in the campaign to prevent the enemy from obtaining the means of prolonging a war disastrous alike to all involved in it at that time, but I must reaffirm that they could not and did not in any way go beyond the limits of persuasion and good counsel as between governments associated in a common cause.

23. When the British, French and Russian Governments realised that any hesitancy on the part of the Roumanian Government to carry out to the end the policy of destruction to which they had set their hand would be mainly caused by the fear of eventual claims which might be brought against them by the several companies, they (the Allied Governments), as a measure of inducement, offered to indemnify the Roumanian Government for any such claims made against them by the Companies for the destruction of their properties. This verbal guarantee, after the receipt of which the Roumanian authorities issued the detailed destruction orders outlined above, was later embodied in a formal note addressed by His Majesty's Minister at Bucharest to the Roumanian Government on December 3rd, 1916. This pledge has been duly honoured. The British and French Governments agreed with the Roumanian Government on the amount of the claims of the oil companies concerned, which were assessed in 1920 by a joint British, French and Roumanian commission at an approximate total of ten million pounds sterling. (The cooperation of Russia was not forthcoming owing to the Bolshevik régime in that country). The

British and French Governments, in settling with the Roumanian Government the terms of war debt repayment, have each reduced by five million pounds sterling the amounts owing to them by Roumania, in full execution of the undertaking given to the Roumanian Government by the British, French and Russian Governments in 1916. The Roumanian Government on their part recognised their liability to compensate the companies concerned, and have accordingly concluded agreements to this effect not only with the British companies but also with practically all the companies in which there is a substantial foreign interest.

24. His Majesty's Government have every reason for believing that the Roumanian Government would be willing to offer the same terms of settlement to the Romano-Americana Company as have already been accepted by the British, French, Dutch and Belgian companies and by those Roumanian corporations such as the Astra Romana and the Steaua Company, in which the shares are mainly held by non-Roumanian shareholders. His Majesty's Government therefore must decline to accept any responsibility whatever for the compensation which may be due to the Romano-Americana Company arising out of the destruction of their properties in Roumania in 1916. They have honoured the undertaking given by them to the Roumanian Government in 1916, and in doing so, have acquitted themselves of their one and only liability in the matter. Consequently they cannot entertain Mr. Houghton's suggestion that the question of the indemnity due to the Romano-Americana Company should form the subject of a discussion between representatives of His Majesty's Government and the Government of the United States.

25. Mr. Houghton goes on to suggest that failing such a direct discussion the United States Government's claim should be submitted to arbitration. As His Excellency makes certain propositions of law in support of this request, it seems desirable that I should state shortly the grounds on which His Majesty's Government find themselves unable to accept as applicable to the present case the contentions there advanced.

26. Mr. Houghton states that "Neither approval by the Roumanian Government nor ratification by it of the acts of destruction nor any agreements which His Majesty's Government might have had with the French, Russian and Roumanian Governments . . .³¹ relieves His Majesty's Government from liability to indemnify the owners of the property destroyed by agencies of His Majesty's Government under instructions, notwithstanding that those agencies might have been acting as members of a joint commission brought into existence by agreement amongst several Governments".

³¹ Omission indicated in the original note.

27. In the sphere of private law there are few principles more generally recognised than that which affirms that the ratification by a principal of the act of a person purporting to act as an agent makes that act for all purposes the act of the principal. This principle was held to apply to the ratification by a sovereign power of acts of its servants in the case of *Buron versus Denman*, 2 Exchequer Reports, 167. The views expressed by the Government of the United States in the case of the "Caroline" (Moore, *Digest of International Law*, Column II, Page 209^{31a} are to the same effect. His Majesty's Government are not aware of any case in which it has been held that the principle thus clearly established in private law does not apply equally to cases where a claim is raised through diplomatic channels, to which principles of international law would be applied. Even if therefore, contrary to the view held by His Majesty's Government, it should be considered that the action taken by Colonel Norton Griffiths was at the time unauthorised by the Roumanian Government, His Majesty's Government would none the less contend that the subsequent ratification by the Roumanian Government of those acts made them for all purposes the acts of the Roumanian Government and that, in consonance with the principles set out in Mr. Houghton's note, the persons whose property is destroyed must look to the Government responsible for the destruction of the property, or its successors.

28. With regard to the authorities cited in support of the contention that the destruction of property by a belligerent for the purpose of preventing it from falling into the hands of the enemy is a ground on which compensation can be claimed by the owner of that property, I need only observe that those authorities are in every instance confined to the assertion that the right of the owner of the property destroyed is to claim against the Government which actually destroyed the property. Having regard, therefore, to the view of the facts taken by His Majesty's Government, I am unable to admit that those authorities are in any way relevant to the claim sought to be made against His Majesty's Government.

29. When stating that, in the absence of an amicable settlement of the present dispute, the Government of the United States would feel bound to insist on the matter being referred to arbitration Mr. Houghton specifically invokes the Treaties of April 1908 and June 1923 between the United States and Great Britain.³² I would however, point out that the terms of those Treaties expressly exclude disputes in which third parties are interested. The Roumanian Government have, as mentioned in my note of April 15th, 1926, acknowledged their responsibility for the acts of destruction and have stated that

^{31a} Citation should be to volume II, p. 409.

³² *Foreign Relations*, 1908, p. 382; *ibid.*, 1923, vol. II, p. 315.

they would object to any interference in the matter as being an infringement of their sovereign rights. It has already been explained that the obligation resting on His Majesty's Government to indemnify the Roumanian Government is also shared by the French Government and it has been shown above that that obligation has been implemented by both those Governments. A French officer was moreover a member of the Roumanian Commission and took part in the deliberations of that body. In view of these facts, His Majesty's Government feel compelled to dissent from the view that the present dispute is one falling within the terms of the Treaties of April 4th 1908 or June 3rd, 1923.

30. Mr. Houghton observes that the Government of the United States is seeking to recover indemnity for the losses sustained by the claimants through the destruction of the property of their Roumanian subsidiary. It will not be denied that the Roumanian Company itself is, so far as nationality can be predicated of a corporation, a Roumanian national, and that no claim on its behalf could be advanced in international law by a foreign Government. Mr. Houghton urges, however, that the interests of the American stockholders of the Roumanian Company are such as to justify a claim being made on their behalf against His Majesty's Government, notwithstanding that the property alleged to have been destroyed was in fact that of a Roumanian national. His Majesty's Government cannot admit that such a claim is supported by any recognised principles of international law.

31. It is not disputed that in certain circumstances the destruction of property may give rise to a claim by the owner of that property against the Government of a State, but in the case of a corporation the distinction between the property of the corporation in the corporation's assets and the interest of the stockholders of the corporation is well settled. "No shareholder has any right to any item of property owned by the company, for he has no legal or equitable interests therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up".

"The corporator, even if he holds all the shares, is not the corporation and neither he nor any member of the company has any property legal or equitable in the assets of the corporation". These two citations from a recent judgment of the highest English tribunal represent, as His Majesty's Government believe, the law on the subject both in England and in the United States and were referred to with approval in the majority decision of the tribunal appointed in the arbitration between the Reparation Commission and the Government of the United States relating to certain oil-tankers, the property of

the Deutsche Amerikanische Petroleum Gesellschaft, under the agreement of June 7th, 1920.³³

32. This decision is particularly important since it affects a claim made by the Standard Oil Company raising a legal issue precisely similar to that now raised by the same Company.

33. Under the Treaty of Versailles, the German Government ceded to the Allied and Associated Governments all German merchant ships of one thousand six hundred tons gross and upwards. In pursuance of this provision the German Government handed over to the Reparation Commission, among other vessels, certain tankers which belonged to a German Company known as the Deutsche Amerikanische Petroleum Gesellschaft (commonly referred to as the D. A. P. G.). The Standard Oil Company protested against the delivery of these vessels of which it claimed the ownership on the ground that at all material times it owned practically the whole of the capital of the D. A. P. G.³⁴ The Tribunal decided that the Standard Oil Company had failed to make good its claim to beneficial ownership, on the above ground, of any of the vessels in question, and that they were not entitled to demand any compensation in respect thereof.³⁵

34. On the strength of these precedents His Majesty's Government deny that in the present case any property of the claimants was in fact destroyed or damaged or that a right to compensation has accrued to the claimants on the ground only that they are shareholders in the Roumanian Company.

35. Mr. Houghton, however, refers to a number of precedents which, it is alleged, show that international law recognises the right of shareholders or stockholders as such to claim in respect of damage done to the corporate property of the Company, and, as a corollary, the right of a Government to intervene on their behalf, even though the corporation of which they are stockholders or shareholders is a foreign corporation. His Majesty's Government propose briefly to examine these precedents which in their view fall far short of establishing the proposition which His Excellency puts forward.

36. His Majesty's Government readily admit that many cases might be cited in which a Government has used its good offices in the interests of its own nationals who are stockholders in a foreign corporation; but it will be found upon examination, that the cases in which the right of a Government to intervene on behalf of the shareholders of such a corporation, for the purpose of establishing a claim against another Government, has been admitted, are few in number and exhibit certain marked characteristics none of which are present in the case now under consideration. Cases of this kind fall, generally

³³ *Foreign Relations*, 1920, vol. II, p. 598.

³⁴ See *ibid.*, pp. 542 ff.

³⁵ See *ibid.*, 1926, vol. II, pp. 166 ff.

speaking, into two classes (1) where the action of the Government against whom the claim is made has in law or in fact put an end to the Company's existence or by confiscating its property has compelled it to suspend operations; (2) where by special agreement between the two Governments a right to claim compensation has been accorded to the shareholders. From the second class of case it is plain that no principle of international law can be deduced. The first class, so far from being an exception to the general rule, is in fact an example of its application; for it is not until a Company has ceased to have an active existence or has gone into liquidation that the interest of its shareholders ceases to be merely the right to share in the Company's profits and becomes a right to share in its actual surplus assets. Moreover, though it is well settled that no Government will intervene on behalf of a claimant who has not exhausted all his remedies under the municipal law of the country, it would be manifestly unjust to refuse diplomatic support to the shareholders of a foreign corporation where the foreign Government had by its own wrongdoing rendered illusory all remedies which might otherwise have been asserted by the corporation itself.

37. The cases which may be referred to as illustrating and indeed establishing the principle that a Government is entitled to intervene in a case where the action of the Government against whom the claim is made has in law or in fact put an end to the Company's existence, or has made it impossible for it to take any action on its own behalf, are those commonly known as the *Delagoa Bay* case and the *El Triunfo* case.³⁶

38. As Mr. Houghton observes, the facts and the decisions in these cases are so well known that it is unnecessary to set them out in detail. It seems to His Majesty's Government sufficient, so far as regards the *Delagoa Bay* case, to refer to the following extracts from the instructions given by His Majesty's Government and the Government of the United States to their respective representatives. The Marquis of Salisbury in his instructions to the British Minister at Lisbon said "His Majesty's Government hold the action of the Portuguese Government to have been wrongful and to have violated the clear rights and injured the interests of the British Construction Company which was powerless to prevent it, and which, as the Portuguese Company is practically defunct, has no remedy except through the intervention of its own Government". Similarly Mr. Blaine in his instructions to the United States Minister at Lisbon said: "In any case, the Portuguese Company being without remedy and having now practically ceased to exist, the only recourse of those whose property has been confiscated

³⁶ *Foreign Relations*, 1900, p. 903 and *ibid.*, 1902, pp. 838 ff.

is the intervention of their respective Governments". (Moore, *International Law Digest*, VI, 648).

39. As regards the El Triunfo case, the position was that the Company had been declared bankrupt and a receiver had been appointed. The grounds on which the intervention of the Government of the United States was admitted seem to His Majesty's Government to be correctly and sufficiently summed up in the following extract from the decision of the majority of the Arbitrators:⁸⁷ "We have not discussed the question of the right of the United States under international law to make reclamation for these shareholders in the El Triunfo Company, a domestic corporation of Salvador, for the reason that the question of such right is fully settled by the conclusions reached in the frequently cited and well understood Delagoa Railway Bay [*Delagoa Bay Railway*] arbitration". (Moore, *ibid.*, 651).

40. On the other hand, where the Company is still in effective existence the shareholders have no status to claim in respect of damage to the corporate property, and intervention on their behalf is inadmissible. In support of this contention His Majesty's Government would refer to the following cases with which you are no doubt well acquainted.

41. In the case of the *Antioquia* (Moore, *ibid.*, 644), the Government of the United States declined to intervene on behalf of United States stockholders in a Colombian Company. Mr. Seward in explaining the reasons for this decision observed that if individual shares belonging to a United States citizen in a foreign company should be unjustifiably confiscated, he might properly call for the intervention of his Government, but as a corporator he had no individual property in the chattels or credits of the corporation. "If it (the corporation) has sustained a wrong, is it not for it to pursue such remedy as it may have in the same manner as a private Colombian would be obliged to do, without the aid of any Government external to Colombia?"

42. Intervention was again denied by the Government of the United States in the case of the nitrate establishments of Tarapaca (Moore, *ibid.*, 646). The grounds for the decision were that "the rights and privileges held by the Company were in every sense Peruvian . . . ⁸⁸ that the existing interest of the American shareholders was reduced to an equitable right to their distributive share of the funds of the corporation; that the rights of the corporation were involved and not the individual rights of the shareholders, and that even if all the individual members of the corporation were duly qualified American citizens they could not present their complaint in their individual names as owners but must present them as belonging wholly to the

⁸⁷ *Foreign Relations*, 1902, pp. 862, 873.

⁸⁸ Omission indicated in the original note.

corporation as owner". Nor could an individual shareholder prosecute a corporate cause of action because the corporation failed or refused to do so. It was finally stated that the "good offices" of the United States might with propriety be exercised in behalf of the United States claimants when the claims of the Company were properly presented to Chile, but that the request that prompt and efficient diplomatic steps be taken in support of their individual interests as shareholders was out of the question.

43. The same question arose in a number of cases in the course of the Venezuelan Arbitrations of 1903. I may refer you in particular to the case of Kunhardt and Company (Ralston, *Venezuelan Arbitrations*, 63). This case is of particular interest in that while the members of the Commission differed as to the correct inferences to be drawn from the facts presented to them, they expressed the same views as to the legal principles involved. His Majesty's Government would especially refer to the following extracts from the opinions of the Commissioners who adjudicated in the case:

"The shareholders of a corporation are not co-owners of the property of the corporation during its existence: they only have in their possession a certificate which entitles them to participate in the profits and to become owners of proportional parts of the property of the corporation when the latter is by final adjudication dissolved or liquidated. This corporation has not been dissolved or liquidated in accordance with the laws of Venezuela and therefore the claimants have no standing to claim before the Commission".

"While the property of a corporation *in esse* belongs not to the stockholders individually or collectively but to the corporation itself, it is a principle of law universally recognised that upon dissolution the interests of the several stockholders become equitable rights to proportionate shares of the corporate property after the payment of the debts".

44. Similarly in the case of Brewer Moller and Company (Ralston, *op. cit.*, 595), the Venezuelan Government had contended that the property damaged was that of a Venezuelan corporation. The umpire stated that he was "unable to regard the objection of the Commission for Venezuela as a technical one, in the sense of the protocol" page 597 (which had empowered the Commission to disregard provisions of local legislation). "Certainly under the protocol this Commission cannot take jurisdiction of a claim which is now owned by a German subject, and if, as has been stated, [the Company]³⁹ were the owners in law of the property, and their German associates have only a right to an accounting for their contribution and its profits, they are not the legal owners of the debt or of any interest therein".

³⁹ Brackets appear on the original note.

45. Again, in Baasch and Romer (Ralston, *op. cit.*, 906) the umpire stated that the claimant "is a Venezuelan Corporation created and existing under and by virtue of Venezuelan law and has its domicile in Venezuela. This Mixed Commission has no jurisdiction over the claim. It is the corporation whose property was injured. It may have a rightful claim before Venezuelan Courts, but it has no standing here. The shareholders being Dutch does not affect the question. The nationality of the corporation is the sole matter to be considered". Further decisions of the same and other tribunals could, if necessary, be mentioned, but those already cited seem to His Majesty's Government to establish the principle beyond question.

46. As regards the Alsop case⁴⁰ to which Mr. Houghton refers, His Majesty's Government desire to draw particular attention to the second paragraph of the extract quoted in his note from the report of the Committee appointed to advise King Edward VII (the "amiable compositeur") wherein it is stated that "We hardly think that this contention" [i. e. that as the Company was a Chilean Company their grievances against the Chilean Government could not properly be made the subject of a diplomatic claim]⁴¹ "is seriously put forward as precluding Your Majesty from dealing with the merits of the case. It would be inconsistent with the terms of reference to Your Majesty and would practically exclude the possibility of any real decision on the equities of the claim put forward". This case is therefore clearly an example of the second class referred to in paragraph 36 in which by special agreement between the two Governments a right to compensation has been accorded to shareholders. It is also material to observe that the reference was not to an arbitrator but to an *amiable compositeur* who, as the name implies, would not necessarily hold himself to be bound by the strict rules of international law.

47. A similar case is that of the case of *Cerruti versus Colombia* (*Foreign Relations of the United States*, 1898, 245) where President Cleveland also considered himself entitled under the terms of submission to award an indemnity to the individual members of the firm on whose behalf the claim was being presented by their Governments.

48. Mr. Houghton refers to a case which presents features perhaps at first sight inconsistent with the principles which have been developed above, namely, the Tlahualilo case (*Foreign Relations of the United States*, 1913, 993). It is true that in making diplomatic representations to the Mexican Government in connexion with the confiscation of the property of the Company in that case, both His Majesty's Government and the Government of the United States refer to the interest of their citizens who were stockholders therein, but it

⁴⁰ See *Foreign Relations*, 1911, p. 38.

⁴¹ Brackets appear on the original note.

appears from the report that the interests of mortgage creditors were also concerned, and it is clear that the rights of mortgage creditors are rights of an entirely different character from the rights of shareholders, inasmuch as they are rights *in rem* over specific assets of the corporation and not merely a right to share in the profits. It is moreover clear that the action of the Mexican Government resulted in the complete suspension of the Company's activities and the case therefore bore a close analogy with that of the Delagoa case. That the Government of the United States so regarded it is shown by the following extract from the instructions given to the United States Ambassador on August 12th, 1912:⁴² "The attitude of the Governments of the United States and Great Britain upon the question of representation in such cases was made clear in the measure mutually taken by them in the now famous Delagoa Bay case, a case practically on all fours with the present, the principle of which has been repeatedly affirmed".

49. His Majesty's Government would in conclusion refer to the following passage in a well-known and authoritative American work (Borchard, "Diplomatic Protection of Citizens Abroad", 1925 Edition, 624): "That the nationality of the corporation rather than that of the stockholders must control the jurisdiction of international tribunals in claims growing out of corporate losses appears evident from the fact that the corporation, the trustee, possesses the entire legal and equitable title to a claim as part of the assets of the corporation, whereas the stockholder possesses only an equitable right, enforceable in a court of equity, to an accounting and to compel the proper management of the Company by its directors. The stockholder, therefore, having no legal title to the corporate property of a solvent corporation, can hardly be recognized by an arbitral tribunal acting under the usual form of protocol as a proper party claimant, and only under exceptional protocols, as will presently be noticed, has this been done." Though demurring to the description of a corporation as trustee for its shareholders His Majesty's Government conceive that the above passages accurately represent the present state of the law.

50. Reference has already been made in passing to the rule which His Majesty's Government conceive to be as well established as any in international law, namely, that before a Government can intervene against a foreign Government on behalf of one of its nationals the injured party must first exhaust the other remedies open to him. I would now refer to the following statement of this rule by Mr. Marcy, Secretary of State, to the Minister of Peru on May 24th, 1855 (Moore, *International Law Digest*, VI, 659) which seems to His Majesty's Government to be especially appropriate to the circumstances of the present

⁴² For complete text of the instructions, see *Foreign Relations*, 1910, p. 1000.

case: "The natives of the foreign country seek redress for wrongs through the judicial tribunals or in the form of petitions to the executive or legislative authorities. Foreigners are bound to pursue the same course unless there should be a positive and unequivocal treaty stipulation imparting to them privileges superior to those enjoyed by the natives of the country".

51. In applying to the circumstances of the present case the principles of international law enunciated above, His Majesty's Government deem it sufficient to point out (a) that the Romano-Americana Company which, as Mr. Houghton concedes, is the owner of the property damaged, is still in existence, and (b) that, as explained above, the way appears open to it to apply for and to obtain from the Roumanian Government compensation for the damage to the Company's property on exactly the same basis as that on which compensation has been granted to other companies whose properties were damaged or destroyed in order to prevent them falling into the hands of the enemy.

52. The various considerations I have thus elaborated have led His Majesty's Government to the conclusion that they are neither called upon nor able to entertain the request of the Government of the United States that the matters arising from the destruction of the property of the Romano-Americana Company in Roumania should be submitted to arbitration. These considerations may be summarised as follows:

(1) Because the case is one which affects the interests of third parties and is therefore expressly excluded from the scope of the Arbitration Treaties between the United States and Great Britain.

(2) Because the Government of the United States are not entitled under international law to claim against His Majesty's Government on behalf of, or in respect of damage done to the property of, the Romano-Americana Company (a Roumanian National) merely because the majority of the shares in the Romano-Americana Company are held by the Standard Oil Company. I would like to emphasise that, as the nature of the rights of shareholders in relation to their Company's property has recently been decided by an International Tribunal in a case to which the Standard Oil Company were themselves a party (I refer to the case of the Tanker arbitration mentioned in paragraphs 31-33 of this Note), His Majesty's Government cannot admit that they are under any obligation to agree to a further arbitration on the same point.

(3) Because it is open to the Romano-Americana Company to apply to the Roumanian Government for compensation as explained in paragraphs 23 and 24 of this Note.

53. Lastly, inasmuch as Mr. Houghton's request was based on a version of the facts which, as I have endeavoured to show above, cannot be regarded as complete or accurate, I trust that the Government of the United States, now that they are placed in possession of the full and exact facts, will agree that the circumstances are not such as to

establish any claim against His Majesty's Government in this matter which requires settlement either by arbitration or by any other method.

I have [etc.]

AUSTEN CHAMBERLAIN

[Subenclosure 1—Translation]

Document No. 1: Rumanian Decree of September 10, 1916, Relating to the Control of the Oil Industry

Ministry of Industry and Commerce. Decision relative to the organisation of the Petroleum Industry and of petroleum derivatives necessary for the army and in the interests of the country.

No. 404 of 10th September, 1916—*Monitor Official*, No. 134 16th September, 1916.

On the basis of Articles 1 and 5 and also of Articles 142 and 144 of the Requisition Law and Regulations, and of the authorisation granted in the Journal of the Council of Ministers, No. 1669 of 24th October, 1916.

We decide:

1. That petroleum enterprises engaged in refining, transporting or selling petroleum and its derivatives shall be declared henceforth to be in the service of the State.

2. The Ministry of War is charged with all questions relative to the execution, supervision and control through the State Supervisory Commission for the Petroleum Industry instituted under the Ministry of Industry and Commerce.

[Subenclosure 2—Telegram]

Document No. 2: The British Minister in Rumania (Barclay) to the British Foreign Office

BUCHAREST (via ALEXANDROVSK), October 28, 1916—midnight.

No. 925. Both Minister of War and Prime Minister decline to sanction any general destruction of corn and although Minister of Commerce who has been deputed to deal with the matter tells me he is taking all possible measures with a view to preventing enemy from profiting by oilfields destruction of richest wells dislocation of machinery etc. in case of emergency, I am not very confident as to results.⁴³

(Here follows a paragraph dealing exclusively with the destruction of corn)

As regards the destruction of oilfields, Military Authorities recognize that most sweeping measures are indicated, but as this matter is being dealt with at present by the Minister of Commerce, they cannot

⁴³ The following omission indicated in the original.

act without the approval of the Roumanian Government. Military Attaché will again urge when oilfields come into the military zone, which will occur if a general retreat takes place, that drastic measures be taken by Military Authorities.

[Subenclosure 3—Extract—Telegram]

Document No. 3: The British Minister in Rumania (Barclay) to the British Foreign Office

BUCHAREST, November 3, 1916.

No. 946. . . .⁴⁴ As regards petroleum Prime Minister referred me to the Minister of Commerce. I saw the latter yesterday. His Excellency told me that Roumanian Government was fully alive to the paramount importance of the question and for some time a commission of the best Roumanian experts had been considering how to deal with it. Their work had been as far as possible secret in order not to cause panic. All oil companies had been placed under control of this Commission. A large quantity of oil, some 13,000 wagons—reported already disposed of by leakage or had been pumped back into *gisements* and Commission was continuing this work though there were limits to this as there were places where oil would not sink into the ground in which case evaporation would leave a dangerously inflammable vapour. I observed even burning of a whole district would be well worth while if it prevented such a prolongation of the war as would be caused by our enemies obtaining the existing stocks of oil. He replied that so drastic a measure as burning the stocks could not be taken until the last moment.

Apart from other considerations it would create an extraordinary panic.

As regards question of rendering wells useless he said nine-tenths of the production capacity of the wells were worked by electricity and that Commission had decided to render useless electric power stations and had done so already with all but one which was to be kept going until the last moment for the needs of the country in the matter of residues for fuel. The rest of the wells, those not worked by electricity, were widely distributed, it had been decided to render these useless by destroying the pipes by which oil was passed to the refinery reservoirs.

Transport by other means was impossible.

I asked Minister of Commerce why he could not make arrangements to render useless each of the wells when the moment came for I understood that this was an easy operation. His Excellency said

⁴⁴ Omission indicated in the original.

that there were seven hundred well centres and that he had not enough reliable men to ensure its being done when the moment came.

I have informed my French colleague and my Russian colleague and I have no doubt that General Berthelot and General Belaiev will work with our Military Attaché with a view to securing proper Military co-operation in case moment arrives.

[Subenclosure 4—Telegram]

Document No. 4: The British Minister in Rumania (Barclay) to the British Foreign Office

BUCHAREST, November 8, 1916.

No. 972-A. Following for Anglo-Saxon Petroleum Company from Mr. Jacobson.⁴⁵

Roumanian Authorities in view of invasion have begun to destroy our benzine stocks in Campina by pumping it in old wells: up to now 450 cars of heavy Benzine have been destroyed in that way. Authorities are preparing destruction of all the stock. Our stocks amount to about 60,000 tons crude oil, 5,000 tons unrectified Benzine, 34,000 tons un-refined light, 9,000 tons refined light Benzine, 33,000 tons un-refined, 10,000 tons refined heavy Benzine, 38,000 tons gas oil, 27,000 tons liquid fuel, 5,000 tons lubricating oil. These stocks do not include our former Custendje stocks. Roumanian Authorities refuse to give their instructions in writing.⁴⁶

(Here follow details of interest to the Company only).

Roumanian Authorities also gave instructions to dismiss and remove to unknown places our central electrical plant and other machines and greater part of our materials in stock also without any written orders and without any receipts.

[Subenclosure 5—Translation—Extract]

Document No. 5: Order No. 1787 of November 6/November 19, 1916, from the Rumanian General Commanding Lines of Communication (Iliescu) to the Headquarters Staffs of the 1st, IIInd, and North Armies and Danube Defence Group

In case of the development of events compelling us to evacuate a part of our territory in order to obstruct as much as possible the advance of the enemy, you are requested to be good enough to take the necessary measures to make ready in time the works indicated below:—

a) Preparations will be made for the destruction of the railways to a depth of approximately 30–35 kilometres from the frontier, taking

⁴⁵ Manager of the Astra Romana Company in Rumania.

⁴⁶ The following omission indicated in the original.

up rails, chairs, sleepers, etc: and transporting them to the stations in the Bârlad Valley.

If this material cannot be taken away it will be destroyed.

b) Preparations will be made for the destruction of all constructional work (tunnels, bridges, etc:)

c) All foot-bridges will be removed, while if they cannot be taken away they will be destroyed together with all other constructional work in the respective zones.

d) The destruction and removal of rails will commence in the closest possible proximity to the enemy.

These operations will be carried out by civilian workers, while the evacuation of materials will be supervised by the bases concerned.

e) Cereals in railway warehouses, barns, etc. which cannot be evacuated, will be damped with water or spoiled, pouring petrol on them to which fire may be set at a given time, if orders are not shortly received for their distribution among the inhabitants.

f) The Oil Wells will be destroyed by introducing at a certain depth in the interiors, dynamite cartridges which shall afterwards be fired: working machinery on the installations shall also be destroyed with dynamite, if the technical delegates of the Ministry of Industry shall have instructions to that effect; otherwise all principal parts of machines shall be removed.

For the execution of this work delegates have been appointed to all the more important areas, charged with the supervision of the work of preparation and of execution.⁴⁷

(Followed by instructions of a general character)

By High Order,

for the Chief of General Staff,

General (Signed) D. ILIESCU.

(stamp)

Secretariat General

Ministry of War

for conformity

Chief of Office No. 4.

Major (Signed) V. FLORESCU.

[Subenclosure 6—Translation—Telegram]

Document No. 6: Order No. 3216 of November 16/November 29, 1916, from the Rumanian General Headquarters to the Headquarters of the IInd Army

Urgent.

To No. 1562.

The destruction of the wells and the emptying of the reservoirs can begin immediately.

For Chief of the General Staff

General (Signed) ILIESCU

⁴⁷ The following omission indicated in the original.

[Subenclosure 7—Translation—Telegram]

Document No. 7: Order No. 07067 of November 17/November 30, 1916, from the Rumanian General Commanding Lines of Communication (Popovici) to Engineers Tanasescu and Gana, Prefecture of District of Nambovita Targoviste

In conformity with the decision of the Ministry of War.

Re telegram No. 1531 from Targoviste, we beg you to take orders of detail from the First Army Headquarters—Titu—and the Second—Naicci [?]^a—to whom Order No. 1787 of the 6.11.1916 (old style. November 19th, 1916 new style) relative to the oil regions decided upon and to the destruction about to be effected in conformity with the arrangements made by the Ministry of Industry, has been transmitted.

Communicate this to your foreign colleagues.

General Commanding Lines of Communication

General (ss) POPOVICI

[Subenclosure 8—Translation ⁴⁸]

Document No. 8: Order No. 3503 of November 21/December 4, 1916, from the Rumanian General Headquarters to the IInd Army

The destruction of petroleum installations and of petroleum, oil and benzine warehouses will be effected immediately not only in the entire Câmpina region but also throughout the region eastward of the Prahova.

Excepted are those in the basin of the Buzeu.

By order of H. M. the King:

Per the Chief of the General Staff,

No. 3503

General Ilescu

In the execution of this order:

(1) The IInd Army on November 21, old style (December 4, new style) shall issue the following order:

To General Manolescu Mladian, Câmpina.

To General Anastasiade, 3d Division.

In execution of Order No. 3503 of General Headquarters, you are requested to order that the destruction of installations and warehouses of petroleum, oil and benzine be immediately effected not only in the region of Câmpina but also in the region eastward of the Prahova.

Excepted are those in the valley of the Buzeu.

The tasks shall be carried out for the present in such manner that the passing of troops and of baggage be not impeded and shall be accomplished after the retreat.

The Commander of the IInd Army,

General of Division,

(Signed) Averescu

No. 6956.21/9 [*sic*], old style.

^a Supplied by the editor from the French translation of the original Rumanian.

(2) On the same date of 21/9[*sic*], old style, the IInd Army shall issue the following order to C. S. A. [*sic*]:

No. 6958 of November 21, 1916, old style.

To the 3d Army Corps, Câmpina.

In execution of the order from General Headquarters, No. 3503, the order has been issued to Generals Mladian and Anastasiade, military commanders of the Prahova and Teléajen regions, immediately to effect the destruction of installations and warehouses of petroleum, oil and benzine, etc. . . . in the Câmpina region and throughout the region eastward of the Prahova.

The tasks shall be carried out in such fashion that the retreat of the troops be not impeded.

The Commander of the 2d Army,
General of Division, Averescu

441.11 St 23/78

*The Attorney of the Standard Oil Company of New Jersey (Hayes)
to the Secretary of State*

NEW YORK, *September 28, 1928.*

[Received October 2.]

Attention—Green H. Hackworth, Solicitor

DEAR MR. HACKWORTH: I have gone over with my clients the last note which you received from the British Foreign Office, copy of which you sent to me recently.

As it is seemingly impossible for us to produce any further evidence in contradiction of that which has now been set up by Great Britain, we have decided to take your suggestion and open up negotiations with Roumania for settlement.

It is my understanding that you would send a note to Great Britain answering certain portions of the British note, and at the same time stating in your answer that you had suggested to the claimant that it approach Roumania on the question of settlement. Further, that in your note you will include the reservation of any and all rights and claims which the Standard Oil Company of New Jersey might have against Great Britain by reason of destruction.

I take it that in view of our following out your suggestion to develop things with Roumania, you will now send forward the reply to the British note.

The contract that Roumania has made with the British and French oil companies states that the amounts of the several claims is based upon the capital figures established by the Thring-Wenger-Mrazak Commission. Our capital sum is fixed by this Commission at £1,516,522. We submitted no evidence to this Commission with respect to our damage. However, evidence was submitted to the Anglo-

French Commission, which was headed by Colonel A. C. Hearn of Great Britain. The Anglo-French Commission fixed our capital sum at £2,099,900. The Thring-Wenger-Mrazak figures therefore are incorrect.

I have written to Mr. Harry G. Seidel our representative in Europe, fully about the matter, sending him copies of the note received and also copy of the contract entered into by the British and French companies with Roumania, and asking him to open up preliminary negotiations with Roumania, looking toward arriving at a possible settlement.

I also brought to his attention the discrepancy between the Thring-Wenger-Mrazak Commission figures and the Anglo-French Commission figures, and felt that as we had not submitted any evidence to the Thring-Wenger-Mrazak Commission, we should now be permitted to do so to establish our capital sum of £2,099,900.

The contract that has been entered into between the British and French oil companies and Roumania provides payment of capital sum plus interest over a period of forty years, one-half of the annuities being paid at the present time, owing to the fact that the House of Deputies of France has not as yet ratified the agreement that the French Government entered into with Roumania.

Spreading of any figure that we may agree upon over a period of forty years surely is not just compensation, and I feel that we should not be forced to accept such terms.

It is quite possible that the preliminary negotiations with Roumania will be either conducted officially by Mr. Seidel, or unofficially by a local Director of Romana-Americana in Roumania, namely Mr. Luca. We will appreciate very much if you would issue instructions to the American Minister at Bucharest to lend all possible aid and assistance to Mr. Seidel or Mr. Luca to the end that we may satisfactorily settle this controversy. I take it that you will not ask the Minister at Bucharest to do anything until he is approached by either Mr. Seidel or Mr. Luca.

Assuring you of our appreciation of the assistance that you have already given to us in connection with this matter, I am,

Respectfully yours,

JAMES H. HAYES

441.11 St 23/80

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

No. 1577

WASHINGTON, October 11, 1928.

SIR: Reference is made to your despatch No. 2888, July 10, 1928, enclosing a note of July 5, 1928, from the Foreign Office relating to the Romana-Americana claim, growing out of destruction of property in Rumania in 1916. Upon the basis of representations made in the

British note, the claimant, The Standard Oil Company of New Jersey, has been advised to approach the Rumanian Government on the question of settlement.

Pending the settlement and satisfaction of the claim by the Rumanian Government, the Standard Oil Company of New Jersey reserves all rights and claims it might have against Great Britain by reason of the destruction of Romana-Americana properties in Rumania in 1916.

Please communicate with the Foreign Office in the sense of the foregoing.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

441.11 St 23/81

The Secretary of State to the Minister in Rumania (Wilson)

No. 324

WASHINGTON, October 11, 1928.

SIR: The claim of the Standard Oil Company of New Jersey for the destruction of the property of the Romana-Americana in Rumania in 1916 will be presented to the Rumanian authorities in the near future by a representative of the company. The Department is advised that the preliminary negotiations with the Rumanian Government will be conducted officially by Mr. Harry G. Seidel or unofficially by a local director of Romana-Americana in Rumania, namely Mr. Luca.

Provided you are requested by Mr. Seidel or Mr. Luca to use your good offices in securing a satisfactory settlement of this claim, please render them every assistance.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

INTERPRETATION OF CONVENTION OF DECEMBER 2, 1899, AND MERCHANT MARINE ACT OF 1920 WITH RESPECT TO BRITISH COMMERCIAL RIGHTS IN AMERICAN SAMOA⁴⁹

611.62 m 31/44

The Secretary of the Navy to the Secretary of State

WASHINGTON, 11 May, 1927.

SIR: Referring to Navy Department letters No. 3931-1429:75, dated September 14, 1922, and No. 3931-1429:75, dated August 24, 1926, and to State Department letter No. 611.62 m 31/17, dated September 4, 1926,⁵⁰ all relating to the subject of the preferential treat-

⁴⁹ Continued from *Foreign Relations*, 1927, vol. II, pp. 760-775.

⁵⁰ None printed.

ment of British goods imported into the mandated territory of Western Samoa under the administration of the New Zealand Government as Mandatary, I have the honor to inform you that under date of 10 September, 1926, the Navy Department advised the Governor of American Samoa as follows: "Out of deference to the implied wishes of the State Department, the Navy Department desires that no action looking to the establishment of a preferential tariff in American Samoa be taken until further instructions are received."

The Navy Department is now in receipt of additional communications from the Governor of American Samoa, namely, a letter dated 26 January, 1927, and a letter dated 7 April, 1927. By these communications this Department judges that the Governor is convinced, from reliable information in his possession, that no steps will be taken on its own initiative by the Mandatary Government, New Zealand, toward lifting the existing preferential tariff on British goods imported into Western Samoa and thereby restoring equality of treatment between British and American commerce as provided by the tripartite Convention of 16 February, 1900, Article III.⁵¹

The Governor desires to be able to answer what he terms "the very just criticism" that American Samoa does not foster American trade by adopting a preferential tariff for American goods, while Western Samoa gives preference to British goods.

I am, therefore, moved to inquire whether, in the opinion of your Department, the negotiations on this subject have reached a stage where the Navy Department would be justified in authorizing the Governor of American Samoa to establish a tariff preferential to American goods imported thereinto.

Very respectfully,

CURTIS D. WILBUR

611.62 m 31/44

The Secretary of State to the Secretary of the Navy

WASHINGTON, June 5, 1928.

SIR: I have the honor to refer to your letter of May 11, 1927, in which you inquire, in connection with previous correspondence, whether in the opinion of this Department, the negotiations relating to the preferential treatment of British goods imported into the mandated territory of Western Samoa (under the administration of the Government of New Zealand) have reached a stage where the Navy

⁵¹ Convention to adjust questions between the United States, Germany, and Great Britain in respect to the Samoan Islands, signed December 2, 1899; *Foreign Relations*, 1899, p. 667. The ratifications were exchanged, and the convention was proclaimed by the President, on Feb. 16, 1900.

Department would be justified in authorizing the Governor of American Samoa to establish a customs tariff with rates preferential to goods imported from the United States.

The question of the treaty rights of the United States and of New Zealand, respectively, in the mandated territory of Western Samoa and in the portions of the Samoan Islands group which are under the sovereignty and jurisdiction of the United States, has, as you know, been before the American and British Governments for a number of years.

I am in receipt of a letter from the Attorney General of the United States, dated February 9, 1927,⁵² with which he encloses his official opinion to the effect that the extension of the coastwise laws of the United States to American Samoa by authority of Section 21 of the Merchant Marine Act, 1920,⁵³ is in contravention of and, as a matter of municipal law, overrules Article III of the Tripartite Convention of 1899, between the United States, Great Britain and Germany, adjusting questions in respect of the Samoan Islands.

I need not emphasize here the seriousness of the situation from the point of view of international relations where a country enacts a statute in conflict with the provisions of a treaty to which it is a party; nor need I mention the evident fact that the enactment of such a statute does not relieve the country enacting it from that country's obligation under the treaty. Article III of the Convention of 1899 is as follows:

"It is understood and agreed that each of the three signatory Powers shall continue to enjoy, in respect to their commerce and commercial vessels, in all the islands of the Samoan group privileges and conditions equal to those enjoyed by the sovereign Power, in all ports which may be open to the commerce of either of them."

There would seem to be no question that, if discrimination in the matter of shipping opportunities constitutes a violation of this treaty provision, a differential tariff, affecting adversely importations of goods from the other party to the treaty, would equally violate it. Indeed it is precisely such an act, a tariff made applicable by New Zealand in Western Samoa, that forms the basis of protest already made by this Government to the Government of Great Britain. I have reason to believe that the revocation, in so far as they apply to American Samoa, of American coastwise shipping laws would result in a revocation by New Zealand of its differential tariff laws in so far as applicable to Western Samoa.

⁵² Apparently refers to letter of Jan. 27, 1927, from the Attorney General, *Foreign Relations*, 1927, vol. II, p. 770.

⁵³ 41 Stat. 988, 997.

The Department is considering what further steps it will take in relation to these negotiations. It is hoped, therefore, that you will instruct the Governor of American Samoa to take no action looking to the establishment of a preferential tariff for American goods entering the territory under his jurisdiction. It would, in my opinion, be most unfortunate, at a time when effort is being made to adjust the differences between the United States and Great Britain in regard to these matters, to take a new step which might be regarded as not less in contravention of Article III of the Tripartite Treaty than was the extension of the American coastwise laws to American Samoa.

I have delayed answering your letter in the hope that I might report definitely the renewal of negotiations. I shall not fail to inform you when such action is taken.

I have [etc.]

FRANK B. KELLOGG

NEGOTIATIONS IN REGARD TO THE ADMINISTRATION OF THE TURTLE ISLANDS AND TO THE BOUNDARY BETWEEN THE PHILIPPINE ISLANDS AND BRITISH NORTH BORNEO⁵⁴

711.4115A/37

The British Ambassador (Howard) to the Secretary of State

No. 119

WASHINGTON, March 7, 1928.

SIR: I have the honour to refer to your note of August 20th last,⁵⁵ in which you proposed that the United States Government and His Majesty's Government should enter upon negotiations for the conclusion of a treaty to accomplish the definitive delimitation of the boundary on certain islands on the East coast of Borneo which are now being administered by the British North Borneo Company in conformity with the Agreement concluded between the United States and Great Britain on July 10th, 1907.⁵⁶

On instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I now have the honour to inform you that the proposals submitted in your note under reference are acceptable to His Majesty's Government, and that they are willing to enter into the necessary negotiations for an agreement on this question.

In accepting the invitation of the United States Government to conduct these negotiations at Washington, Secretary Sir Austen Chamberlain instructs me to inform you that the following points arising out of my note No. 279 of April 21st, 1926,⁵⁷ appear suitable for treatment during the coming discussions and will be raised at that time:

(1) The establishment of an effective United States police post on one of those islands in the vicinity of Turtle Islands which the

⁵⁴ Continued from *Foreign Relations*, 1927, vol. II, pp. 775-781.

⁵⁵ *Ibid.*, p. 779.

⁵⁶ *Ibid.*, 1907, pt. I, p. 548.

⁵⁷ *Ibid.*, 1927, vol. II, p. 777.

boundary now proposed by the United States will embrace within American territory.

(2) The determination of an amount payable to the British North Borneo Company by way of compensation for the lighthouse at present operated by the Company at Taganac Island, which the Philippine Government are prepared to take over and maintain.

(3) An undertaking from the United States Government that, in the event of any subsequent transfer to a third State of the Islands forming the subject of negotiation, the Islands in question will remain subject to the restrictive provisions respecting fortification attaching to them under Article 19 of the Washington Naval Treaty.⁵⁸

I have [etc.]

ESME HOWARD

711.4115A/37

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, September 21, 1928.

SIR: The receipt is acknowledged of Sir Esme Howard's note of March 7, 1928, in which, in accordance with instructions from his Government, he stated that Great Britain was willing to enter upon negotiations at Washington for the purpose of concluding a treaty definitely delimiting the boundary in respect of certain islands on the east coast of Borneo, in conformity with the Agreement of July 10, 1907, between Great Britain and the United States.

In reply I take pleasure in informing you that the President has indicated that he will be prepared to empower, on behalf of the United States in these negotiations, Major General Frank McIntyre, Chief of the Bureau of Insular Affairs of the War Department, and Mr. Jacob A. Metzger and Mr. John K. Caldwell of the Department of State, who will be ready to enter upon negotiations as soon as may be convenient to your Government after the return from the Philippine Islands of Major General McIntyre, which is expected about December 1, 1928. I shall appreciate having you communicate to me the name of your Government's negotiator and approximately the time when it will be convenient to proceed with the necessary conversations.⁵⁹ The exact day and hour may appropriately be arranged informally thereafter.

With reference to the points which appear to your Government to be suitable for discussion, this Government agrees that these points be discussed during the negotiations.

Accept [etc.]

FRANK B. KELLOGG

⁵⁸ Treaty between the United States of America, the British Empire, France, Italy, and Japan, signed Feb. 6, 1922; *Foreign Relations*, 1922, vol. 1, pp. 247, 252.

⁵⁹ In note No. 289, May 21, 1929 (711.4115A/40), the British Ambassador (Howard) informed the Department that these negotiations would be entrusted to him with the assistance of Mr. F. W. Fraser, recently Government Secretary in North Borneo. A convention was signed Jan. 2, 1930 (Department of State Treaty Series No. 856).

ATTITUDE OF THE UNITED STATES GOVERNMENT REGARDING THE
HOLDING BY BRITISH CONSULS OF NAVAL COURTS UPON BRITISH
VESSELS IN AMERICAN WATERS

841.303/2

*The British Ambassador (Howard) to the Under Secretary of
State (Olds)*

WASHINGTON, November 3, 1927.

MY DEAR MR. UNDER-SECRETARY: You will no doubt remember that on the 24th October I spoke to you about the case of a strike of firemen on board the British S. S. "Firpark" at New Orleans on August 13th last and about the question that arose out of it, namely: whether a British Consul could summon a naval court in a United States Port under the provisions of the British Merchant Shipping Acts and whether a decision rendered by such a Court could count on any recognition by or support from the United States authorities. You kindly said that you would look into the matter if I sent you a memorandum explaining it in more detail.

I now enclose a memorandum detailing the circumstances of the incident and should be grateful to know the views of the State Department on the subject so that I may inform our Consuls accordingly.

Believe me [etc.]

ESME HOWARD

[Enclosure]

The British Embassy to the Department of State

MEMORANDUM

On the afternoon of Saturday, August 13th, the "Firpark" being then due to depart from port on the following day, the firemen refused to raise steam and demanded their discharge. The State police authorities, to whom he appealed referred the Master to His Britannic Majesty's Consulate-General at New Orleans on the grounds that, as the ship flew a foreign flag, it was not within their competence to intervene in the dispute. As a result of personal investigation, His Majesty's Consul-General satisfied himself that the complaint prompting the attitude of the firemen reduced itself to the fact that, on Saturday August the 13th, when they went to the galley for their midday meal, they had found the food served in dirty mess-tins. Although the tins had been cleaned an hour after this incident, the men did not return for their food. The Master assured Mr. Tom that the tins would in future be kept properly clean. The latter therefore advised the firemen to return to work and raise steam but without success. He thereupon invoked the aid of the United States District Attorney who replied that, in his opinion, the matter was one with which Mr. Tom himself was fully competent to deal under Section 4081 of the United States Revised Statutes to the exclusion of any

authority or jurisdiction of the United States. It should here be explained that His Majesty's Consular Officers are not authorised to proceed in disputes of this nature beyond an effort to bring about an amicable settlement between the parties concerned. Failing the success of their efforts, the only course open to His Majesty's Consular Officers is to summon a Naval Court to deal with the matter under Sections 480-486 of the British Merchant Shipping Act of 1894 and Sections 67 and 68 of the British Merchant Shipping Act of 1906, copies of which are annexed herewith⁶⁰ for convenience of reference. In this connection, however, His Majesty's Consul-General at New Orleans had occasion in December 1925 to address enquiries to His Majesty's Embassy regarding the attitude of the United States Government towards the foregoing provisions of the British Merchant Shipping Acts and Mr. G. H. Thompson, then a member of His Majesty's Embassy staff, was at that time given to understand, in conversation with Mr. Vallance and Mr. Baker of the State Department that the United States Government would not be prepared to recognise a Naval Court summoned under these provisions. Consequently, in the present instance, Mr. Tom hesitated to summon a Court although assured by the District Attorney at New Orleans that the local United States authorities would give effect to any decision which a Naval Court might render in the case. The legal advisers to the Consulate-General thus saw no alternative but to represent to the Master of the "Firpark" that it was in his best interest to discharge the recalcitrant seamen without penalties and engage substitutes in their place. The Master reluctantly acceded to this advice and on the evening of August the 16th the "Firpark" cleared from New Orleans by which time it had already sustained a loss of approximately \$250.00 a day.

His Majesty's Embassy have drawn attention at length to this incident because it illustrates the embarrassing position in which His Majesty's Consular Officers and Masters of British ships are liable to be placed in cases where the local United States Judicial authorities refuse to take cognizance of disputes arising on board British vessels and where, owing to the provisions of the United States Immigration regulations, a Master cannot take immediate disciplinary action by discharging members of his crew and serious financial loss is thus occasioned to the owners of the vessel detained in port.

In these circumstances, His Majesty's Embassy would be grateful to learn whether, on a further review of the situation, the United States Government would not be prepared to express their willingness to permit His Majesty's Consuls in the United States, when necessity arises, to summon a Naval Court in accordance with the relevant pro-

⁶⁰ Enclosures not printed.

visions of the British Merchant Shipping Acts accompanying the present *aide memoire*, and to recognise and give effect to the findings of such a Court thereby obviating the recurrence of untoward incidents similar to that under reference.

WASHINGTON, *October 29, 1927.*

841.303/2

The Under Secretary of State (Olds) to the British Ambassador (Howard)

WASHINGTON, *November 14, 1927.*

MY DEAR MR. AMBASSADOR: I beg to acknowledge the receipt of your note of November 3, 1927, together with its enclosure, with respect to the difficulty experienced by the "Firpark" in New Orleans, in which you ask whether on a further review of the situation the United States would be prepared to express their willingness to permit His Majesty's consuls in the United States, when necessity arises, to summon a Naval Court in accordance with the relevant provisions of the British Merchant Shipping Acts and to recognize and give effect to the findings of such a Court.

The Congress of the United States, by the Act of March 4, 1915, commonly known as the Seaman's Act,⁶¹ requested and directed the President to abrogate all treaties or parts thereof insofar as they provide for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign countries and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from foreign merchant vessels in the United States and for the cooperation, aid and protection of competent legal authorities in effecting such arrest or imprisonment. Pursuant to this Act notice of abrogation of the treaty between Great Britain and the United States concluded June 3, 1892,⁶² providing for the recovery of deserters from merchant vessels was sent to your Government, the abrogation to be effective July 1, 1916.⁶³ A copy of the pertinent sections of the Act is enclosed for your information.⁶⁴ You will note that Section 17 specifically repeals Section 5280 of the Revised Statutes of the United States providing for the restoration by authorities of the United States of deserting seamen on the application of a consul or vice consul of any foreign government having a treaty with the United States stipulating for such action. It also repeals that part of Section 4081 of the Revised Statutes of the United States relied upon by the United States District

⁶¹ Act of Mar. 4, 1915; 38 Stat. 1164.

⁶² Malloy, *Treaties*, 1776-1909, vol. I, p. 762.

⁶³ *Foreign Relations*, 1915, pp. 3 ff.

⁶⁴ Not printed; see secs. 16 and 17 of act of Mar. 4, 1915.

Attorney in New Orleans in expressing the views referred to on page one of your memorandum. There appears to be no other provision of law authorizing the authorities of the United States to give assistance in such matters.

In these circumstances you will readily appreciate that a decision by a Naval Court convoked in the United States by a British consul pursuant to the British Merchant Shipping Acts could not be accorded recognition or support by the authorities of the United States.

I am [etc.]

ROBERT E. OLDS

841.303/3

The British Ambassador (Howard) to the Under Secretary of State (Olds)

WASHINGTON, January 14, 1928.

MY DEAR COLONEL OLDS: I am writing to you in connection with your letter of November 14th, replying to an enquiry which I addressed to you on November 3rd as to whether the United States Government would be prepared to permit His Majesty's Government to summon a Naval Court in accordance with the relevant provisions of the British Merchant Shipping Act and to recognise and give effect to the findings of such a Court.

I am most grateful to you for the clear exposition contained in your letter under reference of the present situation as governed by Sections 16 and 17 of the Seamen's Act of March 1915, which debars the authorities of the United States from according recognition to the decision of a Naval Court convoked in the United States by a British Consul.

I am desirous of communicating your ruling on this aspect of the question to all our Consuls in this country, and of informing them of the attitude which United States judicial and police officers must maintain towards the proceedings and judgments of British Naval Courts. But before I write to the Consuls on the matter, I should be glad to receive from you a confirmation of my impression that the State Department have no objection to the actual holding of Naval Courts provided that the Consuls who summon them to deal as best they can with emergencies do so on their own initiative and responsibility and without in any way invoking the aid of American authorities either Federal or State. You will appreciate in this connection that Naval Courts constitute a highly essential part of our Consular machinery for administering the provisions of the British Merchant Shipping laws. The Consul frequently requires the assistance and decisions of Naval Courts before he can legally impose the penalties prescribed for offences by British shipmasters and sea-

men against the sections of the Acts relating to registry, to the seaworthiness of the vessel, to negligence in navigation, to the proper treatment of seamen, to the maintenance of discipline and to a variety of other matters that affect the safety of life and property and the internal economy of British merchant vessels. In cases of serious insubordination such as that which occurred on the "Fir-park" and which was described in my letter of the 3rd of November, 1927, the Consul is left practically powerless unless he can organize a Naval Court to deal with the situation. Had the Consul-General at New Orleans summoned a Naval Court in the case of the "Fir-park" the acts of indiscipline that had occurred on board that ship could have been punished, not perhaps by imprisonment but by fine, forfeiture of wages, endorsement of discharge certificates or some other penalty in harmony with British law and not involving intervention of any kind on the part of the United States authorities. In the rare contingency of Naval Courts exceeding their powers, the aggrieved parties can find their remedy by appealing to higher British tribunals or perhaps occasionally by bringing action in American courts competent and willing to exercise jurisdiction in the premises. What we desire to guard against is the withdrawal of all means of proceeding to the punishment of grave breaches of discipline, serious assault on board ship on the high seas or in foreign ports, culpable negligence in navigation, and the like. It is for this object that the machinery of Naval Courts was devised and I observe that the United States Revised Statutes recognise the necessity of such tribunals in certain contingencies and authorize American Consuls abroad to set them up (Revised Statutes Sec. 4559).

I have ventured to go into this matter at some length because of its importance and because I feel that we have been acting under a misapprehension as to the attitude of the United States Government. In order to relieve the position of all elements of doubt or uncertainty I should be grateful for an assurance from you that in holding Naval Courts but without calling upon American authorities for assistance in relation to them, our Consuls in this country will not be exercising functions to which your Government would take exception.

Believe me [etc.]

ESME HOWARD

841.303/3

*The Under Secretary of State (Olds) to the British Ambassador
(Howard)*

WASHINGTON, January 21, 1928.

MY DEAR MR. AMBASSADOR: I beg to acknowledge the receipt of your note of January 14, 1928, with further reference to your desire

that this Government express its willingness to permit His Majesty's Consuls in the United States to summon a Naval Court in accordance with the relevant provisions of the British Merchant Shipping Acts.

It is my opinion that the Government of the United States would not take exception to the holding by British Consuls of such proceedings as are suggested in your note upon British vessels in American waters. It is to be understood, however, that such proceedings shall not be exclusive of the jurisdiction of the local authorities, State or Federal, of the United States in proper cases, and that neither the Consul nor the court convoked by the Consul, nor any member thereof shall exercise any coercive jurisdiction off such British vessels either on land or in the territorial waters of the United States.

I am [etc.]

ROBERT E. OLDS

REPRESENTATIONS BY THE BRITISH GOVERNMENT REGARDING DETENTION AND SEARCH OF BRITISH VESSELS IN DELAWARE BAY AND THE DELAWARE RIVER

811.114 Median/1

The British Ambassador (Howard) to the Secretary of State

No. 728

WASHINGTON, *December 28, 1927.*

SIR: I have the honour to inform you that Mr. Frederick Watson, His Majesty's Consul-General at Philadelphia, has drawn my attention to a system recently initiated whereby the Coast Guard Service detain and search British steamers in Delaware Bay and at various points in the Delaware River. The details of this system are set forth in the enclosed letter of protest which Mr. Charles Lawrenson, master of the British S. S. "Median" addressed to the Philadelphia Manager of the International Mercantile Marine Company on December 17th last,⁶⁵ and also in the three annexed affidavits of Mr. Henry Williams, Mr. Tom Makin and Mr. Alfred Ernest Bailey,⁶⁶ respectively master and chief officer of the British steamship "Manchester Corporation" and master of the British steamship "London Mariner" from which it appears that these bona fide vessels forming part of a regular established service to Philadelphia, carrying passengers and merchandise, have been subjected, as a result of the action of the Coast Guard Service, to a loss of as much as two days in their sailing schedule. In the case of the "Manchester Corporation", I would also call attention to the fact that on the evening of November the 27th last, the Chief Officer of the United States Coast Guard boat No. 103 apparently caused a gun to be trained on the vessel at the time when

⁶⁵ Not printed.

⁶⁶ The affidavits annexed to this note were forwarded to the Treasury Department on January 11, 1928.

it was executing a turn in the channel at a point where the Pilot considered it unsafe to stop, and, furthermore, that on October the 1st last the Coast Guard Officer who then detained and searched the same vessel removed the ship's certified manifest against the protest of the master and failed to observe his promise to return it by the time the "Manchester Corporation" entered at Customs at Philadelphia.

In bringing the foregoing cases to my notice Mr. Watson points out that, quite apart from the serious loss of time involved, the practice of United States Coast Guard boats in detaining steamers for search in the narrow channel of the Delaware will inevitably lead to a grounding of one of these vessels on some future occasion with resulting prejudice to the British shipping interests concerned.

In these circumstances, I have the honour to enquire whether it is essential in the public interest that the local United States Coast Guard should detain for search and place under convoy bona fide British vessels proceeding up the Delaware River which will in any event be examined at the Customs upon arrival in the port of Philadelphia, and whether, unless absolute necessity demands it, the competent United States authorities could not see their way to discontinue a practice entailing loss of time and inconvenience and fraught with serious risk to the vessels concerned.

I have [etc.]

ESME HOWARD

811.114 Median/3

The Acting Secretary of State to the British Ambassador (Howard)

WASHINGTON, February 8, 1928.

EXCELLENCY: I have the honor to refer to your note No. 728, dated December 28, 1927, concerning the detention and search of British steamers in Delaware Bay and the Delaware River, by the United States Coast Guard, and to inform you of the receipt of a letter dated January 25, 1928, from the appropriate authority of this Government ⁶⁷ in which it is stated that the above matters have been the subject of a careful investigation.

As a result of the inquiry, the conclusion was reached that the boarding and examination of vessels subject to such customs formalities have been performed impartially. The discrimination alleged by the British steamships *Median*, *Manchester Corporation*, and *London Mariner*, are, therefore, stated to be without foundation in fact.

With regard to the complaint of the master of the *Median*, it is stated that while the conditions of sea and weather frequently make the task of the boarding of larger craft by the 75-foot Coast Guard patrol boats in the Delaware River a difficult one, and the officers in

⁶⁷ Not printed.

charge of the patrol boats in such circumstances use their best judgment and discretion as to the procedure to be followed in carrying out, in the safest and most practicable manner, the lawful duties with which they are charged, yet the element of risk in such cases is preponderantly on the side of the smaller patrol boat which is performing the boarding duty.

Regarding the representation of the master of the *Manchester Corporation* that his vessel was detained two days, it is stated that the investigation disclosed that the detention was really a matter of fifteen hours in all, and this delay was occasioned by unavoidable circumstances over which the patrol boat had no control. Furthermore, the officer in charge of the CG-103 denies that he used improper language or threatened to fire into the vessel. The investigation further revealed that the procedure prescribed by law for the handling of manifests was followed in this case, the copies of the manifests being certified and forwarded by mail to the Collector of Customs of the port for which the vessel is bound.

It is unfortunate that it should be necessary to board vessels bound for Philadelphia, but the report which has been received states that this necessity has become particularly accentuated due to the past practice of British and other vessels' discharging quantities of liquor into small boats after entering Delaware Bay and during the voyage up the river. While energetic measures are being taken to break up this unlawful practice, it is stated that the boarding officers are particularly careful to see that their duty is performed in a reasonable and lawful manner and that no action is taken which might in any way unnecessarily delay or inconvenience legitimate shipping, and that the officers of the Coast Guard and Customs Service are solicitous that the boarding be performed in a way that is mutually satisfactory to the Government and to the shipping interests.

The report states, furthermore, that this matter was recently the subject of a conference between Government officials and the Philadelphia managers of Furness-Withy and Company and the International Mercantile Marine, at which time unanimous expressions of satisfaction were voiced upon the present methods of boarding.

Accept [etc.]

ROBERT E. OLDS

811.114 Median/5

The British Ambassador (Howard) to the Secretary of State

No. 102

WASHINGTON, February 27, 1928.

SIR: I have the honour to acknowledge the receipt of your note of February 8th (File Reference 811.114 Median/3), in which, replying to my representations regarding the detention and search of British

vessels in Delaware Bay and at various points in the Delaware River, you inform me that the appropriate United States authorities deny the discrimination alleged by the steamships "Median", "Manchester Corporation" and "London Mariner". In this connection, and for the purpose of removing the possibility of misunderstanding, I beg leave to point out that my note No. 728 of December 28th last on this subject did not allege any discrimination on the part of the United States Coast Guard authorities between the three abovementioned British vessels or British shipping in general on the one hand and vessels of other nationality on the other. I merely intended to draw attention to the serious loss of time and inconvenience involved in this practice of search and detention, which might easily result, on some future occasion, in the grounding of a British steamer in the narrow channel of the Delaware River, with resulting prejudice to British shipping interests. I note that the boarding officers are at pains to exercise particular care that their duty is performed in a reasonable and lawful manner and that no action is taken which might in any way unnecessarily delay or inconvenience legitimate shipping.

I have [etc.]

ESME HOWARD

811.114 Median/7

The British Ambassador (Howard) to the Secretary of State

No. 201

WASHINGTON, May 7, 1928.

SIR: With reference to your note of March 6th last ⁶⁸ and to previous correspondence regarding the detention and search by the United States Revenue authorities of British vessels in Delaware Bay and the Delaware river, I have the honour, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, to inform you that the allegations regarding the illicit activities of British vessels made in Mr. Olds' note to me of February 8th, is not borne out by the information at the disposal of His Majesty's Consul-General at Philadelphia.

Sir Austen Chamberlain presumes that as it is only comparatively recently that the United States Preventive forces have interfered with British shipping in the waters abovementioned, the expression "past practice" in paragraph 5 of Mr. Olds' note of the 8th of February can only be held to refer to alleged liquor smuggling activities in Delaware Bay or river within the last two or three years at the most. In this connection His Majesty's Consul-General in Philadelphia has reported that no specific instance of British vessels having discharged liquor into small boats after entering Delaware Bay and during the voyage up the river has come to his notice in the past four years.

⁶⁸ Not printed.

I have been instructed to request, therefore, that you may be so good as to furnish me for the information of His Majesty's Government, with full particulars of those cases in which it is known that liquor has been illegally discharged from the British Merchant vessels in Delaware Bay and the Delaware river, in order that the matter may be taken up with the owners of the ships in question.

I have [etc.]

ESME HOWARD

811.114 Median/12

The Secretary of State to the British Ambassador (Howard)

WASHINGTON, June 6, 1928.

EXCELLENCY: I have the honor to refer to your note No. 201, of May 7, 1928, regarding the boarding and searching of vessels in Delaware Bay and the Delaware River, and requesting information concerning those cases in which it is known that liquor has been illegally discharged from British vessels, in view of the fact that the allegations regarding these vessels are not borne out by the information at the disposal of His Majesty's Consul General at Philadelphia.

In reply I have the honor to inform you that I am now in receipt of a letter from the appropriate authority of this Government ⁶⁹ in which it is stated that no action was taken against several vessels which had unladen illegally in the Delaware Bay and the Delaware River, owing to the lack of incontrovertible proof of such violations, and, hence, no report was made to the Consul General. The vessels in question were permitted to proceed unmolested with the exception of the *Charles Edward*, which was seized by the United States Coast Guard on November 10, 1927, in Delaware Bay with a cargo of 120 cases of contraband liquor and 275 kegs of Islay malt.

In addition, the British steamship *Lairg* entered the Delaware with 3,372 cases and 192 kegs of contraband liquor, and was seized on September 10, 1927, at Philadelphia by the customs authorities.

Also, the British steamship *Clackamas* was seized on February 23, 1927, by the United States Coast Guard after having discharged a large cargo of liquor in the Delaware River.

Accept [etc.]

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

⁶⁹ Not printed.

PROPOSED SPECIAL COMMISSION TO DEAL WITH CLAIMS REGARD-
ING USE BY THE UNITED STATES GOVERNMENT OF INVENTIONS
OF BRITISH SUBJECTS

811.54241/70

*The British Embassy to the Department of State*⁷⁰

MEMORANDUM

His Majesty's Embassy desire to draw the attention of the State Department to past correspondence between His Majesty's Embassy and the State Department regarding the desirability of establishing a Commission in the United States to deal with claims in respect of the user by the United States Government of patented and non-patented inventions of British subjects.

In Mr. Kellogg's last note on this subject dated April 17th, 1926, (File Reference 811.54241/60),⁷¹ a request was made that additional information should be supplied in respect of individual claims, and that the State Department should be furnished with some typical cases in which His Majesty's Government desire to obtain awards for British subjects for the user of inventions. In this connection, His Majesty's Embassy beg leave to state that, in subsequent communications received from His Majesty's Principal Secretary of State for Foreign Affairs, to whom the foregoing note was duly communicated, it has been pointed out that the majority of claims on the part of British inventors are in respect of the user of non-patented inventions. For this reason, His Majesty's Government are primarily desirous that when considering the establishment of the proposed Commission the United States Government should bear in mind the necessity of including in its purview the consideration of claims based on the use of unpatented inventions and claims which may be founded partly on monopoly rights and partly on grounds of equity. His Majesty's Government are of opinion that the United States Government will the more readily be prepared to meet their wishes in this matter having in view the fact that, as pointed out in His Majesty's Embassy's notes of July 22nd, 1925, and of March 17th, 1926,⁷² United States citizens in Great Britain are entitled to file suits before the Royal Commission on Awards in respect of inventions not covered by patents. Furthermore, under Article I, paragraph 2, of the arrangement concluded between the United States Government and His Majesty's Government of May 19th, 1927,⁷³ for the disposal of certain pecuniary claims arising out of the recent war, it is laid down that each of the parties to the agreement will

⁷⁰ Handed to the Assistant to the Under Secretary of State by the Commercial Counselor of the British Embassy, Jan. 5, 1928.

⁷¹ Not printed.

⁷² Neither printed.

⁷³ *Foreign Relations*, 1927, vol. II, p. 753.

use its best endeavours to secure to the nationals of the other the same rights and remedies as may be enjoyed by its own nationals in similar circumstances.

In the last paragraph of the note which His Majesty's Ambassador addressed to the Secretary of State on May 19th, 1927, attention is also drawn to this provision. Reference is there made to the understanding of His Majesty's Government, (confirmed in the concluding paragraph of Mr. Kellogg's note of the same date), that, in view of the assurance contained in paragraph 2 of Article I of the agreement, the Department of State will give active support to a request to Congress for appropriate remedial legislation on behalf of those British nationals whose claims are not covered by the agreement.

In these circumstances, His Majesty's Government have now instructed His Majesty's Ambassador to invite the United States Government to give their active support to the enactment of legislation setting up a Commission which will secure to British nationals with claims in respect of non-patented, as well as patented, inventions the same rights and remedies as United States nationals already enjoy in similar circumstances in Great Britain.

It is confidently expected that such reciprocal treatment of the British nationals concerned will be granted retrospectively, at any rate so far as concerns services rendered in the past forming the subject of pending claims, and His Majesty's Government are anxious, moreover, that it be extended to include all cases arising during the war up to January 10th, 1920, i. e. the date of the Order in Council announcing the official termination of the war, in respect of the user of patented and non-patented inventions by British subjects which have proved or may prove of use to all branches of the United States forces.

Whilst it is not proposed that the contemplated Commission should include in its purview the consideration of the claims of British nationals arising from the user of new patented or non-patented inventions adopted by the United States forces subsequent to the official termination of the war, it is the desire of His Majesty's Government that the Commission should entertain claims in respect of the past, present and future use of all inventions which the United States Government adopted during the war.

It should be added that the claims under reference are those of individuals and not of His Majesty's Government. The claimants themselves would consequently present their claims to any Commission which the United States Government may decide to set up, a procedure conforming with that adopted in the case of claims by United States citizens submitted to the British Royal Commission on Awards to Inventors.

As regards claims for the user of patented inventions, His Majesty's Government appreciate the fact that, as stated in Mr. Kellogg's note

of November 12th, 1925,⁷⁴ it is already open for British nationals in this category to prefer their claims before the United States Court of Claims in accordance with the provisions of the Act of Congress of June 25th, 1910.⁷⁵ On the other hand, the large number of claims already pending before that Tribunal renders it inevitable that considerable time must necessarily elapse before the Court can actually hold a hearing and make an award to the individual British patentees who are at liberty to have recourse to it for compensation. For this reason, His Majesty's Government desire to express the hope that, for the purpose of effecting the speedy settlement of claims in this category, also, the United States Government will agree to include them, as well as those not covered by patents, in the purview of the proposed Commission. In the event of the United States Government being prepared to approve this arrangement, it would also be advantageous were they in suitable cases, to adopt the practice of making a modified admission of the validity and infringement of the patent similar to that set out in paragraph 6 of the first report of the Royal Commission on Awards to Inventors forwarded to the State Department under cover of Mr. Chilton's note No. 706 of July 22nd, 1925.⁷⁴

Similarly, if, after filing his claim, an individual claimant finds that the validity or infringement of his patent is seriously disputed, he should be enabled to abandon his case as based on patent rights where he feels that such rights exist and to continue proceedings before the same tribunal.

In order to facilitate the consideration of this question on the part of the United States Government, there is appended to the present memorandum a list of certain typical instances of claims or complaints in respect of the user both of patented and non-patented inventions now on record in the files of His Majesty's Admiralty and War Office.⁷⁴

Lastly, it should be pointed out that a number of the claims, for the consideration of which it is desired to secure the establishment of a Commission, relate to inventions on the part of British Naval Officers who were forbidden by His Majesty's Government to enter into negotiations for the war user of their inventions at the time when these inventions were communicated to the United States Government. This procedure was at no time considered to debar the officer concerned from making a claim for an award upon the United States Government subsequent to the user of his invention and His Majesty's Government have full confidence that claimants in this category will not be denied remuneration for their valuable inventions, from which

⁷⁴ Not printed.

⁷⁵ 36 Stat. 851.

the United States Government were enabled to profit by the action of His Majesty's Government in freely placing them at their disposal at a time of great need.

811.54241/72

The Secretary of State to the British Chargé (Chilton)

WASHINGTON, July 23, 1928.

SIR: I have the honor to refer to the memorandum which Sir John Broderick⁷⁷ handed to an officer of this Department on January 5, 1928, concerning claims of British nationals in respect to the use by the Government of the United States of patented or unpatented inventions of British subjects, and to invite attention to the following considerations after consultation with the interested authorities of this Government and very careful examination of the suggestions of your Government.

The Court of Claims of the United States now provides a remedy for British subjects in cases of patented inventions which is the equivalent of the remedy provided in similar cases for American citizens. No adequate reason is set forth in the Embassy's memorandum for giving to British subjects a special tribunal different from that provided for the trial and determination of claims of citizens of foreign countries other than Great Britain.

From an examination of the claims submitted with the Embassy's memorandum it appears that they are largely those of British officers and that the inventions were submitted to the United States by the British Government. Prior to the Act of Congress approved April 30, 1928,⁷⁸ inventions of officers of the Army or Navy of the United States belonged to this Government, and in the absence of evidence to the contrary it would not seem equitable for this Government to decline to pay American officers for those inventions and to provide payment for similar inventions of officers of a foreign Government furnished by it as an aid in the prosecution of the war.

As regards any remedies which American citizens may have under British law, it may be pointed out that such remedy is not a matter of right but a matter of grace voluntarily granted by the British Government as a matter of policy and not at the request of the Government of the United States.

Furthermore, it would seem from the evidence presented that some of these claims are based upon unpatented inventions. It is contrary to the long established policy of this Government to protect such inventions or to consider claims for royalties in respect to them.

As these inventions are understood to have been turned over to officers of the Army or Navy of the United States by the British

⁷⁷ Commercial Counselor of the British Embassy.

⁷⁸ 45 Stat. 467.

Government and not by the inventors, and as there was apparently no indication at that time that this Government was expected to pay for the use of the inventions, it seems clear that the claims do not have a legal basis.

In view of the foregoing it is not found possible to give favorable consideration to the request contained in the Embassy's memorandum that a special tribunal be established for the consideration of these claims.

Accept [etc.]

FRANK B. KELLOGG

ANTARCTIC EXPEDITION OF COMMANDER RICHARD E. BYRD

031 Byrd South Polar Expedition/27

The Secretary of State to the Consul General at Wellington (Lowrie)

WASHINGTON, July 11, 1928.

SIR: I enclose a copy of a letter from Commander Richard E. Byrd⁷⁹ concerning his desire that the supplies and equipment that will be used on his forthcoming Antarctic Expedition be admitted free of duty by the authorities at Dunedin and stored in the warehouse of Tapley, Limited, at Dunedin, the New Zealand Agent for the expedition.

You are instructed to take appropriate action in the matter and to express the hope that, as the expedition is solely one of a scientific nature, it may be found possible to comply with Commander Byrd's request.

Please advise the Consular Agent at Dunedin of the action taken by you in the matter.

I am [etc.]

For the Secretary of State:

W. R. CASTLE, Jr.

031 Byrd South Polar Expedition/30

The Consul in Charge at Wellington (Gotlieb) to the Secretary of State

No. 43

WELLINGTON, August 24, 1928.

[Received September 19.]

SIR: I have the honor to acknowledge receipt of the Department's instruction dated July 11, 1928, (File No. 031-Byrd South Polar Expedition/25⁸⁰) directing this office to request of the New Zealand Government that the supplies and equipment to be used on Commander Byrd's forthcoming Antarctic Expedition, be admitted free of duty by the Customs authorities at Dunedin.

⁷⁹ Not printed.

⁸⁰ This enclosure number was later changed to 27 by the Index Bureau.

The Minister of Customs was duly approached in this matter, and I am today in receipt of a communication from the Department of Customs under date of August 21, 1928, stating that exemption has been granted from Customs duties as requested. The Consular Agent at Dunedin has been advised accordingly.

I have [etc.]

BERNARD GOTTLIEB

800.014 Antarctic/1

*The Personal Representative of Commander Richard E. Byrd
(Railey) to the Secretary of State*

NEW YORK, October 10, 1928.

[Received October 11.]

MY DEAR MR. SECRETARY: In the event that the Flight Division of the Byrd Antarctic Expedition discovers land not now charted on the maps, will you kindly advise me what the attitude of the State Department would be toward the claiming of such lands on behalf of the United States?

Just before Commander Byrd left New York for San Pedro, he asked me, in great haste, to obtain this information and forward it to him at Dunedin.

Will you kindly advise me?

Very sincerely yours,

H. H. RAILEY

031 Byrd South Polar Expedition/37 : Telegram

The Secretary of State to the Consul General at Wellington (Lowrie)

WASHINGTON, November 13, 1928—6 p. m.

At request Commander Byrd you are authorized to inform New Zealand Government that while his expedition is not under the auspices of this Government it is solely one of a scientific nature and express the hope that it may find it possible to render the expedition such assistance as may be practicable in the accomplishment of its purpose. Inform Commander Byrd.

KELLOGG

031 Byrd South Polar Expedition/38

The British Ambassador (Howard) to the Secretary of State

No. 526

WASHINGTON, November 17, 1928.

SIR: I have the honour to inform you, in accordance with instructions received from His Majesty's Acting Principal Secretary of State for Foreign Affairs, that His Majesty's Governments in different countries of the Empire have learnt that an American expedition, under Commander Byrd, has started on a voyage of scientific research in the

Antarctic regions. His Majesty's Governments concerned will watch with especial interest the progress of this expedition on account of the interest which they themselves take in the regions in which they understand that the bulk of the research by Commander Byrd and his party is to be undertaken. It will probably be recalled that certain regions of the Antarctic formed the subject of discussions which took place at the Imperial Conference held in London in 1926. An account of these discussions is given on pages 33 and 34 of the Public Summary of Proceedings, a copy of which I have the honour to transmit to you herewith.⁸¹

I am to add that His Majesty's Governments wish every success to the expedition, and that, if the United States Government so desire, instructions will be issued to the appropriate authorities to afford Commander Byrd every assistance in their power while the expedition is in the Ross Dependency and the Falkland Islands Dependencies.⁸²

I have [etc.]

ESME HOWARD

031 Byrd South Polar Expedition/45

The Consul General at Wellington (Lowrie) to the Secretary of State

No. 592

WELLINGTON, November 30, 1928.

[Received December 28.]

SIR: I have the honor to refer to my Despatch No. 582, November 16, 1928,⁸³ and to enclose copy of a note received from the Minister of Internal Affairs, for the Prime Minister, concerning Government assistance to Commander Byrd and the Antarctic Expedition.

⁸¹ Not printed. Following is account referred to:

"XI.—BRITISH POLICY IN THE ANTARCTIC

The question of Antarctic exploration was discussed between representatives of the Governments interested. There are certain areas in these regions to which a British title already exists by virtue of discovery. These areas include:—

(i.) The outlying part of Coats Land, viz., the portion not comprised within the Falkland Islands Dependencies.

(ii.) Enderby Land.

(iii.) Kemp Land.

(iv.) Queen Mary Land.

(v.) The area which lies to the west of Adélie Land and which on its discovery by the Australian Antarctic Expedition in 1912 was denominated Wilkes Land.

(vi.) King George V Land.

(vii.) Oates Land.

The representatives of the Governments concerned studied the information available concerning these areas with special reference to their possible utilisation for further developing exploration and scientific research in the Antarctic regions." Great Britain, Cmd. 2768, Imperial Conference (1926): *Summary of Proceedings*.

⁸² In its reply of Nov. 15, 1929 (031 Byrd South Polar Expedition 65½), the Department stated in part:

"The reference in the Ambassador's note to the summary of proceedings of the Imperial Conference of 1926, containing an account of discussions concerning certain regions of the Antarctic, has been noted, but since it is assumed that this was merely brought to the Department's attention for its information, no comment by the Department would seem to be called for at this time."

⁸³ Not printed.

Occasion is taken to enclose also a copy of a note from Commander Byrd dated Dunedin, November 28th,⁸⁴ concerning the cooperation of this office during his stay in the Dominion.

Commander Byrd and members of the Expedition have made a splendid impression on the public of New Zealand and have increased materially the prestige of the United States in this country.

I have [etc.]

W. L. LOWRIE

[Enclosure]

The New Zealand Minister of Internal Affairs (Pomare) to the American Consul General at Wellington (Lowrie)

WELLINGTON, 26 November, 1928.

DEAR SIR: The Prime Minister has referred to me your letter of the 15th instant relative to the visit of Commander Byrd and members of his Antarctic Expedition.

In regard to the wish expressed by your Department of State that such assistance, as may be practicable, be extended to the Expedition, I have to say that the Government has been pleased to extend courtesies and the thanks of the Commander, as expressed by you, are appreciated.

The inability of Commander Byrd and those closely associated with him to spare time to visit many interesting places in the Dominion is regretted but it is hoped that this may be remedied on the return of the Expedition to New Zealand.

Yours faithfully,

M. POMARE

800.014 Antarctic/2

The Secretary of State to the Personal Representative of Commander Richard E. Byrd (Railey)

WASHINGTON, December 5, 1928.

SIR: The Department has received your letter dated October 10, 1928, in which you request to be informed concerning the attitude of this Department with respect to the right to claim on behalf of the United States any lands which may be discovered by the Flight Division of the Byrd Antarctic Expedition.

Your letter has been noted carefully and if the occasion should arise the Department will be pleased to indicate to you its conclusions in the matter.

I am [etc.]

For the Secretary of State:

J. REUBEN CLARK, Jr.

Under Secretary

⁸⁴ Not printed.

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